

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2960
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Windstorm Insurance Association (TWIA), known as the Texas Catastrophe Property Insurance Association until September 1, 1997, was established by the Texas Legislature in 1971 as a mechanism to provide wind and hail coverage to applicants unable to obtain insurance in the voluntary market. The legislature's action was a response to market constrictions along the Texas Gulf Coast after several hurricanes.

Since TWIA's inception, the legislature has made it clear that TWIA was to write limited coverage for wind and hail in order to provide for the "orderly economic growth of the coastal counties." Persons who own businesses or residences in the following counties are eligible for coverage through TWIA: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy. Portions of Harris County east of Highway 146 are also eligible. TWIA is also authorized to provide coverage in other areas designated as "catastrophe areas" by the commissioner of insurance. The term "catastrophe area" is defined in the Insurance Code to include, among other things, areas where "windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property."

TWIA's exposure has been growing rapidly in recent years. It is estimated that TWIA's exposure, including miscellaneous coverages such as business interruption, will exceed \$60 billion by the end of this year. This growth increases the possible losses arising out of a given storm, placing state revenues at an ever-increasing risk. The current catastrophe funding capacity available to cover losses before the reimbursable tax credits are triggered (approximately \$1.039 billion) is estimated to cover the probable losses from a storm that would be expected to occur every 20-25 years (a four percent to five percent chance of striking in any given year). An example might be a Hurricane Rita-type storm striking Galveston.

Texas' general revenue stream would be at significant risk should a more severe storm strike the coast. For example, losses from a so-called 100-year storm (one having a one percent chance of striking in any given year) are estimated at about \$3.3 billion, placing about \$2.3 billion of state revenues at risk; a 250-year storm (one with a 0.4 percent chance of striking in any given year) would produce about \$5.2 billion in losses for TWIA, jeopardizing about \$4.2 billion in state revenues.

The current funding mechanism for TWIA was developed in 1993 at a time when TWIA's exposure to loss was considerably less. In that year, the combined residential and commercial exposure was \$6.5 billion, about one-tenth of today's levels. What may have been adequate then to promote the property market and protect state revenues is inadequate today.

C.S.H.B. 2960 restructures the funding mechanism for TWIA and the Texas FAIR Plan Association and makes other changes, with the overall goal of creating a system that does not excessively expose the state's general revenue to hurricane losses while at the same time allowing for strong, sustainable economic growth along the coast by making necessary insurance coverage available.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 4 (Section 2210.005, Insurance Code), SECTION 5 (Section 2210.008, Insurance Code), SECTION 9 (Section 2210.058, Insurance Code), SECTION 21 (Section 2210.210, Insurance

Code), SECTION 22 (Section 2210.251, Insurance Code), SECTION 26 (Section 2210.261, Insurance Code), and SECTION 34 (Section 2211.104, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 17 (Section 2210.151, Insurance Code) and SECTION 31 (Section 2210.452, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 22 (Section 2210.251, Insurance Code), SECTION 23 (Section 2210.252, Insurance Code), SECTION 24 (Section 2210.254, Insurance Code), and SECTION 25 (Section 2210.255, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2210.002, Insurance Code, as follows:

Sec. 2210.002. New heading: SHORT TITLE; SUNSET PROVISION. (a) Creates this subsection from existing text.

(b) Provides that the Texas Windstorm Insurance Association (TWIA) is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. Requires TWIA to be reviewed during the period in which state agencies abolished in 2013 are reviewed. Provides that this subsection expires September 1, 2013.

SECTION 1A. Amends Section 2210.001, Insurance Code, as follows:

Sec. 2210.001. PURPOSE. Provides that an adequate market for windstorm and hail insurance in the seacoast territory 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. Provides that this chapter provides a method by which adequate windstorm and hail insurance is authorized to be obtained in certain designated portions of the seacoast territory. Deletes existing text making this section applicable to fire insurance. Makes conforming changes.

SECTION 2. Amends Section 2210.003(6), Insurance Code, to redefine "insurance."

SECTION 3. Amends Sections 2210.004(a) and (g), Insurance Code, as follows:

(a) Redefines "insurable property."

(g) Deletes existing text providing that a residential structure is insurable property if a building permit or plat for the residential structure was filed with the municipality, the county, or the United States Army Corps of Engineers before January 1, 2004.

SECTION 4. Amends Section 2210.005, Insurance Code, as follows:

Sec. 2210.005. New heading: DESIGNATION AS CATASTROPHE AREA; REVOCATION OF DESIGNATION. (a) Makes no changes to this subsection.

(b) Redesignated from existing Subsection (c). Deletes existing Subsection (b) authorizing the commissioner to 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. Makes a conforming change.

(c) Redesignated from existing Subsection (d). Makes conforming changes.

(d) Authorizes the commissioner, after at least 10 days' notice and a hearing, to determine, unless such a determination creates an adverse impact to the exposure of TWIA, that windstorm and hail insurance is not reasonably available to a group

that is located in a specified area of the state and that has similar risk characteristics. Requires that group of risks to be considered the same as a risk that is located in a catastrophe area for all purposes under this chapter on such a determination by the commissioner.

(e) Requires the commissioner to revoke a determination made under Subsection (d) 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 group determined to be eligible under Subsection (d).

(f) Authorizes TWIA to request in writing that the commissioner revoke the determination if TWIA determines that windstorm and hail insurance is no longer reasonably unavailable to a group determined to be eligible under Subsection (d). Requires the commissioner to either approve the request and revoke the determination or reject the request after at least 10 days' notice and a hearing, but not later than the 30th day after the date of the hearing.

(g) Authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Subchapter A (Rules), Chapter 36, to implement this section.

SECTION 5. Amends Section 2210.008, Insurance Code, as follows:

Sec. 2210.008. New heading: DEPARTMENT ORDERS; RULEMAKING AUTHORITY. (a) Authorizes the commissioner to issue any orders that the commissioner considers necessary to implement this chapter. Deletes existing text including orders regarding maximum rates, competitive rates, and policy forms.

(b) Authorizes the commissioner to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as reasonable and necessary to implement this chapter. Deletes existing text requiring Texas Department of Insurance (TDI), before the commissioner adopts an order, to post notice of the hearing on the order at the secretary of state's office in Austin and deletes existing text requiring TDI to hold a hearing to consider the proposed order. Deletes existing text authorizing any person to appear at the hearing and testify for or against the adoption of the order.

SECTION 6. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Section 2210.009, as follows:

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN. (a) Requires TDI to 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) Requires TDI to 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 TWIA as a means to obtain insurance.

SECTION 7. Amends Sections 2210.052, by amending Subsections (a) and (d) and adding Subsection (e), Insurance Code, as follows:

(a) Requires each member of TWIA to participate in insured losses and operating expenses of TWIA, in excess of premium and other revenue of TWIA, rather than participate in the writings, expenses, profits, and losses of TWIA, 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 TWIA, as determined using the information provided under Subsection (b).

(d) Entitles a member, notwithstanding Subsection (a), in accordance with the plan of operation, to receive credit for similar insurance voluntarily written in areas, rather than an area, designated by the commissioner. Requires the member's participation in the insured losses and operating expenses of the association in excess of premium and other

revenue, rather than in the writings, of TWIA to be reduced in accordance with the plan of operation.

(e) Provides that, notwithstanding Subsections (a) through (d), an insurer that becomes a member of TWIA and that has not previously been a member of TWIA is not subject to participation in any insured losses and operating expenses of TWIA in excess of premium and other revenue of TWIA until the second anniversary of the date on which the insurer first becomes a member of TWIA. Authorizes the commissioner to adopt procedures in the plan of operation for reduced assessments for such an insurer for an additional period, not to exceed three years, beyond the initial exemption under this subsection.

SECTION 8. Amends Section 2210.053, Insurance Code, by adding Subsection (c), to require TWIA, as directed by the commissioner and after notice and hearing, to assume reinsurance from a county mutual insurance company issuing industrial fire insurance policies as described by Section 912.310.

SECTION 9. Amends Section 2210.058, Insurance Code, as follows:

Sec. 2210.058. New heading: PAYMENT OF EXCESS LOSSES. (a) Requires excess losses and operating expenses to be paid as provided by this section.

(b) Requires, for each occurrence, losses to be paid as provided by this section from the catastrophe reserve trust fund established under Subchapter J. Authorizes, for each occurrence, not more than 50 percent of the amount in the catastrophe reserve trust fund as of the date of occurrence, reduced by anticipated payments from prior occurrences, to be used unless the commissioner determines that a greater percentage should be applied after at least 10 days' notice and a hearing, if a hearing is requested by any person within the 10-day notice period. Authorizes TWIA, with the approval of the commissioner, to require each member of TWIA and TFPA (TFPA) to collect a premium surcharge for one year from their respective policyholders who reside or have operations in, or whose insured property is located in, the catastrophe area if the trust fund is reduced by more than 50 percent in any calendar. Prohibits the premium surcharge from exceeding two percent of premium and applies to all policies of insurance for all property and casualty lines, other than workers' compensation insurance, accident and health insurance, and medical malpractice insurance. Requires the premium surcharge collected under this subsection to be deposited in the catastrophe reserve trust fund. Deletes existing text providing the amount of money to be paid as excess losses to members and any reinsurance program established by TWIA.

(c) Created from part of existing Subsection (a). Requires losses in excess of those paid under Subsection (b) to be paid as provided by this subsection. Requires, for each occurrence, a certain amount to be computed and assessed against the members of TWIA and TFPA, as provided by Subsection (h). Prohibits TWIA from assessing members of TWIA and TFPA under this subsection more than twice in any calendar year.

(d) Created from part of existing Subsection (a). Requires a certain amount to be computed and assessed against the members of TWIA and TFPA, as provided by Subsection (i), for losses in excess of those paid under Subsections (b) and (c).

(e) Requires, for losses in excess of those paid under Subsections (a), (b), and (c), an amount equal to a maximum of four percent of all the direct premiums written by all the members of TWIA and TFPA, as reported in the annual statement filed with TDI for the calendar year immediately preceding the year in which the assessment is made for fire insurance and allied lines insurance, homeowners insurance, farm and ranch insurance, and commercial multiperil insurance, to be computed and assessed against the members of TWIA and TFPA, as provided by Subsection (h). Prohibits TWIA from assessing members of TWIA and TFPA

under this subsection more than twice in any calendar year. Deletes existing text relating to an assessment against members of TWIA.

(f) Requires any losses in excess of those paid under Subsections (b) through (e) to be paid from proceeds from Class 2 public securities issued by TWIA in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under Subsection (a).

(g) Requires any losses in excess of those paid under Subsections (b) through (f) to be assessed against members of TWIA and TFPA, as provided by Subsection (h).

(h) Created from existing Subsection (b). Requires the proportion of the losses allocable to each insurer and TFPA under Subsections (c), (e), and (g), rather than Subsections (a)(1), (3), and (4), to be determined in the manner used to determine each insurer's participation in TWIA for the year under Section 2210.052, and as to TFPA, as provided by the plan of operation.

(i) Authorizes public securities described by Subsection (d) to be issued in principal amounts not to exceed \$1.2 billion. Requires any public securities proceeds received under Subsection (d) to be used before the proceeds of any public securities that TWIA authorizes to be issued under Subsection (f) on or after any catastrophic event, and prohibits the public securities proceeds from being used to fund losses of any catastrophic event occurring before the date on which public securities described by Subsection (d) are authorized to be issued.

(j) Authorizes TWIA to borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates in addition to the funding described by Subsections (b) through (g).

(k) Authorizes the commissioner to adopt rules in the manner provided by Subchapter A, Chapter 36, as necessary to implement this section. Deletes existing Subsection (c) authorizing an insurer to credit a certain amount paid against the insurer's premium tax.

SECTION 10. Amends Section 2210.060(c), Insurance Code, to provide that Subsection (a) does not authorize TWIA to indemnify a member of TWIA for participating in the assessments made by TWIA, rather than the writings, expenses, profits, and losses of TWIA, in the manner provided by this chapter.

SECTION 11. Amends the heading to Subchapter C, Chapter 2210, Insurance Code, to read as follows:

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

SECTION 12. Amends Section 2210.102, Insurance Code, as follows:

Sec. 2210.102. COMPOSITION. (a) Provides that the board of directors is composed of nine members appointed by the commissioner in accordance with this section.

(b) Requires four members to be employed by or affiliated with, other than as agents, insurers who are members of TWIA.

(c) Requires three members to be public representatives, at least one of whom, as of the date of the appointment, resides in or owns property in a first tier coastal county and at least one of whom, as of the date of the appointment, does not reside in or own property in the seacoast territory. Makes conforming changes.

(d) Requires at two members to be general property and casualty agents licensed under this code who are not captive agents, one of whom, as of the date of

appointment, maintains the agent's principal office in the a first tier coastal county, and one of whom, as of the date of the appointment, does not maintain the agent's principal office in the seacoast territory.

(e) Requires all members to have demonstrated experience in insurance, general business, or actuarial principals sufficient to make the success of TWIA probable. Deletes existing text providing the composition of the board of directors. Deletes existing Subsection (b) requiring the persons appointed under existing Subsections (a)(2) and (3) to be from different counties.

SECTION 13. Amends Section 2210.103, by adding Subsection (c), Insurance Code, to require the commissioner to 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 14. Amends Section 2210.104, Insurance Code, to delete existing text requiring at least one of the officers of the board of directors to be a member appointed under Section 2210.102(a)(2) or (3).

SECTION 15. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.1051, as follows:

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a) Authorizes members of the board of directors, notwithstanding Chapter 551, Government Code, or any other law, to meet by telephone conference call, video conference, or other similar telecommunication method. Authorizes the board to use telephone conference call, video conference, 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). Provides that this subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting.

(b) Provides that a meeting held by telephone conference call, video conference, or other similar telecommunication method is subject to certain requirements and restrictions.

SECTION 16. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.107, as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES. Provides that the primary objectives of the board of directors are to ensure that TWIA operates in accordance with this chapter and commissioner rules, complies with sound insurance principles, and meets all standards imposed under this chapter.

SECTION 17. Amends Section 2210.151, Insurance Code, to delete existing text requiring the commissioner by rule to adopt the plan of operation to provide Texas fire and explosion insurance in an inadequate fire insurance area.

SECTION 18. Amends Section 2210.152(a), Insurance Code, to require the plan of operation to include, among other thing, a plan for the assessment of TFPA.

SECTION 19. Amends Section 2210.202(a), Insurance Code, as follows:

(a) Requires TWIA to 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 two declinations from insurers authorized to engage in the business of, and writing, property insurance in this state. Defines "declination." Deletes existing text providing that a person who applies to TWIA for insurance coverage is subject to an inspection fee.

SECTION 20. Amends Section 2210.203, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Prohibits TWIA from issuing a new or renewal insurance policy unless evidence that the property is covered by a flood insurance policy is submitted to TWIA, notwithstanding Subsection (a), if the property is located in certain zones and if flood insurance under the National Flood Insurance Program is available. Provides that, if that flood insurance is unavailable, an association policy insuring a residential structure is subject to a premium surcharge for the insurance coverage obtained through TWIA in an amount equal to not less than 10 percent of the premium, as set by the commissioner after notice and a hearing. Requires a premium surcharge collected under this subsection to be deposited in the catastrophe reserve trust fund under Subchapter J. Provides that a premium surcharge under this subsection is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

SECTION 21. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Section 2210.210, as follows:

Sec. 2210.210. NOTICE TO APPLICANTS FOR INSURANCE AND POLICYHOLDERS; CONSUMER INFORMATION. (a) Requires each application for insurance and each policy issued by TWIA to include a notice as provided by this section. Authorizes the commissioner by rule to prescribe specific requirements for the notice. Sets forth the language required to be included on the notice.

(b) Requires TDI to establish a link on TDI's website through which applicants for insurance coverage through TWIA and association policyholders may obtain information in a format easily understood about TWIA's exposure and available resources.

SECTION 22. Amends Sections 2210.251, Insurance Code, as follows:

Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Requires a structure that is constructed or repaired or to which additions are made on or after January 1, 1988, to be inspected by TWIA, rather than be inspected and approved by TDI, for compliance with the plan of operation in order to be considered insurable property for windstorm and hail insurance coverage from TWIA.

(b) Requires the board of directors, after January 1, 2004, for geographic areas specified by the commissioner, to recognize for the purposes of this chapter, rather than the commissioner by rule to adopt, the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. Authorizes, for those geographic areas, the board of directors to recognize, rather than the commissioner by rule to adopt, a subsequent edition of that code and any supplements published by the International Code Council and amendments to that code.

(c) Requires a person, after January 1, 2004, to submit a notice of a windstorm inspection to TWIA, rather than the unit responsible for certification of windstorm inspections at TDI, before beginning to construct, alter, remodel, enlarge, or repair a structure.

(d) and (e) Makes conforming changes.

(f) Requires TWIA, rather than TDI, to issue a certificate of compliance for each structure that qualifies for coverage.

(g) Creates this subsection from existing Subsection (h). Authorizes TWIA, rather than TDI, to charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public. Deletes existing text authorizing TDI to enter into agreements and contracts as necessary to implement this section.

(h) Authorizes TWIA to charge a reasonable fee for each inspection in an amount set by commissioner rule. Authorizes TWIA to use fees collected under this section for operating expenses.

(i) Authorizes TWIA to fund certain expenses and hire certain individuals in the event of an occurrence or series of occurrences within a defined catastrophe area that results in widespread destruction of property.

(j) Requires TDI, without limitation of TDI's authority to otherwise enforce this chapter, to monitor TWIA's compliance with this subchapter and authorizes TDI to take any disciplinary action available under this code to enforce this subchapter, including an action authorized under Chapters 82, 83, and 84.

(k) Authorizes the commissioner to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this section.

SECTION 23. Amends Section 2210.252, Insurance Code, as follows:

Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING SPECIFICATIONS. (a) Authorizes TWIA, rather than the commissioner by rule, to supplement the plan of operation building specifications with certain structural provisions published by entities recognized by the board of directors, rather than TDI.

(b) Authorizes the board of directors to recognize, rather than the commissioner by rule to adopt, a subsequent edition of the International Residential Code for one- and two-family dwellings and a supplement published by the International Code Council or an amendment to that code.

SECTION 24. Amends Sections 2210.254(a) and (b), Insurance Code, as follows:

(a) Redefines "qualified inspector."

(b) Authorizes a windstorm inspection to be performed only by a qualified inspector who is employed by or under contract with TWIA.

SECTION 25. Amends Section 2210.255, Insurance Code, as follows:

Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS INSPECTOR. (a) Authorizes TWIA, rather than requires the commissioner, to appoint an engineer, on request by that engineer, as an inspector under this subchapter on receipt of information satisfactory to the board of directors that the engineer is qualified to perform windstorm inspections under this subchapter. Deletes existing text providing that the engineer is appointed not later than the 10th day after the date the engineer delivers certain information relating to his or her qualifications to the commissioner.

(b) Requires the board of director to consult with the commissioner regarding the information to be considered in appointing engineers under this section. Deletes existing text requiring the commissioner to adopt rules establishing the information to be considered in appointing engineers under this section.

SECTION 26. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Sections 2210.258 through 2210.261, as follows:

Sec. 2210.258. MANDATORY COMPLIANCE WITH BUILDING CODES; ELIGIBILITY. (a) Requires all construction, alteration, remodeling, enlargement, and repair of any structure located in the catastrophe area that is begun on or after January 1, 2008, notwithstanding any other provision of this chapter, to be eligible for insurance through TWIA, to be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) Prohibits TWIA from insuring a structure described by Subsection (a) until the structure has been inspected for compliance with the plan of operation in accordance with Section 2210.251(a) and a certificate of compliance has been issued for the structure in accordance with Section 2210.251(f).

Sec. 2210.259. EXCEPTION; SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES. (a) Prohibits TWIA from insuring a structure that has not been inspected for compliance with the plan of operation in accordance with Section 2210.251(a) for which a certificate of compliance has not been issued on the structure in accordance with Section 2210.251(f), unless certain conditions are met.

(b) Provides that a structure eligible for insurance under Subsection (a) is subject to a premium surcharge for insurance coverage obtained through TWIA. Requires the commissioner to determine the surcharge, after notice and a hearing, in an amount not less than an amount equal to 20 percent of the premium.

(c) Requires a premium surcharge collected under this section to be deposited in the catastrophe reserve trust fund under Subchapter J. Provides that a premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

Sec. 2210.260. STRUCTURES NOT SUBJECT TO PREMIUM SURCHARGE. Authorizes TWIA, notwithstanding Section 2210.259, to insure without a premium surcharge a structure that was constructed or repaired or to which additions were made before January 1, 1988, and not thereafter, and is eligible for association coverage under Section 2210.251(d) or (e) or is the subject of a certificate of compliance issued by TDI and that has not been altered, remodeled, enlarged, or repaired after the date of issuance of the last TDI certificate.

Sec. 2210.261. RULES. Authorizes the commissioner to adopt rules to implement Sections 2210.258, 2210.259, and 2210.260.

SECTION 27. Amends Section 2210.351(c), Insurance Code, to create an exception provided by Section 2210.352(a-1) to the provision that the commissioner must approve the filing.

SECTION 28. Amends Section 2210.352, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Deletes existing text requiring TWIA to file a proposed manual with TDI for approval by the commissioner.

(a-1) Authorizes TWIA to use a rate filed by TWIA without prior commissioner approval under certain circumstances.

SECTION 29. Amends Section 2210.354(a), Insurance Code, to authorize any interested person to file a written request with the commissioner for additional supporting information related to the filing in the case of a filing in which the filed rate exceeds 105 percent of the rate used by TWIA during the preceding 12-month period.

SECTION 30. Amends Section 2210.355, Insurance Code, by adding Subsections (h) and (i), as follows:

(h) Authorizes TWIA to establish rating territories and vary rates among territories. Authorizes TWIA to use rating territories that subdivide a county only if the rate for any subdivision in the county is not greater than 15 percent higher than the rate used in any other subdivision of that county.

(i) Prohibits catastrophe models, including hurricane models, from being used to develop rates under this chapter.

SECTION 31. Amends Sections 2210.452(a), and (c), Insurance Code, as follows:

(a) Requires the commissioner to adopt rules under which TWIA makes payments to the catastrophe reserve trust fund, rather than rules under which TWIA members relinquish their net equity on an annual basis as provided by those rules by making payments to the catastrophe reserve trust fund. Authorizes said trust fund to be used only to fund the obligations of the trust fund under Section 2210.058 and the mitigation and preparedness plan established under Section 2210.454 to reduce the potential for payments by association members and TFPA that give rise to tax credits in the event of loss.

(c) Requires TWIA to pay the net gain from operations of TWIA, rather than to pay the equity, including all premium and other revenue of TWIA in excess of incurred losses and operating expenses, to the trust fund or a reinsurance program approved by the commissioner. Defines "operating expenses."

SECTION 32. Amends Section 2210.453, Insurance Code, as follows:

Sec. 2210.453. New heading: REINSURANCE. (a) Authorizes TWIA to make payments into the trust fund and purchase reinsurance as part of TWIA's annual operating expenses to the extent approved by the commissioner. Deletes existing text requiring TWIA to make payments into the trust fund or establish a reinsurance program approved by TDI.

(b) Authorizes TWIA to purchase reinsurance, rather than establish a reinsurance program, as provided by this subsection, rather than with the approval of TDI, that operates in addition to or in concert with the trust fund and with assessments authorized by this chapter. Authorizes TWIA to purchase reinsurance in lieu of using public securities authorized under Section 2210.058 if, after a cost-benefit analysis or other appropriate examination, the board of directors determines that the use of reinsurance would result in lower costs to TWIA or is otherwise economically beneficial to the operations of TWIA.

SECTION 33. Amends Chapter 2210, Insurance Code, by adding Subchapter M, as follows:

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

Sec. 2210.601. PURPOSE. Provides that the legislature finds that authorizing the issuance of public securities to provide a method to raise funds to provide windstorm and hail insurance through TWIA in certain designated portions of the state for the benefit of the public and in furtherance of a public purpose.

Sec. 2210.602. DEFINITIONS. Defines "board," "Class 1 public securities," "Class 2 public securities," "credit agreement," "insurer," "public security," "public security administrative expenses," "public security obligations," "public security obligation revenue fund," and "public security resolution."

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. Requires the board of directors of the Texas Public Finance Authority (board) to issue public securities as described by Section 2210.604 in accordance with and subject to the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. Provides that in the event of a conflict, this subchapter controls.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) Requires the Texas Public Finance Authority (authority) to issue Class 1 or 2 public securities at the request of TWIA and with the approval of the commissioner.

(b) Requires TWIA to specify in TWIA's request to the board the maximum principal amount of the public securities and the maximum term of the public securities, not to exceed 30 years.

(c) Authorizes the principal amount determined by TWIA under Subsection (b) to be increased to include an amount to cover certain costs, provide a public security

reserve fund, and capitalize interest for the period determined necessary by TWIA, not to exceed two years.

Sec. 2210.605. TERMS OF ISSUANCE. (a) Requires the board to 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 TWIA and effect the borrowing at the lowest practicable cost. Authorizes the board to enter into a credit agreement in connection with the public securities.

(b) Requires public securities to include the name of TWIA.

Sec. 2210.606. ADDITIONAL COVENANTS. Authorizes the board to make additional covenants with respect to the public securities and the designated income and receipts of TWIA 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. Authorizes the proceeds of public securities issued by the board under this subchapter to be deposited with a trustee selected by TWIA in consultation with the commissioner or held by the comptroller of public accounts (comptroller) in a dedicated trust fund outside the state treasury in the custody of the comptroller.

Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS. (a) Requires public security proceeds, including investment income, to be held in trust for the exclusive use and benefit of TWIA. Authorizes TWIA to use the proceeds to make certain payments.

(b) Authorizes any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied to be used to purchase or redeem outstanding public securities. Requires the excess proceeds to be transferred to the catastrophe reserve trust fund if there are no outstanding public security obligations or public security administrative expenses.

Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY OBLIGATIONS. (a) Requires TWIA to pay all public security obligations from available funds collected by TWIA from and deposited into the public security obligation revenue fund. Requires TWIA to pay the public security obligations and public security administrative expenses, if any, with available funds, in accordance with Sections 2210.612 and 2210.613, if TWIA determines that it is unable to pay those obligations.

(b) Requires the board to notify TWIA 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 TWIA, to permit TWIA to determine the availability of funds and assess a premium surcharge if necessary.

(c) Requires TWIA to deposit all revenue collected under Sections 2210.612 and 2210.613 in the public security obligation revenue fund. Authorizes money deposited in the fund to be invested as permitted by general law. Requires money in the fund required to be used to pay public security obligations and public security administrative expenses, if any, to 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.

(d) Requires TWIA to 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) Requires an amount owned by the board under a credit agreement to be payable from and secured by a pledge of revenues received by TWIA 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) Authorizes revenues received from the premium surcharges under Section 2210.612 or 2210.613 to be applied only as provided by this subchapter.

(b) Authorizes TWIA to pay public security obligations with other legally available funds.

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

Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Authorizes revenue collected in any year from a premium surcharge under Section 2210.612 or 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 to be used to pay certain obligations or deposited in the catastrophe reserve trust fund, at the discretion of TWIA.

Sec. 2210.612. CLASS 1 PREMIUM SURCHARGE. (a) Authorizes each insurer, TWIA, and TFPA to collect from their policyholders a surcharge in addition to any premiums to pay public security obligations and public security administrative expenses, if any, on Class 1 public securities.

(b) Requires TWIA to determine the premium surcharge at least annually.

(c) Requires certain parties to assess a premium surcharge to its policyholders as provided by this section, on approval by the commissioner. Requires the premium surcharge to 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.

(d) Requires TWIA to collect the premium surcharge from its policyholders. Requires each insurer and TFPA to collect the premium surcharge from their policyholders who have a property or casualty policy that provides coverage for premises, locations, operations, or property located in the catastrophe area and remit the premium surcharge to TWIA as required by commissioner rule.

(e) Requires a premium surcharge under this section to apply to all policies that provide coverage on any premises, locations, operations, or property located in the catastrophe area for all property and casualty lines of insurance, other than workers' compensation insurance, accident and health insurance, and medical malpractice insurance. Provides that the premium surcharge does not apply to premiums charged for any premises, location, operations, or property located outside the catastrophe area, except for premiums charged by TWIA for property insured by TWIA.

(f) Provides that a premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

Sec. 2210.613. CLASS 2 PREMIUM SURCHARGE. (a) Requires each insurer, TWIA, and TFPA to collect from their policyholders a premium surcharge to pay public security obligations and public security administrative expenses, if any, on Class 2 public securities.

(b) Requires TWIA to determine the premium surcharge at least annually.

(c) Requires, on approval by the commissioner, each insurer, TWIA, and TFPA to assess a premium surcharge to its policyholders as provided by this section. Requires the premium surcharge to be set in an amount sufficient to pay all debt service and all related expenses on the public securities. Prohibits the premium surcharge assessed under this section from exceeding six percent of premium and prohibits from cumulatively exceeding 10 percent of premium over a 12-month period beginning on the date the surcharge is first assessed.

(d) Requires each insurer, TWIA, and TFPA to collect the premium surcharge under this section from their policyholders who have a property or casualty policy that provides coverage for premises, locations, operations, or property located in this state, and requires those parties to remit the premium surcharge to TWIA as required by commissioner rule.

(e) Requires a premium surcharge under this section to apply to all policies that provide coverage on any premises, locations, operations, or property located in this state for all property and casualty lines of insurance, other than workers' compensation insurance, accident and health insurance, and medical malpractice insurance. Provides that the premium surcharge does not apply to premiums charged for any premises, locations, operations, or property located outside this state.

(f) Provides that a premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Provides that failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

Sec. 2210.614. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) Provides that a public security or credit agreement is payable solely from revenue as provided by this subchapter.

(b) Provides that 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) Requires each public security, and any related credit agreement, issued under this chapter to state on the security's face that 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 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. 2210.615. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. Prohibits the state, if public securities under this subchapter are outstanding, from taking action to limit or restrict the rights of TWIA to fulfill its responsibility to pay public security obligations or in any way impair the rights and remedies of the public security owners until the public securities are fully discharged.

Sec. 2210.616. ENFORCEMENT BY MANDAMUS. Provides that a writ of mandamus and any other legal and equitable remedies are available to a party at interest to require TWIA or another party to fulfill an agreement and to perform functions and duties under this subchapter, the Texas Constitution, or a relevant public security resolution.

Sec. 2210.617. EXEMPTION FROM TAXATION. Exempts a public security issued under this subchapter, any transaction relating to the public security, and profits made from the sale of the public security from taxation by this state or by a municipality or other political subdivision of this state.

Sec. 2210.618. NO PERSONAL LIABILITY. Provides that the members of TWIA, association employees, the board, employees of authority, the commissioner, and TDI employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Sec. 2210.619. AUTHORIZED INVESTMENTS. Provides that public securities issued under this subchapter are authorized investments under Subchapter B, Chapter 424, Subchapter C, Chapter 425, and Sections 424.203 through 425.213.

SECTION 34. Amends Section 2211.104, Insurance Code, as follows:

Sec. 2211.104. ADDITIONAL ASSESSMENT IN EVENT OF DEFICIT; PREMIUM SURCHARGE AUTHORIZED. (a) Creates an exception provided by Subsection (f) to the actions taken by TWIA if a deficit is incurred.

(b) Creates an exception provided by Subsection (f) to an insurer charging a premium surcharge on every property insurance policy as reimbursement for assessments paid under this section or service fees.

(c) Creates an exception provided by Subsection (f) to the specific amount of surcharge computed by insurers.

(d) and (e) Makes no changes to this subsection.

(f) Authorizes the commissioner to adopt rules in the manner provided by Subchapter A, Chapter 36, to provide for the coordinated recoupment of deficits in the event of an occurrence or series of occurrences resulting in deficits for TWIA and TFPA. Prohibits the rules from providing for a recoupment of assessments through premium tax credits.

SECTION 35. Amends Section 941.003, Insurance Code, by adding Subsection (e), to provide that a Lloyd's plan is subject to Chapter 2210, as provided by that chapter.

SECTION 36. Amends Section 942.003, Insurance Code, by adding Subsection (f), to provide that an exchange is subject to Chapter 2210, as provided by that chapter.

SECTION 37. Repealer: Sections 2210.003(5) (defining "inadequate fire insurance area") and (12) (defining "Texas fire and explosion insurance"), Section 2210.059 (Notification Regarding Tax Credits), Section 2210.356 (Uniform Rate Requirements; Information Used in Developing Rates), and Subchapters G (Windstorm Building Code Advisory Committee) and I (Rate Rollback), Chapter 2210, Insurance Code.

SECTION 38. (a) Abolishes the TWIA board of directors, on the 30th day after the effective day of this Act, established under Section 2210.102, Insurance Code, as that section existed before amendment by this Act.

(b) Requires the commissioner to appoint the members of the board of directors under Section 2210.102, Insurance Code, as amended by this Act, not later than the 31st day after the effective date of this Act.

(c) Provides that the term of a person serving as a member of the board of directors before the abolition of that board expires on the 30th day after the effective date of this Act.

SECTION 39. Requires the commissioner to adopt rules as required by Chapter 2210, Insurance Code, as amended by this Act, not later than the 180th day after the effective date of this Act.

SECTION 40. Provides that Section 2210.202(a), Insurance Code, as amended by this Act, applies to an application for insurance coverage submitted to TWIA on or after the effective date of this Act.

SECTION 41. Provides that Section 2210.251, Insurance Code, as amended by this Act, applies to an inspection conducted by TWIA on or after the effective date of this Act.

SECTION 42. (a) Provides that, in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies that amended statute, the text of Section 2211.104, Insurance Code, as set out in Section 34 of this Act, gives effect to changes made by Chapter 1082, Acts of the 79th Legislature, Regular Session, 2005.

(b) Provides that, to the extent of any conflict, this Act prevails over another Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions and corrections in enacted codes.

SECTION 43. Effective date: upon passage or September 1, 2007.