

## **BILL ANALYSIS**

Senate Research Center

H.B. 3  
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Business & Commerce  
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Engrossed

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

The Texas Legislature created the Texas Windstorm Insurance Association (TWIA) to address the lack of available windstorm insurance in a specified territory along the Texas Gulf Coast. TWIA was designed to serve as the insurer of last resort for a property owner who wants to obtain basic wind and hail insurance coverage. The primary sources of exposure for TWIA are losses from tropical storms and hurricanes. TWIA originally was intended to provide coverage for dwellings and small commercial buildings, but since its creation, the association has grown exponentially and has been required to provide coverage for many large commercial and governmental structures beyond what was originally envisioned.

The statute governing TWIA has been changed a number of times, including changes designed to make the association more of a quasi-governmental entity with all of its governing board appointed by the commissioner of insurance. Despite the fact that TWIA is a quasi-governmental entity, it has been found subject to many laws that apply to licensed insurance companies, including laws permitting recovery of punitive, additional, and other damages that generally are not available in suits against a quasi-governmental entity or a governmental entity.

TWIA is not capitalized as an insurance company, has very little capital or surplus, and is funded by premiums from policyholders, reinsurance, reserves in a catastrophe reserve trust fund, and assessments on licensed property insurers. Before recent changes, TWIA assessed licensed insurers unlimited amounts needed to pay claims, with a certain amount of such contingent assessments being eligible for premium tax credits for premiums taxes paid to the state by licensed insurers.

Hurricanes Dolly and Ike resulted in billions of dollars in losses to TWIA, most of which were paid through assessments or reinsurance. Further changes were made to change the way losses in TWIA would be funded if another major hurricane strikes the Texas Gulf Coast, including authorization to issue post-event securities. Flooding is not covered by TWIA policies, yet numerous claims may have been paid or settled involving damages from causes other than those covered by the association policy. TWIA also has been inundated with lawsuits resulting from Hurricanes Dolly and Ike, imposing significant additional expense to the overall losses required to be paid by the association that could result in higher costs not only to consumers in the association but also to property insurance consumers statewide.

H.B. 3 amends current law relating to the operation and name of the Texas Windstorm Insurance Association, to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers; providing penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 29 (Section 2210.2551, Insurance Code), SECTION 32 (Section 2210.259, Insurance Code), SECTION 33 (Section 2210.260, Insurance Code), and SECTION 38 (Sections 2210.575 and 2210.580, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Professional Engineers in SECTION 48 (Sections 1001.652 and 1001.653, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the legislative interim study committee conducting a study of alternative ways to provide insurance to the seacoast territory of this state through a quasi-governmental entity in SECTION 52 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, 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, except as provided by Subsection (c).

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

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. Provides that if S.B. No. 652, Acts of the 82nd Legislature, Regular Session, 2011, becomes law, Section 2210.002(b), Insurance Code, as amended by that Act, is amended as follows:

(b) Requires the Texas Coastal Insurance Plan Association (association) to be reviewed during the period in which state agencies abolished in 2015 are reviewed, rather than during the period in which state agencies abolished in 2013 are reviewed. Provides that this subsection expires September 1, 2015, rather than September 1, 2013.

SECTION 6. Amends Section 2210.003(1), Insurance Code, to redefine "association" to mean the Texas Coastal Insurance Plan Association.

SECTION 7. Amends Section 2210.003, Insurance Code, by adding Subdivision (3-b), to define "catastrophe year."

SECTION 8. Amends Section 2210.009(a), Insurance Code, to require the Texas Department of Insurance (TDI) to maintain a list of all authorized insurers that engage in the business of property and casualty insurance in the voluntary market in the seacoast territory.

SECTION 9. 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 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 is required to 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 of 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), Texas Rules of Civil Procedure, to only be brought against the association by the attorney general at the request of TDI, notwithstanding any other provision of this code or this chapter.

(b) Provides that Chapter 542 does not apply to the processing and settlement of claims by 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 (board) 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 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 or employee of the association who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member or employee of the association to, not later than the 30th day after discovering the conduct, report the conduct and identity of the person engaging in the conduct to TDI and authorizes the board member or employee to report the conduct and the identity of the person engaging in the conduct to another appropriate governmental authority. Requires TDI to forward a report received under this subsection to the appropriate governmental authority if TDI does not have the authority to finally resolve, or jurisdiction over, the matter that is the subject of the report.

Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS PROHIBITED. Prohibits a member of the board 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 10. Amends Section 2210.053, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes TDI to develop programs to improve the efficient operation of the association, including a program for approving policy forms under Section 2301.010 and a program designed to create incentives for insurers to write windstorm and hail insurance voluntarily to cover property located in a catastrophe area, especially property located on the barrier islands of this state.

(c) Prohibits the association from being considered a debtor authorized to file a petition or seek relief in bankruptcy under Title 11, United States Code.

SECTION 11. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Sections 2210.058 and 2210.061, as follows:

Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) Requires the commissioner, in the manner and at the time the commissioner determines to be necessary, to conduct a random audit of claim files concerning claims the bases of which are damage to insured property caused by a particular storm to:

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

(2) 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 to ensure the quality of the process with which 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 is not adequately and properly documenting claims decisions or that claims described by Subsection (a) are not otherwise being handled appropriately, to:

(1) notify the board of that determination; and

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

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

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

(2) an association employee.

SECTION 12. Amends Section 2210.071(a), Insurance Code, to require that 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, the excess losses and operating expenses be paid as provided by this subchapter.

SECTION 13. 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) (relating to requiring the association to pay losses in excess of premium and other revenue of the association from available reserves of the association and available amounts in the catastrophe reserve trust fund), rather than losses not paid under Section 2210.071 (Payment of Excess Losses; Payment from Reserves and Trust Fund), 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. Requires that public securities issued under this section be repaid within a period not to exceed 14 years, rather than within a period not to exceed 10 years, and authorizes such public securities to be repaid sooner if the board 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 on the request of the board of directors with the approval of the commissioner; 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) Creates this subsection from existing text. 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 during that catastrophe year 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 regardless of whether for a single occurrence or a series of occurrences; and

(2) subject to the \$1 billion maximum described by Subdivision (1), 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 that year, during the following calendar year.

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

(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 depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used. Provides that this subsection does not prohibit the association from issuing securities after an occurrence or series of occurrences before the proceeds of outstanding public securities issued during a previous catastrophe year have been depleted.

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

SECTION 14. 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) (class 2 public securities):

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

(2) are authorized to be issued, subject to the \$1 billion maximum described by Subdivision (1), 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 that year, during the following calendar year.

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

SECTION 15. 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) (class 3 public securities):

(1) are authorized to be issued as necessary in a principal amount not to exceed \$500 million per catastrophe year, in the aggregate, whether for a single occurrence or a series of occurrences; and

(2) are authorized to be issued, subject to the \$500 million maximum described by Subdivision (1), 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 that year, during the following calendar year.

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

SECTION 16. Amends Section 2210.075, Insurance Code, as follows:

Sec. 2210.075. REINSURANCE. (a) Authorizes an insurer, before any occurrence or series of occurrences, to elect to purchase reinsurance to cover an assessment for which the insurer would otherwise be liable under Section 2210.074(c) (relating to payment through class 3 public securities), rather than under 2210.074(b).

(b) Makes a conforming change.

SECTION 17. Amends Section 2210.102, Insurance Code, by adding Subsection (i), as follows:

(i) Authorizes the commissioner, notwithstanding Subsection (f) (relating to filling vacancies on the board of directors), for a vacancy occurring in a position under Subsection (b) (relating to requiring that four members of the board of directors be representatives of the insurance industry), 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 18. 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 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.

Makes nonsubstantive changes.

(b) Makes a nonsubstantive change.

(b-1) Authorizes the commissioner or the commissioner's designated representative to attend a meeting of the board or the members of the association, including a closed meeting authorized by Subchapter D (Exceptions to Requirement that Meetings Be Open), Chapter 551 (Open Meetings), Government Code, except for those portions of a closed meeting that involve the rendition of legal advice to the board concerning a regulatory matter or that would constitute an ex parte communication with the commissioner.

(e) Requires the association to:

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

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

(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 19. 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 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 the 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 (Legislative Oversight Board), 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 20. 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 (Public Information), Government Code.

(b) Provides that a settlement agreement to which the association is a party:

- (1) subject to Subsection (d), is public information and is not exempted from required disclosure under Chapter 552, Government Code; and
- (2) if applicable, is required to contain the name of any attorney representing a claimant or the association in connection 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 confidential under Chapter 552, Government Code.

SECTION 21. Amends Section 2210.152, Insurance Code, by adding Subsection (c), to require that the plan of operation require the association to use the claim settlement guidelines published by the commissioner under Section 2210.578(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.

SECTION 22. Amends Section 2210.202, Insurance Code, as follows:

Sec. 2210.202. APPLICATION FOR COVERAGE. (a) Provides that notwithstanding Section 2210.203(c) (relating to authorizing a policy to be renewed annually on application for renewal as long as the property continues to be insurable property), evidence of one declination every three calendar years 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 process that allows for the acceptance of an application for initial or renewal coverage from, and payment of premiums by, a property and casualty agent, a person insured under this chapter, or an applicant for coverage under this chapter. Requires that each 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) (relating to requiring that certain properties be covered by flood insurance), regardless of whether the agent or the applicant submits the application for coverage.

Makes nonsubstantive changes.

SECTION 23. 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 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 receiving a recommendation from the board of directors, to approve a commission structure for payment of an agent who submits an application for coverage to the association on behalf of a person who has an insurable interest in insurable property. Requires that the commission structure adopted by the commissioner be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to the association and the prevailing commission structure in the private windstorm market.

SECTION 24. 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 to refund the agent's commission on any unearned premium in the same manner, 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 for cancellation of insurance coverage under this section, the minimum retained premium in the plan of operation be for a period of not less than 90 days, rather than 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 25. 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:

(A) the processes and deadlines for appraisal under Section 2210.574 and alternative dispute resolution under Section 2210.575;

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

(C) 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 the following structures, regardless of whether the structure is otherwise insurable property under this chapter:

(1) a wind turbine;

(2) a structure used primarily as a casino or other gambling establishment, other than a premises on which bingo may be conducted under Chapter 2001 (Bingo), Occupations Code;

(3) a structure used as a sexually oriented business, as defined by Section 243.002 (Definition), Local Government Code; or

(4) a structure in which, or in any portion of which, an establishment is located that is used primarily for the operation of video lottery machines, eight-liners, or other gambling devices, regardless of whether the gambling devices are regulated under state law.

SECTION 26. Amends Section 2210.251(g), Insurance Code, to provide that the decision whether to issue a certificate of compliance for a structure is wholly within the discretion of TDI and is not dependent on the actions of the Texas Board of Professional Engineers (TBPE) or any other regulatory agency.

SECTION 27. Amends Section 2210.254, Insurance Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Redefines, for purposes of this chapter, "qualified inspector."

(e) Authorizes TDI to establish an annual renewal period for persons appointed as qualified inspectors.

SECTION 28. Amends Section 2210.255(a), Insurance Code, to require the commissioner, on request of an engineer who is licensed by TBPE and is on the roster described by Section 1001.652, Occupations Code, to appoint the engineer as an inspector under this subchapter not later than the 10th day after the date the engineer delivers to the commissioner information demonstrating that the engineer is qualified to perform windstorm inspections under this subchapter.

SECTION 29. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.2551, as follows:

Sec. 2210.2551. 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 and to the physical inspection of structures for the purposes of this chapter, including the submission of documents to TDI or the association regarding the physical inspection of structures.

(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.

(d) Requires TDI to report to TBPE if TDI determines that:

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

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

(e) Requires TDI to include in its biennial report to the legislature under Section 32.022 (Biennial Report to Legislature) the number of matters reported to TBPE under this section and the outcome of those matters.

SECTION 30. 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 31. Amends Section 2210.256, Insurance Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the commissioner, in addition to any other action authorized under this section, ex parte 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:

(1) the commissioner believes that:

(A) the qualified inspector has:

(i) 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 TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

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

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

SECTION 32. Amends Section 2210.259, Insurance Code, by adding Subsection (c), to authorize the commissioner by rule to provide for a discount of, or a credit against, a surcharge assessed under Subsection (a) (relating to surcharge for certain noncompliant structures) in instances in which a policyholder demonstrates that the noncompliant structure was constructed with at least one structural building component that complies with the building code standards set forth in the plan of operation.

SECTION 33. 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 August 31, 2011, 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:

(1) inspected by a TDI inspector or by a qualified inspector; and

(2) 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) Requires 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), to obtain an alternative certification under this section before the association, on or after January 1, 2013, is authorized to renew coverage for the structure, except as provided in Section 2210.251(f) (relating to certain residential structures continuing coverage subject to inspection requirements).

(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); 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. Requires that a surcharge under this subsection be developed and implemented in an amount that does not exceed the percentage of premium at which a surcharge under Section 2210.259(a) is assessed.

SECTION 34. Amends Section 2210.453, Insurance Code, by adding Subsections (c), (d), and (e), as follows:

(c) 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 report containing an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more if the association does not purchase reinsurance as authorized by this section. 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 submitted under this section is for informational purposes only and does not bind the association to a particular course of action.

SECTION 35. 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 submitted under this section is for informational purposes only and does not bind the association to a particular course of action.

SECTION 36. Amends Section 2210.502, Insurance Code, by adding Subsection (e), to prohibit the maximum liability limit for dwellings and corporeal movable property described by Section 2210.501(b)(1) (relating to the maximum liability limits for a dwelling and the corporeal moveable property located in or about the dwelling) from exceeding \$1.5 million, notwithstanding Subsection (a) (relating to adjustments to maximum liability limits).

SECTION 37. 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) Authorizes a person or entity described by Subsection (a)(2), rather than Subsection (a), who is aggrieved by an act, ruling, or decision of the association to appeal to the commissioner not later than the 30th day after the date of that act, ruling, or decision.

SECTION 38. 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," "claim," and "claimant."

Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD. (a) Provides that this subchapter provides the exclusive remedies for a claim against the association, including an agent or representative of the association.

(b) Prohibits the association from being held liable for any amount other than covered losses payable under the terms of the association policy, subject to Section 2210.576.

(c) Prohibits the association, and an agent or representative of the association, from being held liable for damages under Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, or under any provision of any law providing for additional damages, punitive 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) Authorizes the claimant to submit written materials, comments, documents, records, and other information to the association relating to the claim. Authorizes the association, if the claimant fails to submit information in the claimant's possession that is necessary for the association to determine whether to accept or reject a claim, to, not later than the 30th day after the date the claim is filed, request in writing the necessary information from the claimant.

(c) Requires the association, on request, provide a claimant reasonable access to all information relevant to the determination of the association concerning the claim. 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.

(d) Requires the association, unless the applicable 60-day period described by this subsection is extended by order of the commissioner, not later than the later of the 60th day after the date the association receives a claim or the 60th day after the date the association receives information requested under Subsection (b), to provide the claimant, in writing, notification that:

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

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

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

(e) Requires the association, in a notice described by Subsection (d)(1), to inform the claimant of the amount of loss the association will pay and of the time limit to request appraisal under Section 2210.574.

(f) Requires the association, in a notice described by Subsection (d)(2) or (3), to inform the claimant of, as applicable:

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

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

(3) the time limit to:

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

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

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

**Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED COVERAGE.**

(a) Authorizes the claimant, if the association accepts coverage for a claim in full and a claimant disputes only the amount of loss the association will pay for the claim, or if the association accepts coverage for a claim in part and a claimant disputes the amount of loss the association will pay for the accepted portion of the claim, to request from the association a detailed summary of the manner in which the association determined the amount of loss the association will pay.

(b) Authorizes a claimant, if the claimant disputes the amount of loss the association will pay for a claim or a portion of a claim, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(1) or (2), to demand appraisal in accordance with the terms of the association policy.

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

(d) Provides that if a claimant demands appraisal under this section:

(1) the appraisal is required to be conducted as provided by the association policy; and

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

(e) Provides that if a claimant demands appraisal under this section and the appraiser retained by the claimant and the appraiser retained by the association are able to agree on an appraisal umpire to participate in the resolution of the dispute, the appraisal umpire is the umpire chosen by the two appraisers. Requires the commissioner, if the appraiser retained by the claimant and the appraiser retained by the association are unable to agree on an appraisal umpire to participate in the resolution of the dispute, to select an appraisal umpire from a roster of qualified umpires maintained by TDI. Authorizes TDI to:

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

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

(f) Provides that the appraisal decision is binding on the claimant and the association as to the amount of loss the association will pay for a fully accepted claim or the accepted portion of a partially accepted claim and is not appealable or otherwise reviewable. Provides that a claimant that does not demand appraisal before the expiration of the periods described by Subsections (b) and (c) waives the claimant's right to contest the association's determination of the amount of loss the association will pay with reference to a fully accepted claim or the accepted portion of a partially accepted claim.

(g) Prohibits a claimant from bringing an action against the association with reference to a claim for which the association has accepted coverage in full.

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

(b) Authorizes the association, if a claimant provides notice of intent to bring an action under Subsection (a), to require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code. Provides that a claimant that does not provide notice of intent to bring an action before the expiration of the period described by Subsection (a) waives the claimant's right to contest the association's partial or full denial of coverage and is barred from bringing an action against the association concerning the denial of coverage.

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

(d) Requires that alternative dispute resolution under this section be completed not later than the 60th day after the date a request for alternative dispute resolution is made under Subsection (c). 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.

(e) Authorizes the claimant, if the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (d) or any extension under that subsection, to bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. Requires that an action brought under this subsection 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. Requires a judge appointed under this section to be a resident of a first tier coastal county or a second tier coastal county.

(f) Requires the court, if a claimant brings an action against the association concerning a partial or full denial of coverage, to abate the action until the notice of intent to bring an action has been provided and, if requested by the association,

the dispute has been submitted to alternative dispute resolution, in accordance with this section.

(g) Authorizes a moderated settlement conference under this section to be conducted by a panel consisting of one or more impartial third parties.

(h) Provides that if the association requests mediation under this section, the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the mediation.

(i) Provides that if the association requests mediation under this section, and the claimant and the association are able to agree on a mediator, the mediator is the mediator agreed to by the claimant and the association. Requires the commissioner to select a mediator from a roster of qualified mediators maintained by TDI if the claimant and the association are unable to agree on a mediator. Authorizes TDI to:

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

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

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

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

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

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

(b) Authorizes a claimant that brings an action against the association under Section 2210.575 to recover only:

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

(2) prejudgment interest from the 30th day after the date specified in Section 2210.573(d), at the prejudgment interest rate provided in Subchapter B (Prejudgment Interest in Wrongful Death, Personal Injury, or Property Damage Case), Chapter 304 (Judgment Interest), Finance Code; and

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

**Sec. 2210.577. LIMITATIONS PERIOD.** (a) Requires a claimant who brings an action against the association under Section 2210.575 to bring the action not later than the second anniversary of the date on which the person receives a notice described by Section 2210.573(d)(2) or (3), notwithstanding any other law.

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

Sec. 2210.578. EXPERT PANEL. (a) Requires the commissioner to appoint a panel of experts to advise the association concerning the extent to which a loss to insurable property was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges. 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, or rising waters not caused by waves or surges.

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

(d) Requires the panel to investigate, collect, and evaluate the information necessary to provide recommendations under Subsection (e). Requires that the cost and expense incurred by the panel associated with the work of the panel under this section be paid or reimbursed by the association.

(e) Requires the panel, at the request of the commissioner, to recommend to the commissioner methods or models for determining the extent to which a loss to insurable property may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges 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 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.

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

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. RULEMAKING. (a) Requires the commissioner to adopt rules regarding the provisions of this subchapter, including rules concerning:

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

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

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

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

(b) Requires that all rules adopted by the commissioner under this section promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

SECTION 39. Amends Section 2210.602(2), Insurance Code, to redefine "class 1 public securities."

SECTION 40. Amends Section 2210.604, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) 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 41. Amends Section 2210.608, Insurance Code, by adding Subsection (c) to prohibit the proceeds from public securities issued under Section 2210.072 (Payment from Class 1 Public Securities; Financial Instruments) before an occurrence or series of occurrences that results in incurred losses, including investment income, notwithstanding Subsection (a)(2) (relating to authorizing the association to use public security proceeds to purchase reinsurance for the association), from being used to purchase reinsurance for the association.

SECTION 42. Amends Section 2210.609(b), Insurance Code, to require the board of directors of the Texas Public Finance Authority to notify the association of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each calendar year in a period sufficient, as determined by the association, to permit the association to determine the availability of funds and assess a premium surcharge if necessary.

SECTION 43. 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 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 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 44. Amends Section 2210.612(b), Insurance Code, as follows:

(b) 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 that results in insured losses under Section 2210.072(a) (relating to payment from class 2 public securities) but in which no tranche of commercial paper is issued under a commercial paper program until after such an occurrence, 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 45. Amends Section 2210.613, Insurance Code, as follows:

Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a) Provides that a member of the association is prohibited from recouping an assessment paid under this subsection through a premium surcharge or tax credit, and, notwithstanding Section 2210.073(a) (relating to payment from class 2 public securities), is authorized to elect to pay an assessment under this subsection in a lump sum.

(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 passenger 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 46. Amends Sections 2210.6135(a) and (c), Insurance Code, as follows:

(a) Requires the association, for the payment of the losses, to assess the members of the association an amount not to exceed \$500 million per catastrophe year. Makes a nonsubstantive change.

(c) Provides that a member of the association is prohibited from recouping an assessment paid under this section through a premium surcharge or tax credit, and notwithstanding Section 2210.074(a) (relating to payment through class 3 public securities), is authorized to elect to pay an assessment under this section in a lump sum.

SECTION 47. Amends Subchapter A, Chapter 2301, Insurance Code, by adding Section 2301.010, as follows:

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

(b) Authorizes a policy form or printed endorsement form for residential or commercial property insurance that is filed by an insurer described by Subsection (a) or adopted by TDI under this subchapter for use by an insurer described by Subsection (a), notwithstanding Section 16.070 (Contractual Limitations Period), Civil Practice and Remedies Code, and for the purpose described by Section 2210.053(b), to provide for a contractual limitations period for filing suit on a first-party claim under the policy. Prohibits the contractual limitations period from ending before the earlier of two years from the date the insurer accepts or rejects the claim, or three years from the date of the loss that is the subject of the claim.

(c) Authorizes a policy or endorsement described by Subsection (b) to also contain a provision requiring that a claim be filed with the insurer not later than one year after the date of the loss that is the subject of the claim. Requires that a provision under this subsection include a provision allowing the filing of claims after the first anniversary of the date of the loss for good cause shown by the person filing the claim.

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

(e) Authorizes TDI, to encourage the authorized insurers to write windstorm and hail insurance in the catastrophe area, as defined by Section 2210.003, and in other areas of the state, to approve policy or contractual provisions other than those described by Subsections (b) and (c) that are consistent with sound underwriting and insurance principles, provided that the policy or contractual provisions meet the requirements of Sections 2301.007(a) (relating to authorizing the commissioner to disapprove or withdraw approval of a form) and 2301.053 (Requirements for Forms; Plain-Language Requirement).

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

SECTION 48. Amends Chapter 1001, Occupations Code, by adding Subchapter N, as follows:

#### SUBCHAPTER N. WINDSTORM-RELATED DESIGN SERVICES

Sec. 1001.651. DEFINITIONS. Defines, in this subchapter, "association," "plan of operation," and "windstorm certification standards."

Sec. 1001.652. QUALIFICATIONS; ROSTER. (a) Requires TBPE to:

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

(2) in consultation with TDI, adopt rules establishing criteria for determining whether an engineer possesses the knowledge, understanding, and professional competence to be qualified to provide engineering design services related to compliance with applicable windstorm certification standards under Subchapter F (Property Inspections for Windstorm and Hail Insurance), Chapter 2210, Insurance Code.

(b) Requires TBPE to prepare and publish a roster of engineers who satisfy the criteria adopted under Subsection (a)(2) and to make the roster available to the public without cost in an online computer database format.

Sec. 1001.653. COMPLIANCE WITH BUILDING CODES; ENFORCEMENT. (a) Requires TBPE, in consultation with TDI, to adopt rules requiring an engineer who is providing engineering design services to comply with windstorm certification standards.

(b) Authorizes TBPE to inspect a structure to ensure an engineer's compliance with Subsection (a).

(c) Authorizes TBPE, if TBPE determines that an engineer's engineering design services related to windstorm certification standards do not comply with the standards, to:

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

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

(3) determine that a structure was not constructed, altered, remodeled, enlarged, repaired, or added to according to the applicable windstorm certification standards and report that finding to the association and TDI.

(d) Requires TBPE to give the engineer notice of any action under this section.

(e) Provides that a violation of this subchapter, including a violation of the windstorm inspection standards, is grounds for disciplinary action under Section 1001.452 (Grounds for Disciplinary Action).

SECTION 49. Repealers: Sections 2210.551(e) (relating to certain hearings to be held in Travis County) and 2210.552 (Claim Disputes; Venue), Insurance Code.

SECTION 50. Makes application of Section 2301.010, Insurance Code, as added by this Act, prospective to January 1, 2012.

SECTION 51. Requires TBPE, not later than December 1, 2011, to adopt rules to implement Subchapter N, Chapter 1001, Occupations Code, as added by this Act.

SECTION 52. (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, including providing insurance coverage through a system or program in which insurers in this state provide insurance in the seacoast territory of this state in proportion to the percentage of insurance coverage provided in geographic areas of this state other than the seacoast territory;

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

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

(4) 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

(5) 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.

(h) Provides that this section expires June 1, 2013.

SECTION 53. (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 54. (a) Provides that except as otherwise specifically provided by this section, this Act applies only to a Texas windstorm and hail insurance policy, and to a dispute under a Texas windstorm and hail insurance policy, that is delivered, issued for delivery, or renewed by TWIA on or after the 60th day after the effective date of this Act. Provides that a Texas windstorm and hail insurance policy, and to a dispute under a Texas windstorm and hail insurance policy, that is delivered, issued for delivery, or renewed by TWIA before the 60th day after the effective date of this Act, is 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.

(b) Provides that the deadline to file a claim under a Texas windstorm and hail insurance policy delivered, issued for delivery, or renewed before the effective date of this Act by TWIA is governed by the law in effect on the date the policy under which the claim is

filed was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

(c) Provides that if a person insured by TWIA disputes the amount the association will pay for a partially or fully accepted claim filed by the person, Section 2210.574, Insurance Code, as added by this Act, applies only if the claim is filed on or after the 60th day after the effective date of this Act.

(d) Provides that if a person insured by TWIA disputes the amount the association will pay for a partially or fully accepted claim filed by the person and the claim is filed before the 60th day after the effective date of this Act:

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

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

(e) Authorizes the person insured by TWIA and TWIA to agree that an appraisal conducted under Subsection (d)(2) of this section is binding on the parties.

(f) Requires that an action brought against the association concerning a claim described by Subsection (d) of this section be abated until the appraisal process under Subsection (d)(2) of this section is completed.

(g) Provides that, notwithstanding Sections 2210.575 and 2210.576, Insurance Code, as added by this Act, Subsection (b) of this section, or any other provision of this Act, Sections 2210.576(b)(1)-(3), Insurance Code, apply to any cause of action that accrues against TWIA on or after the effective date of this Act and the basis of which is a claim filed under a Texas windstorm and hail policy that is delivered, issued for delivery, or renewed by the association, regardless of the date on which the policy was delivered, issued for delivery, or renewed.

SECTION 55. Requires TWIA to amend TWIA's plan of operation to conform to the changes in law made by this Act not later than the 60th day after the effective date of this Act.

SECTION 56. 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 57. Effective date: upon passage or the 91st day after the last day of the legislative session.