

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION  
DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST  
FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES  
28 TAC §5.4131 and §5.4132**

**1. INTRODUCTION.** The Texas Department of Insurance proposes the repeal of 28 TAC §5.4131 and §5.4132 concerning the Texas Windstorm Insurance Association's procedure for requesting the issuance of public securities and the Texas Public Finance Authority's responsibilities concerning the issuance of public securities, respectively. The repeal of these sections is necessary to implement the requirements of HB 3, 82nd Legislature, First Called Session, effective September 28, 2011, and to reorganize the sections in the division. This proposed repeal is related to a separate rule proposal published in this issue of the *Texas Register* concerning the association's loss funding and the issuance of public securities. In that rule proposal, the department is proposing adding new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164.

Section 5.4131 was previously adopted to implement HB 4409, 81st Legislature, Regular Session, 2009. HB 4409 substantially amended how the association funded its losses in excess of premium and other revenue by establishing public securities to pay for excess losses in the event of a catastrophe. Three classes of public securities were established in Insurance Code Chapter 2210 to pay for losses that exceed the association's premium and other revenue from available reserves and available amounts in the catastrophe reserve trust fund. Section 5.4131, adopted in the February

4, 2011, issue of the *Texas Register*, established the procedure for the association to request, subject to the commissioner's approval, the issuance of public securities after a catastrophe when the association estimates its losses will exceed its net premium, other revenue, available amounts in the catastrophe reserve trust fund, and any reinsurance proceeds. HB 3 amended several provisions in Insurance Code Chapter 2210 concerning public securities. Specifically, HB 3 amended Insurance Code §2210.072 to permit the association's board of directors to request the issuance of class 1 public securities before a catastrophe occurs. HB 3 also enacted Insurance Code §2210.6136, which establishes a procedure for the issuance of class 2 and class 3 public securities if the Texas Public Finance Authority (TPFA) cannot issue all or any portion of the class 1 public securities authorized under Insurance Code §2210.072. Prior to Insurance Code §2210.6136, 28 TAC §5.4131 established the procedure for issuing public securities. Section 5.4131 has become outdated because it does not address the issuance of class 1 public securities prior to a catastrophe or the issuance of class 2 and 3 public securities if the TPFA cannot issue all or any portion of class 1 public securities.

In a separate rule proposal in this issue of the *Texas Register*, the department proposes new 28 TAC §§5.4123 - 5.4126 to establish the procedure for issuing public securities to pay for excess losses. These new sections implement changes as a result of HB 3. Proposed §5.4123 requires the association's board of directors to submit a written request for the issuance of public securities to the commissioner for the commissioner's approval. Proposed §5.4124 establishes the procedure for the

issuance of class 1 public securities before a catastrophic event and establishes the information the association must include in its request to the commissioner. Proposed §5.4125 establishes the procedure for requesting public securities after a catastrophic event, and proposed §5.4126 establishes the procedure for the issuance of class 2 and class 3 public securities when TPFA cannot issue all or any portion of the class 1 public securities authorized under Insurance Code §2210.072. Sections 5.4123 - 5.4126 will replace §5.4131.

The department also proposes to repeal §5.4132 which references TPFA's responsibilities in connection with the issuance of public securities on behalf of the association under Insurance Code Chapter 2210. Section 5.4132 does not establish any requirements for TPFA; it only refers to statutory obligations which already exist. Referencing those statutory obligations in §5.4132 is unnecessary, so the department has determined that §5.4132 should be repealed.

**2. FISCAL NOTE.** C. H. Mah, associate commissioner of the Property and Casualty Section, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

**3. PUBLIC BENEFIT/COST NOTE.** Mr. Mah has determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the

implementation of Insurance Code §2210.6136, the more efficient operation of the association, and the removal of unnecessary sections. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There will be no effect on small or micro businesses.

#### **4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS**

**FOR SMALL AND MICRO BUSINESSES.** Section 2006.002(c) of the Government Code requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

There will be no new costs to any person to comply with the repeal. There is no anticipated adverse economic effect on small or micro businesses regarding the regulatory cost of compliance with the repeal, so preparation of an economic impact statement and regulatory flexibility analysis is not statutorily required.

**5. TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, so it does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To have your comments considered, you must submit written comments on the proposal no later than 5 p.m., Central time on March 10, 2014. You may send your comments electronically to the Chief Clerk by email at [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov), or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit a copy of your comments by email to Brian Ryder in the Property and Casualty Actuarial Office at [Brian.Ryder@tdi.texas.gov](mailto:Brian.Ryder@tdi.texas.gov), or by mail to Brian Ryder, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk by email at [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov), or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** The department proposes the repeal under Insurance Code §§2210.008, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.604, 2210.6136, and 36.001. Section 2210.008 authorizes the commissioner to adopt rules necessary to carry out the purposes of Insurance Code Chapter 2210. Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating

expenses must be paid as provided in Insurance Code Chapter 2210, Subchapter B-1. Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences to pay losses not paid under §2210.071, and establishes the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences. Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association to use the proceeds of class 3 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.073, and establishes the maximum principal amount of class 3 public securities.

Section 2210.151 requires the commissioner to adopt the association's plan of operation as a rule. Section 2210.152(a)(1) requires the association's plan of operation to provide for the efficient, economical, fair, and nondiscriminatory administration of the association.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. Section 2210.608 provides how the association may use public security proceeds and excess public security proceeds. Section 2210.6136 provides that if all or any part of the class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 and 3 public securities.

Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§5.4131	Insurance Code §§2210.008, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.604, and 2210.6136
§5.4132	Insurance Code §2210.008

**9. TEXT.**

**§5.4131. Issuance of Public Securities.**

**§5.4132. Texas Public Finance Authority Responsibilities Concerning Issuance of Public Securities.**

**10. CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued at Austin, Texas on January 28, 2014.

  
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Sara Waitt  
General Counsel  
Texas Department of Insurance