

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST
FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES
28 TAC §5.4183**

1. INTRODUCTION. The Texas Department of Insurance proposes the repeal of 28 TAC §5.4183 concerning the procedure for determining the premium surcharge for other applicable lines of insurance in the event of a catastrophe. The repeal of this section is necessary to implement the requirements of House Bill (HB) 3, 82nd Legislature, 1st Called Session., effective September 28, 2011. HB 3 amended Insurance Code §2210.613 to specify the lines of insurance that are subject to a premium surcharge. It is necessary to repeal §5.4183 because the lines of insurance addressed in it are not subject to premium surcharges. This proposed repeal is related to a separate rule proposal in this issue of the *Texas Register* which concerns amendments to 28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184, 5.4185 - 5.4187, and 5.4189 - 5.4192. Those amendments relate to procedures for making and assessing a premium surcharge under Insurance Code Chapter 2210.

The department previously adopted §5.4183 to implement HB 4409, 81st Legislature, 2009, Regular Session. HB 4409 substantially amended how the Texas Windstorm Insurance 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. The association provides windstorm and hail insurance to policyholders in the catastrophe area who are unable to obtain such insurance in the private market. The catastrophe area includes the 14 first tier coastal counties and parts of Harris

County. HB 4409 established three classes of public securities in Insurance Code Chapter 2210 to pay for losses that exceeded the association's premium and other revenue, available reserves, and amounts in the catastrophe reserve trust fund. Public securities are only issued if a catastrophe occurs and results in excess losses. Each class of public securities is to be repaid in the manner established by Insurance Code Chapter 2210.

Class 2 public securities are issued under Insurance Code §2210.073 to pay for losses not paid under §2210.072. The cost of class 2 public securities issued under Insurance Code §2210.073 are paid by member insurer assessments and premium surcharges on policyholders in the catastrophe area. Under Insurance Code §2210.613, 30 percent of the cost of class 2 public securities is to be paid by member insurer assessments and 70 percent of the cost is to be paid by a premium surcharge assessed on property and casualty policyholders who reside, have operations in, or whose insured property is located in the catastrophe area.

HB 3 amended several provisions in Insurance Code Chapter 2210 concerning public securities. With regard to the premium surcharges and the applicable lines of insurance that are surcharged, HB 3 amended Insurance Code §2210.613 to eliminate certain lines of insurance subject to a premium surcharge and to specify the lines of property and casualty insurance policies subject to a premium surcharge. Previously, Insurance Code §2201.613 stated that the premium surcharges applied to all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice

insurance. The department adopted §5.4183 to implement an allocation method for determining the premium surcharge applicable to lines of insurance that were not specified in §5.4182. Because HB 3 amended Insurance Code §2210.613 to eliminate the lines of insurance described by §5.4183 from the lines of insurance subject to a premium surcharge, §5.4183 is no longer necessary. The department proposes to repeal §5.4183 because it is now obsolete.

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 to repeal this rule section. 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 §2210.613, the more efficient operation of the association, and the removal of unnecessary sections from the TAC. 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. Government Code §2006.002(c) requires that if a proposed rule could 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, 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 an additional copy of the comments to Brian Ryder in the Property and Casualty Actuarial Office at 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, 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, 2210.613, and 36.001. Section 2210.008 authorizes the commissioner to adopt rules necessary to carry out the purposes of Insurance Code Chapter 2210. Section 2210.613 concerns the payment of class 2 public securities and specifies the lines of insurance that are subject to a premium surcharge. 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:

Rule

Statute

§5.4183

Insurance Code §2210.008 and
§2210.613

9. TEXT.

§5.4183. Allocation Method for Other Lines of Insurance.

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.



Sara Waitt
General Counsel
Texas Department of Insurance