

**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 (association) procedure for requesting the issuance of public securities. The repeal is necessary to implement the requirements of House Bill 3, 82nd Legislature, 1st Called Session, effective September 28, 2011, and to reorganize the sections in the division. In conjunction with this 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, and 5.4141 - 5.4147 in a separate proposal also published in this issue of the *Texas Register*.

HB 3 enacted the 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 the Insurance Code §2210.072. Prior to Insurance §2210.6136, that situation was addressed in §5.4131. The Insurance Code §2210.6136 makes §5.4131 unnecessary. Other §5.4131 procedures for issuing public securities have been reallocated to §§5.4123 – 5.4125 in the referenced separate proposal. To effect these changes it is necessary to repeal §5.4131.

Section 5.4132 referenced certain statutory obligations of the TPFA in connection with the issuance of public securities on behalf of the association under the Insurance

Code Chapter 2210. The section did not establish requirements for the TPFA. Referencing those obligations in this title is unnecessary and may ultimately be confusing if the section differs from the statute. The department has determined that §5.4132 is unnecessary and should be repealed.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 the 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 also 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 the 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; therefore, 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 that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the 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 5:00 p.m. on July , 23, 2012, to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2735 scheduled for July 12, 2012, at 9:30 am in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe

Street, Austin, Texas. The commissioner will consider written and oral comments presented at the hearing.

7. STATUTORY AUTHORITY. The department proposes the repeal under the Insurance Code §§2210.008, 2210.151, 2210.152, and 36.001. Section 2210.008 authorizes the commissioner to adopt rules necessary to carry out the purposes of the Insurance Code Chapter 2210. 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 36.001 authorizes the commissioner of insurance 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, 2210.151 and 2210.152
§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.**