

SUBJECT: Revising the operations of the Texas Windstorm Insurance Association

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Lucio, G. Bonnen, Julie Johnson, Lambert, Paul, C. Turner, Vo

0 nays

2 absent — Oliverson, S. Davis

SENATE VOTE: On final passage, April 4 — 30-1 (Seliger)

WITNESSES: For — Jay Thompson, AFACT; Lee Loftis, Independent Insurance Agents of Texas; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Joe Woods, American Property Casualty Insurance Association; Ryan Brannan, Coastal Windstorm Insurance Coalition; Paul Martin, National Association of Mutual Insurance Companies; Jessica Boston, Texas Association of Business; Trace Finley, United Corpus Christi Chamber of Commerce; Cathy DeWitt, USAA)

Against — Carlos Castillo, Francisco Medrano, and Daniel Hernandez, Casa Engineering, LLC; Joseph Brooks, Complete Curb Products; and seven individuals (*Registered, but did not testify*: Arthur Simon; Ronald Voss)

On — (*Registered, but did not testify*: Carissa Nash, Sunset Advisory Commission; Elisabeth Ret, Texas Department of Insurance; John Polak, Texas Windstorm Insurance Association)

BACKGROUND: The Texas Windstorm Insurance Association (TWIA) is a nonprofit insurance provider created by the Legislature in 1971 to provide windstorm and hail insurance for residential and commercial property owners in designated coastal counties who are unable to purchase coverage in the private insurance marketplace. TWIA operates with regulation and oversight from the Texas Department of Insurance (TDI).

**Governance and membership.** TWIA is governed by a board of directors consisting of nine members who serve staggered three-year terms. The board members are appointed by the commissioner of TDI. The board does not have rulemaking authority; instead, it makes recommendations to the TDI commissioner.

Companies providing property insurance in Texas are required to be TWIA members unless they qualify for a specific exemption.

**Funding.** TWIA operates primarily on premiums collected from policyholders, and its expenditures vary widely from year to year depending on the number and severity of claims. In 2016, the most recent calendar year without a major storm, TWIA collected about \$500 million in revenue and expended about \$353 million.

In years without a major coastal storm, TWIA uses annual premium revenues to pay claims and often generates a surplus that is deposited in the Catastrophe Reserve Trust Fund (CRTF), an account outside of the treasury managed by the comptroller that held almost \$750 million before Hurricane Harvey.

In the event premiums and other sources of revenue do not fully cover TWIA's costs, each company pays assessments in proportion to their share of business across the state. Assessments cannot exceed \$1 billion collectively in response to a single year's funding needs.

In 2017, TWIA's expenditures significantly increased due to Hurricane Harvey, totaling \$1.7 billion, including \$743 million from the CRTF, \$448 million in bond proceeds from a previous bond issuance, and \$281 million in member assessments.

**Staffing.** In 2016, TWIA employed 218 staff at the agency's headquarters in Austin, with an additional 25 contract employees and a third-party call center. At the end of 2017, TWIA had 228 employees and an additional 402 contracted staff. TWIA employees are not state employees and do not

receive state benefits.

**Depopulation.** In 2015, to encourage growth in the private coastal insurance market, the Legislature authorized two programs through SB 900 by Taylor designed to shift policies out of TWIA and into private insurance companies through a process called depopulation. Under the depopulation programs, TWIA shares policy information with participating private insurers who can make offers to take over TWIA policies subject to approval by the policyholder and the policyholder's insurance agent.

**Sunset date.** TWIA is subject to review under the Sunset Act but is not subject to abolishment under that chapter.

DIGEST:

CSSB 615 would make changes to the operations and functions of the Texas Windstorm Insurance Association (TWIA). The changes would include:

- establishing a process for automatic renewal of policies and acceptance of certain payment methods;
- formally authorizing TWIA to provide supplemental payments;
- determining replacement cost at effective date of policy rather than at the time of property loss;
- transferring the issuance of certificates of compliance from TWIA to the Texas Department of Insurance (TDI);
- requiring certain disclosures; and
- making other changes consistent with across-the-board Sunset recommendations.

The bill would require the next Sunset review of TWIA to occur during the period in which agencies scheduled to be abolished in 2031 would be reviewed.

**Customer Service.** CSSB 615 would require TWIA to establish a process for automatic renewal of a policy. The process would have to provide for TWIA to verify the flood insurance coverage and declination required by

statute and any other information related to insurability of a property. The process also would have to provide an opportunity for the policyholder to elect to cancel the policy before it automatically renewed. The bill would eliminate a current requirement for TWIA to develop a simplified renewal process.

The bill would require TWIA to accept payment of premium by credit card. TWIA could impose a fee of no more than necessary to recoup the cost incurred for use of the card.

The bill also would require TWIA to provide to policyholders the option to pay premium in installments. A policyholder that paid premiums in accordance with an installment payment plan established by TWIA and remained current on the payments would satisfy the statutory obligation for payment of premiums.

TWIA would be required to comply with provisions relating to automatic renewal beginning January 1, 2020, and provisions relating to payment methods beginning January 1, 2021.

**Supplemental payments.** TWIA would be authorized to provide for supplemental payments under a windstorm and hail insurance policy. The TDI commissioner would adopt rules clarifying the deadlines related to supplemental payments after considering comments from TWIA, its members, and policyholders. The rules would have to ensure that a request for supplemental payment would not impair a policyholder's statutory right to appraisal.

TWIA policies would have to contain a conspicuous notice concerning the availability of supplemental payments under the policy, including a description of the process for requesting a supplemental payment and notice of applicable deadlines. A notice that TWIA had accepted a claim also would have to include this information.

The notice requirement would apply only to policies delivered, issued, or renewed on or after July 1, 2020.

**Replacement cost.** CSSB 615 would remove the requirement for TWIA to assess the replacement cost of a property at the time of loss and instead would require it to assess that cost on the effective date of a policy.

The changes to the replacement cost calculation would apply only to policies delivered, issued, or renewed on or after January 1, 2020.

**Certificates of compliance.** CSSB 615 would transfer the issuance of certificates of compliance from TWIA to TDI.

TDI would be required to issue a certificate of compliance for a completed improvement if a licensed engineer:

- had designed the improvement, had affixed the engineer's seal on the design, and submitted to TDI on a form an affirmation that the design complied with the applicable building code under the plan of operation and that the improvement was constructed in accordance with the design; or
- completed and submitted to TDI a sealed post-construction evaluation report that confirmed the improvement's compliance with the applicable building code under the plan of operation and included documentation supporting the engineer's post-construction evaluation report on a form on which the engineer had affixed the engineer's seal.

TDI could deny an application for a certificate of compliance if the evaluation report was not fully documented as required.

A form prescribed by TDI for the purposes of applying for a certificate of compliance could not require a professional engineer to assume liability for the construction of an improvement.

TDI could submit a formal complaint under the Occupations Code to the Texas Board of Professional Engineers related to the engineering work of a professional engineer as reflected in materials submitted by an engineer

applying for a certificate of compliance.

Provisions relating to certificates of compliance would not affect the status of a certificate issued before June 1, 2020, or after June 1, 2020, in response to an application made before that date for purposes of establishing evidence of insurability. The changes in law would apply to applications made on or after June 1, 2020.

**Rate adequacy analysis.** CSSB 615 would require TWIA to make its rate adequacy analysis publicly available on its website at least 14 days before the board of directors voted on the submission of a proposed rate filing based on the analysis to TDI.

The rate adequacy analysis would be required to include all user selected hurricane model input assumptions and output data with the same content and in the same format that was customarily provided to TWIA by hurricane modelers and to TDI by TWIA. The bill also would require the rate adequacy analysis be provided in a searchable electronic format that allowed for efficient analysis and that was sufficiently detailed to allow the historical experience in Texas to be compared to results produced by the model.

The bill would require TWIA to accept public comment with respect to its rate adequacy analysis at a public meeting of the board of directors before the board voted on the submission of a proposed rate filing to TDI.

These provisions would apply only to a rate adequacy analysis made on or after the bill's effective date.

**Conflicts of interest.** The bill would require members of the board of directors and members of a subcommittee of the board related to underwriting and actuarial matters to disclose any known potential conflict of interest with respect to a matter for discussion or vote by the board or subcommittee before the discussion or vote.

A potential conflict of interest would be defined as an interest that could

reasonably be expected to diminish the member's independent judgment with respect to the matter for discussion or vote. Potential conflicts of interest required to be disclosed would include a financial or personal interest in an entity that could financially benefit from the outcome of the discussion or vote and holding an insurance policy issued by TWIA that could be affected by the discussion or vote.

The bill would require disclosures under this section be made available to the public. A board or subcommittee member would satisfy this requirement if:

- the member publicly disclosed the conflict of interest during a public meeting or meeting broadcast live on TWIA's website; or
- for a closed meeting or meeting that was not broadcast live, the member disclosed the conflict of interest in the meeting's agenda and made the agenda publicly available on TWIA's website.

**Transfer of policies.** The bill would amend statutory provisions establishing a procedure for the transfer of reinsured policies. The TDI commissioner could not make rules that contained deadlines that required a property and casualty insurer or agent or a policyholder to take action or make a decision on or after June 1 or before December 1 in any year.

The bill would eliminate requirements for the rule to provide that a reinsurance agreement include an offer commencement date of December 1 and the opportunity for the policyholder to opt out on or before May 31 and replace them with an opportunity for the policyholder to opt out not more than 60 days after the policyholder received notice of the reinsurance agreement.

**Rulemaking authority.** The bill would permit TWIA to propose a rule for adoption by the TDI commissioner. The commissioner would initiate a rulemaking proceeding within 30 days after receiving a proposed rule. TWIA could request a public hearing for a proposed rule.

**Board member training.** The bill would prohibit a person who was

appointed to and who qualified for office as a member of the board of directors of TWIA from voting, deliberating, or being counted as a member in attendance at a board meeting until the person completed a training program that provided the person with information regarding:

- the law governing the operation of TWIA;
- the programs, functions, rules, and budget of TWIA;
- the scope of and limitations on the rulemaking authority of the board of directors;
- the results of the most recent formal audit of TWIA;
- the requirements of laws relating to open meetings, public information, administrative procedure, and conflict of interest disclosure, and other applicable laws; and
- any applicable ethics policies adopted by TWIA or the Texas Ethics Commission.

The general manager of TWIA would be required to create a training manual with the above information and annually distribute a copy to each member of the board of directors, who would have to sign and submit to the general manager an acknowledgement of receipt.

TWIA would have to provide for the training program by January 1, 2020.

**Public membership.** The bill would require the board members appointed to the board of directors from designated areas to represent the general public in the regions described by those subsections.

A person could not be appointed to represent the general public if the person or the person's spouse:

- was employed by, participated in the management of, or directly or indirectly owned or controlled more than a 10 percent interest in a business entity or other organization that operated in the Texas property and casualty industry, received money from TWIA other than insurance claim payments, or received money from TWIA policyholders with respect to policyholders' claims; or



- used or received a substantial amount of tangible goods, services, or money from TWIA, other than insurance claim payments or compensation or reimbursement authorized by law for board members' expenses.

**Report.** SB 615 would repeal a requirement for the general manager of TWIA to submit a bimonthly report to the board.

The bill would take effect September 1, 2019, except as otherwise specified.

**SUPPORTERS  
SAY:**

CSSB 615 would make improvements to the Texas Windstorm Insurance Association's operational efficiency and effectiveness, including improvements to customer payment options, clarity regarding the availability of supplemental payments, and a more efficient replacement cost calculation.

CSSB 615 appropriately focuses specifically on Sunset Advisory Commission recommendations to increase the effectiveness and efficiency of TWIA's operations, improve its customer service, decrease costs to policyholders, and help ensure it can respond more quickly to legislative changes. Policy decisions regarding TWIA's purpose, funding structure, and competing mandates would be better left to other legislation.

**Customer service.** Offering automatic policy renewal would simplify the renewal process for the majority of renewals. Typically, no new information is necessary to continue coverage under the statutory requirements. Other provisions to improve customer service would include allowing installment premium payments, which would help customers who cannot pay the full annual premium upfront. Accepting credit card payments also would make premium payment easier for policyholders.

**Supplemental payments.** Authorizing TWIA to issue supplemental payments and requiring the commissioner of the Texas Department of Insurance (TDI) to adopt rules for that process would align statute with

current practice and create more clarity for policyholders.

**Replacement cost.** Establishing the replacement cost of a property on the effective date of a TWIA policy would simplify the claims process and provide both TWIA and policyholders with greater certainty regarding policy coverage.

**Certificates of compliance.** Transferring issuance of certificates of compliance to TDI would ensure proper oversight to make sure TWIA-insured buildings were properly prepared for extreme weather conditions. The transfer would provide better customer service to policyholders and would provide comprehensive and consistent information about windstorm code compliance. TDI is well equipped to handle this oversight.

**Conflicts of interest.** The bill's requirement of disclosure of conflicts of interest would improve transparency for stakeholders and board members around the board decisions.

**Transfer of policies.** Changes to rules on the transfer of policies from TWIA to private insurers would reduce policyholder confusion and reduce the administrative burden on TWIA.

**Rulemaking authority.** Granting TWIA authority to formally propose rules to TDI would aid the timely implementation of statute and facilitate TWIA's continued process improvements.

OPPONENTS  
SAY:

By granting the authority to issue certificates of compliance to the Texas Department of Insurance, CSSB 615 would continue to put non-engineers in charge of approving engineering decisions. The practice of issuing or affirming certificates of compliance after a property has been constructed or renovated allows for jobs to be inspected and approved by an engineer, built, and then afterwards rejected. These reviews by non-engineers who lack sufficient expertise can be prone to abuse. Oversight of professional engineering decisions should be left to the Professional Board of Engineers.

It is not necessary to codify the Sunset Advisory Commission's standard recommendations regarding member training and conflict of interest disclosure because the practices already are standard operating procedure for TWIA. New board members are given live, onsite training as they are appointed, using training materials that cover the items included in the Sunset recommendation. TWIA has a rigorous ethics and conflict-of-interest policy and requires board members to make annual certifications and disclose relevant conflict information.

OTHER  
OPPONENTS  
SAY:

CSSB 615 would not go far enough in addressing the central policy issues surrounding TWIA, including its funding structure and competing mandates. The Legislature's deferral on the issue of TWIA's contradiction in organizational purpose has resulted in increasing rates for policyholders and no meaningful transfer of policies from TWIA to private insurers.

TWIA's current funding structure primarily relies on premiums and debt repaid by future premiums. Assessments against members help to subsidize costs and cover claims in major storm years, but there is a liability cap on such assessments against the industry. Since TWIA's revenue from premiums is insufficient to pay future claims, TWIA would have to issue more debt secured by future premium revenues, necessitating further increases in policyholder rates.

At the same time, TWIA is supposed to be an insurer of last resort for coastal communities that cannot purchase windstorm insurance on the private market. Because mortgages typically require windstorm insurance coverage of the mortgaged property, changes to TWIA's funding structure to allow for even greater flexibility raising premiums could make TWIA coverage too expensive and could risk the long-term viability of certain coastal communities.