

BILL ANALYSIS

Senate Research Center
82R17957 KCR-D

S.B. 1889
By: Jackson
Business & Commerce
4/4/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Windstorm Insurance Association (TWIA) is a quasi-governmental entity created in 1971, by the 62nd Legislature. TWIA is statutorily defined as the "insurer of last resort" and only provides wind and hail coverage to those properties located in the 14 coastal counties and parts of Harris County (East of Highway 146).

Since Hurricane Ike hit landfall September 13, 2008, the Texas legislature and TWIA's regulator, the Texas Department of Insurance (TDI), have identified numerous issues related to the operation, management, and litigation of claims handling that require legislative action.

S.B. 1889 seeks to provide a number of reforms associated with the litigation of claims. The bill prohibits treble damages and requires certain limitations on the amount of time an insured may file a claim and/or bring action against TWIA. The bill requires the commissioner of TDI (commissioner) to appoint an expert panel to determine certain standardized data associated with a storm, whereby the commissioner will adopt by rule the standardized data that TWIA will use to settle claims following the storm.

S.B. 1889 seeks to clarify certain issues pertaining to TWIA's current statutory funding structure. The bill authorizes TWIA to access Class II or Class III public securities when public securities at a lower Class are considered not marketable or insufficient to pay the excess losses for which they are issued. The bill revises the types of property and casualty policies located in the catastrophe area that are subject to Class II surcharges and clarifies Class II assessments on member carriers are calculated on a per-event basis.

S.B. 1889 seeks to address operational functions administered by TWIA and regulated by TDI. The bill clarifies TWIA is subject to the Open Meetings Act and Open Records Act and requires the live broadcast of all board meetings on their website and archiving of such recordings on the website for a minimum of two years. The bill authorizes the commissioner or the commissioner's designated representative access to TWIA closed meetings of the board. The bill reduces the statutory minimum retained premium from 180 days to 90 days and defines an alternative eligibility for coverage. The bill authorizes a premium discount for those properties that exceed the applicable windstorm building code standards.

S.B. 1889 would authorize certain regulatory authority by TDI. The bill increases TDI's authority to regulate and enforce penalties on licensed engineers and qualified inspectors. The bill requires the commissioner to appoint an advisory council to address appropriate building code standards to be used by TWIA and report its findings to the 83rd Legislature.

As proposed, S.B. 1889 amends current law relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Section 2210.010, Insurance Code), SECTION 13 (Section 2210.2551, Insurance Code), and SECTION 19 (Section 2210.363, Insurance Code) 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) Creates an exception under Section 541.152(c).

(c) Provides that Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association (TWIA) by a person who is insured under Chapter 2210 (Texas Windstorm Insurance Association).

SECTION 3. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Section 2210.010, as follows:

Sec. 2210.010. EXPERT PANEL. (a) Requires the commissioner of insurance (commissioner) to appoint a panel of experts to advise the commissioner concerning the manner in which, following a storm, TWIA should evaluate the extent to which a loss to insurable property was incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with the storm. Requires the commissioner to appoint one member of the panel to serve as the presiding officer of the panel.

(b) Requires a person, to be a member of the panel, to have professional expertise in, and be knowledgeable concerning, the geography of the seacoast territory, the meteorological patterns common in the seacoast territory, the scientific basis for meteorological patterns in coastal areas, or the technology necessary to evaluate the geography of, or meteorological patterns common to, the seacoast territory.

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

(d) Requires the panel to collect and evaluate the data necessary to perform the panel's general duties under Subsection (a).

(e) Requires the panel, immediately following a storm, for geographic areas or regions designated by the commissioner, to recommend to the commissioner standardized data necessary to evaluate the extent to which a loss to insurable property was incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with the storm, including wind speed, total rainfall, and the extent of wave action or tidal surges.

(f) Requires the commissioner by rule, after consideration of the recommendations made by the panel under Subsection (e), to adopt standardized data as part of the formula that the association will use to settle claims following the storm from which the standardized data recommendations were derived.

SECTION 4. Amends Section 2210.072(b), Insurance Code, to require that public securities described by Subsection (a) (relating to public securities losses) be issued as necessary in a principal amount not to exceed \$1 billion per occurrence or series of occurrences in a calendar year that results in insured losses.

SECTION 5. Amends Section 2210.073(b), Insurance Code, to make a conforming change.

SECTION 6. Amends Section 2210.074(b), Insurance Code, to make a conforming change.

SECTION 7. Amends Section 2210.105, Insurance Code, by amending Subsection (b) and adding Subsections (b-1), (e), and (f), as follows:

(b) Provides that, except for a closed meeting authorized by Subchapter D (Exceptions to Requirement that Meetings be Open), Chapter 551 (Open Meetings), Government Code, a meeting of the board of directors of TWIA (board) or of the members of TWIA is open to the public, rather than is open to the commissioner or the commissioner's designated representative and the public.

(b-1) Provides that a meeting of the board of directors or the members of TWIA, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, is open to the commissioner or the commissioner's designated representative.

(e) Requires TWIA to broadcast live on TWIA's Internet website all meetings of the board of directors, other than closed meetings, and maintain on TWIA's Internet website an archive of meetings of the board of directors.

(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 8. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.108, as follows:

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. Provides that except as specifically provided by this chapter or another law, TWIA is subject to Chapters 551 and 552 (Public Information), Government Code.

SECTION 9. Amends Section 2210.152, Insurance Code, by adding Subsection (c), to require that the plan of operation require TWIA to use the standardized data recommendations adopted by the commissioner under Section 2210.010(f) in evaluating the extent to which a loss to insurable property is incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, or wind-driven rain associated with a storm.

SECTION 10. Amends Section 2210.204(e), Insurance Code, as follows:

(e) Requires that the minimum retained premium in the place of operation, for cancellation of insurance coverage under this section, be for a period of not less than 90 days, rather 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:

- (1) the purchase of similar coverage in the voluntary market;
- (2) sale of the property to an unrelated party;
- (3) death of the policyholder; or
- (4) total loss of the property.

SECTION 11. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Section 2210.205, as follows:

Sec. 2210.205. REQUIRED POLICY PROVISION: DEADLINE FOR FILING CLAIM. Requires that a windstorm and hail insurance policy issued by TWIA require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage or loss that is the basis of the claim occurs.

SECTION 12. Amends Section 2210.254, Insurance Code, by adding Subsection (e), to authorize the Texas Department of Insurance (TDI) to establish an annual renewal period for persons appointed as qualified inspectors.

SECTION 13. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.2551, as follows:

Sec. 2210.2551. EXCLUSIVE 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.

(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 (Appointment of Licensed Engineer as Inspector), possesses the knowledge, understanding, and professional competence to perform windstorm inspections under this chapter and to comply with other requirements of this chapter.

SECTION 14. 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 15. Amends Section 2210.256, Insurance Code, by adding Subsection (a-2), as follows:

(a-2) Authorizes the commissioner ex parte, in addition to any other action authorized under this section, 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 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 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 16. Amends Section 2210.258(b), Insurance Code, to prohibit TWIA from insuring a structure described by Subsection (a) (relating to requiring construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure be performed in compliance with the appropriate building codes) until the structure has been inspected for compliance with the plan of operation in accordance with Section 2210.251(a) (relating to requiring construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure be approved by TDI for compliance), and except as provided by Section 2210.260, a certificate of compliance issued for the structure in accordance with Section 2210.251(g) (relating to a certificate of compliance).

SECTION 17. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.260, as follows:

Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. Authorizes a person who as an insurable interest in insurable property, on and after September 1, 2011, to obtain insurance coverage through TWIA for a residential structure without obtaining a certificate of compliance under Section 2210.251(g), if:

(1) within the 12-month period preceding the date of the application for initial coverage by TWIA, the structure was insured on an annual basis under a residential property insurance policy that included windstorm and hail coverage;

(2) the insurer that issued the coverage described by Subdivision (1) has ceased to provide windstorm and hail insurance under the policy, or issue residential property insurance policies in the portion of the catastrophe area in which the structure is located; and

(3) the applicant for coverage complies with the flood insurance requirement of Section 2210.203(a-1) (relating to structures constructed, altered, remodeled, or enlarged on or after September 1, 2009), if applicable; the mandatory building code requirement of Section 2210.258(a) (relating to requiring that all construction done on any structure located in the catastrophe area be performed in compliance with applicable building code standards); and all other TWIA underwriting requirements, including maintaining the structure in an insurable condition and paying premiums in the manner required by TWIA; and provides evidence of declination as required by Section 2210.202(a) (relating to authorizing a person who has an insurable interest in insurable property to apply to the association for coverage subject to certain conditions).

SECTION 18. Amends the heading to Subchapter H, Chapter 2210, Insurance Code, to read as follows:

SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

SECTION 19. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.363, as follows:

Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a) Authorizes TWIA to offer a person insured under this chapter a premium discount on a policy issued by TWIA, or a credit against any surcharge assessed against the person, if the construction, alteration, remodeling, enlargement, or repair of, or an addition to, insurable property exceeds applicable building code standards set forth in the plan of operation.

(b) Requires the commissioner to adopt rules necessary to implement and enforce this section.

SECTION 20. Amends the heading to Section 2210.552, Insurance Code, to read as follows:

Sec. 2210.552. CERTAIN CLAIM DISPUTES; VENUE AND NOTICE OF INTENT TO BRING ACTION.

SECTION 21. Amends Section 2210.552, Insurance Code, by adding Subsections (e) and (f), as follows:

(e) Provides that a person who brings an action against TWIA under this section is authorized to recover the amount of actual damages, plus court costs and reasonable and necessary attorney's fees, and is prohibited from recovering punitive or exemplary damages, including damages under Section 541.152(b) (relating to authorizing the trier of fact on a finding that the defendant knowingly committed the act a certain amount).

(f) Prohibits a person insured under this chapter who brings an action against TWIA in the manner described by Subsection (a)(1) (relating to action against TWIA) from bringing the action until the 61st day after the date the person provides written notice to TWIA of the person's intent to dispute TWIA's handling of the person's claim. Requires

that a notice provided under this section advise TWIA of the insured's specific complaint concerning the handling of the person's claim.

SECTION 22. Amends Subchapter L, Chapter 2210, Insurance Code, by adding Section 2210.553, as follows:

Sec. 2210.553. LIMITATIONS PERIOD. Requires a person insured under this chapter who brings an action against TWIA in the manner described by Section 2210.552(a)(1) (relating to authorizing a person who is aggrieved by an act, ruling, or decision to bring a claim against TWIA under certain conditions) notwithstanding any other law, including Section 541.162 (Limitations Period), to bring the action not later than the second anniversary of the date of the act, ruling, or decision of TWIA by which the insured is aggrieved.

SECTION 23. Amends Section 2210.604, Insurance Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires TWIA to specify in TWIA's request to the board the maximum principal amount of the public securities and the maximum term of the public securities. Prohibits the maximum principal requested under this subsection from exceeding the amount of public securities TWIA determines to be marketable.

(d) Authorizes marketable Class 2 public securities, if the amount of marketable Class 1 public securities is insufficient to pay the excess losses for which the securities are issued, to be issued. Authorizes marketable Class 3 public securities, if the amount of marketable Class 2 public securities is insufficient to pay the excess losses for which the securities are issued, to be issued.

SECTION 24. Amends Sections 2210.613(b)-(d), Insurance Code, as follows:

(b) Requires that seventy percent of the cost of the public securities be paid by a premium surcharge, rather than a nonrefundable premium surcharge, collected under this section in an amount set by the commissioner. Requires each insurer, TWIA, 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 to assess a premium surcharge to each of 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) to be assessed on all policyholders of policies that cover, insured property that is located in a catastrophe area, rather than 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. Requires that the premium surcharge be assessed on, rather than for, 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:

- (A) fire and allied lines;
- (B) farm and ranch owners;
- (C) residential property insurance;

(D) private passenger automobile liability and physical damage insurance;
and

(E) 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. Makes nonsubstantive changes.

(d) Makes a conforming change.

SECTION 25. Amends Section 2210.6135(a), Insurance Code, as follows:

(a) Requires TWIA to pay Class 3 public securities issued under Section 2210.074 (Payment Through Class 3 Public Securities) as provided by this section through member assessments. Requires TWIA, for the payment of the losses, to assess the members of TWIA an amount not to exceed \$500 million per occurrence or series of occurrences that results in insured losses in a calendar year. Makes a nonsubstantive change.

SECTION 26. (a) Requires the commissioner to appoint an advisory committee to advise TDI and TWIA concerning appropriate building code standards to be used by TWIA in the performance of its duties under Chapter 2210, Insurance Code. Requires the commissioner to designate one member of the committee to serve as the presiding officer of the committee.

(b) Requires the commissioner to ensure that the following groups or interests are represented on the advisory committee:

(1) insurers that write windstorm insurance in the private windstorm insurance market in this state;

(2) policyholders of windstorm insurance issued both by the association and by insurers in the private windstorm insurance market in this state; and

(3) building and construction professionals, including qualified inspectors appointed under Sections 2210.254 and 2210.255, Insurance Code.

(c) Requires the advisory committee to submit a report to TWIA, for inclusion in the association's biennial report to be submitted on or before December 31, 2012, under Section 2210.0025 (Biennial Report to Legislature), Insurance Code, containing recommendations concerning appropriate building code standards to be used by TWIA in the performance of its duties under Chapter 2210, Insurance Code.

(d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

(e) Requires the advisory committee to meet at least once each year and is authorized meet at other times at the call of the commissioner or the committee's presiding officer.

(f) Authorizes the advisory committee to meet by telephone conference call, video conference call, or other similar audiovisual telecommunication.

(g) Provides that this section expires January 1, 2013.

SECTION 27. Makes application of this Act prospective to the 30th day after the effective date of this Act.

SECTION 28. Requires TWIA, not later than January 1, 2012, to amend TWIA's plan of operation as necessary to conform to the changes in law made by this Act.

SECTION 29. Effective date: upon passage or September 1, 2011.