

BILL ANALYSIS

Senate Research Center

H.B. 1890
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Insurance companies are not required to write windstorm insurance along the Texas coast. Individuals who cannot obtain windstorm insurance through the voluntary market may obtain coverage through the Texas Windstorm Insurance Association (association), created by the 63rd Legislature in 1971. Structures complying with building specifications or falling within the grandfather provisions qualify for coverage through the association. The association, consisting of all property insurers authorized to write property insurance in Texas, administers day-to-day operations, including policy issuance and claims processing. In the event the association is unable to cover losses from collected premiums, the following funding mechanism applies (in order):

1. \$100 million assessed to member insurers;
2. Catastrophe Reserve Trust Fund (CRTF) and reinsurance (approximately \$1 billion);
3. \$200 million assessed to member insurers; and
4. Unlimited assessment to member insurers (subject to premium tax credits for five or more successive years).

The current capacity that is not subject to future premium tax credits for the association is approximately \$1.3 billion for residential and commercial property combined for all storms occurring in a calendar year. The \$1.3 billion is a combination of the CRTF, reinsurance, and member assessments not subject to premium tax credit, and is estimated to cover the probable maximum loss of a storm that would occur every 100 - 125 years (e.g., a Category III storm striking Galveston). Florida's 2004 hurricane season demonstrated that multiple hurricanes are possible in a single storm season. Additionally, those storms could easily exceed the Category III level. Texas' general revenue stream would be at a significant risk should storm severity or occurrence go beyond the single Category III scenario.

The combined voluntary exposure of private insurers covering coastal property is estimated at \$55 billion for both residential and commercial risks (projections based on 2003 and 2002 data; actual amount is most likely higher). This \$55 billion is separate from the amounts that would be payable by the association which currently has over \$20 billion in exposure. In addition, the threat of future assessments stifles the full development of a competitive homeowners market since insurers must weigh expanding their market share against the potential for future assessments also based on marketshare. As an additional consideration, insurers are precluded by IRS regulations to accumulate reserves for future catastrophic events on a tax deferred basis.

H.B. 1890 partially restructures the financing of storm damage. The bill provides for the issuance of bonds within the insurance structure to pay for future losses with repayment of bonds up to \$1 billion to be funded by policyholders, thereby reducing the possibility of general revenue tax offsets. The bill also changes the appointment process and other requirements relating to the association board of directors.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 5 (Section 19, Article 21.49, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4(d), Article 21.49, Insurance Code, to provide that, on dissolution of the Texas Windstorm Insurance Association (association), all assets of the association, including the unexpended and unobligated balance of the catastrophe reserve trust fund as of the date of the dissolution, revert to this state.

SECTION 2. Amends Section 5, Article 21.49, Insurance Code, by amending Subsections (g), (h), (i), (j), and (l), and adding Subsections (n), (o), and (p), as follows:

(g) Provides that the board of directors of the association is responsible and accountable to the commissioner of insurance (commissioner), rather than the State Board of Insurance, and that the board of directors is composed of nine members appointed by the commissioner in a specific manner.

(h) Provides that a member of the board of directors serves at the pleasure of the commissioner and may be removed by the commissioner before the expiration of the member's term. Deletes existing text limiting membership on the board of directors to three consecutive full terms.

(i) Requires the persons appointed as provided by Subsection (g), rather than Subsection (g)(2) and (g)(3), of this section to have demonstrated business, insurance, or financial experience to be eligible for appointment, rather than to be from different counties.

(j) Requires the board of directors of the association to select one member of the board of directors to serve as presiding officer of the board of directors. Provides that the presiding officer serves at the pleasure of the board of directors and is entitled to vote on all matters before the board of directors. Requires the board of directors to elect other officers of the board of directors, rather than an executive committee, consisting of specific members.

(l) Requires the association, if an occurrence or series of occurrences within the defined catastrophe area results in insured losses that result in payment of losses under Section 19 of this article, rather than tax credits under Section 19(4) of this article in a single calendar year, to notify the commissioner of that fact. Makes conforming changes.

(n) Requires the board of directors to report annually to the governor, the lieutenant governor, and the speaker of the house of representatives regarding certain aspects of the association.

(o) Authorizes members of the board of directors, as an exception to Chapter 551, Government Code, and other law, to meet by telephone conference call, videoconference, or other similar telecommunication method. Authorizes the board of directors to use telephone conferences or other similar telecommunication methods for purposes of establishing a quorum, for purposes of voting, and for any other meeting purpose in accordance with this subsection and Subsection (p). Provides that this subsection applies without regard to the subject matters discussed or considered by the members of the board of directors at the meeting.

(p) Sets forth specific requirements for a meeting held by use of telephone conference call, videoconference, or other similar telecommunication method.

SECTION 3. Amends Article 21.49, Insurance Code, by adding Section 5C, as follows:

Sec. 5C. GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS. Sets forth the general powers and duties of the board of directors. Requires that, in exercising powers and duties under this article, the primary goal of the board of directors be to make the association financially sound.

SECTION 4. Amends Section 8, Article 21.49, Insurance Code, as follows:

Sec. 8. RATES, RATING PLANS, AND RATE RULES APPLICABLE. (a) Requires the association to file with the commissioner for approval the proposed rates and

supplemental rate information to be used in connection with the issuance of policies or endorsements. Requires rates to be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer. Requires the association and the commissioner, in determining rates, to use methods based on sound actuarial principles comparable to the methods used by insurers in the voluntary market. Deletes existing text requiring the association to file certain other information with the commissioner. Authorizes forms and endorsements used under this section to be designed without regard to other forms filed with, approved by, or promulgated by the Texas Department of Insurance (department), rather than the board. Authorizes the commissioner to take certain action after notice and a hearing, if a hearing is requested by any person not later than the 10th day after the date of the notice. Requires the commissioner, if the commissioner modifies or rejects a proposed rate recommended under this subsection, to make specific written findings as to how the proposed rate fails to comply with the standards of this Act.

(b) Redesignated from existing text of Subsection (c). Makes conforming changes.

(c) Redesignated from existing text of Subsection (d). Requires a hearing under this subsection to be requested by any person not later than the 10th day after the date of the notice, rather than to be held on not less than 20 days' notice to the association specifying the matters to be considered at such hearing. Makes conforming changes.

(d) Redesignated from existing text of Subsection (e). Deletes existing text requiring all rates to be made in accordance with specific provisions and requires commissions paid to agents to be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory.

(e) Redesignated from existing text of Subsection (f).

(f) Redesignated from existing text of Subsection (g).

(g) Redesignated from existing text of Subsection (h). Amends the specific requirements of the association and the commissioner under this subsection. Deletes existing text relating to the catastrophe and noncatastrophe elements used to develop rates under this Act. Makes conforming changes.

(h) Redesignated from existing text of Subsection (i). Requires the commissioner to adopt rules under which the association relinquishes its, rather than members relinquish their, net equity on an annual basis. Requires the association to pay the cost of any reinsurance to the catastrophe reserve trust fund as established under this subsection, rather than a reinsurance program approved by the commissioner. Deletes existing text requiring the commissioner's rules to establish the procedure relating to the disbursement of money from the catastrophe reserve trust fund to policyholders in the event of an occurrence or series of occurrences within the defined catastrophe area that results in a disbursement under Section 19(a) of this Act. Authorizes the rules to provide that money from the catastrophe reserve trust fund be used to purchase reinsurance to protect the fund or to reimburse the association for the payment of policyholder claims. Requires reinsurance purchases, if any, to be included in the reinsurance approved under Subsection (g)(13) of this section. Makes conforming changes.

SECTION 5. Amends Section 19, Article 21.49, Insurance Code, as follows:

Sec. 19. PAYMENT OF LOSSES; PREMIUM TAX CREDIT. (a) Requires any excess losses paid under this section to be paid as provided by this section.

(b) Requires \$100 million per catastrophic event, after application of available revenue to losses, to be assessed to the members of the association in specific proportions. Prohibits a member of the association from directly or indirectly

recovering the amount of any assessment made under this subsection from additional premium charges on any insurance policy written on property that is not located within the first tier coastal counties.

(c) Requires any losses that exceed the amounts available under Subsection (b) of this section, but not to exceed an additional \$3 million per catastrophic event, to be funded through public securities issued, without regard to whether an occurrence or series of occurrences within a defined catastrophe area has occurred, under the revenue bond program established under Section 20 of this Act.

(d) Requires any losses in excess of the amounts authorized under Subsections (b) and (c) of this section, rather than \$100 million, to be paid from the catastrophe reserve trust fund established under Section 8(h) of this Act, not to exceed an amount equal to 50 percent of the balance of that fund.

(e) Requires an additional amount not to exceed \$500 million, if the amount available under Subsection (d) is insufficient to pay the excess losses, to be funded through the issuance of additional public securities under the revenue bond program established under Section 20 of this Act.

(f) Requires reinsurance proceeds recoverable by the association and available under any reinsurance program established by the association to be used to pay the excess losses, if the amount available under Subsection (e) of this section is insufficient to pay the excess losses.

(g) Deletes existing text providing for an additional \$200 million to be assessed to the members of the association, for certain excess losses. Requires any losses in excess of those paid under Subsections (b)-(f) of this section, rather than Subdivisions (1), (2), and (3) of this subsection, to be assessed against members of the association in specific proportions.

(h) Redesignated from existing text of Subsection (b). Authorizes an insurer to credit certain amounts against its premium tax under Section 221.002, rather than Article 4.10, of this code.

(i) Authorizes the commissioner to adopt rules as necessary to implement this section.

SECTION 6. Amends Article 21.49, Insurance Code, by adding Section 20, as follows:

Sec. 20. REVENUE BOND PROGRAM FOR OPERATIONS AND PAYMENT OF CLAIMS. (a) Defines "board," "bond," and "public security resolution."

(b) Provides that the legislature finds that the issuance of public securities to provide a method to raise funds to provide windstorm, hail, and fire insurance through the association in certain designated portions of the state is for the benefit of the public and in furtherance of a public purpose.

(c) Requires the Texas Public Finance Authority (authority), at the request of the association and with the approval of the commissioner, to issue, on behalf of the association, public securities in an amount not to exceed \$800 million in accordance with Subsections (d) and (e).

(d) Requires the board of directors of the authority (board), without regard to whether an occurrence or series of occurrences within the defined catastrophe area has occurred, to issue public securities equal to the amount specified under Section 19(c) of this Act.

(e) Requires the board, after an occurrence or series of occurrences within the defined catastrophe area has occurred, to issue public securities in the amount not

to exceed the amount specified under Section 19(e) of this Act as necessary to fund the payment of excess losses under that subsection.

(f) Requires public securities issued under this section to be used for specific purposes.

(g) Provides that, to the extent consistent with this section, Chapter 1232, Government Code, applies to public securities issued under this section. Provides that, in the event of a conflict, this section controls. Provides that certain other laws also apply to public securities issued under this section to the extent consistent with this section.

(h) Authorizes public securities issued under this section to be issued at public or private sale and requires such securities to be issued in the name of the association and mature not more than 10 years after the date issued.

(i) Authorizes the board, in a public security resolution, to take certain actions.

(j) Requires funds generated through the issuance of public securities to be held outside the state treasury in the custody of the comptroller of public accounts. Authorizes the association to request disbursement of the funds for the purposes set forth in Subsection (f) of this section.

(k) Authorizes a public security resolution to establish special accounts, including an interest and sinking fund account, reserve account, and other accounts. Requires the association to administer the accounts in accordance with this section.

(l) Provides that public securities are payable only from the premium surcharges established under Subsection (m) or (n) of this section, as applicable, or from other amounts that the association is authorized to levy, charge, and collect. Provides that public securities are obligations solely of the association and do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state. Requires each public security to include a statement that this state is not obligated to pay any amount on the public security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments. Requires each public security issued under this section to state on its face that the public security is payable solely from the revenues pledged for that purpose and that the public security does not and may not constitute a legal or moral obligation of the state.

(m) Requires the public securities and all debt service on the public securities issued in accordance with Subsection (d) to be paid by premium surcharges in an amount approved by the commissioner and applied to insurance policies written through the association in the first tier coastal counties.

(n) Requires the public securities and all debt service on the public securities issued in accordance with Subsection (e) to be paid by premium surcharges in amounts approved by the commissioner and applied to each property and casualty insurance policy written by an insurer in this state or by the FAIR Plan Association. Requires the premium surcharges applicable under this subsection to insurance policies written on property located in first tier coastal counties, including policies issued through the association to be equal to two times the premium surcharges applicable to insurance policies written on property located in counties that are not first tier coastal counties. Prohibits a premium surcharge under this subsection from being applied to a workers' compensation insurance policy, an accident and health insurance policy, or a medical malpractice insurance policy.

(o) Provides that, as a condition of engaging in the business of insurance in this state, an insurer that engages in the business of property insurance in this state

agrees that if the insurer leaves the insurance market in this state the insurer remains obligated to pay, until the public securities are retired, the insurer's share of the premium surcharges assessed under Subsection (m) or (n) of this section, as applicable, in an amount proportionate to that insurer's share of the insurance market in this state, as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. Requires the proportion assessed against the insurer to be based on the insurer's gross written premiums for insurance for the insurer's last reporting period.

(p) Requires the association to deposit all premium surcharges collected under Subsection (m) or (n) of this section, as applicable, in a fund to be held outside the state treasury in the custody of the comptroller. Authorizes money deposited in the fund to be invested as permitted by general law. Requires money in the fund required to be used to pay bond obligations and bond administrative expenses to be transferred to the authority or used by the comptroller in the manner and at the time specified in the resolution adopted in connection with the bond issue to ensure timely payment of obligations and expenses, or as otherwise provided by the bond documents. Requires the association, for bonds issued by the authority for the association, to provide for the payment of the bond obligations and the bond administrative expenses by irrevocably pledging revenues received from the premium surcharges and amounts on deposit in the fund, together with any bond reserve fund, as provided in the proceedings authorizing the bonds and related credit agreements.

(q) Authorizes revenue collected from the premium surcharges assessed under Subsection (m) or (n) of this section, as applicable, in any year that exceeds the amount of the bond obligations and bond administrative expenses payable in that year and interest earned on the premium surcharges to, in the discretion of the association and with the approval of the commissioner, for certain purposes.

(r) Provides that the public securities issued under this section, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by this state or a political subdivision of this state.

(s) Provides that the public securities issued under this section constitute authorized investments under Articles 2.10 and 3.33 and Subpart A, Part I, Article 3.39, of this code.

(t) Provides that the state pledges to and agrees with the owners of any public securities issued in accordance with this section that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the owners of the public securities or in any way impair the rights and remedies of those owners until the public securities, bond premium, if any, or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners, are fully met and discharged. Authorizes the association to include this pledge and agreement of the state in any agreement with the owners of the public securities.

(u) Authorizes a party at interest to use mandamus and all other legal and equitable remedies to require the association and any other party to carry out agreements and to perform functions and duties established under this section, the Texas Constitution, or a public security resolution.

(v) Provides that this section expires September 1, 2011.

SECTION 7. (a) Provides that the board of directors of the association established under Section 5, Article 21.49, Insurance Code, as that section existed prior to amendment by this Act, is abolished effective January 1, 2006.

(b) Requires the commissioner, not later than December 31, 2005, to appoint the members of the board of directors of the association under Section 5, Article 21.49, Insurance Code, as amended by this Act.

(c) Provides that the term of a person who is serving as a member of the board of directors of the association immediately before abolition of that board under Subsection (a) of this section expires on January 1, 2006. Provides that such a person is eligible for appointment by the commissioner of insurance to the new board of directors of the association under Section 5, Article 21.49, Insurance Code, as amended by this Act.

SECTION 8. Effective date: January 1, 2006.