

BILL ANALYSIS

C.S.H.B. 1890
By: Smithee
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 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,
4. Unlimited assessment to member insurers (subject to premium tax credits for 5 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 catastrophe events on a tax deferred basis.

CSHB 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 B to be funded by policyholders therefore reducing the possibility of General Revenue Tax offsets. The bill also changes the appointment process and other requirements relating to the TWIA board of directors.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of the Texas Department of Insurance in SECTION 6 (Section 19, Article 21.49 (i) of the Insurance Code) of this bill.

ANALYSIS

C.S.H.B. 1890 79(R)

Section 1: Amends Section 4 (d), Article 21.49 of the Insurance Code by adding that upon dissolution of the association, the unexpended and unobligated balance of the catastrophe reserve trust fund as of the date of the dissolution shall revert to the state.

Section 2: Amends Section 5, Article 21.49 of the Insurance Code by amending subsections (g), (h), (i) (j) and (l) and adding subsection (n). Provides that the TWIA board of directors is responsible to the commissioner and the governor. Requires that the board of directors is composed of 9 members appointed by the governor. Changes criteria for the selection of board members. Specifies that three members must be residents of first tier coastal counties and that one of these three must be a licensed insurance agent. Three members must be representatives of insurers who are TWIA members and may reside anywhere in the state. Three members must be residents of counties other than first tier coastal counties and at least one of these three must be a licensed insurance agent.

Changes the term for board members to two-year staggered terms. Removes the three full consecutive term or nine year limitation for members. Provides that a member of the board serves at the pleasure of the governor and may be removed by the Governor before the expiration of the member's term. Requires that members of the board must have demonstrated business, insurance, or financial experience to be eligible for appointment. The governor shall designate one member of the board of directors to serve as the presiding officer. The presiding officer serves at the will of the governor and is entitled to vote on all matters before the board. Removes language requiring the board to elect an executive committee and instead requires the board to elect other officers of the board from its membership.

Requires board to notify commissioner and the commissioner to subsequently notify the governor and appropriate committees of the legislature if an occurrence or series of occurrences within the designated catastrophe area results in payment of losses under Section 19.

Board shall make annual report to Governor, Lt. Gov., and Speaker as to (1) solvency of association; (2) sufficiency of reserves; (3) sufficiency of rates charged for coverage through the association, and difference between actual rates being charged and actuarially sufficient rates; and (4) outstanding risks to association and its members.

Section 3: Amends Article 21.49 by adding section 5(c). Requires the board to recommend rates to the department and to determine coverage limits, applicable deductibles, and any surcharge for non-compliance with applicable building codes. Provides that the primary goal of board, along with exercising powers and duties under this article, shall be to the association financially sound.

Section 4: Amends Section 8 (h) (2), Article 21.49 by requiring that the board, rather than the association, make the proposed manual rate filing for all types and classes of risk written by the association.

Section 5: Amends Section 8 (i) (1), Article 21.49, by removing language regarding reducing the potential for payments by association members giving rise to tax credits. Removes language providing that on termination of the fund, all assets of the fund revert to the state to be used to provide funding for the annual loss mitigation and preparedness plan.

Section 6: Amends Section 19, Article 21.49 provisions regarding occurrence or series of occurrences in a calendar year and the requirement regarding the payment of excess losses and assessments to the association members from an occurrence or series of occurrences in a calendar year. Maintains the requirement that after application of all available revenue to losses, \$100 million shall be assessed to the members of the association. The proportion of the loss allocable to each insurer is determined in the same manner as its participation in the association has been determined for the year under Section 5(b). Any losses in excess of \$100 million shall be paid from the catastrophe reserve trust fund, not to exceed an amount equal to 50 percent of the balance of that fund. If this amount is insufficient to pay the excess losses, an additional amount not to exceed \$500 million shall be funded through the issuance of public securities under the revenue bond program established in this Act. If this amount is insufficient to pay excess losses, reinsurance proceeds recoverable by the association and available under any

reinsurance program established by the association shall be used to pay the losses. For losses in excess of these provisions, an additional \$500 million shall be funded through the revenue bond program. Subsection (g) requires that any losses in excess of these provisions shall be assessed against members of the association. The proportion of the loss allocable to each insurer is determined in the same manner as its participation in the association has been determined for the year under Section 5(b). Allows premium tax credits under Section 221.002 for any amount paid under subsection (g). Grants the commissioner the authority to adopt rules as necessary to implement this section.

Section 7: Amends Article 21.49 by adding section 20. Establishes a revenue bond program for operations and payment of claims through the issuance of public securities. Provides definitions to be used in this section. Sets out requirements for issuance, payment, deposit, and use of revenue and allowable actions by the board and association. Sets out provisions for a public securities resolution. Applies Chapters 1232, 1201, 1202, 1204, 1205, 1231, 1371, and Chapter 1206, Subchapter A, of the Government Code to public securities issued under this section. In the event of a conflict, this section controls. Provides that the public securities issued and all debt service shall be paid by premium surcharges applied to each property and casualty insurance policy written by an insurer in the state or by the FAIR Plan, other than a workers' compensation policy, an accident and health insurance policy, or a medical malpractice policy. Provides that 20 percent of the necessary amount shall be charged on insurance policies written on property located in first tier coastal counties, including policies issued by the association. Eighty percent of the necessary amount shall be charged on insurance policies written on property not located in first tier coastal counties. Provides that as a condition of engaging in business in the state, an insurer engaging in the business of property insurance in the state agrees that if the insurer leaves the property and casualty insurance market in this state the insurer remains obligated to pay, until the public securities are retired, its share of the service fee assessed under Subsection (j) of this section in an amount proportionate to that insurer's share of the property and casualty 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. The proportion assessed against the insurer is based on the insurer's gross written premiums for property and casualty insurance for the insurer's last reporting period. Allows 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 perform functions and duties under this section.

Section 8: Amends 941.003 (b) of the Insurance Code regarding Lloyd's Plans by adding recodified chapter numbers, repealing the corresponding articles that have been recodified, and including Article 21.49 as one of the provisions that applies to Lloyd's plans.

Section 9: Amends Section 942.003 (b) of the Insurance Code regarding exchanges by adding recodified chapter numbers, repealing the corresponding articles that have been recodified, and including Article 21.49 as one of the provisions that applies to exchanges.

Section 10: Abolishes the board of directors of TWIA established under Section 5, Article 21.49, as that section existed prior to this Act, effective January 1, 2006. Requires the governor to appoint new members by December 31, 2005. Provides that the term of current members expires January 1, 2006. Such members are eligible for appointment to the new board.

Section 11: Effective date

EFFECTIVE DATE

This Act takes effect September 1, 2005, except for Section 20, Article 21.49 of the Insurance Code as added by this Act. This Section takes effect upon passage, or if the Act does not receive the necessary number of votes, this section takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute makes several substantive changes and renumbers parts of the original accordingly.

Section 1 of the substitute is not contained in the original.

Section 2 of the substitute contains language regarding the board of directors (topic of section 1 in the original). The substitute makes several changes to the requirements for appointment of the board and changes the terms of the board members. The substitute changes language regarding notification of the commissioner by the TWIA board when losses occur.

Substitute adds new language requiring the board to make annual report to Governor, Lt. Gov., and Speaker and specifying what the report must contain.

Section 3 of substitute regarding powers and duties of the board and primary goal of the board is not in original.

Section 4 of substitute is not contained in the original and requires the Board of Directors to file a proposed manual rate rather than the association.

Section 5 of the substitute contains language from Section 2 of the original. The substitute strikes "to reduce the potential for payments by members of the association giving rise to tax credits" and strikes the provision stating that on termination of the fund, all assets of the fund revert to the state to be used to provide funding for the annual loss mitigation and preparedness plan developed and implemented by the commissioner under Subdivision (5) of this subsection.

Section 6 of the substitute contains language regarding payment of losses and premium tax credit. This is the topic of Section 3 of the original. The substitute changes the structure and procedure for payment of losses and removes provisions from the original regarding premium surcharges.

Section 7 of the substitute contains revenue bond language from section 4 of the original. The substitute makes changes to the definitions in the original. The substitute removes language in section j of original regarding service fees and adds provisions regarding premium surcharges. Changes provisions in section (n). Section 7 removes language relating to proposed sections 21, 22, and 23 of Article 21.49 regarding the Windstorm reinsurance facility, trust fund and revenue bond program.

Section 8 and 9 of substitute contain language from sections 5 and 6 of original.

Section 7 of the original is not in the substitute.

Section 8 of the original is Section 10 of the substitute.

Section 11 of the substitute changes effective date provisions contained in Section 9 of the original.