BILL ANALYSIS

Senate Research Center
80R9593 PB-D

S.B. 1551
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Business & Commerce
4/22/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With insurance companies ceasing to write insurance along the Gulf Coast, the Texas Windstorm Insurance Association is facing increasing financial pressure in the event of a major storm event. One of the issues facing private insurers is the cost of reinsurance, which is skyrocketing worldwide.

As proposed, S.B. 1551 creates a reinsurance organization as part of a public-private partnership between the state and reinsurance companies, easing the pressure on private companies and allowing them to write more insurance on the coast.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 1809.051, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 10, Insurance Code, by adding Chapter 1809, as follows:

CHAPTER 1809. NATURAL DISASTER CATASTROPHE FUND

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1809. SHORT TITLE. Authorizes this chapter to be cited as the Texas Natural Disaster Catastrophe Fund Act.

Sec. 1809.002. FINDINGS; PURPOSE. (a) Provides that the legislature finds that there is a compelling state interest in maintaining a viable and orderly private sector market for property insurance in this state. Provides that, to the extent that the private sector is unable to maintain such a market in this state, state actions to maintain such a market are valid and necessary exercises of the police power.

(b) Provides that the legislature finds that, as a result of unprecedented levels of insured losses from natural disasters in recent years, and especially as a result of Hurricane Andrew and the Northridge earthquake, numerous insurers have determined that in order to protect their solvency, it is necessary for those insurers to reduce their exposure to losses from natural disasters. Provides that the instability of the world reinsurance market, also caused in part by these events, has also increased the pressure on insurers to reduce their catastrophic exposures.

(c) Provides that the legislature finds that mortgages require reliable property insurance, and the unavailability of reliable property insurance would make most real estate transactions impossible. Provides that, in addition, the public health, safety, and welfare demand that structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible. Provides that, therefore, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable residents of this state to obtain property insurance coverage in the private sector endangers the economy of this state and endangers the public health, safety, and welfare. Provides that, accordingly, state action to correct for this inability of the private sector constitutes a valid and necessary public and governmental purpose.

(d) Provides that the legislature finds that the insolvencies and financial impairments resulting from Hurricane Andrew and the Northridge earthquake demonstrate that many property insurers are unable or unwilling to maintain reserves, surplus, and reinsurance sufficient to enable the insurers to pay all claims in full in the event of a major natural disaster. Provides that state action is therefore necessary to protect the public from an insurer's unwillingness or inability to maintain sufficient reserves, surplus, and reinsurance.

(e) Provides that the legislature finds that a state program to provide reimbursement to insurers for a portion of their catastrophic losses will create additional insurance capacity sufficient to ameliorate the current dangers to this state's economy and to the public health, safety, and welfare.

(f) Provides that it is essential to the efficient functioning of a state program to increase insurance capacity that revenues received be exempt from federal taxation. Provides that it is therefore the intent of the legislature that the program under this chapter be structured as a state trust fund under the control of the Texas Department of Insurance (TDI) and operate exclusively for the purpose of protecting and advancing the state's interest in maintaining insurance capacity in this state.

Sec. 1809.003. DEFINITIONS. Defines "actuarially indicated," "covered event," "covered policy," "fund," "insurer," "losses," and "retention."

[Reserves Sections 1809.004-1809.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSIONER

Sec. 1809.051. RULEMAKING. (a) Requires the commissioner of insurance (commissioner) to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as reasonable and necessary to implement this chapter.

(b) Requires rules adopted under Subsection (a) to meet certain criteria.

(c) Requires rules adopted under Subsection (a) to contain general provisions to allow the rules to be applied with enough reasonable flexibility to accommodate insurers in situations of an unusual nature or if undue hardship may result. Prohibits the flexibility authorized under this subsection from in any way impairing, overriding, superseding, or constraining the public purpose of the fund, and requires the flexibility to be consistent with sound insurance practices.

Sec. 1809.052. ALTERNATE REPORTING METHODS AUTHORIZED. Authorizes TDI to allow insurers to use alternative methods of reporting to comply with reporting requirements adopted under this chapter if the commissioner makes certain determinations.

Sec. 1809.053. REPROCESSING FEE. Authorizes TDI, to ensure the equitable operation of the fund, to impose a reasonable fee on an insurer to recover any costs incurred by TDI in reprocessing inaccurate, incomplete, or untimely exposure data submitted by the insurer.

Sec. 1809.054. ADVISORY COUNCIL. (a) Requires the commissioner, to provide TDI with information and advice in connection with the department's duties under this chapter, to appoint a nine-member advisory council composed of certain entities.

(b) Provides that members of the advisory council serve at the pleasure of the commissioner.

(c) Provides that a member of the advisory council is not entitled to compensation, but is entitled to reimbursement for traveling expenses incurred in performing duties as a member of the advisory council up to the limit provided by the General Appropriations Act.

Sec. 1809.055. EFFECT OF CREATION OF FEDERAL OR MULTISTATE PROGRAM. Requires TDI, on the creation of a federal or multistate catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund established under this chapter, to promptly make recommendations to the legislature regarding certain issues.

[Reserves Sections 1809.056-1809.100 for expansion.]

SUBCHAPTER C. FUND

Sec. 1809.101. ESTABLISHMENT OF FUND. (a) Provides that the Texas natural disaster catastrophe fund (fund) is a trust fund outside the state treasury in the custody of the comptroller. Requires the department to administer the fund.

(b) Prohibits money in the fund from being spent, loaned, or appropriated except to pay for certain costs.

(c) Requires the comptroller of public accounts (comptroller) to invest the money in the fund in the manner provided by law for investment of state funds. Requires, except as otherwise provided by this chapter, earnings from all investments to be retained in the fund.

(d) Authorizes TDI to employ staff or contract with professionals as the commissioner considers necessary for the administration of the fund.

Sec. 1809.102. BORROWING AUTHORIZED. Authorizes TDI, in addition to using public securities under Subchapter H, to also borrow from any market sources at prevailing interest rates.

Sec. 1809.103. MITIGATION PROGRAM; USE OF FUND INVESTMENT INCOME. (a) Authorizes, as directed by legislative appropriation, an amount not to exceed 35 percent of the investment income of the fund for the prior fiscal year to be used annually to provide funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to serve certain purposes.

(b) Provides that, notwithstanding Subsection (a), money is not available for appropriation under this section if the comptroller determines that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

Sec. 1809.104. BIANNUAL STATEMENT. Requires the comptroller, in May and October of each year, to publish in the Texas Register a statement of the fund's anticipated borrowing capacity and the balance of the fund as of the date of the statement.

Sec. 1809.105. REINSURANCE. Authorizes TDI to procure reinsurance from reinsurers authorized under Subtitle F, Title 4 for the purpose of maximizing the capacity of the fund.

Sec. 1809.106. REVERSION OF FUND ASSETS ON TERMINATION. Authorizes the fund and the duties of the comptroller and TDI under this chapter to be terminated only by law. Requires all assets of the fund to revert to the general revenue fund on termination of the fund.

Sec. 1809.107. ADVANCE PREMIUM PAYMENT. (a) Requires each insurer, to provide startup money for the administration of the fund, to pay to the fund an advance premium payment of $1,000. Requires TDI to collect the advance premium payments required by this section for deposit in the fund. Requires the insurer to receive a credit against future premiums for the advance payment.

(b) Provides that this section expires September 1, 2009.

[Reserves Sections 1809.108-1809.150 for expansion.]

SUBCHAPTER D. COMPUTATION OF INSURER'S RETENTION

Sec. 1809.151. COMPUTATION OF INSURER'S RETENTION. Requires an insurer's retention to be computed as provided by this subchapter for purposes of this chapter.

Sec. 1809.152. RETENTION MULTIPLES. (a) Requires TDI to compute and report to each insurer the retention multiples for each year.

(b) Provides that, for the contract year beginning in 2007, the retention multiple is equal to $2 billion, divided by the total estimated reimbursement premium for the contract year. Provides that, for subsequent years, the retention multiple is equal to $2 billion, adjusted to reflect the percentage growth in premium for covered policies since the date of the initial contracts entered into under this chapter, divided by the total estimated reimbursement premium for the contract year.

Sec. 1809.153. INSURER ELECTION; PROVISIONAL AND ACTUAL RETENTION. (a) Requires the retention multiple determined under Section 1809.152(b) to be adjusted to reflect the coverage level elected by the insurer under Section 1809.202. Sets forth the adjusted retention multiples for various coverage levels for insurers electing.

(b) Requires an insurer to determine the insurer's provisional and actual retention by employing certain methods.

[Reserves Sections 1809.154-1809.200 for expansion.]

SUBCHAPTER E. REIMBURSEMENT CONTRACTS

Sec. 1809.201. REIMBURSEMENT CONTRACT REQUIRED. Requires, as a condition of engaging in the business of insurance in this state, each insurer that writes covered policies to enter into a contract with TDI under which TDI is required to provide to the insurer the reimbursement described by Section 1809.202 in exchange for the reimbursement premium paid to the fund by the insurer under Subchapter G.

Sec. 1809.202. REIMBURSEMENT PERCENTAGES. (a) Requires a reimbursement contract to contain a promise by TDI to reimburse the insurer, as provided by Subsection (b), for a percentage equal to 45 percent, 75 percent, or 90 percent of the insurer's losses from each covered event in excess of the insurer's retention, plus five percent of the reimbursed losses to cover loss adjustment expenses.

(b) Requires the insurer to elect one of the payment percentages specified under Subsection (a). Authorizes the insurer to elect certain payment percentages on renewal of a reimbursement contract.

(c) Requires all members of an insurer group to elect the same payment percentage.

(d) Requires a joint underwriting association or assigned risk plan established under this code to elect the 90 percent payment percentage.

Sec. 1809.203. EFFECT OF REINSURANCE; OTHER RECOVERIES. (a) Requires a reimbursement contract to provide that reimbursement amounts may not be reduced by reinsurance paid or payable to the insurer from other sources.

(b) Prohibits recoveries from another source, together with reimbursements under the contract, from exceeding 100 percent of the insurer's losses from covered events. Requires, if those recoveries and reimbursements exceed 100 percent of the insurer's losses from covered events, and if an agreement between the insurer and the reinsurer to the contrary does not exist, any amount in excess of 100 percent of the insurer's losses to be deposited in the fund.

Sec. 1809.204. DEPARTMENT OBLIGATION. Requires a reimbursement contract to provide that the obligation of TDI with respect to all contracts covering a particular year may not exceed the current balance of the fund, together with the maximum amount that TDI is able to raise through the issuance of public securities under Subchapter H.

Sec. 1809.205. ANNUAL NOTIFICATION TO INSURERS. (a) Requires a reimbursement contract to require TDI to notify each insurer annually of certain information regarding the fund.

(b) Authorizes an insurer, for all regulatory and reinsurance purposes, to compute the insurer's projected payout from the fund as the insurer's share of the total fund premium multiplied by the sum of the fund balance and bonding capacity as reported under this section.

Sec. 1809.206. INSURER QUARTERLY REPORTS; PAYMENT OF REIMBURSEMENT BY DEPARTMENT. (a) Requires the reimbursement contract to require each insurer to report to TDI on December 31 of each year and quarterly thereafter the insurer's losses from covered events for the year and the quarter.

(b) Requires TDI to determine and pay, as soon as practicable after receiving a report under Subsection (a), the initial amount of reimbursement due and adjustments to that amount based on later loss information. Requires adjustments to reimbursement amounts to require TDI to pay, or the insurer to return, amounts reflecting the most recent computation of losses.

Sec. 1809.207. LOANS TO MAINTAIN INSURER SOLVENCY. (a) Requires each reimbursement contract to provide that TDI shall loan to an insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer if the insurer demonstrates to the satisfaction of TDI that certain conditions are satisfied.

(b) Prohibits a loan under Subsection (a) from exceeding an amount equal to 50 percent of the TDI's estimate of the reimbursement due the insurer. Requires the insurer's reimbursement to be reduced by an amount equal to the amount of the loan and interest on the loan.

Sec. 1809.208. EFFECT OF INSURER INSOLVENCY. (a) Defines "net amount of all reimbursement moneys." Requires a private reinsurer described by this subsection, notwithstanding any law to the contrary, to be reimbursed or otherwise paid before any payment to the Texas Property and Casualty Insurance Guaranty Association under Subsection (b).

(b) Requires each reimbursement contract to provide that in the event of the insolvency of an insurer, the fund is required to pay the net amount of reimbursement all moneys owed to the insurer directly to the Texas Property and Casualty Insurance Guaranty Association (guaranty association) for the benefit of the insurer's policyholders in this state. Requires the guaranty association to pay all claims up to the maximum amount permitted by Chapter 462. Requires any remaining moneys to be paid pro rata to claims not fully satisfied.

[Reserves Sections 1809.209-1809.250 for expansion.]

SUBCHAPTER F. REIMBURSEMENT IF FUNDS INSUFFICIENT

Sec. 1809.251. REIMBURSEMENT IF FUNDS INSUFFICIENT. Requires TDI, if it determines that the current balance of the fund, together with the amount that TDI determines possible to raise through public securities issued under Subchapter H, is insufficient to reimburse all insurers at the level promised under the reimbursement contracts, to reimburse insurers as provided by this subchapter.

Sec. 1809.252. FIRST REIMBURSEMENT. (a) Requires TDI to first reimburse each insurer writing covered policies that is determined by TDI to satisfy certain conditions.

(b) Requires the amount of reimbursement made to an insurer under Subsection (a) to be the lesser of certain amounts.

(c) Prohibits the amount of reimbursement paid under this section from exceeding the full amount of reimbursement promised by the reimbursement contract.

(d) Provides that this section does not apply to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds an amount set by the commissioner in consultation with the comptroller and the Texas Public Finance Authority.

Sec. 1809.253. SECOND REIMBURSEMENT. Requires TDI, after reimbursements under Section 1809.252, to pay to each insurer the amount of reimbursement owed to that insurer, up to an amount equal to the projected payout determined under Section 1809.254.

Sec. 1809.254. PRORATED REIMBURSEMENT. Requires TDI, after reimbursements under Section 1809.252, to establish the prorated reimbursement level at the highest level for which any remaining fund balance or public security proceeds are sufficient.

[Reserves Sections 1809.255-1809.300 for expansion.]

SUBCHAPTER G. REIMBURSEMENT PREMIUMS

Sec. 1809.301. PREMIUM PAYMENT. Requires each reimbursement contract to require the insurer to pay to the fund annually an actuarially indicated premium for the promised reimbursement. Requires TDI, in establishing the premium, to consider the coverage level elected by the insurer under Section 1809.202 and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other factors considered appropriate by the commissioner.

Sec. 1809.302. FORMULA FOR PAYMENT OF PREMIUM. (a) Requires TDI to select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. Requires the formula to specify, for each zip code or other limited geographical area, the amount to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area.

(b) Authorizes TDI, at any time, to revise the formula in the manner provided by this section.

Sec. 1809.303. INSURER NOTICE; PAYMENT. (a) Requires each insurer, not later than September 1 of each year, to notify TDI of the insurer's insured values under covered policies by zip code, as of June 30 of that year.

(b) Requires TDI, based on the reports received under Subsection (a), to compute the premium due from each insurer, based on the formula adopted under Section 1809.302. Requires the insurer to pay the required annual premium under a periodic payment plan as specified in the reimbursement contract. Requires TDI to provide for certain costs.

(c) Requires all premiums paid to the fund under reimbursement contracts to be treated as premium for approved reinsurance for all accounting and regulatory purposes.

Sec. 1809.304. EMERGENCY ASSESSMENT. (a) Requires the Texas Public Finance Authority (authority), if it determines that the amount of revenue produced under this subchapter through reimbursement premiums is insufficient to fund any public securities issued under Subchapter H as necessary to pay reimbursement at the levels promised in the reimbursement contracts, to direct TDI to levy an emergency assessment on each insurer writing property and casualty insurance in this state.

(b) Requires each affected insurer, except as otherwise provided by this subsection, to pay to the fund, by July 1 of each year, an amount equal to two percent of the insurer's gross direct written premium for the prior year from all property and casualty insurance written in this state. Authorizes, if the governor has declared a state of emergency under Chapter 418 (Emergency Management), Government Code, because of the occurrence of a covered event, the amount of the emergency assessment under this subsection to be increased to an amount not exceeding four percent of that premium.

(c) Provides that the annual assessments under this section continue until the public securities issued with respect to which the assessment was imposed are retired.

(d) Prohibits an insurer from being subject to more than one assessment under this section.

(e) Requires any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied under this section to be deemed approved when made, subject to the authority of the commissioner to require actuarial justification as to the adequacy of any rate at any time. Authorizes, if the rate filing reflects only a rate change attributable to the assessment under this section, the filing to consist of a certification so stating.

[Reserves Sections 1809.305-1809.350 for expansion.]

SUBCHAPTER H. PUBLIC SECURITIES PROGRAM

Sec. 1809.351. PURPOSE. Provides that the legislature finds that the issuance of public securities to fund a state program to provide reimbursement to insurers for a portion of their losses incurred as a result of certain natural disasters will create additional insurance capacity to benefit this state's economy and the public health, safety, and welfare.

Sec. 1809.352. DEFINITIONS. Defines "board," "public security," and "public security resolution."

Sec. 1809.353. APPLICABILITY OF OTHER LAWS. (a) Provides that, to the extent consistent with this subchapter, Chapter 1232 (Texas Public Finance Authority), Government Code, applies to public securities issued under this subchapter. Provides that, in the event of a conflict, this subchapter controls.

(b) Sets forth laws that also apply to public securities issued under this subchapter to the extent consistent with this section.

Sec. 1809.354. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) Requires the commissioner, in the occurrence of a covered event and a determination by the comptroller that the amount in the fund will be insufficient to pay reimbursement at the levels promised under reimbursement contracts under this chapter, to request the Texas Public Finance Authority (authority) to issue public securities for the benefit of the fund.

(b) Authorizes the authority to issue, on behalf of TDI, public securities in an amount sufficient to fund the obligations of TDI under reimbursement contracts entered into under this chapter as determined by TDI and approved by the commissioner after at least 10 days' notice and a hearing if a hearing is requested by any person within the 10-day notice period.

Sec. 1809.355. TERMS OF ISSUANCE. (a) Authorizes public securities issued under this subchapter to be issued at a public or private sale.

(b) Requires public securities to satisfy certain conditions.

Sec. 1809.356. CONTENTS OF PUBLIC SECURITY RESOLUTION; ADMINISTRATION OF ACCOUNTS. (a) Authorizes the board of directors of the authority (board), in a public security resolution, to take certain actions.

(b) Requires the association (sic) to administer the accounts in accordance with this subchapter.

Sec. 1809.357. SOURCE OF PAYMENT. (a) Provides that public securities issued under this subchapter are payable only from certain funds.

(b) Provides that the public securities are obligations solely of TDI and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state.

(c) Requires each public security to meet certain criteria.

Sec. 1809.358. PAYMENT OF INTEREST. Requires interest on the public securities issued under this subchapter to be paid from the reimbursement premiums collected under Subchapter G.

Sec. 1809.359. EXEMPTION FROM TAXATION. Provides that public securities issued under this subchapter, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

Sec. 1809.360. AUTHORIZED INVESTMENTS. Provides that public securities issued under this subchapter are authorized investments under Subchapter B (Investment of Funds in Excess of Minimum Capital and Surplus), Chapter 424, and Subchapters C (Authorized Investments and Transactions for Capital Stock Life, Health, and Accident Insurers) and D (Authorized Investments and Transactions for Other Life, Health, and Accident Insurers), Chapter 425, Insurance Code.

Sec. 1809.361. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER RIGHTS AND REMEDIES. (a) Provides that the state pledges to and agrees with the owners of public securities issued in accordance with this subchapter that the state will not limit or alter the rights vested in TDI to fulfill the terms of agreements made with the owners or in any way impair the rights and remedies of those owners until certain obligations are fully discharged.

(b) Authorizes TDI to include the state's pledge and agreement under Subsection (a) in an agreement with the owners of the public securities.

Sec. 1809.362. PAYMENT ENFORCEABLE BY MANDAMUS. Provides that a writ of mandamus and any other legal or equitable remedy are available to a party in interest to require TDI or another party to fulfill an agreement or perform a function or duty under certain laws.

[Reserves Sections 1809.363-1809.400 for expansion.]

SUBCHAPTER I. ENFORCEMENT

Sec. 1809.401. SANCTIONS. Provides that an insurer that violates this chapter or a rule adopted under this chapter is subject to sanctions under Chapter 82 (Sanctions).

SECTION 2. Requires the commissioner to appoint the advisory council established under Section 1809.054, Insurance Code, as added by this Act, not later than the 30th day after the effective date of this Act.

SECTION 3. Requires the commissioner to adopt the initial contract forms required under Chapter 1809, Insurance Code, as added by this Act, not later than the 30th day after the effective date of this Act, and to adopt the initial premium formula not later than the 60th day after the effective date of this Act.

SECTION 4. Requires TDI to enter into reimbursement contracts with insurers under Chapter 1809, Insurance Code, as added by this Act, not later than the 90th day after the effective date of this Act.

SECTION 5. (a) Provides that, except as provided by Subsection (b), an insurer is not required to comply with Chapter 1809, Insurance Code, until the 90th day after the effective date of this Act.

(b) Requires an insurer to pay the advance premium payment required under Section 1809.107, Insurance Code, as added by this Act, not later than the 60th day after the effective date of this Act.

SECTION 7. Effective date: upon passage or September 1, 2007.