LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 2, 2007

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3272** by Eiland (Relating to the establishment, funding, and operation of the natural disaster catastrophe fund.), **As Introduced**

Depending upon the magnitude and timing of reimbursement premiums and other revenues that would be deposited to the new trust fund based on the nature and requirements of the contracts entered into between the Texas Department of Insurance and insurers, the fiscal impact to the state cannot be determined.

The bill would add a new chapter to the Insurance Code to create the Natural Disaster Catastrophe Fund. The new fund would be a trust fund held outside the State Treasury, administered by the Texas Department of Insurance (TDI) and held in custody by the Comptroller. Money in the fund could only be spent, loaned, or appropriated for debts; administration and reinsurance costs; the costs of the authorized mitigation program; and the obligations that arise out of reimbursement contracts entered into pursuant to the bill.

The bill provides that an amount not to exceed 35 percent of the fund's investment income for the previous fiscal year could be used annually, as directed by legislative appropriation, to provide funding for local governments, state agencies, educational institutions, and nonprofit organizations to support programs to improve natural disaster preparedness, to reduce potential losses, and protect infrastructure from potential damage from a covered event, among other related programs. The bill would prohibit money from being appropriated from the fund if the Comptroller determined that an appropriation would jeopardize the actuarial soundness of the fund. The bill would require the Comptroller to publish a statement of the fund's anticipated borrowing capacity and the balance of the fund each May and October. It is assumed that costs incurred by the Comptroller associated with publishing the balance could be absorbed within existing resources.

The bill would authorize TDI to procure reinsurance for the purpose of maximizing the capacity of the fund. To provide startup money for the fund, the bill would require each residential property insurer to pay the fund an advance payment of $1,000 which would be collected by TDI for deposit to the fund. This provision would expire September 1, 2009.

The bill would establish a formula for the calculation of an insurer's retention, and it would establish procedures by which reimbursements would be made to insurers. The bill would also establish procedures by which an insurer's annual reimbursement premium would be set.

The bill would require the Commissioner of Insurance to establish an advisory council to assist TDI with respect to this bill, and it would establish procedures for emergency assessments and for the issuance of public securities.

Based on the analysis of TDI, it is assumed that any costs incurred by TDI associated with implementing the provisions of the bill could be absorbed within existing resources.

Based on the analysis of the Comptroller of Public Accounts, it is not possible to estimate the magnitude and timing of reimbursement premiums and other revenues that would be deposited to the new trust fund because the nature and requirements of the contracts entered into between TDI and insurers cannot be predicted. In addition, the potential loss in retaliatory taxes to the state in fiscal 2009 consequent to the $1,000 startup fee that would be imposed on insurers authorized to write residential coverage cannot be estimated.

The bill would authorize the Texas Public Finance Authority (TPFA) to issue bonds on behalf of TDI for the purposes of and as required by the bill. Based on the analysis of TPFA and notwithstanding the legislative findings of public purpose, it is assumed that the proceeds of any bonds would be transferred to individual insurance companies and must be assumed to constitute taxable bonds. The actual amount of debt service for the bonds can not be determined because the amount of a bond issue or when such bonds may be issued are not specified.

The bill would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007.

Local Government Impact

The fiscal impact on units of local government cannot be estimated.

Source Agencies: 304 Comptroller of Public Accounts, 347 Public Finance Authority, 454 Department of Insurance

LBB Staff: JOB, JRO, MW, SK, JW