LEGISLATIVE BUDGET BOARD
Austin, Texas

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June 28, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: **HB3** by Smithee (Relating to the operation of the Texas Windstorm Insurance Association, to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers; providing penalties.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3, Conference Committee Report: an impact of $0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	$0
2013	$0
2014	$0
2015	$0
2016	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from *Insurance Maint Tax Fees* 8042	Probable (Cost) from *Insurance Maint Tax Fees* 8042	Probable Revenue Gain from *Dept Ins Operating Acct* 36	Probable (Cost) from *Dept Ins Operating Acct* 36
2012	$164,563	($164,563)	$291,131	($291,131)
2013	$154,960	($154,960)	$276,822	($276,822)
2014	$154,960	($154,960)	$276,822	($276,822)
2015	$154,960	($154,960)	$276,822	($276,822)
2016	$154,960	($154,960)	$276,822	($276,822)

Fiscal Year	Probable Revenue Gain from *Appropriated Receipts* 666	Probable (Cost) from *Appropriated Receipts* 666	Change in Number of State Employees from FY 2011
2012	$750,000	($750,000)	5.0
2013	$0	$0	5.0
2014	$0	$0	5.0
2015	$0	$0	5.0
2016	$0	$0	5.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA), to the resolution of certain disputes concerning claims made to that association, and to the issuance of windstorm and hail insurance policies in the private insurance market by certain insurers; providing penalties.

The bill would impose certain limitations on certain claims and actions brought against TWIA; require TWIA to make random audits of claims practices following certain storms; and describe the process and requirements for the filing of claims against TWIA, for the processing of those claims, and for the resolution of disputes concerning those claims.

The bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal, and seek redress in a court of law. The bill would create an expert panel, appointed by the commissioner of insurance, to advise TWIA concerning the extent to which damage to property insured under an Association policy was incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm. The bill would require the Texas Department of Insurance (TDI) to publish guidelines that TWIA will use to settle claims, after consideration of the recommendations made by the panel.

The bill would amend and add provisions that provide for the initiation of cease and desist actions by TDI against appointed qualified inspectors who perform building code inspections on structures in the catastrophe area.

The bill would allow TWIA to issue pre-event public securities to cover anticipated losses; make the inability of TWIA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of the Insurance Code; and establish the new Premium Surcharge Trust Fund and the Member Assessment Trust Fund as dedicated funds held by the Texas Safekeeping Trust Company to receive any premium surcharges and member assessments levied to repay certain public securities.

The bill would require TWIA to develop a plan to obtain reinsurance; and, if TWIA does not purchase reinsurance, to submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of $2.5 billion or more.

The bill would require studies by TDI and TWIA to determine whether using a single adjuster program would improve effectiveness and efficiency, and by the Commissioner of Insurance to examine the feasibility of TWIA writing policies directly. In addition, the bill would require that a legislative interim committee conduct a study of alternative ways to provide insurance in coastal areas.

The bill would make TWIA subject to audit by the State Auditor; prohibit TWIA from issuing coverage for wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow premium discounts for certain property exceeding building code standards and for certain insureds who chose binding arbitration in disputes with TWIA; and require the Commissioner of Insurance to appoint an expert panel to advise the association concerning the extent to which insured storm damage was incurred as a result of wind and tidal surges.
Additionally, the bill would make various administrative changes involving dispute resolution; reports; compensation of employees and contractors; appointment of persons to the TWIA board of

directors; meetings of the board of directors; open records; applications for and renewals of coverage; agent commissions; rate setting; liability limits; and issuance and repayment of public securities. The bill would require the Texas Board of Professional Engineers to adopt rules to implement changes in the Occupations Code relating to windstorm-related design services and windstorm certification standards. Additionally the bill would require that TWIA submit a catastrophe plan describing how TWIA would evaluate losses and process claims following certain categories of windstorms.

The bill would allow the issuance of Class 1 public securities pre-event, and would increase the possible maturity to 14 years. The bill would provide that Class 1 public securities may be issued before a catastrophe on the request of the board with the approval of the commission, and may not exceed $1 billion in the aggregate at any one time, regardless of the calendar year or years in which the outstanding securities were issued. Additionally, the bill would provide that the Class 1 public securities shall be issued as necessary but not to exceed $1 billion in principal amount in a catastrophe year, in the aggregate, if issued before the catastrophe, or on or after the catastrophe, and may be issued in multiple tranches during the calendar year of the event or in the following year. The bill would state that if public securities are issued as described by sec. 2210.072, then they shall be repaid from TWIA premium revenue. The bill would provide that if Class 1 debt is issued pre-event, TWIA will have to use those funds to pay claims before the proceeds of any Class 1 debt issued after the occurrence; however, Class 1 securities may be issued after an event, but before pre-event proceeds have been exhausted. If proceeds issued under subsection (e) must be depleted, those proceeds will count against the $1 billion cap.

The bill would clarify that $1 billion in the aggregate is the principal amount of Class 2 public securities that can be issued in a catastrophe year, whether for losses from a single event or series of events and that the debt can be issued in one of more tranches during the calendar year of the event or events, but also in the following calendar year, if debt cannot reasonably be issued in the year of the events. Additionally, the bill would clarify that $500 million in the aggregate is the principal amount of Class 3 public securities that can be issued can be issued in a catastrophe year, whether for losses from a single event or series of events and that the debt can be issued in one of more tranches during the calendar year of the event or events, but also in the following calendar year, if debt cannot reasonably be issued in the year of the events.

The bill would establish a new Ombudsman Program within TDI to provide information and educational programs to assist TWIA policyholders with the claims processes via a new toll-free number, consumer publications available in print and on the TDI website, and presentations at outreach events. The bill would require TWIA to transfer funds to TDI to cover the cost of the program every May 1st, and that any of these funds not expended on the program would be reimbursed to TWIA on the following April 30th. Additionally, the bill would allow TDI to increase the budget of the program and TWIA to transfer additional funds following a windstorm.

The bill requires TWIA to amend the association’s plan of operation to conform to the changes in the bill no later that the 60th day after the effective date of the bill.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect on the 91st day after the last day of the legislative session.

Methodology

Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney III and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost $119,142 in salaries and wages with benefits cost of $33,193, other operating expenses of $225, and telephone costs of $2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be $9,603 in fiscal year 2012. This analysis assumes these costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis by TDI, implementation of the new ombudsman program would require 3.0 FTEs to write consumer materials, give presentations, and assist policyholders with the claims processes. If a catastrophe occurs that affects TWIA policyholders, additional staffing may be required. The bill states that TWIA would transfer funds to TDI to fund the new ombudsman program. Absent of specific clarification by the bill of where the funds from TWIA would be deposited, it is assumed that the transferred funds would be deposited to the credit of General Revenue-Dedicated Fund 36. While the bill creates a new budget approval process within TDI, the bill does not provide additional authority to exceed the agency's FTE cap or appropriation authority established in Senate Bill 1, the General Appropriations Act for 2012-13, 82nd Legislature, Regular Session. Although the bill requires that TDI repay TWIA any unused program funds each April 30th, the bill would not provide the agency any specific appropriation authority to repay TWIA. The 3.0 FTEs would cost $291,131 in fiscal year 2012, and $276,822 each fiscal year of 2013-2016. The 3.0 FTEs would cost $187,077 in salaries and wages with benefits cost of $52,120, other operating expenses of $15,675, telephone and consumables costs of $6,950, and travel costs of $15,000 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be $14,309 in fiscal year 2012. This analysis assumes these costs would be funded by General Revenue-Dedicated Fund 36, with transferred funds from TWIA.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class I public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost $750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

The fiscal impact of costs that may be incurred in association with implementing the provisions of the bill for the Texas Board of Professional Engineers are not considered in this analysis because fiscal impact for this agency would be realized outside of the Treasury due to the agency being Self-Directed and Semi-Independent.

Based on the analysis provided by the Sunset Advisory Commission, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. TWIA is scheduled in statute for Sunset review in the 2014-15 biennium, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State.

Based on the analysis provided by the State Auditor's Office (SAO), the bill would require TWIA to be subject to an audit by the SAO and pay for the costs incurred by the SAO in performing the audit. According to the bill, TWIA would be responsible for paying the costs incurred by the SAO in performing the audit, meaning the review would not have a fiscal impact to the State. Based on the analysis provided by the SAO, any audit of TWIA would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. In accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be evaluated for inclusion in the SAO's annual audit plan for Legislative Audit Committee approval.

The bill creates new funds, the Premium Surcharge Trust Fund and the Member Assessment Trust Fund, to be held outside the Treasury. This analysis does not consider fiscal impacts for these funds since they are held outside the treasury. Based on the analysis by the Comptroller of Public Accounts, this legislation 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.

Based on the analysis provided by the Comptroller of Public Accounts, discounts for those premiums stemming from policies written by TWIA could result in a reduction in premium tax revenue, but that amount cannot be determined as it is unknown how many policyholders would opt for binding arbitration which is required to receive the discount. Currently, premium tax revenue from TWIA policies is approximately $6 million annually.

Technology

The technology impact to TDI would be $6,125 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 347 Public Finance Authority, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 352 Bond Review Board, 454 Department of Insurance, 460 Board of Professional Engineers

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