

BILL ANALYSIS

C.S.H.B. 272
By: Smithee
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Legislature created the Texas Windstorm Insurance Association (TWIA) to address the lack of available windstorm insurance in a specified territory along the Texas Gulf Coast. TWIA was designed to serve as the insurer of last resort for a property owner who wants to obtain basic wind and hail insurance coverage. The primary sources of exposure for TWIA are losses from tropical storms and hurricanes. TWIA originally was intended to provide coverage for dwellings and small commercial buildings, but since its creation, the association has grown exponentially and has been required to provide coverage for many large commercial and governmental structures beyond what was originally envisioned.

The statute governing TWIA has been changed a number of times, including changes designed to make the association more of a quasi-governmental entity with all of its governing board appointed by the commissioner of insurance. Despite the fact that TWIA is a quasi-governmental entity, it has been found subject to many laws that apply to licensed insurance companies, including laws permitting recovery of punitive, additional, and other damages that generally are not available in suits against a quasi-governmental entity or a governmental entity.

TWIA is not capitalized as an insurance company, has very little capital or surplus, and is funded by premiums from policyholders, reinsurance, reserves in a catastrophe reserve trust fund, and assessments on licensed property insurers. Before recent changes, TWIA assessed licensed insurers unlimited amounts needed to pay claims, with a certain amount of such contingent assessments being eligible for premium tax credits for premiums taxes paid to the state by licensed insurers.

Hurricanes Dolly and Ike resulted in billions of dollars in losses to TWIA, most of which were paid through assessments or reinsurance. Further changes were made to change the way losses in TWIA would be funded if another major hurricane strikes the Texas Gulf Coast, including authorization to issue post-event securities. Flooding is not covered by TWIA policies, yet numerous claims may have been paid or settled involving damages from causes other than those covered by the association policy. TWIA also has been inundated with lawsuits resulting from Hurricanes Dolly and Ike, imposing significant additional expense to the overall losses required to be paid by the association that could result in higher costs to not only consumers in the association but also to property insurance consumers statewide.

C.S.H.B. 272 clarifies and expands recent legislative changes so that TWIA will be regulated in a manner more consistent with its status as a quasi-governmental entity.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 13, 17, 20, and 28 of this bill.

ANALYSIS

C.S.H.B. 272 amends the Insurance Code to make statutory provisions relating to the authority of the commissioner of insurance to issue emergency cease and desist orders applicable to a person appointed as a qualified building or windstorm inspector or acting as such a qualified inspector without being appointed as a qualified inspector under the Texas Windstorm Insurance Association Act. The bill exempts an action brought under the provisions governing a private action for damages over unfair methods of competition or unfair or deceptive acts or practices brought against the Texas Windstorm Insurance Association (TWIA) by a person insured under the act from the application of provisions authorizing a trier of fact to award an amount not to exceed three times the amount of actual damages.

C.S.H.B. 272 changes the period for TWIA's sunset review from the period in which agencies to be abolished in 2015 are reviewed to the period in which agencies to be abolished in 2013 are reviewed. The bill changes the expiration of the provision subjecting TWIA to sunset review from September 1, 2015, to September 1, 2013.

C.S.H.B. 272 makes provisions of law relating to unfair methods of competition and unfair or deceptive acts or practices in the insurance industry and provisions relating to the processing and settlement of claims applicable to TWIA and to TWIA's processing and settlement of claims. The bill establishes that to the extent of any conflict between the Texas Windstorm Insurance Association Act and those provisions, the act prevails. The bill prohibits a person insured under the act from bringing a private action against TWIA under provisions of law relating to unfair methods of competition and unfair or deceptive acts or practices in the insurance industry and exempts an action against TWIA from a statutory provision governing a joinder between a claimant and a responsible third party in an action. The bill prohibits a person insured under the act from presiding over a matter or action to which TWIA is a party, including by sitting as a judge or serving as an arbitrator.

C.S.H.B. 272 establishes standards of conduct for members of the board of directors of TWIA and TWIA employees that prohibit certain actions that might tend to influence the member or employee in the discharge of the individual's duties, require or induce the disclosure of confidential information, impair the individual's independence of judgment, create a conflict of interests, or entail receiving a benefit for having exercised the individual's power relating to TWIA operations or business. The bill makes a TWIA employee who violates such a prohibition or a code of conduct established under the bill's provisions subject to an employee-related sanction, including termination of employment with TWIA. The bill makes a member of the board of directors or an employee who violates a prohibition subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

C.S.H.B. 272 prohibits a TWIA board member or employee from appointing, employing, or contracting with an individual related to the member or employee within the third degree of consanguinity or within the second degree of affinity or an individual related to any member of the board of directors or employee for the provision of goods or services if the individual to be appointed or employed, or with whom a contract is to be entered into, is to be directly or indirectly compensated with TWIA funds.

C.S.H.B. 272 specifies that the \$1 billion cap on the amount of Class 1 and Class 2 public securities that TWIA is required or authorized to issue, respectively, to pay for certain losses is a cap of \$1 billion per occurrence or series of occurrences in a calendar year that result in insured losses, rather than per year, for each class of public securities. The bill similarly specifies that the \$500 million cap on Class 3 public securities is a cap of \$500 million per occurrence or series of occurrences in a calendar year that result in insured losses, rather than per year.

C.S.H.B. 272 requires TWIA to post on TWIA's Internet website the salary of each TWIA employee who serves in a managerial capacity and any bonuses paid to those employees. The

bill requires TWIA, in addition to notifying the Texas Department of Insurance (TDI) in advance of a meeting of the board of directors or of TWIA members, to post notice of the meeting on both the TWIA and TDI Internet websites, except for an emergency meeting, not later than the seventh day before the date of the meeting. The bill establishes that a meeting of the TWIA board of directors or members, including a closed meeting authorized by the state's open meetings law, is open to the commissioner of insurance or the commissioner's designated representative. The bill requires TWIA to broadcast live on TWIA's Internet website all meetings of the board of directors, other than closed meetings, and to maintain on that website an archive of such meetings. The bill requires a recording of a meeting to be maintained in the archive through and including the second anniversary of the meeting.

C.S.H.B. 272 expands the primary objectives of the board of directors to include ensuring that the board, in addition to TWIA, operates in accordance with the act, the plan of operation, and commissioner rules; complies with sound insurance principles; and meets all applicable standards. The bill adds to the primary board objectives ensuring that the board and TWIA establish a code of conduct and performance standards for TWIA employees and persons with which TWIA contracts and establish, and adhere to terms of, an annual evaluation of TWIA management necessary to achieve the statutory purpose, board objectives, and any performance or enterprise risk management objectives established by the board. The bill requires TWIA, not later than June 1 of each year, to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives a report evaluating the extent to which the board met its primary statutory objectives in the 12-month period immediately preceding the date of the report.

C.S.H.B. 272 makes TWIA subject to state open meetings and open records laws and establishes that a settlement agreement to which TWIA is a party is public information and is not exempted from required disclosure under the state's open records law and, if applicable, is required to contain the name of any attorney or adjuster involved with the claim that is the basis of the settlement. The bill requires TWIA's plan of operation to require TWIA to use the claim settlement guidelines published by the commissioner of insurance in evaluating the extent to which a loss to insurable property is incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, or wind-driven rain associated with a storm.

C.S.H.B. 272 requires the commissioner to adopt rules to simplify and streamline the process through which a person who has an insurable interest in insurable property may apply with TWIA for insurance coverage and a person insured under the Texas Windstorm Insurance Association Act may apply for renewal of that coverage. The bill, in a provision relating to the cancellation of certain coverage, reduces from not less than 180 days to not less than 90 days the required period for the minimum retained premium in the plan operation, with certain exceptions.

C.S.H.B. 272 requires a TWIA windstorm and hail insurance policy to require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs and to contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including the processes and deadlines for appraisal and independent coverage review and the necessity of complying with applicable requirements to seek administrative or judicial relief. The bill authorizes the commissioner, on a showing of good cause by an insured, to extend the one-year period for filing a claim for a period not to exceed 180 days. The bill prohibits TWIA from issuing coverage for a wind turbine, a structure used primarily as a casino or other gambling establishment, or a structure used as a sexually oriented business, regardless of whether the structure is otherwise insurable under the act.

C.S.H.B. 272 authorizes TDI to establish an annual renewal period for persons appointed as qualified inspectors under the act. The bill grants TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and requires the commissioner

by rule to establish criteria to ensure that a person, including an engineer, seeking such appointment possesses the knowledge, understanding, and professional competence to perform windstorm inspections and to comply with other requirements of the act.

C.S.H.B. 272 authorizes the commissioner ex parte, in addition to any other authorized disciplinary proceedings against appointed inspectors, to enter an emergency cease and desist order against a qualified inspector, or a person acting as a qualified inspector, if the following conditions apply: the commissioner believes that the qualified inspector has failed to demonstrate that a structure or a portion of a structure subject to inspection meets the requirements of the act and TDI rules or refused to comply with requirements imposed under the act or TDI rules, or that the person acting as a qualified inspector is acting without appointment as a qualified inspector, and the commissioner determines that such conduct is fraudulent or hazardous or creates an immediate danger to the public.

C.S.H.B. 272 removes a provision setting the annual premium surcharge for a noncompliant residential structure insured by TWIA as of September 1, 2009, that has been approved for insurability under the approval process regulations in effect on that date at an amount equal to 15 percent of the premium for TWIA insurance coverage and instead requires the commissioner to establish by rule the amount of that annual premium surcharge, after receiving a recommendation from the board concerning the amount. The bill requires the amount of the surcharge to be actuarially justifiable and not less than 15 percent of the premium for TWIA insurance coverage. The bill requires the commissioner, before establishing the amount of that premium surcharge, to report to the windstorm insurance legislative oversight board on the methodology used to determine that amount.

C.S.H.B. 272 authorizes TWIA to use rate relativities for rating territories that subdivide a county without prior commissioner approval if the resulting rate for any subdivision in the county is not more than 15 percent greater than the resulting rate used in any other subdivision in that county for identical coverage for insureds having identical risk characteristics except for rating territory and the rate is not unfairly discriminatory. The bill requires prior commissioner approval for TWIA's use of such rate relativities if the resulting rate for any subdivision does not meet the specified criteria. The bill requires, rather than authorizes, TWIA to establish rating territories and to vary rates among the territories in accordance with provisions for the use of rate relativities. The bill removes a provision authorizing the use of a rating territory that subdivides a county based on criteria relating to TWIA rates used in specified years.

C.S.H.B. 272 requires the TWIA board of directors, not later than June 1 of each year, to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives a report containing an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more if TWIA does not purchase reinsurance.

C.S.H.B. 272 requires the board, not later than June 1 of each year, to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives a catastrophe plan covering the period beginning on the date the plan is submitted and ending on the following May 31. The bill requires the catastrophe plan to describe the manner in which TWIA will, during the period covered by the plan, evaluate losses and process claims after windstorms with a one, two, and four percent chance of occurring that affect an area of maximum exposure to TWIA. The bill requires the plan to include a description of how losses under TWIA policies will be paid and how claims under such policies will be administered and adjusted during the period covered by the plan.

C.S.H.B. 272 excludes a person insured under the Texas Windstorm Insurance Association Act who is required to resolve a dispute concerning a causation, coverage, or damage dispute under provisions of the bill relating to settlement and dispute resolution from statutory provisions

authorizing a person aggrieved by a TWIA act, ruling, or decision to appeal to the commissioner of insurance. The bill authorizes a person who brings an action against TWIA to recover only the amount of actual damages, plus court costs and reasonable and necessary attorney's fees, and prohibits such a person from recovering consequential, punitive, or exemplary damages.

C.S.H.B. 272 requires a person insured under the act who brings an action against TWIA to bring the action not later than the second anniversary of the date of the act, ruling, or decision by which the insured is aggrieved. The bill establishes that this limitation constitutes a statute of repose and controls over any other applicable limitations period.

C.S.H.B. 272 establishes that the bill's provisions relating to claims settlement and dispute resolution provide the exclusive remedies for a causation, coverage, or damage dispute with TWIA. The bill prohibits a claimant from being paid or recovering any amount in excess of the policy limits of the TWIA policy under which the claim that is the basis of a causation, coverage, or damage dispute is made. The bill requires an insured to file a claim not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs. The bill requires TWIA, not later than the 90th day after the date TWIA receives a claim, to notify the claimant in writing of the amount of money, if any, TWIA will pay for the claim and to provide the claimant with a detailed description of the assumptions or estimates used in determining that amount or, if TWIA determines that, in whole or in part, the property damaged is not insured under the TWIA policy, or that the property insured under the TWIA policy was damaged by an event or peril not covered by the policy, a detailed description of the factual and legal basis on which TWIA determined that a coverage or causation dispute exists concerning all or part of the claim.

C.S.H.B. 272 establishes a presumption that a claim is covered by a TWIA policy if TWIA does not notify the claimant in accordance with applicable requirements. The bill authorizes TWIA to extend the 90-day period for a period not to exceed 90 days, if, before the end of the initial period, TWIA determines that special circumstances require such an extension and notifies the claimant in writing of that determination and those circumstances. The bill authorizes TWIA, if a claimant fails to submit information necessary for TWIA to determine whether to pay a claim or any portion of a claim or to deny payment of a claim or any portion of a claim, to request in writing the necessary information from the claimant. The bill makes the applicable 90-day period, if TWIA makes a written request for information, toll from the date TWIA requests the information until the date TWIA receives from the claimant information responsive to the request. The bill requires TWIA, in addition to the notice and information otherwise required, to notify a claimant of the time limits to request review of TWIA's determination.

C.S.H.B. 272 authorizes a claimant aggrieved by such a determination to request in writing, not later than the 30th day after the date the claimant receives TWIA's determination, a review of the determination and to submit written comments, documents, records, and other information to TWIA with or following the request for review. The bill requires TWIA to provide, on request and free of charge, a claimant requesting review of a TWIA determination reasonable access to all information relevant to the determination that is being reviewed and authorizes the claimant to copy the information at the claimant's own cost or to request TWIA to provide a copy of all or part of the information to the claimant. The bill authorizes TWIA to charge a claimant the actual cost incurred in providing a copy of information, excluding any amount for labor involved in making any information or copy of information available to a claimant. The bill requires TWIA, not later than the 60th day after the date TWIA receives a request for review, to notify the claimant in writing of the outcome of the review. The bill authorizes TWIA and the claimant to agree to extend the 60-day period. The bill requires TWIA's notice to the claimant of the outcome of the review to be in writing, contain the reasons for the outcome, and notify the claimant of the time limits to request, as applicable, appraisal or review by an independent review panel.

C.S.H.B. 272 authorizes a claimant to request appraisal of the extent of damage to the property,

or the cost of repairing or replacing the property, insured under the policy if, after review of a TWIA determination, a damage dispute exists with reference to a claim filed under a TWIA policy but a coverage or causation dispute does not exist with reference to that claim. The bill requires a claimant to make a written request for appraisal not later than the 30th day after the date the claimant receives actual or constructive notice of the outcome of TWIA's review of a determination that is the basis of the damage dispute. The bill authorizes the commissioner of insurance to grant an additional 30-day period in which the claimant may request appraisal if a claimant, on a showing of good cause and not later than the 60th day after the expiration of the 30-day period, requests in writing that the 30-day period to request appraisal be extended.

C.S.H.B. 272 requires a claimant and TWIA, if the claimant requests appraisal, to resolve the damage dispute through appraisal, in accordance with the terms of the TWIA policy. The bill establishes that the results of the appraisal are binding on the claimant and TWIA and subject to appeal and judicial review only in the manner provided by the bill's provisions and become final and appealable on the 15th day after the date the appealing party receives actual or constructive notice of the results. The bill makes a request for appraisal, and participation in the appraisal process, a condition precedent to contesting a TWIA determination concerning the extent of damage to property, or the cost of repairing or replacing property, insured under a TWIA policy. The bill establishes that a claimant who does not request appraisal within the applicable period waives the right to contest a TWIA determination concerning the extent of damage to property, or the cost of repairing or replacing property, insured under a TWIA policy. The bill requires the commissioner by rule to establish policies and procedures for an appraisal requested and conducted under these provisions.

C.S.H.B. 272 authorizes a claimant to seek resolution of all disputes concerning the claim, including a damage dispute, through review by an independent review panel, if, after review of a TWIA determination, a coverage or causation dispute exists with reference to a claim filed under a TWIA policy. The bill requires a claimant to make a written request, mailed or served on TWIA or the commissioner, for review by an independent review panel not later than the 30th day after the date the claimant receives actual or constructive notice of the outcome of TWIA's review of a determination that is the basis of the causation, coverage, or damage dispute. The bill requires TWIA to immediately forward the request for review to the commissioner if a claimant mails or serves a request for review by an independent review panel. The bill authorizes the commissioner to grant an additional 30-day period in which the claimant may request independent review if a claimant, on a showing of good cause and not later than the 60th day after the expiration of the 30-day period, requests in writing that the 30-day period to request review by an independent review panel be extended.

C.S.H.B. 272 requires the commissioner to appoint a three-member independent review panel to resolve a dispute whose members are selected by the commissioner from a roster of qualified panel members maintained and published by the commissioner. The bill requires the commissioner, if a selected panel member cannot serve or declines to serve for any reason, to select a new panel member not later than the 10th day after the date the panel member notifies the commissioner of the member's inability or unwillingness to serve. The bill requires the commissioner to appoint one member of the panel to serve as presiding officer. The bill requires an independent review panel to make a determination concerning, as applicable, the causation, coverage, or damage dispute submitted to the panel for review and notify the claimant and TWIA in writing of the panel's determination as soon as practicable, but not later than the 120th day after the date the independent review panel is appointed. The bill authorizes the commissioner to grant a reasonable extension for the panel to make a determination or dissolve the panel and appoint a new panel to conduct the review if the independent review panel does not make a determination concerning a dispute before the 120th day.

C.S.H.B. 272 requires an independent review panel to determine whether the review of a dispute involves a technical issue requiring guidance or information from a technical panel and, if so, to request from the technical panel guidance and any information relevant to the dispute. The bill

makes the 120-day period toll from the date the independent review panel requests guidance or information from the technical panel through the date on which the independent review panel receives the requested guidance or information. The bill establishes that the determination of an independent review panel is binding on the claimant and TWIA and is subject to appeal and judicial review only in the manner provided by the bill's provisions and becomes final and appealable on the 15th day after the date the appealing party receives actual or constructive notice of the determination. The bill requires the commissioner by rule to establish the qualifications for members of the independent review panel, procedures and deadlines to be used in independent review, procedures and requirements relating to the exchange of documents during the independent review process, and procedures or requirements necessary for any other matter regarding the handling of requests for review. The bill requires such rules to ensure that the independent review process is fair to the claimant and enables the claimant to participate in the independent review process without engaging legal counsel.

C.S.H.B. 272 requires the commissioner to appoint a technical panel of experts to advise TWIA concerning the extent to which damage to property insured under a TWIA 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 requires the panel to consist of a number of experts to be decided by the commissioner and requires the commissioner to appoint one member of the panel to serve as the presiding officer of the panel. The bill requires members of the panel to have professional expertise in, and be knowledgeable concerning, the geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent to which damage to property is caused by wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm. The bill requires the panel to meet at the request of the commissioner or the call of the panel's presiding officer and to investigate, collect, and evaluate the information necessary to provide recommendations and to provide guidance or other information requested by an independent review panel. The bill requires the technical panel, at the commissioner's request, to recommend methods for determining the extent to which damage to property insured under a TWIA policy resulted from wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm for geographic areas or regions designated by the commissioner. The bill requires the commissioner, after consideration of such recommendations made by the panel, to publish guidelines that TWIA will use to settle claims.

C.S.H.B. 272 entitles a claimant who has exhausted all administrative remedies and who is aggrieved by an appraisal or the determination of an independent review panel to judicial review. The bill prohibits a claimant from seeking judicial review before exhausting all administrative remedies. The bill authorizes a claimant to seek judicial review of an appraisal or the determination of an independent review panel in the manner provided for the appeal of contested cases under the Administrative Procedure Act. The bill makes the standard for judicial review the substantial evidence rule. The bill authorizes a court to award, in a proceeding for judicial review, an amount not to exceed the policy limits of the TWIA policy under which the claim that is the basis of a causation, coverage, or damage dispute is made, plus court costs and reasonable and necessary attorney's fees. The bill establishes that to the extent of any conflict between a provision of the bill relating to claim settlement and dispute resolution and any other law, the provision of the bill prevails. The bill defines, for purposes of the bill's provisions relating to settlement and dispute resolutions, "association policy," "causation dispute," "claim," "claimant," "coverage dispute," and "damage dispute."

C.S.H.B. 272 makes its provisions applicable only to a Texas windstorm and hail insurance policy, and a dispute arising under such a policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association on or after the 30th day after the effective date of this bill. The bill requires TWIA to amend its plan of operation to conform to the changes in law made by the bill not later than January 1, 2012, and makes conforming changes.

C.S.H.B. 272 provides for the prospective application of its provisions relating to a cause of

action brought against the Texas Windstorm Insurance Association (TWIA) by a person insured under the act and provisions relating to the recovery of certain damages for a cause of action that accrues on or after the effective date of the bill.

C.S.H.B. 272 repeals Section 2210.551(e), Insurance Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 272 contains provisions not included in the original extending the authority of the commissioner of insurance to issue emergency cease and desist orders to include orders to a person appointed or acting as a qualified building or windstorm inspector; exempting certain actions brought against the Texas Windstorm Insurance Association (TWIA) by an insured from the authorization for a trier of fact to award an amount not to exceed three times the amount of actual damages; and advancing by two years the period for TWIA's sunset review.

C.S.H.B. 272 differs from the original by making statutory provisions relating to unfair methods of competition and unfair or deceptive acts or practices in the insurance industry and the Unfair Claim Settlement Practices Act applicable to TWIA and to TWIA's processing and settlement of claims and making the Texas Windstorm Insurance Association Act prevail to the extent of any conflict between that act and those provisions, whereas the original exempts TWIA's processing and settlement of claims from the Unfair Claim Settlement Practices Act.

C.S.H.B. 272 contains a provision not included in the original exempting an action against TWIA from a statutory provision governing a joinder between a claimant and a responsible third party in an action.

C.S.H.B. 272 contains provisions not included in the original establishing standards of conduct for TWIA's board of directors and employees, prohibiting certain employment and contracts by a board member or employee, and clarifying that the caps on the amount of Class 1, Class 2, and Class 3 public securities that TWIA is required or authorized to issue to pay for certain losses are caps on the amount per occurrence or series of occurrences in a calendar year that result in insured losses, rather than per year, for each class of public securities.

C.S.H.B. 272 differs from the original by requiring TWIA to post on TWIA's Internet website the salary of each TWIA employee who serves in a managerial capacity and any bonuses paid to such employees, whereas the original applies this requirement to the posting of the salary and bonuses paid to a TWIA officer.

C.S.H.B. 272 differs from the original by exempting closed meetings of the TWIA board from the requirement to broadcast live on TWIA's Internet website all meetings of the board of directors, whereas the original does not include that exemption. The substitute contains provisions not included in the original requiring TWIA to maintain on TWIA's website an archive of such board meetings and requiring a recording of a meeting to be maintained in the archive through and including the second anniversary of the meeting.

C.S.H.B. 272 contains a provision not included in the original expanding the TWIA board's primary objectives to include ensuring that the board, in addition to TWIA, operates in accordance with applicable laws, plan of operation, and rules, complies with sound insurance principles, and meets applicable standards, and to ensure that the board and TWIA establish an employee and contractor code of conduct and performance standards and establish, and adhere to terms of, an annual evaluation of TWIA management. The substitute contains a provision not included in the original adding as an objective ensuring operation in accordance with TWIA's

plan of operation.

C.S.H.B. 272 contains a provision not included in the original establishing that a settlement agreement to which TWIA is a party is public information and is not exempted from required disclosure under the state's open records law and, if applicable, must contain the name of any attorney or adjuster involved in a claim settlement. The substitute contains a provision not included in the original requiring TWIA's plan of operation to require the use of claim settlement guidelines published by the commissioner of insurance in evaluating the extent to which a loss to insurable property is incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, or wind-driven rain associated with a storm.

C.S.H.B. 272 omits provisions included in the original prohibiting TWIA from issuing an insurance policy covering property in certain zones with a high level of flood risk or in zones with an additional hazard associated with storm waves without evidence that the property is covered also by a policy issued under the National Flood Insurance Program in an amount equal to or greater than the amount of coverage under the policy to be issued by TWIA.

C.S.H.B. 272 contains a provision not included in the original reducing the required period for the minimum retained premium in the plan operation for cancellation of certain insurance coverage.

C.S.H.B. 272 differs from the original, in a provision requiring a windstorm and hail insurance policy issued by TWIA to contain a conspicuous notice concerning resolution of disputes under the policy, by referring to the processes and deadlines for appraisal, independent coverage review, and the necessity of complying with requirements to seek administrative or judicial review, whereas the original refers to certain mandatory arbitration procedures. The substitute differs from the original by authorizing the commissioner, on a showing of good cause, to extend the one-year period for filing a claim for a period not to exceed 180 days, whereas the original authorizes the commissioner to extend that period for a period not to exceed 90 days.

C.S.H.B. 272 omits provisions included in the original relating to proof of other coverage required for settlement of certain claims and notice and appraisal of certain claims.

C.S.H.B. 272 contains provisions not included in the original authorizing the Texas Department of Insurance (TDI) to establish an annual renewal period for persons appointed as qualified inspectors; granting TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors; and requiring the commissioner to establish criteria to ensure that a person seeking appointment as a qualified inspector possesses the necessary knowledge, understanding, and professional competence.

C.S.H.B. 272 contains a provision not included in the original authorizing the commissioner ex parte to enter an emergency cease and desist order against a qualified inspector, or a person acting as a qualified inspector, under certain conditions.

C.S.H.B. 272 omits provisions included in the original requiring a commission paid to an insurance agent to comply with relevant rules and requiring the commissioner to establish a commission structure for payment of such an agent.

C.S.H.B. 272 contains provisions not included in the original authorizing TWIA to use rate relativities for rating territories that subdivide a county without prior commissioner approval under certain conditions; requiring, rather than authorizing, TWIA to establish rating territories and to vary rates among the territories in accordance with the use of rate relativities; requiring such rate relativities to be based on sound actuarial, data-supported principles; and removing rating territory requirements based on TWIA rates used in specified years.

C.S.H.B. 272 omits a provision included in the original capping the maximum liability limits for

insurable property the issuance or renewal of coverage of which requires evidence of coverage by a National Flood Insurance Program flood insurance policy. The substitute omits a provision included in the original prohibiting the TWIA board of directors from proposing, and the commissioner from approving, maximum liability limits for such insurable property and for movable property in or about that property, that exceed the maximum liability limits in effect under the National Flood Insurance Program.

C.S.H.B. 272 contains provisions not included in the original requiring the board to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives a catastrophe plan.

C.S.H.B. 272 differs from the original by excluding from application of provisions authorizing an appeal to the commissioner of insurance a person insured under the Texas Windstorm Insurance Association Act who is required to resolve a dispute concerning a causation, coverage, or damage dispute under the substitute's provisions relating to settlement and dispute resolution, whereas the original excludes such an insured who is required to resolve a dispute concerning the payment of, the amount of, or the denial of a particular claim under mandatory arbitration.

C.S.H.B. 272 differs from the original, in a provision authorizing a person who brings an action against TWIA to recover only the amount of actual damages, plus court costs and reasonable and necessary attorney's fees, by prohibiting such a person from recovering consequential, punitive, or exemplary damages, whereas the original prohibits such a person from recovering punitive or exemplary damages.

C.S.H.B. 272 omits provisions included in the original relating to arbitration of coverage and claim disputes under the act, arbitration awards and attorney's fees, and abatement of arbitration.

C.S.H.B. 272 contains a provision not included in the original establishing a two-year limitations period on bringing an action against TWIA and establishing that the limitation constitutes a statute of repose and controls over any other applicable limitations period.

C.S.H.B. 272 contains provisions not included in the original establishing settlement and dispute resolution procedures for claims under the act, including remedies and limitations on awards, filing and processing of claims, requests for review of TWIA determinations, appraisals in damage disputes, review by an independent review panel, appointment of a technical panel, judicial review, and construction with other law.

C.S.H.B. 272 contains provisions not included in the original providing for the prospective application of certain of its provisions for a cause of action that accrues on or after the effective date of the bill.

C.S.H.B. 272 differs from the original in nonsubstantive ways.