LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

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

IN RE: **HB272** by Smithee (Relating to the operation and name of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB272, As Engrossed: 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 *Appropriated Receipts* 666	Probable (Cost) from *Appropriated Receipts* 666
2012	$230,584	($230,584)	$942,709	($942,709)
2013	$314,280	($314,280)	$74,316	($74,316)
2014	$258,200	($258,200)	$0	$0
2015	$258,200	($258,200)	$0	$0
2016	$258,200	($258,200)	$0	$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	5.0
2013	4.0
2014	3.0
2015	3.0
2016	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association.

This bill would amend Chapter 2210 of the Insurance Code, regarding the continuation of the Texas Windstorm Insurance Association (TWIA), and the changing of TWIA's name to the Texas Coastal Insurance Plan Association (TCIPA).

The bill would change the sunset review year for TCIPA from 2015 to 2013; make TCIPA subject to Chapters 551 and 552 of the Government Code, regarding open meetings and public information, respectively; and make settlement agreements to which TCIPA is party, including the name of any attorney or adjustor involved with the claim that is the basis of the settlement, public information.

The bill would allow the issuance of public securities to cover TCIPA's excess losses on a per occurrence basis instead of the current yearly basis; allow TCIPA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for class II securities issued by TCIPA; make the inability of TCIPA 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 this code; mandate certain standards of conduct for TCIPA employees and board members; prohibit certain employment arrangements and contracts; require TCIPA to post the salaries of and bonuses paid to managers, and advance notice of meetings of the board of directors on TCIPA's website; mandate that TCIPA broadcast live, and maintain an archive of, meetings of the board of directors, other than closed meetings; allow the Commissioner of Insurance to attend closed meetings of the TCIPA board of directors; add establishment of a code of conduct, performance standards, and of an annual evaluation of management to the primary objectives of TCIPA; require TCIPA to submit an annual report evaluating the extent to which TCIPA had met those objectives in the preceding 12-month period; require TCIPA to make random audits of claims practices following certain storms; impose certain restrictions on policies issued by TCIPA; prohibit TCIPA from issuing coverage for casinos or certain other gambling establishments, sexually oriented businesses, and wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow the Commissioner to establish an annual renewal period for qualified inspectors; grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors; and amend Chapter 83 of this code to allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would impose certain limitations on certain claims and actions brought against TCIPA; describe the process and requirements for filing of claims, and for the processing of those claims by TCIPA; provide for a process for the review of TCIPA claims determinations; provide that Chapters 541 and 542 of this code, regarding deceptive practices and processing and settlement of claims apply to TCIPA; and prohibit TCIPA from filing a petition or seeking relief in bankruptcy under Title 11 of the U.S. Code.

The bill would require the Commissioner to appoint an expert panel to advise the Commissioner on and recommend methods of determining the extent to which insured storm damage was incurred as a result of wind, waves, tidal surges, rising waters, and wind-driven rain; and, after considering the recommendations of the panel, to publish guidelines that TCIPA would use to settle claims; and require that a legislative interim study committee conduct a study of alternative ways to provide insurance in coastal areas.

Additionally, the bill would require, if TCIPA does not purchase reinsurance, that TCIPA, not later than June 1 of each year, submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of $2.5 billion or more; and require that TCIPA, not later than June 1 of each year, submit a catastrophe plan describing how TCIPA would evaluate losses and process claims following certain categories of windstorms.

The bill would repeal Section 2210.551(e), and make conforming changes to Sections 83.002 and 541.152, of the Insurance Code.

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 September 1, 2011.

Methodology

Based on the analysis provided by TDI, the expert panel would cost $50,000 to compensate members for the initial work performed in fiscal year 2012 and an additional $50,000 to compensate members for work performed following a storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimate, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. These costs would be funded by General Revenue – Insurance Maintenance Tax.

Additionally, the bill would create new procedures and processes for TCIPA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel from a list of panel members created and published by TDI. The bill also provides for judicial review of the reviews by the appraisal, independent review panel and Association determinations. The bill would require the Commissioner to act and to assess the requests of any Association's insureds to obtain relief regarding a claim or decision of the appraisal or panel. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney IV 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 $129,220 in salaries and wages with benefits cost of $36,001, 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 $12,738 in fiscal year 2012. Based on the information provided by TDI, an additional FTE, an Attorney III, would be required during a year with a significant storm. Since the timing, magnitude, location, and number of storms that might occur cannot be estimated, this analysis assumes one storm during the next five years, occurring in fiscal year 2013. The additional 1.0 FTE would cost $69,552 in salaries and wages with associated benefits cost of $19,377, other operating expenses of $225, and telephone costs of $1,200 each fiscal year of 2013-2016. Additional one-time equipment cost would be $6,080 in fiscal year 2013. The total cost of the 2.0 FTEs in fiscal year 2012 would be $180,584 and the 3.0 FTEs in fiscal year 2013 would be $264,280. 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 provided by the Sunset Advisory Commission, the change could provide a basis for spending in the 2012-2013 biennium to cover the cost of the Sunset review, 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 whether it occurred in 2013 or 2015.

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 1 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 TCIPA 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 TCIPA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TCIPA 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.

Technology

The technology impact to TDI would be $2,450 in fiscal year 2012 and $1,225 in fiscal year 2013.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, AG, MW, CH, KJG, JJO