

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**April 27, 2011**

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

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

**IN RE: HB272** by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB272, Committee Report 1st House, Substituted: 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 <i>Insurance Maint Tax Fees 8042</i>	Probable (Cost) from <i>Insurance Maint Tax Fees 8042</i>	Probable Revenue Gain from <i>Appropriated Receipts 666</i>	Probable (Cost) from <i>Appropriated Receipts 666</i>
2012	\$230,584	(\$230,584)	\$750,000	(\$750,000)
2013	\$314,280	(\$314,280)	\$0	\$0
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	2.0
2013	3.0
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.

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

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence basis instead of the current yearly basis; mandate certain standards of conduct for TWIA employees and board members; prohibit certain employment arrangements and contracts; require TWIA to post the salaries of and bonuses paid to managers, and advance notice of meetings of the board of directors on TWIA's website; mandate that TWIA 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 TWIA board of directors; add establishment of a code of conduct, performance standards, and of an annual evaluation of management to the primary objectives of TWIA; require TWIA to submit an annual report evaluating the extent to which TWIA had met those objectives in the preceding 12-month period; direct the commissioner to adopt rules to simplify the application and renewal process for TWIA coverage; impose certain restriction on policies issued by TWIA; prohibit TWIA from issuing coverage for casinos, sexually oriented businesses, and wind turbines; 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 Insurance Code Chapter 83 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 actions brought against TWIA; describe the process and requirements for filing of claims, and for the processing of those claims by TWIA; provide for a process for the review of TWIA claims determinations; provide that Insurance Code Chapters 541 and 542, regarding deceptive practices and processing and settlement of claims, respectively, apply to TWIA; and prohibit TWIA insureds from presiding over a matter to which TWIA is a party.

The bill would require the Commissioner of Insurance 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 TWIA would use to settle claims.

Additionally, the bill would change the annual surcharge applied to noncompliant residential structures from 15 percent of annual premium to an actuarially sound amount, not less than 15 percent of annual premium, to be established by the commissioner; require TWIA to establish rating territories and to vary rates among those territories in accordance with certain rules; require, if TWIA does not purchase reinsurance, that TWIA, 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 TWIA, not later than June 1 of each year, submit a catastrophe plan describing how TWIA would evaluate losses and process claims following certain categories of windstorms.

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

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 TWIA 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 estimate, 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 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.

## **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, KJG, MW, CH, JJO