

## **BILL ANALYSIS**

C.S.H.B. 1588  
By: Oliverson  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Windstorm Insurance Association (TWIA) was created by the Texas Legislature in 1971 to serve as the "insurer of last resort" and provides windstorm and hail insurance coverages to residential and commercial properties in counties along the Texas coast—sometimes referred to as "Tier 1" counties— that cannot find coverage elsewhere. TWIA is not a state agency and does not receive general revenue. Rather, TWIA is an insurance company that collects premiums, issues and services policies, and is responsible for paying covered losses. However, TWIA's current funding structure is not sustainable. C.S.H.B. 1588 seeks to create a sustainable funding structure for TWIA to ensure its ability to meet its obligations to policyholders. In doing so, the bill eliminates debt as a method for funding losses and provides other funding sources, including an assessment, a surcharge, and state-funded financing arrangements, to protect the state's interests in the coastal infrastructure.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1.17 of this bill.

### **ANALYSIS**

C.S.H.B. 1588 amends the Insurance Code and the Government Code to replace the existing method of funding excess losses and operating expenses of the Texas Windstorm Insurance Association (TWIA) incurred after December 31, 2023, and to provide for an assessment, a surcharge, and state-funded financing arrangements.

### **Legislative Findings**

C.S.H.B. 1588 sets out the following legislative findings:

- the use of public securities would not be an efficient or viable long-term method to fund TWIA losses for TWIA to continue providing insurance after a catastrophic event;
- previous experience has shown that the expense to TWIA of issuing public securities, and the interest rates for those securities, would be significant and can impose significant long-term expense obligations on coastal property and casualty risks that may be avoided if the legislature provides for financing or investment from available state money to TWIA before or after a catastrophic event;
- such financing or investment would be a more efficient way to provide funding necessary for TWIA to pay losses after a catastrophic event;

- a loan or other investment from available state money to TWIA of not more than \$500 million before a catastrophic event and not more than \$1 billion after a catastrophic event would do the following:
  - replace the funding levels currently provided by issuing public securities;
  - be consistent with sound insurance solvency standards;
  - provide a more viable method for TWIA to have money for losses after a catastrophic event than the issuance of public securities; and
  - provide a secured investment for the state that would yield interest income for the state on state money and be adequately secured for repayment through statewide catastrophe surcharges on certain insurance policies in Texas; and
- authorizing catastrophe surcharges is a more viable method to assure repayment of loans or investments of state money after a hurricane and to ensure that TWIA can continue to provide insurance after a catastrophic event to maintain TWIA's viability for the benefit of the public and in furtherance of a public purpose.

### **Payment of Losses**

C.S.H.B. 1588 makes the statutory provisions applicable to the method by which TWIA pays for losses and operating expenses in a catastrophe year resulting from an occurrence or series of occurrences in a catastrophic area that are in excess of TWIA's premium and other revenue applicable only to TWIA's payment of losses and operating expenses for a catastrophe year that occurs before January 1, 2024, and results in excess losses and operating expenses incurred by TWIA before that date. The bill repeals such provisions effective September 1, 2025. The bill provides the following:

- the payment of TWIA's excess losses and operating expenses incurred after December 31, 2023, must be paid as provided by the bill; and
- proceeds of public securities issued, a financing arrangement entered into, or assessments made before January 1, 2024, or as a result of any occurrence or series of occurrences in a catastrophe year that occurs before January 1, 2024, and results in incurred losses before that date may not be included in reserves available for the payment of losses in a subsequent catastrophe year unless approved by the commissioner of insurance.

The bill authorizes TWIA to pay losses it would otherwise pay through public securities by borrowing from, or entering into other financing arrangements with, the state as provided under the bill's provisions regarding state-funded catastrophe financing arrangements and investment in windstorm catastrophe financing arrangements. The bill's catastrophe surcharge provisions apply to the financing of losses to the extent necessary to secure and repay a debt obligation to the state under such a financing arrangement. The financing arrangement may also be used to enable TWIA to pay losses or obtain public securities in the same manner as a financing arrangement with a market source.

C.S.H.B. 1588 sets out provisions regarding the method for paying TWIA's insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year that occurs after December 31, 2023, that are incurred after that date and are in excess of TWIA's premium and other revenue. Accordingly, the bill does the following:

- prohibits TWIA from paying such insured losses and operating expenses with premium and other revenue earned in a subsequent year;
- requires TWIA to pay such insured losses and operating expenses from TWIA's reserves available before or accrued during that catastrophe year and amounts in the catastrophe reserve trust fund available before or accrued during that catastrophe year or, for such insured losses and operating expenses not from those reserves, requires TWIA to arrange for financing capped at \$1 billion through one or more financing arrangements entered into with the state as provided by the bill;
- requires insured losses and operating expenses for a catastrophe year not paid from reserves or a financing arrangement to be paid from member assessments capped at \$1 billion for that catastrophe year;

- requires the TWIA board of directors to notify each TWIA member of the member's assessment amount, which is determined by allocating a proportion of insured losses and operating expenses to each insurer in the same manner used to determine each insurer's participation in TWIA for the year;
- prohibits a member from recouping a paid assessment through a premium surcharge or tax credit;
- authorizes a member to purchase, before any occurrence or series of occurrences, reinsurance to cover an assessment for which the member would otherwise be liable;
- requires a member to notify the board of directors, in the manner prescribed by TWIA, whether the member will be purchasing reinsurance; and
- establishes that a member that does not purchase reinsurance remains liable for any imposed assessment.

The bill adds a temporary provision set to expire September 1, 2025, specifying that these provisions apply only to the payment of TWIA's losses and operating expenses for a catastrophe year that occurs after December 31, 2023, and results in excess losses and operating expenses incurred by TWIA after that date. The bill requires the commissioner, as soon as practicable after the bill's effective date and not later than December 1, 2023, to adopt rules necessary to implement these provisions.

### **Catastrophe Reserve Trust Fund and Reinsurance and Alternate Risk Financing**

C.S.H.B. 1588 does the following with regard to the catastrophe reserve trust fund:

- specifies that the money in the fund the comptroller of public accounts holds outside the state treasury on behalf of the Texas Department of Insurance is on behalf of TWIA;
- authorizes TWIA to include the amounts held in the fund as an admitted asset in TWIA's financial statements;
- authorizes the Texas Treasury Safekeeping Trust Company and TWIA board of directors to recommend investments to protect the fund and create investment income;
- removes the requirement that the cost of reinsurance purchased or alternative financing mechanisms used in excess of the amount needed to maintain a certain level of loss funding be paid by member assessments;
- authorizes TWIA to obtain reinsurance at any level including excess of loss, quota share, and other forms of reinsurance to protect the solvency and viability of TWIA;
- authorizes the commissioner to consult with the board of directors regarding methods to protect the solvency and continued viability of TWIA, including by protecting the minimum balance, acquiring reinsurance, or by other means; and
- authorizes the commissioner to adopt a method or approve TWIA's method of determining the probability of one in 100 for association risks and requires the commissioner to provide any adopted or approved method to TWIA on or before February 1 of each year.

### **Public Securities Program**

C.S.H.B. 1588 repeals statutory provisions governing TWIA's public securities program effective September 1, 2025, and, to provide a reasonable transition, authorizes TWIA to issue public securities or enter into financing arrangements with the state as provided by the bill if TWIA needs to provide funds for excess losses and operating expenses incurred before January 1, 2024, for a catastrophe year occurring before that date. The bill prohibits TWIA from issuing public securities after December 31, 2023, except to fund excess losses and operating expenses incurred before January 1, 2024.

### **State-Funded Catastrophe Financing Arrangements**

C.S.H.B. 1588 establishes that the legislature has determined that providing catastrophe funding to TWIA by permitting TWIA to enter into a financial arrangement with the state is an

acceptable use of state money and provides an efficient method for the association to pay losses following a catastrophic event. The bill requires the proceeds of a catastrophe financing arrangement to be deposited to the catastrophe reserve fund. The bill authorizes TWIA to enter into a catastrophe financing arrangement with the state before a catastrophic event, for not more than \$500 million, and after a catastrophic event that depletes the catastrophe reserve fund, for not more than \$1 billion. The bill reduces the amount available for such an agreement after a catastrophic event by the amount of any outstanding pre-event or post-event financing obtained by TWIA.

### **Investing in Windstorm Catastrophe Financing Arrangements**

C.S.H.B. 1588 requires the comptroller to invest state money to provide financing for TWIA losses in accordance with the bill and the Texas Windstorm Insurance Association Act. The bill authorizes the comptroller to enter into an appropriate financing arrangement with TWIA to provide TWIA up to \$500 million in funding before a catastrophic event and up to \$1 billion in funding after a catastrophic event, the financing of which must be secured and repaid by catastrophe surcharges, to fund TWIA losses arising from the catastrophic event. The bill caps the interest rate that may be included in the terms of such a financing arrangement at the sum of two percent and the lesser of either the rate set by the Federal Home Loan Bank Board or the federal funds rate specified in Business & Commerce Code provisions. The bill prohibits a debt obligation entered into for such a financing arrangement from exceeding 36 months to maturity.

C.S.H.B. 1588 authorizes the comptroller, directly or indirectly through a separately managed account or other investment vehicle, to use up to \$1 billion of the Economic Stabilization Fund, otherwise known as the Rainy Day Fund, to provide financing under these financing arrangement provisions. The bill caps at \$1 billion the aggregate amount of outstanding pre-event and post-event financing provided under an applicable financing arrangement.

### **Catastrophe Surcharges**

C.S.H.B. 1588 authorizes the commissioner, in consultation with the board of directors, to order a catastrophe surcharge contingent on the following:

- before a catastrophic event, TWIA enters into a financing arrangement with the state that is the basis for the surcharge; or
- after a catastrophic event, the commissioner determines that TWIA has depleted its reserves, other money, and the catastrophe reserve trust fund and TWIA enters into a financing arrangement with the state that is the basis for the surcharge.

The bill provides the following with respect to the surcharge:

- the commissioner, in consultation with the board of directors, must set the catastrophe surcharge as a percentage of premium to be collected by each applicable insurer;
- the total surcharge is capped at an amount needed to repay the debt obligation to the state under the financing arrangement that is the basis for the surcharge;
- the surcharge percentage must be set in an amount sufficient to repay the debt obligation to the state under the financing arrangement that is the basis for the surcharge and the commissioner may set the surcharge as a percentage of premium to collect the needed aggregate amount over a period of time not to exceed three years;
- requires the surcharge to be assessed by insurers on all applicable policyholders;
- surcharge proceeds must be deposited into the catastrophe reserve trust fund or an account designated by the comptroller for purposes of repayment of TWIA's debt obligation to the state under the financing arrangement that is the basis for the surcharge;
- the surcharge is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions;
- failure by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation; and
- the surcharge is not refundable if the policy is canceled or terminated.

C.S.H.B. 1588 makes the surcharge provisions applicable to the following insurers:

- an insurer authorized to engage in the business of insurance in Texas that is required to be a member of TWIA, including a farm mutual insurance company that is a fronting insurer;
- a farm mutual insurance company that is not a fronting insurer only for purposes of the surcharge collection;
- an unaffiliated eligible surplus lines insurer writing the lines of business subject to the surcharge;
- TWIA; and
- the FAIR Plan Association.

The bill specifies the types of policies to which it applies and requires each policy that is assessed a surcharge to contain a prominent disclosure of the surcharge, as specified by the bill, in the documents attached to the policy. In addition, the bill does the following:

- prohibits its provisions from being construed to require an insurer to be a TWIA member if the insurer is not otherwise required to be a member;
- clarifies that a farm mutual insurance company that is not a fronting insurer is not a TWIA member as a result of the company's collection of catastrophe surcharges or for any other reason;
- exempts a surcharge from state or local taxation;
- provides for a limitation on personal liability for an individual or entity exercising rights and responsibilities granted under the bill's surcharge provisions; and
- prohibits an insurer from collecting the surcharge on any policy issued to the state, a state agency, or a political subdivision of the state.

C.S.H.B. 1588 requires the commissioner to determine the amount available in the catastrophe reserve trust fund as of December 31 of each year and provide a written report to the governor, lieutenant governor, and speaker of the house of representatives that includes the amount available in the fund and information regarding TWIA's current financial condition. The bill requires the commissioner, as soon as practicable after the bill's effective date and not later than December 1, 2023, to adopt rules necessary to implement the bill's surcharge provisions.

### **Transition Provisions**

C.S.H.B. 1588 makes statutory provisions pertaining to the use of TWIA assets, the board of directors' duty to call an emergency meeting, premium discounts and surcharge credits, use of the catastrophe reserve trust fund, and reinsurance applicable to the bill's provisions regarding the payment of losses incurred after December 31, 2023, and regarding a catastrophe surcharge in the same manner as provisions repealed by the bill regarding payment of losses incurred before January 1, 2024, and regarding the public securities program, respectively. The bill establishes the following:

- the payment of TWIA's excess losses and operating expenses incurred before January 1, 2024, is governed by the law as it existed on the bill's effective date;
- the issuance of public securities to pay TWIA's excess losses and operating expenses incurred before January 1, 2024, the use of the proceeds of those securities, the repayment or refinancing of those securities, and any other rights, obligations, or limitations with respect to those securities and proceeds are governed by the law as it existed on the bill's effective date; and
- proceeds of any assessments made for a catastrophe year that occurs before January 1, 2024, may not be included in reserves available for a catastrophe year that occurs after December 31, 2023, unless approved by the commissioner.

### **Repealed Provisions**

C.S.H.B. 1588 repeals the following provisions of Chapter 2210, Insurance Code, effective September 1, 2025:

- Subchapter B-1; and
- Subchapter M.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 1588 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions that were in the introduced authorizing the governor, in consultation with the commissioner, lieutenant governor, and speaker of the house of representatives, to authorize an infrastructure grant to TWIA to provide pre-event or post-event funding capped at \$1 billion. The substitute instead includes provisions that were not in the introduced providing for the payment of TWIA losses from state-funded financing arrangements for up to \$500 million before a catastrophic event and up to \$1 billion after a catastrophic event that depletes the catastrophe reserve fund. The substitute includes a provision not in the introduced authorizing TWIA to enter into financing arrangements if TWIA needs to provide funds for excess losses and operating expenses incurred before January 1, 2024, for a catastrophe year occurring before January 1, 2024, to provide a reasonable transition to the new funding structure proposed by the bill. The substitute additionally includes provisions not in the introduced requiring state investment in windstorm catastrophe financing arrangements.

The substitute includes a provision not in the introduced that requires TWIA to arrange for financing for insured losses and operating expenses for a catastrophe year not paid from reserves available, and amounts in the catastrophe reserve trust fund available, before or accrued during that catastrophe year through one or more financing arrangements entered into with the state.

Whereas the introduced required TWIA to obtain reinsurance at an level including excess of loss, quota share, and other forms of reinsurance to protect TWIA's solvency, the substitute authorizes TWIA to obtain reinsurance at any level including excess of loss, quota share, and other forms of reinsurance to protect TWIA's solvency and viability. The substitute omits a provision from the introduced requiring TWIA, in determining the amount of required reinsurance, to consider maintaining or protecting a minimum balance of \$250 million in the catastrophe reserve trust fund.

The substitute renames the "contingent hurricane surcharge," which was included in the introduced, as a "catastrophe surcharge." The substitute additionally revises the bill's provisions regarding the surcharge in the following manner:

- whereas the introduced conditioned the surcharge on the commissioner determining after a catastrophic event that TWIA has depleted its reserves, other funds, and the catastrophe reserve trust fund and TWIA has no other source of funding reasonably available to provide adequate funding for the next catastrophe year, the substitute conditions the surcharge on, before a catastrophic event, TWIA entering into a financing arrangement with the state that is the basis for the surcharge or, after a catastrophic event, the commissioner determining that TWIA has depleted its reserves, other money, and the catastrophe reserve trust fund and TWIA entering into such a financing arrangement;
- whereas the introduced required the surcharge percentage to be set in an amount sufficient to replenish the catastrophe reserve trust fund to an aggregate amount capped at \$1 billion, the substitute requires the surcharge percentage to be set in an amount sufficient to repay the debt obligation to the state under the financing arrangement entered into with the state that is the basis for the surcharge;

- whereas the introduced capped the surcharge amount at the lesser of \$1 billion or the amount needed to recapitalize the catastrophe reserve trust fund to \$1 billion, the substitute caps the surcharge amount at the amount needed to repay the debt obligation to the state under the financing arrangement entered into with the state that is the basis for the surcharge;
- the substitute omits a provision that was in the introduced requiring the commissioner to determine the period of time and percentage to be applied for the surcharge; and
- the substitute includes a provision not in the introduced authorizing surcharge proceeds to be deposited in a comptroller-designated account as an alternative to the catastrophe reserve trust fund, as is required in the introduced.