

## BILL ANALYSIS

Senate Research Center

S.B. 1217  
By: Middleton et al.  
Business & Commerce  
4/14/2023  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that previous reforms of the Texas Windstorm Insurance Association's (TWIA) operations to control rates and assert greater accountability over TWIA greatly improved the administration of TWIA. Despite these reforms, interested stakeholders contend that additional reforms to the agency are needed to ensure it fulfills its vital public function as the insurer of last resort on the Texas Gulf Coast. S.B. 1217 seeks to address this issue by implementing several reforms that interested parties contend will improve the administration of TWIA.

Omnibus Texas Windstorm Insurance Association (TWIA) Reform:

- Subjects TWIA to the same restrictions as state agencies regarding legislative lobbying by prohibiting TWIA from using money under its control to attempt to influence the outcome of legislation.
- Moves TWIA's headquarters from the city of Austin to a first or second tier coastal county.
- Reforms the general manager position within TWIA by:
  - o Making the general manager an appointed position by the commissioner of the Texas Department of Insurance (commissioner);
  - o Ensuring the general manager has the appropriate knowledge to successfully run TWIA; and
  - o Subjecting the general manager to the same ethics standards as board members, ensuring the general manager does not have a conflict of interest.
- Adjusts TWIA's funding structure by tying the Class 1, Class 2, and Class 3 assessments to the Consumer Price Index to account for inflation.
- Adds a final funding layer, pro rata member assessments, to act as a "catch-all" in the event all funding mechanisms at TWIA's disposal are expended.
- Reforms the TWIA board make-up to be made up of:
  - o Three non-captive property/casualty agents who reside within a tier one county;
  - o Three residents of first tier counties, each region having one representative; and
  - o Three residents representing counties outside the first tier coastal counties, one of which must be the public counsel of the Office of Public Insurance Counsel or their designated appointee.
- Prohibits any board member from being an active employee of an insurer who is a member of the association.
- Requires the commissioner to remove a member of the board if the board member fails to make a reasonable effort to attend the annual rate-setting meeting.
- Requires board meetings to be held within a first or second tier coastal county, except for emergency meetings of the board.
- Permits a legislator or a legislator's designated representative to attend closed meetings of the board.
- Prohibits TWIA from automatically adjusting a policyholder's coverage limit, requiring the use of any one replacement cost calculator, or adjusting any premiums, fees, or costs for inflation without a vote of the board.

- Moves the annual rate setting meeting to September 15 from August 15 to ensure any laws passed by the legislature have gone into effect prior to setting the rate.
- Lowers the probable maximum loss, TWIA's funding floor, from a 1 in 100 year storm to a 1 in 50 year storm, reducing pressure on rates.
- Reforms the process by which TWIA determines the probable maximum loss by requiring TWIA to utilize the model with the lowest probable maximum loss and prohibiting the loss adjustment expense from being included in the probable maximum loss.
- Exempts TWIA from insurance premium and insurance maintenance taxes and fees.

As proposed, S.B. 1217 amends current law relating to the administration of the Texas Windstorm Insurance Association.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Section 2210.016, as follows:

Sec. 2210.016. LEGISLATIVE LOBBYING. (a) Prohibits the Texas Windstorm Insurance Association (association) from using any money under its control to attempt to influence the passage or defeat of a legislative measure.

(b) Provides that an employee or board member that violates Subsection (a) is subject to immediate termination and a fine of \$10,000 to be deposited in the catastrophe reserve trust fund.

(c) Provides that this section does not prohibit a member of the board of directors or an employee from using money under its control to provide public information or to provide information responsive to a request.

SECTION 2. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Section 2210.063, as follows:

Sec. 2210.063. LOCATION OF ASSOCIATION HEADQUARTERS. Requires that the headquarters of the association be located in a first tier coastal county or second tier coastal county.

SECTION 3. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Section 2210.064, as follows:

Sec. 2210.064. ASSOCIATION GENERAL MANAGER. (a) Provides that the general manager of the association is responsible and accountable to the commissioner of insurance (commissioner) and the board of directors.

(b) Provides that the general manager is appointed by the commissioner in accordance with this section.

(c) Authorizes the commissioner to remove an existing general manager and appoint a new general manager at any time.

(d) Requires the general manager to have demonstrated knowledge of windstorm insurance, general business, or actuarial principles sufficient to make the success of the association probable.

(e) Prohibits a person from serving as general manager of the association if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization:

(A) operating in the property and casualty insurance industry in this state;

(B) receiving money from the association, other than insurance claim payments; or

(C) receiving money from association policyholders with respect to the policyholders' claims;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization:

(A) operating in the property and casualty insurance industry in this state;

(B) receiving money from the association, other than insurance claim payments; or

(C) receiving money from association policyholders with respect to the policyholders' claims;

(3) uses or receives a substantial amount of tangible goods, services, or money from the association, other than:

(A) insurance claim payments; or

(B) compensation or reimbursement authorized by law for the general manager's membership, attendance, or expenses.

SECTION 4. Amends Section 2210.0725(a), Insurance Code, to require that losses in a catastrophe year not paid under certain sections be paid as provided by Section 2210.0725 (Payment From Class 1 Assessments) from Class 1 member assessments, and prohibit those paid losses from exceeding \$500 million plus an adjustment equal to the Consumer Price Index for that catastrophe year.

SECTION 5. Amends Section 2210.074(a), Insurance Code, to require that losses in a catastrophe year not paid under certain sections be paid as provided by Section 2210.074 (Payment Through Class 2 Assessments) from Class 2 member assessments, and prohibit those paid losses from exceeding \$250 million plus an adjustment equal to the Consumer Price Index for that catastrophe year.

SECTION 6. Amends Section 2210.0742(a), Insurance Code, to require that losses in a catastrophe year not paid under certain sections be paid as provided by Section 2210.0742 (Payment From Class 3 Assessments) from Class 3 member assessments, and prohibit those paid losses from exceeding \$250 million plus an adjustment equal to the Consumer Price Index for that catastrophe year.

SECTION 7. Amends Subchapter B-1, Chapter 2210, Insurance Code, by adding Section 2210.076, as follows:

Sec. 2210.076. PAYMENT FROM ASSESSMENTS IN EXCESS OF REINSURANCE.

(a) Requires that losses in a catastrophe year not paid under certain sections be paid as provided by this section from member assessments.

(b) Requires the association, with the approval of the commissioner, to notify each member of the amount of the member's assessment under this section.

Requires that the proportion of the losses allocable to each insurer under this section be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052 (Member Participation in Association).

(c) Prohibits a member of the association from recouping an assessment paid under this section through a premium surcharge or tax credit.

SECTION 8. Amends Section 2210.102, Insurance Code, as follows:

Sec. 2210.0102. COMPOSITION. (a) Makes no change to this subsection.

(b) Requires three members to be property and casualty agents who are licensed under this code, are not captive agents, and reside in the first tier coastal counties, rather than requires three members to be representatives of the insurance industry who actively write and renew windstorm and hail insurance in the first tier coastal counties.

(c) Makes no change to this subsection.

Deletes existing text of Subsection (c-1) requiring one of the members appointed under Subsection (c) to be a property and casualty agent who is licensed under this code and is not a captive agent.

(d) Deletes existing text requiring three members to reside in an area of this state that is located outside the first tier coastal counties more than 100 miles from the Texas coastline.

(d-1) Requires one of the members appointed under Subsection (d) to be the public counsel of the Office of Public Insurance Counsel (OPIC) or their designated appointee.

(e) Makes no change to this subsection.

(f) Prohibits any member from being an active employee of an insurer who is a member of the association. Deletes existing text requiring insurers who are members of the association to nominate, from among those members, persons to fill any vacancy in the three board of director seats reserved for representatives of the insurance industry. Deletes existing text requiring the board of directors to solicit nominations from the members and submit the nominations to the commissioner. Deletes existing text requiring that the nominee slate submitted to the commissioner under this subsection include at least three more names than the number of vacancies. Deletes existing text authorizing the commissioner to appoint replacement insurance industry representatives from the nominee slate.

(g) Makes a conforming change to this subsection.

SECTION 9. Amends Section 2210.103, Insurance Code, as follows:

Sec. 2210.103. TERMS. (a)-(c) Makes no change to these subsections.

(d) Requires a member of the board of directors to be removed by the commissioner if the board member fails to make a reasonable effort to attend the board meeting to set the annual rate, described by Section 2210.352 (Manual Rate Filings: Annual Filing).

SECTION 10. Amends Section 2210.105, Insurance Code, by amending Subsection (d) and adding Subsection (b-2), as follows:

(d) Requires a meeting of the board of directors, except for an emergency meeting, to be held at a location in a first tier coastal county or second tier coastal county, rather than a location as determined by the board of directors.

(b-2) Authorizes a legislator or a legislator's designated representative to attend a meeting of the board of directors or the members of the association, including a closed meeting authorized by Subchapter D (Exceptions to Requirement that Meetings Be Open), Chapter 551, Government Code.

SECTION 11. Amends Subchapter G, Insurance Code, by adding Section 2210.211, as follows:

Sec. 2210.211. CERTAIN ADJUSTMENTS PROHIBITED. (a) Prohibits the association from automatically adjusting the amount of coverage to be purchased by a policyholder.

(b) Prohibits the association from requiring the use of any one replacement cost calculator.

(c) Prohibits the association from adjusting premiums, fees, or any other costs to policyholders for inflation without a vote by the board of directors.

SECTION 12. Amends Section 2210.352, Insurance Code, to require the association, not later than September 15, rather than August 15, of each year, to file with the Texas Department of Insurance a proposed manual rate for all types and classes of risks written by the association.

SECTION 13. Amends Section 2210.453(b), Insurance Code, to require the association to maintain total available loss funding in an amount not less than the probable maximum loss for the association for a catastrophe year with a probability of one in 50, rather than one in 100.

SECTION 14. Amends Section 2210.453, Insurance Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Provides that the association, in determining the probable maximum loss under Subsection (b):

(1) is prohibited from considering the cost of providing loss adjustments;

(2) is required, to the extent possible, to contract with any disinterested third parties necessary to execute any catastrophe models that were executed in the preceding storm season;

(3) is required, if the association is unable to contract for the execution of a catastrophe model described by Subdivision (2), to contract with any disinterested third party necessary to execute a catastrophe model that is substantially similar to the model for which the association is unable to contract under Subdivision (2);

(4) is authorized to contract with any disinterested third parties to execute catastrophe models in addition to the models required by Subdivisions (2) and (3);

(5) is required to provide to a third party executing a catastrophe model any information necessary to comply with this subsection;

(6) is prohibited from using a combination of catastrophe models to determine the probable maximum loss; and

(7) is authorized to use only the catastrophe model that produces the lowest probable maximum loss.

(b-2) Requires that any information produced in compliance with Subsection (b-1) be made publicly available on the Internet website.

(b-3) Requires that the amount of loss adjustment expense, as adopted by the board of directors for a catastrophe year and used for the association's rate indication for purposes of filing a rate under Chapter 2210 (Texas Windstorm Insurance Association), to be considered above the probable maximum loss.

SECTION 15. Amends Section 2210.618, Insurance Code, as follows:

Sec. 2210.618. EXEMPTION FROM TAXATION. (a) Creates this subsection from existing text.

(b) Provides that the association is not subject to any insurance premium tax or insurance maintenance tax or fee.

SECTION 16. Provides that Section 2210.063, Insurance Code, as added by this Act, applies to the association beginning on January 1, 2025.

SECTION 17. Effective date: upon passage or September 1, 2023.