

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1217  
By: Middleton et al.  
Business & Commerce  
4/25/2023  
Committee Report (Substituted)

### **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 the agency greatly improved the administration of the agency. Despite these reforms, interested stakeholders contend that additional reforms to the agency are needed to ensure that 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.

Specifically, C.S.S.B. 1217:

- 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 Austin to a first or second tier coastal county.
- Reforms the TWIA Board composition to be made up of:
  - Three insurance industry representatives;
  - 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;
  - Two non-captive agents that reside in tier one; and
  - Three tier one representatives.
- Requires Board meetings to be held within a first or second tier coastal county, except for emergency 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.
- Exempts TWIA from insurance premium and insurance maintenance taxes and fees.
- Requires the TWIA Board to use the model that produces the lowest probable maximum loss in the determination of the 1:100 PML.
- Requires TWIA to file a proposed PML with the commissioner, subject to commissioner approval.
- Allows the commissioner to reject the proposed PML and set a PML for the association.
- Requires the loss adjustment expense to be accounted for in addition to, rather than included in, the PML.

C.S.S.B. 1217 amends current law relating to 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 Section 2210.014, Insurance Code, by adding Subsection (d) to provide that the Texas Windstorm Insurance Association (association) is not subject to any insurance premium tax or insurance maintenance fee or tax.

SECTION 2. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Section 2210.016, as follows:

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

(b) Provides that an association employee or member of the board of directors of the association (board) who violates Subsection (a) is subject to:

(1) immediate termination; and

(2) a fine of \$10,000 to be deposited in the catastrophe reserve trust fund.

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

SECTION 3. 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 a second tier coastal county.

SECTION 4. Amends Section 2210.102, Insurance Code, by amending Subsections (a), (c), (c-1), (d), and (g) and adding Subsection (d-1), as follows:

(a) Provides that the board is composed of eleven members, rather than nine members, appointed by the commissioner of insurance (commissioner) in accordance with Section 2210.102 (Composition).

(c) Requires five members, rather than three members, to reside, as of the date of the appointment, in the first tier coastal counties. Requires that certain regions, to the extent possible, be represented by a member residing in the region and appointed under this subsection.

(c-1) Requires two of the members appointed, rather than one of the members appointed, under Subsection (c) to be property and casualty agents who are licensed under this code and are not captive agents. Makes nonsubstantive changes.

(d) Requires three members to reside in an area of this state that is located outside the first tier coastal counties, rather than in an area that is located 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 or the counsel's designee.

(g) Makes a nonsubstantive change.

SECTION 5. Amends Section 2210.103(a), Insurance Code, to provide that members of the board serve three-year staggered terms, with the terms of three or four members expiring on the third Tuesday of March of each year.

SECTION 6. Amends Section 2210.105(d), Insurance Code, to require that a meeting of the board, except for an emergency meeting, be held at a location in a first tier coastal county or a second tier coastal county as determined by the board.

SECTION 7. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Section 2210.211, as follows:

Sec. 2210.211. LIMITATIONS ON CERTAIN ADJUSTMENTS. (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.

SECTION 8. Amends Section 2210.352(a), Insurance Code, to require the association, not later than September 15 of each year, rather than August 15 of each year, to file with the Texas Department of Insurance (TDI) a proposed manual rate for all types and classes of risks written by the association.

SECTION 9. Amends Subchapter J, Chapter 2210, Insurance Code, by adding Section 2210.4531, as follows:

Sec. 2210.4531. DETERMINATION OF PROBABLE MAXIMUM LOSS. (a) Requires the association to file with TDI a proposed probable maximum loss, subject to Section 2210.453 (Funding Levels; Reinsurance and Alternative Risk Financing Mechanisms; Reinsurance From Certain Insurer or Broker Prohibited).

(b) Provides that the association, in determining the probable maximum loss:

(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 under Subdivisions (2) and (3);

(5) is required to provide to a disinterested 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.

(c) Requires the association to make any information produced in compliance with Subsection (b) publicly available on the association's Internet website.

(d) Authorizes the association to only use a probable maximum loss that is approved by the commissioner. Authorizes the commissioner to reject a probable maximum loss filed with TDI by the association and set a probable maximum loss at any amount determined by the commissioner.

(e) Requires that the amount of loss adjustment expense, as adopted by the board 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), be considered above the probable maximum loss.

SECTION 10. Repealer: Section 2210.102(f) (relating to requiring insurers who are members of the association to nominate, from among those members, persons to fill any vacancy in the three board seats reserved for representatives of the insurance industry), Insurance Code.

SECTION 11. Makes application of Section 2210.063, Insurance Code, as added by this Act, prospective to January 1, 2025.

SECTION 12. (a) Requires the commissioner to appoint two additional members to the board as necessary under Sections 2210.102(c) and (c-1), Insurance Code, as amended by this Act, not later than December 1, 2023.

(b) Provides that the initial term of one of the board members appointed under Subsection (a) of this section, notwithstanding Section 2210.103, Insurance Code, as amended by this Act, expires on the third Tuesday of March 2026, and the initial term of one of the board members appointed under Subsection (a) of this section expires on the third Tuesday of March 2027.

(c) Provides that a member of the board serving under Section 2210.102(d), Insurance Code, notwithstanding Section 2210.102(d-1), Insurance Code, as added by this Act, is not required to be the public insurance counsel or the public insurance counsel's designee until the first vacancy under Section 2210.102(d) that occurs on or after the effective date of this Act.

SECTION 13. Effective date: upon passage or September 1, 2023.