

SUBJECT: Insurance coverage for a building or structure over water

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Taylor, Thompson,  
Van Arsdale

0 nays

1 absent — Oliveira

WITNESSES: For — None

Against — None

On — Marilyn Hamilton, Texas Department of Insurance

BACKGROUND: In 1987, the 70th Legislature enacted the Texas Windstorm Insurance Association (TWIA) Act, which implements certain inspection requirements for structures to be considered insurable property for windstorm and hail insurance. All new construction, repairs, or additions that commenced on or after January 1, 1988, must be inspected or approved by the Texas Department of Insurance (TDI) for compliance with the building specifications in the TWIA Plan of Operation, if the property is to be certified as insurable by the TWIA. Participation in this program is not mandatory, but property that has not been inspected and certified in accordance with the requirements of this inspection program is not eligible for windstorm insurance through the TWIA.

The Texas FAIR (Fair Access to Insurance Requirements) Plan Association operates as a insurer of last resort for consumers who have been turned down twice for residential property insurance. If the commissioner of insurance determines that residential property insurance is not reasonably available in the voluntary market in part of the state, the commissioner may establish a FAIR Plan to deliver residential property insurance to citizens in underserved areas. Currently, the FAIR Plan insures property in 240 Texas counties, excluding the 14 coastal counties that are part of TWIA. Art. 21.49A, sec. 1(c) states that the FAIR Plan

may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under the TWIA.

**DIGEST:**

CSHB 3048 would amend the definition of “insurable property” found in the TWIA Act to state that a windstorm and hail insurance policy issued by TWIA could include coverage for a building or other structure located in the seacoast territory that was built wholly or partially over water and the corporeal movable property contained in the building or structure.

TWIA would impose appropriate limits and deductibles for such coverage. TWIA’s board of directors would submit to the commissioner any proposed changes to the plan of operation necessary to implement this provision, and the commissioner would adopt any necessary rules.

The bill would add coverage for windstorm and hail insurance coverage for property located over water by stating that a policy issued by the FAIR Plan could include coverage against loss or damage by windstorm or hail for a building or other structure that was built wholly or partially over water and the corporeal movable property contained in the building or structure.

The FAIR Plan could impose appropriate limits and deductibles for this coverage. The FAIR Plan’s governing committee would submit to the commissioner for approval any proposed changes to the plan of operation necessary for implementation and the commissioner would adopt any necessary rules.

The bill would stipulate that an insurance policy written by a farm mutual insurance company against loss or damage by windstorm, hurricane, or hail, or by a county mutual insurance company against loss or damage by windstorm or hail, could include coverage for a building or other structure that was built wholly or partially over water and the corporeal movable property contained in the building or structure. The farm mutual and the county mutual could impose appropriate limits and deductibles for the coverage.

The bill would apply to a TWIA windstorm or hail insurance policy delivered on or after January 1, 2006. If TWIA’s board of directors determined that an amendment to its plan of operation was required prior to implementation, those provisions would take effect on the 30th day

after the date the commissioner adopted the necessary rules and would apply only to such a policy delivered 90 days later.

The bill would apply to a FAIR Plan windstorm or hail insurance policy delivered on or after January 1, 2006. If the plan's governing committee determined that an amendment to its plan of operation was required prior to implementation, those provisions would take effect on the 90th day after the date the commissioner adopted the necessary rules and would apply only to such a policy delivered 180 days later.

The provisions affecting farm mutuals and county mutuals would apply only to an insurance policy that was delivered on or after January 1, 2006.

The bill would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 3048 would clarify existing insurance law to permit property wholly or partially over water to be insured for windstorm or hail coverage. Current statutes are unclear as to whether or not property over water qualifies as "insurable property." As a result, insurers in some cases have chosen not to write wind and hail insurance coverage for such properties.

CSHB 3048 would allow the TWIA, the FAIR Plan, farm mutual insurance companies, or county mutual insurance companies, as well as any other property and casualty insurers, to write coverage for windstorm and hail damage in the underserved areas of our state. It would ensure that buildings or structures built wholly or partially over water on inl and lakes or along the coast could be covered. The bill's language is entirely permissive.

**OPPONENTS  
SAY:**

This bill is unnecessary. The TWIA Act defines "insurable property" to mean immovable property at fixed locations in a catastrophe area or corporeal movable property located therein, which property is determined by TWIA pursuant to the criteria specified in the plan of operation. Therefore, it appears that the TWIA board of directors already has the authority to determine in its plan of operation coverage specified in this bill, and could offer such coverage under TWIA and the FAIR Plan without CSHB 3048.

NOTES: The committee substitute differs from the introduced bill by including provisions that specifically would allow the FAIR Plan to write windstorm and hail insurance policies for property located over water.