

BILL ANALYSIS

Senate Research Center

S.B. 1700
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1971, the Texas Legislature created a mandatory association of all property insurance companies, now known as the Texas Windstorm Insurance Association (TWIA), to serve as the insurer of last resort for coastal consumers. TWIA provides wind and hail insurance in the 14 coastal counties of Texas and certain parts of Harris County to consumers unable to obtain such insurance in the voluntary market.

In 1995, the Texas FAIR Plan Association (FAIR Plan) was established to act as the statewide residential property insurer of last resort. The FAIR Plan offers coverage for both windstorm and other perils such as theft and fire. The FAIR Plan does not provide windstorm coverage in areas where TWIA does.

On September 13, 2008, Hurricane Ike struck the Galveston area, resulting in over 92,000 TWIA claims. TWIA's losses for these claims exceeded \$2.53 billion as of the end of 2012. The four years since Hurricane Ike have made it clear that the current operational structure of TWIA needs to change in order to provide more efficient and effective service to policyholders.

In 2009, the Texas Legislature enacted major changes to TWIA operations. A key component of the legislation was a revamp of TWIA's funding structure. In 2011, the legislature made further refinements to the funding structure of TWIA and created a system to process claims.

However, further reform is necessary to ensure funding for TWIA is predictable and viable, and TWIA operations are professionally managed. A stable source of revenue that provides immediate availability of funds to cover future losses is also heeded.

As proposed, S.B. 1700 amends current law relating to the operation of the Texas Windstorm Insurance Association and the FAIR Plan Association.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 9 (Section 2210.452, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2210.001, Insurance Code, to provide that the primary purpose of the Texas Insurance Plan, rather than the Texas Windstorm Insurance Association (TWIA), is the provision of an adequate market for windstorm and hail insurance in the seacoast territory of this state.

SECTION 2. Amends Section 2210.003, Insurance Code, as follows:

(1) Redefines "association" to mean the Texas Insurance Plan, rather than TWIA.

(1-a) Defines "administrator" to mean the person contractually retained to administer TWIA and the plan of operation under Sections 2210.062 and 2211.0522.

SECTION 3. Amends Section 2210.014, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that Chapter 542 (Processing and Settlement of Claims) does not apply to the processing and settlement of claims by the Texas Insurance Plan (TIP) or to an agent or representative of TIP.

(c) Provides that, under this section, insurers acting to administer TIP claims, and the person contractually retained to administer TIP and the plan of operations (administrator) contracted under Sections 2210.062 and 2211.0522, are agents of TIP.

SECTION 4. Amends Subchapter B, Chapter 2210, Insurance Code, by adding Sections 2210.062, 2210.063, 2210.064, 2210.065, 2210.066, and 2210.067, as follows:

Sec. 2210.062. ADMINISTRATION BY CONTRACTED ADMINISTRATOR. (a) Requires the commissioner of insurance (commissioner), notwithstanding any other law, to contract with an administrator to manage TIP and administer the plan of operation not later than January 1, 2014.

(b) Requires the administrator to hold either, or both, a managing general agent license or a third party administrator certificate of authority issued under this code.

(c) Prohibits the term of the administrator contract from exceeding five years. Authorizes the contract to be renewed for additional terms of not more than five years for each term.

Sec. 2210.063. COMPENSATION OF ADMINISTRATOR. (a) Requires that the contract between the commissioner and the administrator specify the administrator's compensation. Requires that the compensation be based in part on reasonable projections of the cost to administer TIP.

(b) Provides that the administrator's compensation will be paid by TIP.

Sec. 2210.064. PROPRIETARY INFORMATION. Provides that any information, analyses, programs, or data acquired or created by the administrator under a contract under this subchapter are property of TIP.

Sec. 2210.065. OFFICE; RECORDS. (a) Requires the administrator to maintain an office in Austin, Texas.

Sec. 2210.066. AUDIT. Provides that the administrator is subject to audit by the commissioner and is required to pay the costs incurred by the commissioner in performing an audit under this section.

Sec. 2210.067. ANNUAL REPORT TO COMMISSIONER. Requires the administrator, not later than March 1 of each year, to submit a report to the commissioner regarding the operation of TIP. Requires the report to be made in accordance with the terms of the administrator's contract with the Texas Department of Insurance (TDI).

SECTION 5. Amends Section 2210.071, Insurance Code, as follows:

Deletes existing Subsection (a) designation. Makes no further changes to text of existing Subsection (a).

Deletes existing Subsection (b) requiring TWIA to pay losses in excess of premium and other revenue of TWIA from available reserves of TWIA and available amounts in the catastrophe reserve trust fund.

Deletes existing Subsection (c) requiring that losses not paid under Subsection (b) be paid from the proceeds from public securities issued in accordance with this subchapter and Subchapter M (Public Securities Program) and, notwithstanding Subsection (a), authorizing that losses be paid from the proceeds of public securities issued under Section 2210.072(a) before an occurrence or series of occurrences that results in insured losses.

SECTION 6. Amends Section 2210.072, Insurance Code, as follows:

Sec. 2210.072. New heading: PAYMENT FROM CLASS 1 FUNDS. (a) Requires TIP to pay losses in excess of premium and other revenue of TIP from available amounts in the catastrophe reserve trust fund and member assessments as provided by this section.

(b) Requires the catastrophe reserve trust fund to fund losses under this section in an amount not to exceed \$1 billion.

(c) Authorizes TIP, following the use of the catastrophe reserve trust fund, to assess its members in an amount not to exceed the lesser of \$800 million or \$1 billion less the amount of catastrophe reserve trust funds used under Subsection (b).

(d) Prohibits the total combined amount of catastrophe reserve trust funds and member assessments used to pay claims under this section from exceeding \$1 billion.

(e) Requires TIP to notify each member of TIP 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 TIP for the year under Section 2210.052 (Member Participation in Association).

Deletes existing text requiring that losses not paid under Section 2210.071(b) be paid as provided by this section from the proceeds from Class 1 public securities authorized to be issued in accordance with Subchapter M before, on, or after the date of any occurrence or series of occurrences that results in insured losses. Deletes existing text requiring public securities issued under this section to be repaid within a period not to exceed 14 years, and authorizing them to be repaid sooner if the board of directors elects to do so and the commissioner approves.

Deletes existing Subsection (b) providing that public securities described by Subsection (a) that are issued before an occurrence or series of occurrences that results in incurred losses are authorized to be issued on the request of the board of directors of TWIA with the approval of the commissioner and are prohibited from, in the aggregate, exceeding \$1 billion at any one time, regardless of the calendar year or years in which the outstanding public securities were issued.

Deletes existing Subsection (b-1) providing that public securities described by Subsection (a) are required to be issued as necessary in a principal amount not to exceed \$1 billion per catastrophe year, in the aggregate, for securities issued during that catastrophe year before the occurrence or series of occurrences that results in incurred losses in that year and securities issued on or after the date of that occurrence or series of occurrences, and regardless of whether for a single occurrence or a series of occurrences and subject to the \$1 billion maximum described by Subdivision (1), are authorized to be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

Deletes existing Subsection (c) requiring that the public securities, if public securities are issued as described by this section, be repaid in the manner prescribed by Subchapter M from TWIA premium revenue.

Deletes existing Subsection (d) authorizing TWIA to borrow from, or enter into other financing arrangements with, any market source, under which the market source makes interest-bearing loans or other financial instruments to TWIA to enable TWIA to pay losses under this section or to obtain public securities under this section. Deletes existing text providing that, for purposes of this subsection, financial instruments includes commercial paper.

Deletes existing Subsection(e) requiring that the proceeds of any outstanding public securities described by Subsection (a) that are issued before an occurrence or series of occurrences be depleted before the proceeds of any securities issued after an occurrence or series of occurrences are authorized to be used. Deletes existing text providing that this subsection does not prohibit TWIA from issuing securities after an occurrence or series of occurrences before the proceeds of outstanding public securities issued during a previous catastrophe year have been depleted.

Deletes existing Subsection (f) providing that, if, under Subsection (e), the proceeds of any outstanding public securities issued during a previous catastrophe year are required to be depleted, those proceeds are required to count against the \$1 billion limit on public securities described by this section in the catastrophe year in which the proceeds are required to be depleted.

SECTION 7. Amends Section 2210.074, Insurance Code, as follows:

Sec. 2210.074. New heading: PAYMENT THROUGH CLASS 3 FUNDS. (a) Requires that losses not paid under Sections 2210.071, 2210.072, and 2210.073 be paid as provided by this section from proceeds of member assessments as provided by this section. Deletes existing text requiring that losses not paid under Sections 2210.071, 2210.072, and 2210.073 be paid as provided by this section from proceeds from public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence that results in insured losses under this subsection or through reinsurance as described by Section 2210.075 (Reinsurance). Deletes existing text requiring that public securities issued under this section be repaid within a period not to exceed 10 years, and authorizing them to be repaid sooner if the board of directors elects to do so and the commissioner approves.

(b) Prohibits the amount of member assessments that is authorized to be made under this section from exceeding \$800 million less the amount of assessments made under Section 2210.072(c).

Deletes existing Subsection (b) providing that public securities described by Subsection (a) are authorized to be issued as necessary in a principal amount not to exceed \$500 million per catastrophe year, in the aggregate, whether for a single occurrence or a series of occurrences and, subject to the \$500 million maximum described by Subdivision (1), are authorized to be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) Deletes existing text requiring that the public securities, if the losses are paid with public securities described by this section, be repaid in the manner prescribed by Subchapter M through member assessments as provided by this section. Makes no further changes to this subsection.

SECTION 8. Amends Subchapter B-1, Chapter 2210, Insurance Code, by adding Section 2210.076, as follows:

Sec. 2210.076. **PREMIUM TAX CREDIT.** (a) Requires that the first \$300 million assessed to TIP members insurers under this Subchapter during a catastrophe year be entitled to a premium tax credit as provided in subsection (b).

(b) Authorizes an insurer to credit an amount paid in accordance with subsection (a) in a catastrophe year against the insurer's premium tax under Chapter 221 (Property and Casualty Insurance Premium Tax). Requires that the tax credit authorized under this subsection be allowed at a rate not to exceed 20 percent per year for five or more successive years following the year of payment of the claims. Authorizes the balance of payments made by the insurer and not claimed as a premium tax credit to be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in an annual statement under Section 862.001 (Annual Statement).

SECTION 9. Amends Section 2210.452, Insurance Code, by amending Subsections (a), (c), and (d), and adding Subsection (e), as follows:

(a) Requires the commissioner to adopt rules under which TIP makes payments to the catastrophe reserve trust fund. Authorizes the trust fund to be used only to fund the obligations of the trust fund under Subchapter B-1 (Payment of Losses), Section 2210.4522, and purchase reinsurance under Section 2210.453 (Reinsurance).

(c) Requires TIP, at the end of each calendar year or policy year, to use the net gain from operations of TIP, including all premium and other revenue of TIP in excess of incurred losses, operating expenses, deposits to the trust fund under Section 2210.4521, and public security obligations, and public security administrative expenses, to make payments to the trust fund, to procure reinsurance, or to make payments to the trust fund and to procure reinsurance.

(d) Requires the commissioner by rule to establish the procedure relating to the disbursement of money from the trust fund to policyholders and TIP administrative expenses in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Subchapter B-1.

(e) Requires the commissioner by rule to establish the procedure relating to the disbursement of money from the trust fund to pay for operating expenses, including reinsurance, under Section 2210.453 if TIP does not have sufficient premium and other revenue.

SECTION 10. Amends Subchapter J, Chapter 2210, Insurance Code, by adding Sections 2210.4521 and 2210.4522, as follows:

Sec. 2210.4521. **CATASTROPHE RESERVE TRUST FUND DEDICATION.** (a) Requires TIP, notwithstanding any other provision in this chapter, as provided for in the plan of operation, to deposit monthly in a trust fund an amount to accumulate on an annual calendar year basis the greater of \$200 million or one half of TIP's earned premium for the current calendar year.

(b) Requires TIP to deposit money collected under this section with the Texas Treasury Safekeeping Trust Company to be held outside the state treasury.

(c) Requires TIP, not later than February 1 of each year, to direct the Texas Treasury Safekeeping Trust Company to deposit all amounts deposited in the trust fund during the preceding calendar year, and interest earned on those funds, into the catastrophe reserve trust fund.

(d) Provides that money deposited in the trust fund under this section is irrevocably pledged to be distributed to the catastrophe reserve trust fund as provided in this section and is exempt from any other claim or attachment under law.

(e) Authorizes money deposited under this section to be invested by the Texas Treasury Safekeeping Trust Company as permitted by general law.

Sec. 2210.4522. CLASS 2 PUBLIC SECURITY ALLOCATION. (a) Authorizes the commissioner, if Class 2 public securities are outstanding and payable, to authorize the transfer of any portion of the amount of catastrophe reserve trust funds in excess of \$1 billion to the premium surcharge trust fund established for the payment of Class 2 public securities and public security administrative expenses under Section 2210.613 (Payment of Class 2 Public Securities).

(b) Requires the commissioner to consider the transfer under this section when determining the premium surcharge under Section 2210.613.

SECTION 11. Amends Section 2210.453, Insurance Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes TIP to purchase reinsurance that operates in addition to assessments authorized by Section 2210.074, rather than authorizes TIP to purchase reinsurance that operates in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized by this chapter.

(b-1) Prohibits TIP from purchasing reinsurance that has an attachment point preceding the member insurer's assessment liabilities under Section 2210.074.

SECTION 12. Amends Subchapter L-1, Chapter 2210, Insurance Code, by adding Section 2210.5725, as follows:

Sec. 2210.5725. ASSOCIATION CLAIMS PROCESSING. (a) Requires an insurer that has primary coverage on property for loss by fire to adjust all claims made on or after June 1, 2013, on TIP policy covering the same property.

(b) Provides that an insurer acting under this section is an agent of the association for purposes of Sections 2210.014 (Applicability of Certain Other Law) and 2210.572 (Exclusive Remedies and Limitation on Award) and is required to process claims as prescribed by this chapter and the plan of operation.

(c) Provides that an insurer acting under this section is not liable for any amount payable under the terms of TIP policy.

SECTION 13. Amends Section 2210.602, Insurance Code, to delete existing definitions of "class 1 public securities," "class 3 public securities," and "gross premium" and to make nonsubstantive changes.

SECTION 14. Amends Section 2210.609, Insurance Code, as follows:

Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY OBLIGATIONS. (a) Requires TIP, if TIP determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, to pay those obligations and expenses in accordance with Section 2210.613, rather than with Sections 2210.612 (Payment of Class 1 Public Securities), 2210.613, 2210.6135 (Payment of Class 3 Public Securities), and 2210.6136 (Alternative Sources of Payment) as applicable. Authorizes Class 2 public securities to be issued on a parity or subordinate lien basis with other Class 2 public securities, rather than authorizing Class 1, Class 2, or Class 3 public securities, respectively.

(b) Requires the Texas Public Finance Authority (authority), if any public securities issued under this chapter are outstanding, to notify TIP of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each calendar year in a period sufficient, as

determined by TIP, to permit TIP to determine the availability of funds, assess members of TIP under Section 2210.613, rather than under Sections 2210.613 and 2210.6135, and assess a premium surcharge if necessary.

(c) Requires TIP to deposit all revenue collected under Section 2210.613(b) (relating to seventy percent of the cost of the public securities required to be paid by a premium surcharge), in the premium surcharge trust fund, and all revenue collected under Section 2210.613(a) (relating to TWIA paying Class 2 public securities) in the member assessment trust fund, rather than requires TWIA to deposit all revenue collected under Section 2210.612 in the public security obligation revenue fund, and all revenue collected under Section 2210.613(b) in the premium surcharge trust fund under Sections 2210.613(a) and 2210.6135 in the member assessment trust fund.

(d) Requires TIP to provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from member assessments, premium surcharges, and amounts on deposit in the public security obligation revenue fund, the premium surcharge fund, and the member assessment trust fund, together with any public security reserve fund, as provided in the proceedings authorizing the public securities and related credit agreements, rather than from premiums, member assessments, premium surcharges, and amounts on deposit, in the public security obligation revenue fund, the premium surcharge trust fund, and the member assessment trust fund, together with any public security reserve fund, as provided in the proceedings authorizing the public securities and related credit agreements.

(e) Makes no changes to this subsection.

SECTION 15. Amends Section 2210.610(a), Insurance Code, to authorize revenues received from the premium surcharges under Section 2210.613 and member assessments under Section 2210.613, rather than Sections 2210.613 and 2210.6135, to be applied only as provided by this subchapter.

SECTION 16. Amends Section 2210.611, Insurance Code, to authorize revenue collected in any calendar year from a premium surcharge under Section 2210.613 and member assessments under Section 2210.613, rather than Sections 2210.613 and 2210.6135, that exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on the public security obligation fund to, in the discretion of TIP, be used for certain purposes.

SECTION 17. Amends Section 2210.614, Insurance Code, to authorize TIP to request the board of directors of the authority (board) to refinance any Class 2 public securities issued in accordance with Subchapter B-1 with public securities payable from the same sources as the original public securities, rather than authorizing TWIA to request the board to refinance any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from the same sources as the original public securities.

SECTION 18. Amends Subchapter B, Chapter 2211, Insurance Code, by adding Section 2211.0522, as follows:

Sec. 2211.0522. ADMINISTRATION BY CONTRACTED ADMINISTRATOR. (a) Requires the commissioner, notwithstanding any other law, to contract with an administrator, as described under Sections 2210.003 (General Definitions), 2210.014 (Applicability of Certain Other Law), 2210.063, 2210.064, 2210.065, 2210.066, and 2210.067, to manage the Fair Access to Insurance Requirements Plan and administer the plan of operation not later than January 1, 2014.

(b) Requires the administrator to hold either, or both, a managing general agent license or a third party administrator certificate of authority issued under this code.

(c) Prohibits the term of the administrator contract from exceeding five years. Authorizes the contract to be renewed for additional terms of not more than five years for each term.

SECTION 19. Repealer: Section 2210.605(c) (relating to certain public securities being eligible obligations), Insurance Code.

Repealer: Section 2210.608(c) (relating to the proceeds from public securities issued before an occurrence that results in incurred losses), Insurance Code.

Repealers: Sections 2210.612 (Payment of Class 1 Public Securities), 2210.6135 (Payment of Class 3 Public Securities), and 2210.6136 (Alternative Sources of Payment), Insurance Code.

SECTION 20. Requires TIP, notwithstanding Section 2210.4521 as added by this Act, beginning on the effective date of this Act and continuing until December 31, 2013, to deposit one-half of its earned premium into the trust described by that section. Requires that money collected in calendar year 2013 be deposited in the catastrophe reserve trust fund as described by that section. Requires that Section 2210.4521 apply to all TIP premium earned on and after January 1, 2014.

SECTION 21. Prohibits amounts collected under Section 2210.4521 and SECTION 20 of this Act, notwithstanding Section 2210.072 as amended by this Act, from being used to pay for a covered insured TWIA loss occurring prior to the effective date of this Act.

SECTION 22. (a) Provides that, effective January 1, 2014, the name of TWIA is changed to TIP and all powers, duties, rights, and obligations of TWIA are the powers, duties, rights, and obligations of the TIP.

(b) Provides that, effective January 1, 2014, a reference in law to TWIA is a reference to the TIP.

(c) Requires TWIA to adopt a timetable for phasing in the change of TWIA's name so as to minimize the fiscal impact of the name change. Authorizes TWIA, until January 1, 2014, to allow for phasing in the change of TWIA's name and in accordance with the timetable established as required by this section, to perform any act authorized by law for TWIA as TIP. Provides that any act of TWIA acting as TIP after the effective date of this Act and before January 1, 2014, is an act of TWIA.

SECTION 23. Authorizes the commissioner to, by order, require the administrator retained to administer TIP under Section 2210.062 to assume responsibility for administering TIP and the plan of operation as described in Section 2210.062 of this Act prior to January 1, 2014.

SECTION 24. Effective date: upon passage or upon the 91st day after the last day of the legislative session.