

BILL ANALYSIS

Senate Research Center

H.B. 2253
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Economic Development
5/13/1999
Engrossed

DIGEST

In 1993, the legislature established the Catastrophe Reserve Trust Fund (trust fund) as part of the state's plan to address catastrophic losses in conjunction with major storms. Funding for the trust fund comes from the member insurers of the Texas Windstorm Insurance Association (TWIA). Under current law, members relinquish their net equity pursuant to a written agreement with the Texas Department of Insurance (department). The trust fund is held by the department outside the state treasury. Legal title to money and investments in the fund is in the department, but the comptroller of public accounts (comptroller) acts as custodian to administer the funds. Recently, the Internal Revenue Service has suggested that the trust fund is subject to federal taxation. H.B. 2253 would substitute the provision authorizing TWIA to enter into a written agreement with the department under which TWIA members relinquish their net equity pursuant to the written agreement on an annual basis by making payments to the trust fund, with the alternative that the member insurers of TWIA are required to relinquish their net equity by making payments to the trust fund directly. All references to the written agreement are deleted. Accordingly, the trust fund is no longer kept and maintained pursuant to the written agreement between TWIA, the department, and the comptroller. Moreover, this bill specifies that all money deposited in the trust fund is state money to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department, until disbursements are made as provided by this Act and rules adopted by the commissioner. In addition, H.B. 2253 would expand the purpose of the trust fund to include funding a mitigation and preparedness plan established by this bill, in addition to the trust fund's purpose to pay its obligations.

PURPOSE

As proposed, H.B. 2253 would establish provisions regarding the operation of the catastrophe reserve trust fund.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of insurance in SECTION 2.03 (Section 8(i), Article 21.49, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. DECLARATION OF LEGISLATIVE INTENT

SECTION 1.01. Sets forth the findings of the legislature.

SECTION 1.02. Specifies that the Texas Windstorm Insurance Association (TWIA) exists as a state-mandated association and sets forth the declaration of the legislature relating to the purpose of this Act.

ARTICLE 2. CONFORMING AMENDMENTS TO ARTICLE 21.49

SECTION 2.01. Amends Section 4, Article 21.49, Insurance Code, by adding Subsections (c) and (d), as follows: (c) Provides that no part of the net earnings of TWIA may inure to the benefit of any private shareholder or individual. Prohibits the assets of TWIA from being used for or diverted to any purpose, other than those specified by this subsection. (d) Establishes that on dissolution of TWIA, all assets of TWIA revert to this state.

SECTION 2.02. Amends Section 8(h)(13), Article 21.49, Insurance Code, to include making payments into the catastrophe reserve trust fund (trust fund) established under, rather than entering into, a contract

as provided in Subsection (i) of this section (Rates, Rating Plans and Rate Rules Applicable), as an alternative to the establishment of a reinsurance program by the Texas Windstorm Insurance Association (TWIA). Makes a conforming change.

SECTION 2.03. Amends Section 8(i), Article 21.49, Insurance Code, to require the commissioner of insurance (commissioner) to adopt rules, rather than authorizes, TWIA to enter into a written agreement with the Texas Department of Insurance (department), under which TWIA members relinquish their equity to pay the obligations of the trust fund under Section 19(a) (Payment of Losses; Premium Tax Credit) of the article, rather than to protect policyholders of TWIA, and to fund the mitigation and preparedness plan (plan) established under this subsection. Provides that all money deposited in the trust fund is state money to be held by the comptroller of public accounts (comptroller), rather than the department, outside the state treasury on behalf of, and with legal title in, the department, until disbursements are made as provided by this article and rules adopted by the commissioner. Provides that, if the trust fund is terminated by law, all assets of the fund revert to the state to be used to provide funding for the annual loss mitigation and preparedness plan developed and implemented by the commissioner under Subdivision (5) of this subsection. Makes conforming changes. Requires the fund to be kept and maintained by the department under this article and rules adopted by the commissioner, rather than under the written agreement between TWIA, the department, and the comptroller. Requires the comptroller to administer the funds solely as provided by this article and the commissioner's rules, rather than the agreement. Deletes the prohibition against the state taking any action with respect to the trust fund other than as specified by this article and the agreement. Makes a conforming change. Requires, rather than authorizes, TWIA to pay the net equity of a member at the end of either the calendar year or policy year. Deletes the provision authorizing all funds held on behalf of or paid to TWIA under one or more reinsurance plans or programs to be immediately paid to the trust fund. Makes a nonsubstantive change. Requires the commissioner's rules, rather than the written agreement, to establish the procedure relating to the disbursement of money, rather than funds, from the trust fund to policyholders in the event of an occurrence or series of occurrences within the defined catastrophe area that results in a disbursement under Section 19(a) of this article, rather than in insured losses and operating expenses of TWIA, greater than \$100 million. Authorizes the department, each state fiscal year beginning with fiscal year 2002, to use from the investment income of the trust fund an amount equal to not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year to provide funding for an annual plan to be developed and implemented each year by the commissioner. Authorizes the department to use in each fiscal year \$1 million for the windstorm inspection program established under Section 6A (Inspections for Windstorm and Hail Insurance) of this Act. Requires the plan to provide for steps to be taken in the seacoast territory by the commissioner or by a local government, state agency, educational institution, or nonprofit organization designated by the commissioner in the plan to: implement programs intended to improve preparedness for windstorm and hail catastrophes; reduce potential losses in the event of such a catastrophe; provide research into the means to reduce those losses; educate or inform the public in determining the appropriateness of particular upgrades to structures; or protect infrastructure from potential damage from those catastrophes. Sets forth that money in excess of \$1 million is not available for use under this subsection if the commissioner determines that an expenditure of investment income from the fund would jeopardize the actuarial soundness of the fund or materially impair the ability of the fund to serve the state purposes for which it was established.

ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. Effective date: September 1, 1999.

SECTION 3.02. Emergency Clause.