LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82nd LEGISLATURE 1st CALLED SESSION - 2011

June 22, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **HB3** by Smithee (Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3, Committee Report 2nd House, Substituted: an impact of $0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	$0
2013	$0
2014	$0
2015	$0
2016	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from *Insurance Maint Tax Fees* 8042	Probable (Cost) from *Insurance Maint Tax Fees* 8042	Probable Revenue Gain from *Appropriated Receipts* 666	Probable (Cost) from *Appropriated Receipts* 666
2012	$164,563	($164,563)	$750,000	($750,000)
2013	$154,960	($154,960)	$0	$0
2014	$154,960	($154,960)	$0	$0
2015	$154,960	($154,960)	$0	$0
2016	$154,960	($154,960)	$0	$0

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.0
2013	2.0
2014	2.0
2015	2.0
2016	2.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the operation of the Texas Windstorm Insurance Association (TWIA) and to the resolution of certain disputes concerning claims made to that association; providing penalties.

The bill would impose certain limitations on certain claims and actions brought against TWIA; require TWIA to make random audits of claims practices following certain storms; and describe the process and requirements for the filing of claims against TWIA, for the processing of those claims, and for the resolution of disputes concerning those claims.

The bill would grant the Texas Department of Insurance (TDI) exclusive authority over the appointment and oversight of qualified inspectors and allow TDI to issue emergency cease and desist orders to inspectors and persons acting as inspectors.

The bill would allow the issuance of public securities to cover TWIA's excess losses on a per occurrence or series of occurrences basis instead of the current yearly basis; allow TWIA to issue pre-event public securities to cover anticipated losses; detail the policies subject to a premium surcharge imposed to pay for Class II securities issued by TWIA; make the inability of TWIA to meet obligations related to the issuance of certain securities a condition that constitutes a hazard to the public for the purposes of Section 441.052 of the Insurance Code; and establish the new Premium Surcharge Trust Fund and the Member Assessment Trust Fund as dedicated funds held by the Texas Safekeeping Trust Company to receive any premium surcharges and member assessments levied to repay certain public securities.

The bill would require TWIA to annually determine the association's maximum probable loss; to develop a plan to obtain reinsurance; and, if TWIA does not purchase reinsurance, to submit an actuarial plan for paying losses in the event of a catastrophe with estimated damage of $2.5 billion or more.

The bill would require studies by TDI and TWIA to determine whether using a single adjuster program would improve effectiveness and efficiency; and by the Commissioner of Insurance to examine the feasibility of TWIA writing policies directly. In addition, the bill would require that a legislative interim committee conduct a study of alternative ways to provide insurance in coastal areas.

The bill would make TWIA subject to audit by the State Auditor; restrict coverage for property not covered by flood insurance located in certain areas; prohibit TWIA from issuing coverage for wind turbines; provide for alternative eligibility for coverage for structures for which the insured does not have a certificate of compliance; allow premium discounts for certain property exceeding building code standards and for certain insureds who chose binding arbitration in disputes with TWIA; and require the Commissioner of Insurance to appoint an expert panel to advise the association concerning the extent to which insured storm damage was incurred as a result of wind and tidal surges.

Additionally, the bill would make various administrative changes involving dispute resolution; reports; compensation of employees and contractors; appointment of persons to the TWIA board of directors; meetings of the board of directors; open records; applications for and renewals of coverage; agent commissions; rate setting; liability limits; and issuance and repayment of public securities.

The bill would authorize TDI by rule to provide a discount or credit for certain assessed surcharges. Additionally, the bill would create a new adjuster advisory board.

The bill would repeal Sections 2210.502(c) and 2210.551(e), regarding the increases in maximum liability limits and certain claims hearings, respectively, and would make conforming changes elsewhere in the code.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Methodology

Based on the analysis provided by TDI, the bill would create new procedures and processes for TWIA policyholders to obtain a review of a loss claim, request appraisal and the review by an independent review panel and judicial review. The bill requires the Commissioner of Insurance to appoint the independent review panel, review the panel's recommendations, and publish the panel's recommendations. Additionally, the bill requires the Commissioner to review the qualifications of presiding officers upon objection and to replace those who are determined to have a direct financial or personal interest in the case. The bill further provides that the Commissioner may initiate cease and desist actions against appointed qualified inspectors who perform building code inspections on structures in the catastrophe area. Based on the analysis provided by TDI, the agency will require 2.0 FTEs, an Attorney III and a Program Specialist II, for the processes for finalizing the reviews and gathering of information for executions of the reviews during a year without significant storms. The 2.0 FTEs would cost $119,142 in salaries and wages with benefits cost of $33,193, other operating expenses of $225, and telephone costs of $2,400 each fiscal year of 2012 through 2016. Additional one-time equipment costs would be $9,603 in fiscal year 2012. These costs would be funded by General Revenue – Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis provided by the Sunset Advisory Commission, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources. TWIA is scheduled in statute for Sunset review in the 2014-15 biennium, depending on the Legislature's determination of agencies scheduled for Sunset review for that biennium and subsequent biennia. According to current statute, the Association would be responsible for paying the costs incurred by the Sunset Commission in performing the review, meaning the review would not have a fiscal impact to the State.

The changes to the Insurance Code regarding the issuance of public securities will require the Texas Public Finance Authority (TPFA) to revise the commercial paper program documents prepared for the sale of Class I public securities. Additionally, revisions to the source of revenue for repayments of all classes of public securities will require TPFA to obtain a new opinion from bond counsel on whether debt can be issued as taxable or tax exempt. Based on the analysis provided by TPFA, implementation of the bill will cost $750,000 in fiscal year 2012 for professional services to revise the commercial paper program documents and to obtain a new opinion from bond counsel on all classes of public securities. If debt is issued, the cost would be reimbursed by proceeds for costs of the issuance. Since the timing of a natural disaster that would require the issuance cannot be predicted, it is assumed that TWIA will fund this cost in fiscal year 2012 and recoup the expense from a future debt issuance.

Based on the analysis by the Bond Review Board, the public securities are obligations solely of TWIA and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state. Since the issuance of TWIA debt is not and may not constitute a legal or moral obligation of the state, it should have no direct impact on the fiscal health of the state.

Based on the analysis provided by the State Auditor's Office (SAO), the bill would require TWIA to be subject to an audit by the SAO and pay for the costs incurred by the SAO in performing the audit. According to the bill, TWIA would be responsible for paying the costs incurred by the SAO in performing the audit, meaning the review would not have a fiscal impact to the State. Based on the analysis provided by the SAO, any audit of TWIA would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. In accordance with Section 321.013, Government Code, all additional duties and responsibilities prescribed by the bill would be evaluated for inclusion in the SAO's annual audit plan for Legislative Audit Committee approval.

The bill creates new funds, the Premium Surcharge Trust Fund and the Member Assessment Trust Fund, to be held outside the Treasury. This analysis does not consider fiscal impacts for these funds since they are held outside the treasury. Based on the analysis by the Comptroller of Public Accounts, this legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The technology impact to TDI would be $2,450 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 347 Public Finance Authority, 352 Bond Review Board, 454 Department of Insurance

LBB Staff: JOB, CH, AG, MW, KJG, JJO