

SUBJECT: Texas Windstorm Insurance Association operations and claims resolutions

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Smithee, Hancock, Nash, Sheets, L. Taylor, Torres
1 nay — Eiland
2 absent — Vo, Walle

WITNESSES: For — Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Fred Bosse, American Insurance Association; Cathy DeWitt, Texas Association of Business; Julie Drenner, The Heartland Institute; Greg Hooser, Texas Surplus Lines Association; Lee Loftis, Independent Insurance Agents of Texas; Annie Mahoney, Texas Conservative Coalition; Gerhardt Schulle, Texas Society of Professional Engineers; Alan Waldrop, Texans for Lawsuit Reform; Joe Woods, Property Casualty Insurers Association of America)

Against — Mark Kincaid, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; (*Registered, but did not testify*: Melissa Cubria, Texas Public Interest Research Group)

On — Steve Bresnen, Coalition for the Survival of Charitable Bingo; A. R. “Babe” Schwartz, Galveston Windstorm Action Committee; Jay Thompson, Association of Fire and Casualty Companies in Texas (AFACT); (*Registered, but did not testify*: Burnie Burner, Texas Windstorm Insurance Association (TWIA) Board of Directors; Marilyn Hamilton, Texas Department of Insurance; Jason Schwartz, The Schwartz Firm; Dalton Smith, Bank of America Merrill Lynch)

BACKGROUND: Initially called the Texas Catastrophe Property Insurance Association, the Texas Windstorm Insurance Association (TWIA) was established in 1971 to protect consumers after companies ceased to write coverage on the Texas coast following Hurricane Celia in 1970. As a provider of last-resort insurance, TWIA provides basic wind and hail coverage to property owners in 14 coastal counties and parts of Harris County when such coverage is excluded from homeowners and other property policies.

All companies licensed to write property and casualty insurance in Texas are required by law to be members of TWIA. The percentage of each company's participation in the association is based on their statewide sales as well as sales within TWIA's territory. Governed by a 10-member board of directors that meets quarterly, TWIA operates differently than for-profit insurance carriers with regard to risk assessment, but similarly to other carriers by providing coverage through a written contract that details policy limits and coverage restrictions.

Payment of losses. Insurance Code, sec. 2210 governs TWIA and outlines its purpose and functions under the law. The Texas Public Finance Authority's board of directors is authorized to issue public securities to raise revenue to provide windstorm and hail coverage through TWIA. Three classes of public securities may be issued on or after an occurrence or series of occurrences in a catastrophe area that result in insured losses. The proceeds from Class 1, Class 2, and Class 3 public securities are used to pay losses. Subch. B-1 governs the payment of losses. Sec. 2210.071 governs losses in excess of premium and other TWIA revenue, and secs. 2210.072-2210.074 address payment of losses apart from those in 2210.071. Each section prescribes the ceiling per calendar year for the principal amount of securities issued.

TWIA directors and employees. Subchapter C governs the powers and duties of the TWIA board of directors. Sec. 2210.104 requires the board to elect an executive committee, presiding officer, assistant presiding officer, and secretary-treasurer from the board's membership. TWIA is required to notify the Department of Insurance (TDI) of a board of directors meeting no later than 11 days before the meeting date. Board meetings are open to the commissioner or the public unless exempted under the Government Code. The primary board objectives require TWIA to operate according to Texas law and commissioner rules, comply with sound insurance principles, and meet all standards imposed under Texas law.

Plan of operation. Subchapter D covers the association's plan of operation. The plan is required to provide for the efficient, just, and unbiased administration of the association and include methods for fair assessment of TWIA members and underwriting standards. The plan is required to have procedures to accept and cede reinsurance, obtain and repay legally authorized loans, determine amounts to be provided to specific risks, and process insurance applications.

Coverage and applications. Subchapter E governs insurance coverage, including applications for coverage, eligible applicants, and cancellation of certain coverage.

Property inspections and inspectors. Sec. 2210.254 defines and governs qualified inspectors and lists required certifications and approval processes. Certain licensed engineers may be appointed as qualified inspectors under this provision. Sec. 2210.256 covers disciplinary proceedings for appointed inspectors, including revocation of appointment following notice and hearing and sanctions imposed by the commissioner including suspension and fines.

Sec. 2210.259 authorizes TWIA to subject certain noncompliant structures insured as of September 1, 2009, to an annual premium surcharge. It establishes the amount that may be assessed for the surcharge and governs collection of the revenue. Sec. 2210.258 details the inspection requirements for certain properties according to the age of the structure and its location.

Rates. TWIA is required to file information with the Texas Department of Insurance (TDI) on all classifications, rules, rates, plans, and other factors that the association plans to use to determine rates. The association is required to consider several relevant factors in adopting rates, such as past and prospective loss experience, operation expenses, and reasonable profit and operations margins. The rest of the provisions in subch. H outline requirements for the association to use in setting rates, creating classifications, addressing agents' commissions, and establishing rating territories.

Trust fund and reinsurance program. Subchapter J governs TWIA's catastrophe reserve trust fund and reinsurance program, including its establishment and use. Sec. 2210.453 specifically addresses reinsurance and allows the association to make payments into the trust fund and purchase reinsurance.

Appeals. An insured person or an affected insurer may appeal an action by the association within 30 days of the action. Under sec. 2210.551(e), hearings concerning a TWIA action relating to the payment of, the amount of, or the denial of a particular claim may be held either in the county where the insured property is located or in Travis County. Procedures for

claims disputes and the venue in which such disputes may be pursued are listed in this section.

Premium surcharge. Sec. 2210.613 requires that 70 percent of the cost of the public securities used to cover the cost of paying claims be paid by a surcharge on insurance premium. The surcharges applies to all policies that provide coverage on any premises, location, operation, or property located in a disaster area for which public securities were issued to cover applicable claims. The surcharge applies to all property and casualty lines of insurance other than federal flood insurance, worker's compensation insurance, accident and health insurance, and medical malpractice insurance.

Other provisions of the code and Texas law. Ch. 83 of the Insurance Code governs cease and desist orders and applies to certain types of insurance companies, including agents of these types of entities, and entities that are regulated by the commissioner.

Ch. 541 governs unfair or deceptive acts or practices of insurers. It allows a prevailing plaintiff to receive actual damages, court costs, and attorney's fees, as well as treble damages. Ch. 542 governs unfair claim settlement practices of insurers.

DIGEST:

HB 3 would revise the administration and operation of the Texas Windstorm Insurance Association, including changing the name of the agency to the Texas Coastal Insurance Plan Association (TCIPA).

Payment of losses. Under HB 3, securities would be issued as necessary in a principal amount not to exceed \$1 billion per occurrence or series of occurrences in a calendar year that resulted in insured losses.

TCIPA directors and employees. Neither a member of the board of directors nor an employee would be allowed to:

- accept or solicit gifts, favors, or services that could influence the member or employee in duties related to the association's business or operation, or that the director or employee knew or should have known were offered for those purposes;

- accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require disclosure of the association's confidential information;
- accept other employment or compensation that could reasonably be expected to impair the member's or employee's independence of judgment while working for the association;
- make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the association's interest; or
- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the member's or employee's powers while working for the association or having performed a favor for another, while working for the association.

Association officers and employees who reasonably suspected that a fraudulent insurance act had been or was being committed by a board member, association employee, or member of the windstorm insurance oversight legislative oversight board would have to report the conduct within 30 days to the Travis County District Attorney's Office or to TDI.

An association employee who violated Insurance Code provisions governing conduct and employee performance standards would be subject to employment-related sanctions, including job termination. An association board member or employee who violated ethics rules would be subject to civil or criminal penalties associated with their actions if those actions violated another statute or rule.

A member of the board of directors or an employee of the association would be prohibited from appointing, employing, or contracting with any of the following individuals for goods or services connected with the operation or business of the association if the individual were to be directly or indirectly paid with association funds:

- someone related to the member or employee within the third degree by consanguinity or within the second degree by affinity; or
- someone related to any member or employee within the third degree by consanguinity or within the second degree by affinity.

HB 3 would require the association to post the salaries and bonuses of all managerial employees on its website.

The bill would require that, in addition to notifying TDI before a meeting of the directors or association members, the association post notice of the meeting on the TDI and association websites no later than seven days before the date of the meeting. These meetings, including certain closed meetings under Government Code, ch. 551, would have to be open to the commissioner or the commissioner's representative. The association would be responsible for live streaming of board meetings on its website and maintaining an archive on its website for at least two years following the date of each meeting.

The board and the association would be responsible for creating a code of conduct and performance standards for employees and contractors and for evaluating association management on an annual basis. The association also would be required to submit an annual report, no later than June 1, to the governor and other state leaders evaluating objectives completed from the prior year.

HB 3 would subject the association to the open meetings and public information provisions in the Government Code. Settlement agreements that involved the association as a party would be considered public information and would have to include the names of attorneys or adjusters involved with the claim that was the basis of the settlement.

Plan of operation. The bill would require the association's plan of operation to use claims settlement guidelines published by the commissioner after recommendations of the commissioner-appointed technical panel in evaluating the extent to which a loss was incurred as a result of certain factors.

Coverage and applications. The association's windstorm and hail policies would have to require insured parties to file claims no later than one year from the date on which damage occurred to the insured property. These policies also would have to list conspicuously in boldface type a notice on resolution of disputes, including:

- the processes and deadlines for appraisal and independent coverage review; and
- the requirement for compliance with the Insurance Code governing dispute resolution to seek administrative or judicial relief.

HB 3 would authorize the commissioner to extend the one-year claim deadline by no more than 180 days for persons showing good cause.

The bill would prohibit the association from providing coverage to certain structures, including wind turbines, structures used primarily as casinos, or structures used as sexually oriented businesses.

Alternative certification. The bill would require the insurance commissioner to create rules for alternative certification of residential structures for coverage. The structure would have to have at least one qualifying structural building component that:

- had been properly inspected; and
- was in compliance with applicable building codes.

A residential structure insured by the association as of January 1, 2012, that had not yet received a certificate of compliance under sec. 2251.251(g) of the Insurance Code would be required to obtain alternative certification before the association renewed coverage on or after January 1, 2013.

Under HB 3, the association would have to develop and implement an actuarially sound rate, credit, or surcharge for policies on noncompliant residential structures. The amount of the rate, credit, or surcharge would vary based on the number of qualifying structural building components.

Property inspections and inspectors. TDI would be authorized to establish an annual renewal period for appointed qualified inspectors. Under HB 3, TDI would have exclusive authority over everything related to the appointment and oversight of qualified inspectors for association matters. The insurance commissioner would be required to establish rules to ensure that persons seeking appointment as qualified inspectors be competent and possess knowledge and skills for windstorm inspections and other compliance issues.

HB 3 would authorize the commissioner to enter an emergency cease and desist order against a qualified inspector the commissioner believed had failed to show through documentation and other information submitted to TDI that a structure met statutory requirements in the Insurance Code. The commissioner also could enter an emergency cease and desist order against a person acting as a qualified inspector without appointment. If the

commissioner determined that inspections performed by any inspector were fraudulent, hazardous, or created immediate danger to the public, the commissioner could enter an emergency cease and desist order.

Trust fund and reinsurance program. If the association did not purchase reinsurance, the board would have to submit a report to the governor and other state officials by June 1 on an actuarial plan to pay losses in the event of a catastrophe that resulted in total damage of at least \$2.5 billion.

The association's board would be required to submit a catastrophe plan to the governor and other state leaders annually by June 1 that covered a period from the date of submission of the plan until May 31 of the following year. The details of the plan would have to include:

- the way the association would determine loss and process claims after windstorms affecting an area of maximum exposure to the association, including windstorms with 4 percent, 2 percent, and 1 percent chances of occurring during the projected period, and
- a description of how losses would be paid and claims administered and adjusted.

This plan would not apply to an insured required to use arbitration methods to settle disputes, but would apply to every other insured policyholder.

Actions against association. For disputes other than causation, coverage, and damage, an insured would be able to bring an action against the association or appeal the decision. The bill would remove the provision allowing an insured to bring an action under ch. 541 of the Insurance Code. The insured would be able to recover only actual damages with court costs and reasonable attorney's fees and could not recover consequential, punitive, or exemplary damages, including treble damages under Insurance Code, sec. 541.152(b) or Business and Commerce Code, sec. 17.50.

Appeals. HB 3 would require an insured to bring an action no later than two years following the date of the act, ruling, or decision that formed the basis of the issue in contention. The bill would create a statute of repose that would control over any other applicable limitations period.

Claims: settlement and dispute resolution. HB 3 would limit the amount of recovery for an insured to the amount of coverage provided for in the windstorm policy at issue and would provide the exclusive remedies for a claim against the association.

Under the bill, an insured would be required to file a claim no later than one year from the date damage occurred to the property that was the basis of the claim. The bill would require the association to act within 90 days after receiving the claim to notify the claimant in writing of the amount of money the association would be willing to pay and provide the claimant with either:

- a detailed description of the assumptions or estimates the association used to determine the claim amount, including estimated costs of labor and materials; or
- a detailed description of the factual or legal basis for a coverage or causation dispute regarding the claim, if the association were to determine that, in whole or in part, the property was not insured or that it was damaged by something not covered in the policy.

If the association failed to notify the claimant in the manner prescribed, the claim would be presumed to be covered by the policy. The association could extend the 90-day period under certain circumstances and would have to notify the claimant of the extension in writing.

If a claimant failed to submit with the claim information necessary for the association to determine whether to pay a claim, the association would within 15 days request in writing the information. For good cause, the association would have 30 days to make such a request. The 90-day review period would be tolled while the request was outstanding.

A claimant could make a written request to review an association determination within 30 days of the decision. The association would have to allow the claimant to review all information relevant to the determination. Within 60 days, the association would have to provide the claimant with a written notification about the review's outcome, or the claimant and the association could agree to extend the review period. The written notice to the claimant by the association would have to contain reasons for the review decision and time limits to request appraisal, as authorized by other sections of the code.

Under the bill, a claimant could request an appraisal for a damage dispute remaining after a review, if no coverage or causation dispute existed. The appraisal would include information about the extent of damage to the property or the costs of repairing or replacing the property. The claimant would have 30 days after the receipt of notice of the association's review. The commissioner could grant an additional 30-day extension for good cause.

The claimant and the association would resolve the dispute through the appraisal process, at the claimant's request, according to the terms of the association policy. The results of the appraisal would be binding and subject to appeal and judicial review only under the provisions governing dispute resolution created by this bill. The results would be final and appealable 15 days after the date the appealing party received actual or constructive notice of the results.

An appraisal request and an appraisal would be mandatory before a claimant could contest an association determination on property damage or the costs of replacement or repair. A claimant failing to request an appraisal would waive the opportunity to contest the association's determination on property damage.

If a claimant requested appraisal, the claimant would be responsible for the cost. The association would be responsible for the cost of an appraiser retained by the association. The claimant and the association would be responsible, in equal shares, for the cost of retaining and using an appraiser chosen by the claimant's and the association's appraisers to participate in the resolution of the dispute. The commissioner would by rule establish policies and procedures for requested appraisals.

Independent review process. A claimant could request resolution of all disputes on a claim through an independent review panel if a coverage or causation dispute remained after TWIA review. The written request for independent review would have to be mailed or served on TWIA or the commissioner within 30 days of notice received by the claimant on a TWIA review. The commissioner could grant an extension for good cause.

The commissioner would have to appoint an independent review panel to resolve the dispute. The panel of three would be selected from a roster of qualified members maintained and published by the commissioner. The

commissioner would appoint one member of the panel as the presiding officer.

The panel would make a determination regarding causation, coverage, or damage, and would have to notify the parties in writing no later than 120 days after the panel was appointed. The commissioner could grant a reasonable extension for the panel to make a determination or could select a new panel for the review.

The independent review panel would determine whether review of a dispute required input from the technical panel appointed under provisions in the bill. If guidance from the technical panel were sought, the 120-day review period would be tolled from the date of request until the information was received.

A review panel's determination would be binding on both parties and subject to appeal and review only by methods provided under the bill. The determination would be final and appealable 15 days after the appealing party received notice of the decision. The commissioner would by rule establish qualifications for review panel members, procedures and deadlines for independent review and the exchange of documents, and other necessary procedures and deadlines. These rules would have to ensure that the independent review process was fair to the claimant and enabled the claimant to participate without requiring legal counsel.

The commissioner by rule would establish:

- the qualifications for members of the independent review panel;
- procedures and deadlines to be used in independent review; and
- procedures and requirements relating to the exchange of documents and their content during the independent review process.

The bill would require the commissioner to design the rules so that the review process would be fair to claimants and would enable the claimant to participate in the review process without engaging legal counsel.

The determination by the independent review panel would be binding on the claimant and the association and would be subject to appeal and judicial review as provided below. The decision would become final and appealable on the 15th day after the appealing party received notice of the determination.

Deadlines tolled by mediation. A deadline imposed on a claimant under a request for review of an association determination, appraisal in damage suits, or by a review by an independent review panel would be tolled for a single period, not to exceed 45 consecutive days, during which the claimant was seeking resolution of a causation dispute, coverage dispute, or damage dispute through mediation administered by TDI.

Technical advisory panel. Under HB 3, the commissioner would appoint a technical panel of experts to advise the association on the extent to which damage was created by wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm. The size of the panel would be determined by the commissioner, with one member serving as presiding officer. The panel members would have to possess expertise in geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent of damage created by the listed weather patterns, and at the commissioner's request would recommend methods to determine the extent of damage. The panel would meet at the commissioner's request or when the presiding officer called a meeting. It would investigate, collect, and evaluate information needed to provide guidance and recommendations for the independent review panel. The commissioner would publish the recommendations for the association's use in settling claims.

Judicial review. If not satisfied with the appraisal or independent review panel's determinations, the claimant would be entitled to judicial review, but only after exhausting all administrative remedies available under dispute resolution. The claimant could seek judicial review in a manner provided for the appeal of contested cases under subchapter G of ch. 2001 of the Government Code. The standard for judicial review under this section would be the substantial evidence rule.

A claimant could appeal to a district court in a trial de novo for determinations limited to:

- the amount of loss;
- whether the loss was covered by an association insurance policy;
- whether the loss was caused by a hazard or risk insured under the policy; and
- the amount of court costs and reasonable and necessary attorney's fees.

Under the bill, a court could award no more than the policy limits, plus court costs and reasonable and necessary attorney's fees. The bill would not permit a plaintiff to recover treble damages in an action brought against the association by a person insured by the association. The evidence that could be admitted in a trial de novo would be evidence admitted or presented in the appraisal or independent review process. The appeal would be required to be filed in the county where the loss occurred. The presiding judge would be appointed by the judicial panel on multidistrict litigation and would have to be a resident of a first or second tier coastal county. The Texas Supreme Court would adopt rules governing these proceedings.

The subchapter created by HB 3 to govern settlement and dispute resolution would prevail upon any conflict with any other law.

HB 3 would repeal sec. 2210.551(e), regarding hearings for certain association actions.

Premium surcharge. The premium surcharge to pay for public securities would be applied to:

- policies that covered automobiles principally garaged in the catastrophe area;
- fire and allied lines insurance;
- farm and ranch owners insurance;
- residential property insurance;
- private passenger automobile liability and physical damage insurance;
- commercial passenger automobile liability and physical damage insurance; and
- the property insurance portion of a commercial multiple peril insurance.

Interim study. The bill would direct the speaker and the lieutenant governor to create a joint legislative study committee to examine alternative ways to provide insurance to the coastal areas of the state through a quasi-governmental entity.

Adjustor advisory board. The bill would direct the commissioner to form an adjustor advisory board. The board would be uncompensated. It would make recommendations to commissioner regarding:

- licensing, testing, and continuing education of licensed adjustors;
- claims handling, catastrophic loss preparedness, ethical guidelines, and other professional relevant issues; and
- any other matter the commissioner submitted to the board.

Sunset date. The bill also would change the year for TWIA's Sunset review to 2013 from 2015.

Other provisions. The bill would prohibit a person insured under the association's provisions from bringing a private lawsuit against TWIA under ch. 541 and ch. 542 of the Insurance Code.

The bill states that if any of its provisions or application to a person or circumstance were held invalid, then it would be severable, and the other provisions still would take full effect.

Effective dates. HB 3 would apply only to policies or disputes initiated 30 days after the effective date of the bill. The association would have to amend the association's plan of operation by January 1, 2012, to conform to changes in the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

**SUPPORTERS
SAY:**

HB 3 would add much-needed regulation, transparency, and ethics reform to the windstorm insurance association that was created to aid and protect insurance consumers on the Texas coast. In the aftermath of Hurricane Ike, the association's board members, management, and staff failed to fulfill the association's purpose of providing last-resort wind and hail insurance to policy holders on the coast.

Arbitration and appeals process. The bill would provide a fair, efficient, and highly effective method for claims disputes that arise between the association and coastal policyholders. The claims settlement and dispute resolution provisions created by HB 3 would allow policyholders to appeal different types of claims by using processes that would be more appropriate for each issue. By setting deadlines for each issue, the bill would streamline the review and appeal process, making it more responsive and predictable. HB 3 would ensure fairness in the dispute process by instituting consumer-friendly deadlines designed to provide

structure and make the association more accountable to policyholders. The bill also would ensure fairness by presenting opportunities to policyholders for deadline extensions.

Arbitration. HB 3 would reduce claims dispute costs for involved parties by providing a process that was supported through the association's current infrastructure. The association has paid millions of dollars in exorbitant legal fees for claims stemming from Hurricane Ike. This type of unsustainable spending cannot continue. Because the association is funded much differently than a for-profit insurance company, the association does not have the resources to sustain losses from exorbitant lawsuits that grant punitive and exemplary damages in addition to the insured's actual loss. The association has never been capitalized as a private, for-profit insurance company, nor was it designed to be. Without HB 3, claims dispute costs would be shouldered by not only coastal consumers in litigation, but also inland consumers who would suffer from higher insurance premiums as a result of that litigation.

Trial. Because HB 3 would strike a sensible compromise between arbitration and access to the legal system. This compromise would be beneficial for both consumers and the association, which cannot afford to continue to litigate claims under the current system.

Transparency. HB 3 would subject the association to increased transparency to benefit Texas taxpayers. Although the association is a quasi-governmental entity subject to the Government Code, the bill would explicitly place the association under the state's open meetings and open records laws, including rate determinations. Live broadcasts of board meetings and access to archives on the Internet, plus the insurance commissioner's presence at any closed meetings, would prevent the board from operating without the authoritative oversight of the commissioner or the watchful eye of the public.

HB 3 would impose more stringent guidelines for association board members and association staff that would prevent improper acts of the association in its operations. By prohibiting improper relationships and transactions between the association and other interested parties and also by prohibiting nepotism in the association, the bill would make it extremely difficult for association employees and others to exploit business relationships or exert improper influence on the association.

Preparedness. The bill also would foster greater assurance in the association's preparedness. The requirement created by HB 3 for catastrophe and actuarial plans would cause the association to take a proactive, rather than its historically reactive, approach to preparing for possible catastrophic storm occurrences.

Claims adjusting. HB 3 would improve the claims adjusting process by requiring the creation of a claims adjustor advisory board that would improve the professionalism and competency of claims adjustors by advising the commissioner on matters like licensing, continuing education, and claims handling.

OPPONENTS
SAY:

HB 3 would create an administrative-adjudicatory process that would result in the same disastrous outcomes consumers experienced when the Legislature created the Texas Residential Construction Commission. Even the positive open government and transparency reforms would be undermined by the removal of meaningful consumer protections.

Consumer protections. HB 3 would remove treble damages and other crucial consumer protections found in chs. 541 and 542 of the Insurance Code. These protections deter abusive conduct on the part of powerful insurers, compel them to honor their contractual and statutory obligations in a timely manner, and make it more likely that aggrieved policy holders will be made whole. These are the protections that other insurance policy holders have, and the association's customers should have the same protections.

The current treble damages provision and other statutory attempts to deter bad actors give consumers more room when negotiating claims disputes between the insured and the association. Without the ability to seek treble and other damages, coastal policyholders would be limited in their negotiation ability and could end up receiving even less than policy coverage.

Treble damages are not bankrupting the association, nor will they in the future. Some argue that treble damages and other consumer protections should be eliminated in order to keep the association solvent. However, the association is able to cover its obligations through its ability to purchase reinsurance, issue bonds, and collect and stockpile payments made by customers on their policies. The association can increase what it

levies other insurance companies for support payments, but this may be done only after it has relied on other methods.

This bill would prevent the awarding of consequential damages, to the detriment of consumers. These damages, such as for temporary housing, are incurred while policyholders wait for resolution of their claims. Under current law, the potential for paying consequential damages encourages insurers to resolve complaints promptly.

Arbitration. The arbitration process created by HB 3 would be an unnecessarily complex administrative system benefitting no one and would be especially burdensome to the association's policyholders. The accountability and increased transparency created by the bill would be negated by the shields created for the association through the claims dispute process.

This bill would not ensure lower costs for claims disputes for the association or consumers. Under current law, an aggrieved policy holder tries to negotiate with TWIA. Failing a successful outcome, the policy holder may retain an attorney, who negotiates and, failing a successful outcome, may threaten legal action. The bill would require arbitration before a court case could even be filed. Though the intent might be to reduce litigation and the cost of attorney's fees for policy holders, HB 3 would compel a policyholder to retain an attorney before a dispute even became eligible for judicial review, because the substantial evidence standard would necessitate a legal expert to build a record for later judicial review. The drawn out process created by timelines in the bill would increase the time and resources both the association and policyholders had to invest in claims disputes. Furthermore, the policyholder would bear a tremendously unfair burden to use as many financial resources as possible due to being pitted against a highly sophisticated opponent equipped with legal counsel and scientific experts.

The arbitration and review process would create additional duties for the association for claims disputes, thereby eliminating any efficiency it may create in other areas. It would create more responsibilities for the association than it could handle. The bill would place policyholders at the mercies of the insurance commissioner, unidentified review panels, and the association. Furthermore, it would serve to discourage the association's policyholders from pursuing disputes through to completion because of the complex and drawn out process.

Trial. Access to a jury of peers would be restricted for claimants through provisions mandating use of the dispute system created by HB 3. Jury trials are essential. Following Hurricane Ike, insurance adjustors, the association, the Legislative Oversight Board, the State Office of Administrative Hearings, and the Texas Department of Insurance all failed to protect policy holders. The judicial process is the last and most effective line of defense consumers have to ensure they are treated equally and made whole under their insurance policies. Restricting access to jury trials would prevent fact issues normally exposed by the jury-trial process from ever being brought to light.

Transparency. Even with the increased transparency and ethics rules provided by HB 3, the association's policyholders would be relegated to second-class policy holders, left with fewer remedies and redress methods than all other insurance consumers in Texas. The bill would effectively punish coastal policyholders for the actions of the agency created to protect them by stripping these consumers of essential protections and remedies granted by chs. 541 and 542 of the Insurance Code. Many of the association's policyholders already are held in a captive market with no bargaining power in negotiating policy terms, and this bill would make this group increasingly vulnerable to unfair treatment by the association.

OTHER
OPPONENTS
SAY:

HB 3 would not improve the broken dispute system because it fails to address the source of most of the disputes — inefficient and inequitable claims adjusting. The bill should adopt a single-adjuster claims process that would use the qualified, competent adjusters of large companies already in the practice of adjusting these claims. Consumers would be protected from unqualified adjusters seeking to take advantage of a broken system, and the association could experience some cost savings by using a very streamlined system, which currently is working well for other states.

The bill would be ineffective for solving windstorm problems in Texas because it would continue the existence of the association. The government should not be involved in the insurance market. Because the market would more effective in setting the costs of premiums for this very special type of coverage, the association should not be involved in regulating insurance premium rates. Additionally, because the bill would not require the association to purchase reinsurance, its current practice of bond financing would continue to be insufficient for its obligations. The government should not be involved as a regulator or a participant in the insurance market.

NOTES:

A related bill, SB 3 by Carona, was considered in a public hearing by the Senate Business and Commerce Committee on June 14 and left pending.