SUBJECT: Changing fund structure and board of directors of TWIA, requiring study

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Muñoz, G. Bonnen, Guerra, Meyer, Paul, Workman

1 nay — Frullo

2 absent — Sheets, Vo

SENATE VOTE: On final passage, April 27 — 23-7 (Burton, Hall, Huffines, Nelson, Perry, V. Taylor, Uresti)

WITNESSES: *(On House companion bill, HB 2245)*
For — Ann Bracher Vaughan, Port Aransas Chamber of Commerce; Jeff Branick, Jefferson County; Brent Chesney, Nueces County; Foster Edwards, Corpus Christi Chamber of Commerce; Nelda Martinez, City of Corpus Christi; Diane Probst, Rockport-Fulton Chamber of Commerce-Coastal Bend Windstorm Coalition; Jim Rich, Greater Beaumont Chamber of Commerce; James Skrobarcyk, Builders Association Corpus Christi; Lee Zapp, Coastal Windstorm Insurance Coalition; Greg Smith; Jim Wade; (*Registered, but not testifying:* Les Findeisen, Texas Trucking Association; Daniel Gonzalez, Texas Association of Realtors; Colleen Mcintyre, City of Corpus Christi; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; Dale Peddy, Entergy Texas; Stephen Scurlock, Independent Bankers Association of Texas; Roy Callais; Joe Daughtry; Mike Hamilton; Donna Wade)

Against — Fred Bosse, American Insurance Association; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Josiah Neeley, R Street Institute; Bill Peacock, Texas Public Policy Foundation; Jay Thompson, Association of Fire and Casualty Companies of Texas (AFACT); (*Registered, but not testifying:* Kari King, USAA; John Marlow, ACE Group; Paul Martin, National Association of Mutual Insurance Companies; Anne O'Ryan, Interinsurance Exchange, Auto Club County Mutual; Joe Woods, Property Casualty Insurers Association of

America)

On — Lee Deviney, Texas Public Finance Authority; John Polak, Texas Windstorm Insurance Association; Elisabeth Ret, Texas Department of Insurance; (*Registered, but not testifying:* Marilyn Hamilton and Brian Ryder, Texas Department of Insurance; John Hernandez, Texas Public Finance Authority; James Murphy, Texas Windstorm Insurance Association)

BACKGROUND: Insurance Code, ch. 2210, governs the Texas Windstorm Insurance Association (TWIA). TWIA's primary purpose is to provide windstorm and hail insurance on the Texas coast as a residual insurer of last resort. TWIA's funding sources include insurance premiums, the Catastrophe Reserve Trust Fund, public securities, and reinsurance.

Ch. 2210, subch. M regulates public securities that can be used by TWIA to cover the costs of certain losses claimed. "Public security" includes a debt instrument issued by the Texas Public Finance Authority.

Under sec. 2210.051, all property insurers authorized to engage in the business of property insurance in Texas are required to be members of TWIA, unless by law they are unable to provide windstorm and hail insurance statewide.

Sec. 2210.052 requires the members of TWIA to participate in insured losses and operating expenses in excess of premiums and other revenue in proportionate amounts. The member's share would be in the proportion that the net direct premiums of that member from the prior year bears to the aggregate net direct premiums by all of the members.

DIGEST: CSSB 900 would change the funding structure of the Texas Coastal Insurance Association (TCIA), currently known as the Texas Windstorm Insurance Association. The bill also would change the composition of the board of directors and require a biennial study.

Funding structure. The bill would specify the order of funds to be used to pay for losses not covered by TCIA premiums, other revenue, or the Catastrophe Reserve Trust Fund (CRTF) in a catastrophe year where an occurrence caused insured losses in a catastrophe area as designated by the commissioner of insurance (commissioner). TCIA would pay losses in order from:

- proceeds of class 1 public securities issued on or before June 1, 2015;
- class 1 member assessments not to exceed $500 million per year;
- proceeds of class 2 public securities not to exceed $250 million per year issued on or after the date of the occurrence;
- class 2 member assessments not to exceed $250 million per year;
- proceeds of class 3 public securities not to exceed $250 million per year issued on or after the date of the occurrence;
- class 3 member assessments not to exceed $250 million per year; and
- reinsurance and alternative risk financing mechanisms.

If member assessments were used to cover losses, regardless of the class, the bill would require TCIA, with the approval of the commissioner to notify each member of the amount of their assessment. The assessment would be determined by the same method used to determine each member’s share of insured losses and operating expenses. A member could not recoup an assessment through a premium surcharge or tax credit.

Public security obligations. TCIA is required under current law to repay public security obligations that it incurs. class 1, 2, and 3 public securities would be paid first from TCIA’s net premiums and other revenue. class 2 and 3 public securities then would be paid with a catastrophe area premium surcharge, if net premium and other revenues were not sufficient to pay the securities, not member assessments as under current law.

The premium surcharge noted above would be assessed to each holder of a TCIA policy. The amount of the premium surcharge would have to be sufficient to pay relevant debts not covered by available funds. Failure of a policyholder to pay the premium surcharge would be same as failing to pay a premium for purposes of policy cancellation.

Board of directors. The bill would abolish the current board of directors appointed by the commissioner, and the terms of the members serving on the board would expire on October 1, 2015. The bill would create a new board to include:

- three members from the insurance industry who actively wrote and renewed windstorm and hail insurance in certain counties located near the coast;
- three members who resided in those counties, one of whom was a licensed property and casualty agent; and
- three members from an area of the state located more than 200 miles from the coastline.

The commissioner also would be required to appoint three non-voting ex officio members to advise the board. These members would hold a state or political subdivision elective office. One member would reside in the northern portion of the seacoast territory, another in the southern portion, and the third in an area not located in the seacoast territory.

Reinsurance and alternative risk financing. The bill would specify that the CRTF could be used only for purposes directly related to funding the payment of insured losses, the payment of catastrophe losses not covered by premiums or other revenue, and purchasing reinsurance or an alternative risk financing mechanism.

The bill would require TCIA to purchase reinsurance or alternative risk financing mechanisms in an amount sufficient to cover the probable maximum loss for a catastrophe year with a probability of one in 100. That amount would be used only if the other fund sources did not cover the insured losses resulting from the one-in-100 year storm.

Biennial study. The bill would require the Texas Department of Insurance to conduct a biennial study of market incentives to promote participation in the voluntary windstorm and hail insurance market in the Texas seacoast territory. The results would be included in the report submitted to the Legislature each biennium.

Management. The bill would allow the commissioner to contract with a licensed or certificated administrator to manage TCIA and administer the required plan of operation. The contract would be required to be in the best interest of policyholders and the public.

This 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 September 1, 2015.

SUPPORTERS SAY:

CSSB 900 would protect the future of the coast by providing a reliable funding structure, changing the composition of the board of directors, and requiring the Texas Coastal Insurance Association (TCIA) to conduct a study to improve market incentives.

TCIA funding. The bill would provide reliable and predictable financing by changing the order of funds used by TCIA to pay catastrophe losses, beginning with premiums, revenue, and the Catastrophe Reserve Trust Fund, then class 1 public securities issued before June 1. Next, class 1 member assessments would be used, which would be less expensive because there would not be associated fees and interest, as with bonds.

The bill would ensure that TCIA had the funds needed for a one-in-100 year storm in any given year. This would benefit all Texans because it would prevent market disruption in the aftermath of a storm.

CSSB 900 would reduce TCIA’s reliance on bonds by changing the order of funds used, which would lower inland costs. The repayment of certain public securities would be covered by catastrophe area premium surcharges. This would ensure that coastal policyholders would bear the majority of risk in the event of a catastrophic storm.

Board of directors. The bill would change the composition of the board of directors to include more members from outside the coast area and insurance industry to offer the perspective of the public and better guide decisions. This would balance the interests of all stakeholders in the state and strengthen statewide input on decisions related to policymaking, rate setting, and financial operations.

Biennial study. The best way for TCIA to act as an insurer of last resort is to increase voluntary participation in the windstorm and hail insurance industry. The bill would require TCIA to conduct a biennial study of market incentives to spur innovative solutions to create a competitive marketplace. This would result in a voluntary depopulation of TCIA and would reduce state reliance on it.

OPPONENTS SAY:

TCIA funding. CSSB 900 would not solve the problems with TCIA's funding and could increase costs statewide. The bill would increase the costs for inland policyholders by increasing TCIA's reliance on member assessments to pay catastrophe losses. Member assessments would be used early in TCIA's funding structure, and the members would build the assessments into rates and premiums charged to their policyholders.

The bill also would not help TCIA become an insurer of last resort because it does not charge market rates. This is why its premiums do not cover more expenses and why there are not more insurance providers stepping into the windstorm and hail insurance industry. Other providers are unable to compete with the below-average rates. If TCIA charged appropriate premiums, it would not need to use bonds or assess members in the event of a catastrophe because it would have sufficient funds in the form of revenue and premiums.

The bill would force all Texans to bear the financial burden that belongs solely to the coast, an area whose inherent risks are well known. Statewide funding should not be used to build homes in hurricane zones where the risk of property damage is obvious. It is not appropriate for the government to sponsor insurance.

Board of directors. The bill would change the composition of the board of directors to weigh heavily in favor of coastal residents by requiring six of the nine members to either reside or work in certain coastal counties. This imbalance in power would allow the coastal majority to run the board and make decisions in their favor, such as not allowing rate increases.

NOTES: The House companion bill, HB 2245 G. Bonnen, was considered in a public hearing of the House Committee on Insurance on April 22 and left pending.