

SYNOPSIS OF HB 4733  
AS FILED 3/30/09

1. Purpose of Texas Windstorm Insurance Association (TWIA) is changed to eliminate inadequate 'fire' insurance, and to eliminate 226 Counties as possible catastrophe areas.
2. Every even numbered year, TWIA must report any proposed changes in the law, and any operations information requested by Texas Department of Insurance (TDI).
3. Certain single family residences in C.O.B.R.A. units will be insurable with a surcharge of not less than 10%.
4. In most cases, rulemaking for TWIA will be changed from notice and hearing at which any person may appear and testify, to the formal Subchapter A, Chapter 36 proceeding.
5. TDI shall maintain a list of all voluntary insurers engaged in the business of property and casualty insurance in the 28 county seacoast territory.
6. TDI shall develop incentive programs to encourage insurers to write voluntarily.
7. Terminology has been changed to enhance the effort to obtain "tax exempt" status for TWIA from the IRS.
8. Restores the loophole, by which non admitted members of an insurance company group have been included in TWIA responsibilities.
9. Changes a member company's possible reduction or elimination from TWIA assessments by writing voluntarily to prohibit a 'maximum' cap, but to require a 'minimum' cap.
10. **"Funding"** to pay claims and other costs would be changed [per year] to:
  - (a) TWIA annual premiums; if not sufficient, then *[Est. \$50 M];*
  - (b) available reserves; if not sufficient, then *[None]*
  - (c) **pre or post event** "Catastrophe Area" public securities, up to 45% of "Required Solvency Level" [RSL]; if not sufficient, then *[Est. \$1.04 B],*
  - (d) **pre or post event** Class 1 public securities, up to 50% of RSL; *[Est. \$1.15 B],*  
if not sufficient, then
  - (e) **post event** Member Company public securities, up to \$500 Million *[\$500 M],* if  
not sufficient, then
  - (f) **post event** Class 2 public securities, up to \$3 Billion *[\$3 B],* if not  
sufficient, then
  - (g) reinsurance, if any ("at any level") *[? Available and Affordable amount?]*

2009 Est total: up to \$2.2 Billion before an event, plus \$3.5 Billion after an event, + reinsurance, if any.  
["Required Solvency Level" would increase from initial 50 year storm up to 100 year storm, AND  
additionally with increases in the size of TWIA—a predictable result of this bill—over the next 3 years].  
Member Insurance Companies \$300 Million [non recoverable], and unlimited additional  
assessments [recoverable by premium tax credits] are repealed.

11. Eligible surplus line insurers may not be TWIA members, or subject to assessments.
12. Surplus line policies covering 1<sup>st</sup> Tier real property or contents shall pay a 5% policy fee, which is paid into the CRTF.
13. The TWIA **board of directors**, as of January 1, 2010, shall be 7 Governor appointed directors, which serve at the discretion of the Governor.
  - a) 3 shall be representatives of member insurers;
  - b) 2 shall be public members, only 1 of which resides in or owns property in the 1<sup>st</sup> Tier, and is a TWIA policyholder.
  - c) 2 shall be licensed general property and casualty agents, not captive agents, only one of which maintains a principal office in the 1<sup>st</sup> Tier.
  - d) All must have demonstrated experience in insurance, general business, or actuarial principles sufficient to make the success of the association probable.
14. The board of directors shall elect its officers: presiding officer, assistant presiding officer, and secretary-treasurer.
15. Directors are authorized to meet by electronic media for any subject matter, if:
  - (1) proper notice is provided;
  - (2) specifying location of the meeting;
  - (3) audible to the public at that location
  - (4) 2 way audio communication for a quorum of directors is maintained.
16. Board of Directors Primary Objectives are to ensure TWIA:
  - (1) complies with the law and rules;
  - (2) complies with sound insurance principles; and
  - (3) meets Chapter 2210, Texas Insurance Code Solvency standards.
17. Eligibility for TWIA coverage is made conditional on unavailability of voluntary market coverage, evidenced by rule to be set out in the Plan of Operation.
18. Evidence of Flood insurance in force is required for new or renewal policies in Flood Zone “V” or other similar storm wave hazard zone. If flood insurance is not available, the policy may be written without flood insurance, with a surcharge of not less than 10%.
19. Each TWIA application and policy must include a notice (**WARNING LABEL**), set out in the law, that neither state or federal government guarantees TWIA policies; that **“...you may be paid less than the full amount of damages that you suffer”**.

TDI is required to provide an internet source of information showing TWIA exposure and available resources.
20. Building code compliance inspections and certifications are removed from TDI and transferred to TWIA effective September 1, 2010.
21. Qualified inspectors are defined as those meeting TWIA requirements (was TDI).

22. Appointment of Engineers as inspectors is changed from TDI to TWIA, after consultation with the commissioner.
23. A property is not in compliance if it has not been inspected or certified [WPI-8] as in compliance with applicable building codes, and is subject to a Surcharge of not less than 10%.
24. TWIA shall file its manual and rates in the manner required by Section 2251.101, Texas Insurance Code [TIC]. TWIA may use the filed rate without prior commissioner approval, subject to possible commissioner DISapproval pursuant to Chapter 2251 TIC. The commissioner may also disapprove of an existing rate as provided in Section 2251.104.  
**REPEALED:** Notice, hearing, commissioner power to modify; effectively, all present means by which unilateral action can be opposed *in advance* are abolished.
25. Rate development would be required to include:  
**-catastrophe MODELS;** [2008: +52%]  
**-ADDED loadings for Catastrophe Reserve Trust Fund [CRTF];** [2008: =15%]  
**-SECUTIES COSTS;** and would be **prohibited to consider credit** for non rate provided sources of payment of claims and expense, if any. [2009: over 120%]  
**REPEALED:** Existing ‘experience based’ rate development legal requirements; AND 10% CAP ON RATE CHANGES.  
**AGENT COMMISSIONS WOULD BE REDUCED TO 10% OR LESS** [now=16%]
26. TWIA may establish rating territories with unlimited variable rates. A person aggrieved by a rate may proceed under Chapter 2251 TIC.  
**REPEALED:** Uniformity of TWIA rates.
27. The commissioner shall adopt rules for TWIA to make payments to the CRTF.  
 Use of CRTF to pay for a mitigation and preparedness plan is repealed  
 At the end of each calendar or policy year, TWIA shall pay the net gain from operations to the CRTF or a commissioner approved reinsurance program.
28. With commissioner approval, TWIA may pay to the CRTF AND purchase reinsurance, **here characterized as “operating expense”** that operates in addition to or in concert with the CRTF, public securities, and member assessments. [rates est. +25%]
29. TDI may fund the mitigation and preparedness plan using its available funds. [use of \$1 Million per year of CRTF funds is repealed].
30. TWIA, or any interested party may, within 30 days of a commissioner action, request a hearing regarding the action, but not thereafter. This does not include rate matters.

## **SUBCHAPTER “M” Public Securities Program [partially summarized]**

Sections. 2210.601 Purpose, .602 Definitions, .603 Applicability of other Laws, .604 Issuance of Public Securities Authorized, .605 Terms of Issuance, .606 Additional Covenants, .607 Public Securities Proceeds, set up the issuance of securities by the Texas Public Finance Authority (TPFA), to provide funds for TWIA insurance. The TWIA board requests the amount and Class of securities, the TPFA board decides the way to accomplish the request at the lowest practicable cost, controls the mechanics and documentation, determines the resources pledged to secure the securities, and sells the securities. The securities are NOT obligations of the State of Texas.

.604 Uses of Public Securities Proceeds allowed include payment:

- (1) to establish/maintain reserves for claims;
- (2) of incurred claims and operating expenses;
- (3) to purchase reinsurance;
- (4) of securities cost and administrative expense;
- (5) to provide a public security reserve;
- (6) of capitalized interest and principal, up to 2 years.

.609 Securities Repayment [first repayment category, **pre event**] *TWIA shall pay all interest and may pay principal* on any **pre event** [2210.058 (c) and (d)] securities obligations from existing premiums; if TWIA it is unable to pay the obligations and administration expense, if any, with existing premiums, TWIA shall pay in accordance with Sections .611 and .612, as applicable.

.610 Securities may be refinanced; sources of payment must remain unchanged.

.611 “Catastrophe Area” Securities [2210.058 (c)] [second repayment category, **pre event**] are payable by **Surcharges on TWIA POLICIES ONLY**. [2009 Est + 120%] The “service fees” [surcharges] to pay securities require annual determination, commissioner approval [subject to hearing if requested within 10 days], of amounts adequate to pay all obligations, are to be paid to TWIA in the manner determined by rule, are separate charges from premiums—are neither commissionable nor taxable—but, like premium, are grounds for policy cancellation for non payment.

.612 Class 1 Securities [third repayment category, **pre event**] are payable by surcharges to be collected by each insurer, TWIA, and FAIR Plan on **all property and casualty policies in the CATASTROPHE AREA**, except Worker’s Compensation, accident and health, and medical malpractice policies [WC/A&H/MM]. [Est. +6% max] The “service fees”, surcharges, to pay securities require annual determination of amounts, on commissioner approval [subject to hearing if requested within 10 days], which shall be adequate to pay all obligations, paid to TWIA in manner determined by rule, are separate charges from premiums—neither commissionable nor taxable—but like premium, are grounds for policy cancellation for non payment.

.613 “Member Company Securities” [third repayment category, **post event**] are to be repaid by annual assessment of member companies in proportion to their participation share [Sec. 2210.052] of TWIA. *[Est. \$64 M/yr max]*

.614 Class 2 Securities [fourth repayment category, **post event**] are payable by surcharges to be collected by each insurer, TWIA, and FAIR plan from **all property and casualty policies in the STATE**, except WC/A&H/MM. *[Est. +1.9% max]*  
This section provides administrative provisions comparable to section .612 above.

.615 Exemption from State Taxation, .616 Authorized Investments, .617 State Pledge of Rights and Remedies, .618 Payment Enforceable by Mandamus ALL seem to be “boiler plate” provisions important for securities, but not likely to directly affect TWIA premiums, policies, or operations.

## NEW SUBCHAPTER N: TWIA SOLVENCY REQUIREMENTS

.651 and .652 TWIA directors are responsible to maintain a “required solvency level” [RSL], defined as “...internal funding necessary to pay 100% of losses... from a Probable Maximum Loss [PML]...” determined under .654. This funding must derive from a combination of: (1) TWIA reserves, (2) CRTF, (3) any reinsurance, (4) Catastrophe Area securities [limited to 45% RSL--.058 (c)], and (5) Class 1 pre event and post event securities [limited to 50% RSL--.058 (d)].

.653 and .654 By April 1 yearly, directors must determine the appropriate PML:  
2009 and 2010: not less than 1 in 50 year occurrence; [*Est \$2.3+ B\**],  
2011 not less than 1 in 75 year occurrence; [*'09 X 128%?\*]*,  
2012 and thereafter not less than 1 in 100 year occurrence; [*'09 X 155%\**],  
based on the average of at least 2 recognized catastrophe models.

By April 15 yearly, directors must certify achievement of RSL requirements, or cease writing new coverage.

No Member Company Securities or Class 2 Securities can be included to satisfy the RSL calculation.

Section 36. **2251.003 TIC** is amended to include Chapter 2210, Subchapters B Administration, and C Board of Directors.

Section 37. **REPEALS** the following sections of Chapter 2210, TIC:

- .003 (5) and (12), dealing with ‘inadequate fire insurance’;
- .059 dealing with premium tax credit;
- .351 (b) dealing with ‘form’ filings;
- .352 dealing with annual manual rate filings;
- .353 dealing with amended filings;
- .354 dealing with additional supporting information;
- .355 (c) dealing with rate ‘standards’ [reasonable, adequate, etc.];
- .355 (d) dealing with grouping risks by class;
- .355 (e) dealing with ‘individual’ rates;
- .356 (a) dealing with uniformity of rates;
- .356 (c) dealing with ‘non catastrophe’ rate development requirements;
- .356 (d) dealing with 10 year ‘non catastrophe’ experience requirement;
- .359 dealing with 10% maximum rate changes;
- .360 dealing with inclusion of all collected premiums in experience periods;
- .502 (c) dealing with directors right to propose increased maximum policy limits.

Section 38: The existing board of directors is abolished 12/31/09; governor shall appoint the new board to terms beginning 1/1/10. Members of the existing board are eligible for appointment to the new board.

Section 39: commissioner shall adopt new rules to implement 2210.356 (b-1) [procedure for approval of models and their methodology of use], not later than 180 days after the effective date of this act.

Section 40: Member Company assessments may not be made before the end of the state 2009-2010 biennium or until the comptroller certifies existing tax credits to Members, whichever is earlier.

Section 41: **EFFECTIVE DATES:**

(a) This Act is effective ‘immediately’ if passed by 2/3 vote of both chambers; otherwise, effective September 1, 2009.

(b) The following are effective September 1, 2010: Sections 2210.

- .251 [code inspections by TWIA],
- .252 [IRC code]
- .254 [qualified inspectors]
- .255 [TWIA appoint engineers]