

SUMMARY of Third Committee Substitute, SB 14 FRASER, April 13, 2009
Changes from original bill: underlined if added, [bracketed if omitted]

This bill is comprehensive and complex; posing major changes to Chapter 2210, Texas Insurance Code, as follows:

- Repeals possibility of including *FIRE* insurance; repeals possibility of extending Catastrophe Area designation to any area not in the *28 Seacoast Counties*; adds new requirement that association policies are only available as a *residual market of last resort, not competitive, and if NO VOLUNTARY COVERAGE IS AVAILABLE*.
- Makes the association subject to Sunset Commission review in 2015.
- Changes the present notice, informal meeting, any party participate process for commissioner review of association matters, to Chapter 36, Subchapter A procedure.
- Changes language intended to qualify the association for IRS tax exempt status.
- Provides that a property insurer, new to Texas, would have *no "participation"* in association assessments until the second anniversary of its membership in TWIA.
- Repeals .058 Funding and .059 Premium tax credit notice; Adds Subchapter B – 1, PAYMENT OF LOSSES. providing the following sources of funds in 2210.071:
 - \$ [400] 250 Million [annual] assessment of members in 2009 and 2010; by participation share; into the Catastrophe Reserve Trust Fund [CRTF], which is not recoupable “through a premium surcharge”; and
 - A one year 3% surcharge by “each insurer that engages in ... property and casualty... business in this state” on policies *in the Catastrophe Area* except TWIA, which shall collect a 20% surcharge on its policies; and
 - Four types of policies are exempt from surcharges: Federal Flood, Worker’s Comp, Accident and Health, and Medical Malpractice.

Losses are payable from current year net premiums. If losses exceed net premium:

- .072: From TWIA ‘available reserves’ and CRTF; or TWIA may borrow from ‘any market source’; or From reinsurance, Class 1 or 2 public securities, or “financing instruments”.
- .073 If CRTF funds are used, then CRTF shall be “replenished” within 30 days after an occurrence, by participation assessment, provided that assessments not exceed \$ [400] 250 Million per year. Assessment may not be recouped by premium surcharge. Purchase of reinsurance must be cost/benefit ‘justified’; it can be paid from premiums, other revenue, or *the CRTF*.
- .074 Losses not paid under these funding sources may be paid with Class 1 ‘pre-event’ securities [limited to \$ [500] 750 Million per occurrence][must be used prior to any Class 2 ‘post-event’ securities], available reinsurance, or “financial instruments” [securities or financial instruments are payable by premium surcharges per **.612**], or in combination.
- .075 Losses not paid under the above may be paid with Class 2 ‘post-event’ securities [not to exceed \$1 Billion per occurrence], available reinsurance, financial instruments, or a combination. Securities or financial instruments are payable by premium surcharges per **.613**
- .076 Losses not paid under the above may be paid by \$300 Million per occurrence participation assessment of members up to twice per year. Assessments under this

subsection may be recouped by one year surcharge on all property and casualty policies in the *state*, with the exception of the same four types policy.

- .077 Losses not paid under the above may be paid from Class 2 post-event securities [not to exceed \$500 Million per occurrence], available reinsurance, financial instruments, or a combination. Securities or financial instruments are payable by premium surcharges per **.613**.
- .078 Losses not paid under the above may be paid from Class 2 post-event securities [up to \$2.8 Billion per occurrence], available reinsurance, or a combination. Securities shall be repaid by premium surcharges per **.613**.
- .079 Losses not paid under the above *and any available reinsurance* may be paid by additional participation assessment of members. This assessment *may not be recouped by surcharge [or tax credit]*.
- .080 TWIA must notify commissioner of tax creditable assessments.

- .102 As of January 1, 2010, the new 9 member board of directors would be appointed by the commissioner of insurance, and serve at the discretion of the commissioner. It would be comprised of 4 insurance company representatives, 3 public members [at least one of which does not reside in or own Catastrophe Area property], and 2 property and casualty agents [only 1 of which maintains a principal office in a first tier county]. Directors must be from different counties.
- The commissioner would also appoint an inspection-advisor non voting director, a structural engineer resident in the first tier of counties.
- Directors elect officers.

.1051 Subject to prescribed conditions, TWIA meetings could be conducted by telecommunications.

.202 Requires proof, for new or renewal policies, in the form of two declinations, that coverage is unavailable from the voluntary market.

.203 If flood insurance is available, it must be in force before TWIA coverage can be obtained, in a flood insurance “V” zone. [If flood insurance is not available at the property location, then TWIA coverage is available with a 30% additional surcharge]. The agent must state with the application that he possesses proof of declinations and flood coverage in force (or that it is unavailable).

.2031 From the effective date of the act, for two years, every residential policy and contents which is not the PRIMARY RESIDENCE of the owner is subject to a 20% surcharge. TWIA shall pay all such surcharges in to the CRTF.

.204 The plan of operation shall provide at least 180 days ‘minimum retained premium’, subject to stated exceptions..

.2041 “Nonrefundable surcharges” are NOT refundable.

.251 Conduct of Building Code Inspections would be changed from Texas Department of Insurance to TWIA, including responsibility for inspectors, subject to TDI ‘oversight’.

.251 (e) Previous voluntary policy coverage must have included wind and hail perils, and been in force within past 12 months to support eligibility for TWIA*.

.251 (f) Property covered June 1, 2009 by TWIA, is ‘eligible’ for TWIA*.

.251 (i) TWIA shall charge a reasonable inspection fee.

.251 (j) TDI shall monitor TWIA inspections.

.251 (k) TWIA must withhold certification of code compliance if fees are not paid, and plan of operation required “DOCUMENTATION” is not received within 6 months. Reinspection is allowed.

.258 Certification of compliance with applicable building codes will be mandatory from [1/1/10] the effective date of this act for eligibility for TWIA coverage.

OMITTED in this substitute:[with limited exceptions--some pre 1/1/10 residential, schools, post-secondary educational institutions structures, are grandfathered if insured in the voluntary market within past 12 months, or in certain self insurance programs, but incur a 30% surcharge, payable into the CRTF.]

.259 Structures eligible under .251 (d) pre 1988; .251 (e) *previously voluntarily insured; and .251 (f) *insured by TWIA 6/1/09; are SURCHARGED 30% from the effective date of this act for every new or renewal TWIA policy. These surcharges are paid to the CRTF.

OMITTED: [.260 Structures constructed, repaired, or to which additions were made prior to 1/1/88, OR which have been certified [WPI-8] by TDI may not be surcharged.]

.351 TWIA may “file and use” new rates starting 30 days after the filing, that are 105% of existing rates or less, meets other criteria, and the commissioner has not disapproved the new rates (stating his reasons, if disapproved).

.352 (a-1)TWIA ‘annual’ filings could be “filed and used” under similar conditions. Rates could be approved or disapproved by the commissioner, but would no longer be subject to ‘modification’.

Notice and hearings are repealed; retained are: a “reasonable opportunity” for any interested person to review and copy a filing, and to submit written comments or information related to the filing, or, under .353, of an amended filing.

.355 Adds the requirement that ‘models’ be used in adopting rates, and allows use of territories with variable rates.

.364 AUTOMATIC RATE INCREASES: The rate for new or renewal TWIA policies automatically increases “for all purposes” by 10% on January 1 of each of the following years: 2010, 2011, and 2012.

.364 (c) states: these rate increases are “PRESUMED TO BE JUSTIFIED”.

.552 CLAIM DISPUTES, VENUE: States that .551 is the “exclusive means” to pursue and action “for policy benefits” .551 appears to describe an administrative remedy ONLY; including appeal to the commissioner, **within 30 days**, using Chapter 36, Subchapter D procedures.

SUBCHAPTER M is added, setting out details of the newly authorized means to obtain funds by issuance of public securities by the Texas Public Finance Authority [TPFA] at the direction of the association, and with approval by the commissioner; the means authorized to repay each type such securities; and clarifying that the faith and credit of the State of Texas does not guarantee the securities.

.604 The association requests the amount, term, and type [Class 1 or 2], the commissioner approves, TPFA issues the securities.

.608 Securities proceeds may be used to pay TWIA claims, operating expenses, purchase reinsurance, and provide a securities reserve, pay administrative costs, pay securities 'capitalized' principal and interest for the period determined necessary by TWIA .

.609 "The **association** shall pay **all public securities obligations from 'available funds'...**" *unless: "the association determines that it is unable..."*, *in which case the association shall pay "...in accordance with 2210.612 and 2210.613 as applicable"*.

.612 Class 1 pre-event securities shall be paid with surcharges by all insurers added to all policies "...in a catastrophe area.", except the same four types of policy named in .071. TWIA policy surcharges must be "...at least **twice**... all other policies".

.613 Class 2 post-event securities issued under .075, .077, and .078, AND financial instruments issued under .075 and .077 shall be paid with surcharges by all insurers added to all policies "... in this state.", except the same four types of policy named in .071. **70%** of a .613 surcharge must come from **Catastrophe Area** policies.

TWIA policies .613 surcharge "...must be **at least twice** ... all other new or renewal policies."

REPEALED the following Chapter 2210 Texas Insurance Code subsections

:.003 (5) and (12) permitting TWIA to serve areas with insufficient fire insurance market.

.058 Claims funding section, and .059 Notice of potential state tax credit assessments.

.205 Forms and rate credits for exclusion of perils from a policy.

.206 Certain insurers inability to insure governmental property.

.256 Discipline of code inspectors.

.257 TDI code inspection fees.

.356 Experience Rate development criteria.

.359 Ten percent rate 'cap' is repealed.

.360 Include past surcharges in rate development.

.363 May allow rate reduction for companion flood policy.

Subchapter G Requires rate credit if stronger codes are adopted.

[2211.104, Insurance Code is amended to allow the commissioner to establish by rule a method of "coordinated recoupment" by insurers of costs to cover a **TWIA deficit**, which shall not include premium tax credits.]

Section 53. Appropriates \$500 Million from general revenue, subject to prior approval by the Governor and Legislative Budget Board, to provide "emergency financing" to the commissioner for "support of the financial integrity of TWIA".

EFFECTIVE DATES:

Applications for coverage are controlled by this act from its effective date.

Causes of action accruing after the effective date are governed by new 2210.552.

The initial \$250 Million assessment is due within 30 days of the effective date.

Commissioner must adopt new rules within 30 days.

Building inspection/certification changes effective date is September 1, 2009.

New appointed board of directors start January 1, 2010.

Directors must recommend plan of operation changes by March 1, 2010.

With exceptions, no TWIA code inspections or certificates are required to replace Texas Department of Insurance inspection and certificates (WPI-8) obtained before Sept. 1, 2009.

Coastal Windstorm Insurance Coalition, Lee Otis Zapp, Jr., GWACI, April 14, 2009