2024 Biennial Report to the 89th Texas Legislature

Letter from the General Manager

August 14, 2024

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lt. Governor
The Honorable Dade Phelan, Speaker of the House
Members of the Sunset Advisory Commission
Members of the Senate Business & Commerce Committee
Members of the House Insurance Committee
The Honorable Cassie Brown, Commissioner of Insurance

Dear Governors, Speaker, Committee Members, and Commissioner,

Pursuant to Texas Insurance Code §2210.0025, I submit the Biennial Report of the Texas Windstorm Insurance Association (TWIA or Association) on behalf of its Board of Directors (Board). Insurance Code 2210.0025 requires the Board to submit to the commissioner, the appropriate committees of each house of the legislature, and the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium on or before December 31 of each even-numbered year. The enclosed report summarizes recent changes made to implement legislation passed by the 88th Legislature and proposed legislative changes for your consideration in the 89th Legislative Session. The recommendations in this report cover both operational matters and topics related to TWIA's catastrophe funding.

The Texas Legislature created TWIA in 1971 after several storms, including Hurricane Celia (1970), caused private market insurers to begin excluding wind and hail coverage from their coastal homeowners' insurance policies. By providing this coverage, the Association contributes to the provision of an adequate market for windstorm and hail insurance in the seacoast territory of Texas, which the Texas Legislature has determined is necessary for the economic welfare of the state.

Both legislators and the TWIA Board have emphasized the importance of addressing the Association's catastrophe funding structure. Since 2021, TWIA has seen its policy count increase after a period of decline. The Association's exposure, which is the total insured value of the properties that TWIA insures, has also increased. This growth impacts the amount of funding the Association must secure for each hurricane season to pay claims following a catastrophic storm event and brings additional urgency to efforts to ensure a more sustainable financial structure for the Association.

In the 89th Legislative Session, TWIA looks forward to continued collaboration with lawmakers and the Texas Department of Insurance on these issues and any others affecting the Association. Thank you for the opportunity to provide this information for your consideration.

Should you have any questions or need additional information, please do not hesitate to contact me at DDurden@TWIA.org or (512) 505-2255 or Anna Stafford, Senior Manager at astafford@twia.org or (512) 505-2133.

Sincerely,
David Durden
General Manager

Contents

TWIA Board of Directors

Name	Member Representation
Chandra Franklin Womack, Chair	First Tier Coastal Representative
Georgia R. Neblett, Vice Chair	First Tier Coastal Representative
Karen Guard, Secretary-Treasurer	Insurance Industry Representative
Tim Garrett	Non Seacoast Territory Representative
Michael Gerik	Insurance Industry Representative
Peggy Gonzalez	First Tier Coastal Representative
Esther Grossman	Insurance Industry Representative
Mary Keller	Non Seacoast Territory Representative
Tony Schrader	Non Seacoast Territory Representative

Status of 88th Legislative Session Changes

In 2023, the 88th Legislature enacted five of the 11 legislative recommendations included in TWIA's 2022 Biennial Report[1].

A description of these law changes and TWIA's actions and progress to implement them are outlined below.

Agent Requirements & Standards | Senate Bill 2232

Authorizes TWIA to establish standards and performance requirements for agents who offer or sell TWIA policies.

Status: TWIA is developing these standards, which will be vetted by the Association's Agent Advisory Group before being implemented in Q4 2024.

Exclude Commercial Risks from Automatic Renewal Process | Senate Bill 2233

Limits automatic policy renewals to residential policies.

Status: TWIA implemented changes to our system and processes in May 2024 to remove commercial policies from the automatic renewal process.

Fully Earned Policy Premiums | House Bill 3208

Requires TWIA to retain the entire annual premium on a policy cancelled by a policyholder unless the policy was cancelled for reasons specified by law.

Status: TWIA implemented this change, applicable to policies effective September 1, 2023 and after.

Claim Appraisal Deadlines | House Bill 3310

Allows the Insurance Commissioner, with the advice of TWIA, to set deadlines for appraisals for TWIA claims.

Status: In early 2024, the Texas Department of Insurance adopted the final rules for this law, which applies to appraisals demanded on or after January 1, 2024.

TWIA Industry Board Vacancies | House Bill 3311

Repeals the requirement that TWIA provide a slate of nominees to the Insurance Commissioner to fill an industry representative vacancy on the Board.

Status: No action was required by TWIA to implement this statutory change.

[1] https://www.twia.org/wp-content/uploads/2022-Biennial-Report-to-88th-Legislature-1.pdf

Proposed Legislative Changes

The table below summarizes seven proposed legislative changes from the TWIA Board of Directors.

Item #	Topic	Description	Page #
1	**Multidistrict Litigation**	Eliminate or make optional TIC Section 2210.575(e) requiring actions against the Association be presided over by a judge appointed by the judicial panel on multidistrict litigation.	Page 6
2	**Premiums Used to Pay Losses**	Revise TIC Section 2210.071 prohibiting the use of current year premiums to pay losses occurring in prior years.	Page 7
3	**FORTIFIED Home Construction**	Consider the feasibility and possible public funding of FORTIFIED home construction and other mitigation programs.	Page 8
4	**Premium & Maintenance Tax**	Exempt TWIA from premium and maintenance taxes.	Page 8
5	**Premium Financing**	Prohibit the use of premium financing for the payment of premiums.	Page 9
6	**Public Security Funding**	Provides options to address concerns with the issuance of public securities in TWIA's funding structure.	Page 10
7	**Reinsurance Funding**	Provides options to reduce the Association's reliance on reinsurance.	Page 11

Proposed Legislative Changes

1 Multidistrict Litigation

Subject: TIC Section 2210.575(e) requires all suits concerning denied claims to be presided over by a judge appointed by the Judicial Panel on multidistrict litigation (MDL). However, the statute does not provide a procedure for securing that appointment, and the existing rules on multidistrict litigation (Government Code Section 74.161 et seq.) do not contemplate appointing presiding judges in individual cases. As a result, no litigant has ever requested an appointment by the MDL panel in the 12-plus years the law has been in effect.

- Plaintiff Stephen Pruski raised this issue in his appeal of a judgment against him. The Corpus Christi Court of Appeals agreed and ruled that all judgments entered without an MDL-appointed judge are void.
- The Texas Supreme Court recently released its opinion reversing the Court of Appeals and agreeing with TWIA that the lack of an MDL-appointed judge does not void a judgment.

Possible Solution: Eliminate the provision requiring an MDL-appointed judge or make the appointment optional to prevent collateral attacks on settled judgments.

- Eliminating or modifying the requirement would reduce future litigation costs and simplify ongoing litigation.
- Clarifying the procedural rules relating to litigation will benefit TWIA policyholders, their legal representatives, and the Association by eliminating uncertainty around this dispute resolution requirement.
- Alternatively, the legislature could explore the option of assigning these matters to jurists who are board-certified in insurance law.
- In lieu of eliminating this provision, staff's proposed bill language to modify this requirement is below:

Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE. (e) If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (d) or any extension under that subsection, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. An action brought under this subsection ~~shall~~ may be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be an active judge, as defined by Section 74.041, Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred.

2 Premiums Used to Pay Losses

Subject: TIC Section 2210.071(b) prohibits TWIA from paying insured losses with premium and other revenue earned in a subsequent year.

- It is relatively common for the estimated ultimate payment on claims to change over time, both favorably and adversely, even after the year in which the claim occurs. This is especially true for events taking place late in the year, late reported claims, and disputed claims.
- For catastrophe years in which insured losses and operating expenses exceed premium and other revenue, adverse development occurring in a subsequent year can be paid in accordance with TIC Chapter 2210 Subchapter B-1.
- For catastrophe years in which insured losses and operating expenses do not exceed premium and other revenue, there is no other source of funds available to pay for adverse development after the net gain from operation for that year has been transferred to the Catastrophe Reserve Trust Fund (CRTF).
- The statute should be amended to specifically authorize TWIA to pay for any adverse loss development beyond what is reserved at the end of the catastrophe year.

Possible Solution: Revise TIC Section 2210.071(b) to limit its prohibition to catastrophe years resulting in losses in excess of premiums.

- This would continue to require all claims occurring in catastrophe years resulting in excess losses, such as 2008 (Dolly and Ike) and 2017 (Harvey), to be paid in accordance with the statutory funding sources outlined in Subchapter B-1.
- It would also allow, in any other year, adverse development to be paid from premiums earned in the year in which the development is incurred, regardless of when the claim initially occurred.
- This would be consistent with industry practice and TWIA's current practice and would comply with statutory accounting principles that recognize changes in loss estimates in the period they become known.
- Staff's proposed bill language for this change is outlined here:

Sec. 2210.071. PAYMENT OF EXCESS LOSSES. (a) If, in a catastrophe year, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses shall be paid as provided by this subchapter.

(b) The association may not pay insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year <u>in excess of premium and other revenue of the association for that catastrophe year</u> with premium and other revenue earned in a subsequent year.

3 FORTIFIED Home Construction

Subject: TWIA does not have any programs associated with FORTIFIED home construction.

- FORTIFIED is a nationally recognized building method that goes beyond building codes to strengthen residential and commercial buildings against specific natural hazards such as high winds and hurricanes. FORTIFIED standards are based on more than 20 years of scientific research and real-world testing by the Insurance Institute for Business & Home Safety (IBHS).
- More resilient construction can improve the availability and affordability of insurance coverage, leading to less community damage, reduced costs of emergency management and disaster recovery resources, and lower insurance losses after a catastrophic event.
- Other coastal states, notably Alabama and North Carolina, have encouraged FORTIFIED home construction for both new and existing homes through a combination of public grants and policy endorsements covering upgrades to the FORTIFIED home construction standards.

Possible Solution: Consider providing funding support from the State of Texas, the CRTF, or other sources for FORTIFIED home construction.

- Alternatively, consider expanding the scope of this recommendation to include TWIA incentives or public funding support for all types of wind mitigation efforts, such as retrofitting existing construction with upgraded opening protections, roof attachments, and other certified improvements.
- In the absence of a request for public funding, implementing this possible solution would not require a legislative change.

4 Premium & Maintenance Tax

Subject: Texas premium and maintenance taxes impact rate indications and lessen the affordability of TWIA policies.

- Due to TWIA's policy growth, the Association paid a record $11.4 million in premium and maintenance taxes in 2023.
- The Association projects paying approximately $13.8 million in premium and maintenance taxes from 2024 operations.

Year	Premium Tax	Maintenance Tax & Other	Total
2010	$6.2 Million	$1.2 Million	$7.3 Million
2011	$6.5 Million	$1.2 Million	$7.7 Million
2012	$7.1 Million	$1.3 Million	$8.4 Million
2013	$7.6 Million	$1.4 Million	$9.0 Million
2014	$7.9 Million	$1.5 Million	$9.4 Million
2015	$8.1 Million	$1.5 Million	$9.6 Million
2016	$7.8 Million	$1.5 Million	$9.3 Million
2017	$6.8 Million	$1.3 Million	$8.0 Million
2018	$6.3 Million	$1.2 Million	$7.5 Million
2019	$6.0 Million	$1.1 Million	$7.1 Million
2020	$5.9 Million	$1.1 Million	$7.0 Million
2021	$6.3 Million	$1.2 Million	$7.5 Million
2022	$8.3 Million	$1.2 Million	$9.5 Million
2023	$10.4 Million	$1.0 Million	$11.4 Million

Possible Solution: Exempt TWIA from paying premium and maintenance taxes.

- A reduction in expenses has a corresponding impact on rate indications. Elimination of premium and maintenance taxes would reduce TWIA expenses by roughly 1.86% of the annual written premium.

5 Premium Financing

Subject: TWIA's 2019 Sunset bill allowed the Association to accept partial premium payments to issue a policy and allowed policyholders to pay the Association directly via credit card or another electronic payment method. Although these law changes enabled TWIA to offer interest-free installment payment options (2-Pay, 4-Pay, and 10-Pay), more than 1,500 policyholders continue to use premium financing for the payment of their premiums.

- 83% of policies were paid in full in 2023 despite the availability of the three installment payment options.
- As of December 31, 2023, TWIA had 1,522 policies in force that were premium financed. Out of this total, 1,122 were residential policies and 400 were commercial policies.
- TWIA recently distributed targeted communications to agents and policyholders to create more awareness and encourage the adoption of TWIA's interest-free payment options.

Possible Solution: Revise statute to explicitly prohibit the use of premium financing for the payment of policy premiums based on the availability of TWIA's interest-free payment plans.

- Texas Insurance Code Chapter (TIC) 2210 and the TWIA Plan of Operation do not contain an explicit requirement that TWIA must accept or that it may reject payment via premium finance companies.
- TIC Chapter 651 governs Financing of Insurance Premiums; this and Chapter 2210, along with the TWIA Plan of Operation, contain procedural requirements related to the refund of TWIA policy premiums to premium financiers, which indicate the Texas Legislature and the Texas Department of Insurance

contemplate the use of these arrangements by TWIA policyholders.

6 Public Security Funding

Subject: TWIA catastrophe funding as described in TIC Section 2210 Subchapter B-1 includes up to $1 billion in public securities. There are numerous potential issues with the use of public securities as part of TWIA's funding:

- Public securities may not be fully marketable or funded sufficiently quickly.
- TWIA's current repayment structure imposes a financial burden on the Association and its current and future policyholders in the years following a catastrophic event.
- The repayment of public securities reduces and, in some cases, may prevent contributions to the CRTF in the years following a catastrophe event.

Possible Solutions: Recommend the Legislature consider one or more of the following changes to current TWIA funding statutes to address these concerns:

- **Replace public securities with a loan from the State's Economic Stabilization Fund.**
  - This change could provide funds to pay Association losses at a reduced cost to TWIA policyholders and coastal residents.
  - Additionally, it would allow the State to earn a competitive interest rate from a loan provided to a state-created entity subject to both legislative and regulatory oversight and, therefore, with little risk of default.
- **Replace public securities with an alternative funding source.**
  - This option seeks to find another source of funding, such as a state "investment" or another mechanism to replace the public security funds in statute.
- **Allow early repayment of public securities by identifying a source of State or statewide funding.**
  - At a certain point, especially if multiple catastrophe years require the issuance of public securities, the cost to repay public securities cannot be reasonably borne by TWIA policyholders and coastal residents.
  - Having a broader repayment base, whether through statewide assessments or other more direct means, such as payments made from State funds, would increase the sustainability of TWIA funding after one or more catastrophic events.
- **Allow public securities to be backed by the State.**
  - This change would significantly reduce the repayment cost for TWIA policyholders and coastal residents at minimal risk to State funds, given the repayment mechanisms already present in statute.

- **Replace the existing separate public security repayment mechanisms with a single, ordered source of repayment for all bond classes.**
  - Repayment would be prioritized for TWIA policyholders, coastal residents, and then statewide residents, and limits could be imposed on the total amount to be repaid from each group, both for a single catastrophe year and cumulatively for multiple years.
- **Reverse the order of public securities and member company assessments within each of the three classes of funding.**
  - This change would make the public securities less likely to be needed to pay losses and provide more time before those funds would be necessary after a catastrophic event.
  - This could be done in conjunction with allowing member companies to recoup assessments either in whole or in part.

7 Reinsurance Funding

Subject: TIC Section 2210.453(b) requires TWIA to maintain total available loss funding not less than the 100-year probable maximum loss (PML) and requires the purchase of reinsurance or similar mechanisms as necessary.

- As TWIA exposures continue to grow, the Association's PML will also grow. Since the amount of statutory funding available from public securities and assessments is fixed, this significantly increases both the amount and cost of reinsurance TWIA must purchase each year.
- Increased reinsurance costs reduce contributions to the CRTF and increase the indicated rate need for TWIA policyholders.

Possible Solution: Recommend the Legislature consider one or more of the following changes to current TWIA funding statutes to address these concerns:

- **Adjust the statutory funding in line with changes in TWIA exposures.**
  - This change could be done either directly based on exposure change from year to year or proportional to changes in the modeled probable maximum loss, effectively keeping the statutory funding as a fixed percentage of total funding.
  - Either method would directly reduce the amount of reinsurance needed and its cost to TWIA policyholders.
- **Authorize a mechanism to maintain the CRTF at a minimum level through a statewide assessment pool or other State source.**
  - Increasing the CRTF's available balance directly decreases the amount of reinsurance that must be purchased.
  - This is especially important in the years immediately after a catastrophic event, as the CRTF will have been used, most likely in its entirety, to fund losses.

- **Identify methods to increase the amount in the CRTF to help reduce the amount of reinsurance TWIA needs.**
- **Require TWIA's premium and maintenance taxes to be deposited directly into the CRTF.**
    - This would cause a significant increase to CRTF balances annually and result in a relatively small reduction in the overall amount of tax revenue received by the State.

Other Topics Considered

The Legislative & External Affairs Committee and TWIA Board considered the following items but chose not to include them in the 2024 Biennial Report.

Item #	Topic	Description
1	**Expert Panel**	Modify statute and regulations to eliminate TIC Section 2210.578 requiring the use of Expert Panel recommendations.
2	**Appraisal Process**	Allow TWIA to have a formal objection process related to issues or concerns with a policyholder’s selected appraiser or umpire.
3	**Payment of Appraisal Costs**	Revise the statutory provision requiring TWIA and the policyholder to split the cost of their respective appraisers to require each party to pay their own appraisal costs.
4	**Depopulation**	Authorize TWIA to activate and deactivate the Assumption Reinsurance Depopulation Program according to market fluctuations.
5	**TWIA/TFPA Merger Study**	Recommend the Legislature consider interim charges to study a merger of TWIA and TFPA to create a single residual market property insurer.
6	**Roof Coverage**	Require all roofs to have ACV coverage and exclude roofs older than 15 years from being covered by the TWIA policy.
7	**Indirect Damage Coverage**	Exclude coverage for indirect damage from the TWIA policy.
8	**Rate Glidepath**	Institute mandatory rate increases for 5 years that would move TWIA closer to rate adequacy.
9	**Rating Changes**	Modify the rating structure to allow for higher commercial rates from residential rates and different rates in areas where the exposure concentration exceeds normal UW guidelines (i.e., Galveston and Corpus Christi).
10	**Member Company Assessments**	Increase the amount of member company assessments from $1 to $2 billion.

Appendix: Insurance Industry Letters

The Legislative & External Affairs Committee of the TWIA Board asked staff to contact insurance industry representatives to ask about initiatives they are pursuing related to TWIA's funding. The Association received two letters from insurance industry representatives in response to staff's request.

- The Insurance Council of Texas, the Texas Coalition for Affordable Insurance Solutions, the American Property and Casualty Insurance Association, and the National Association of Mutual Insurance Companies provided a joint letter for the Committee's consideration (Page 15).
- The Reinsurance Association of America also provided a letter for the Committee's consideration (Page 16).

Insurance Council of TEXAS

June 12, 2024

David Durden
General Manager
Texas Windstorm Insurance Association

Mr. Durden,

This letter is in response to your May 30 letter asking for input on proposals for TWIA funding and TWIA reinsurance funding. This was being done as part of TWIA's efforts to develop its biennial recommendations to the Texas legislature.

This is submitted jointly on behalf of the following state and national property and casualty trade associations: The Insurance Council of Texas, The Texas Coalition for Affordable Insurance Solutions, The American Property and Casualty Insurance Association, and the National Association of Mutual Insurance Companies.

We appreciate the opportunity to provide input on workable solutions to TWIA funding. In the past, the property and casualty industry has offered proposed solutions and worked with coastal legislators, legislative committees, and community leaders to discuss options.

Our interest remains in finding a reasonable and sustainable funding structure for TWIA to ensure its ability to meet its obligations to policyholders. The current bond debt funding structure creates additional costs and long-term debt for TWIA, making it unsustainable for its future financial well-being.

Generally, the property and casualty industry supports finding an alternative funding source for the current \$1 billion funding that is funded through TWIA debt, commonly referred to as Class 1, 2, and 3 public securities as outlined in Insurance Code, Chapter 2210, Subchapter M. Recently, there have been discussions among various stakeholders about state "investments" or other mechanisms to fund the \$1 billion, and we'd welcome the opportunity to continue those discussions.

Concurrently, we are concerned about any proposals that attempt to shift costs to member insurers or disregard sound insurance practices through means such as artificial restrictions on TWIA's determination of its 1 in 100-year PML.

Finally, in any funding proposal, the industry believes it is critical that the funding structure maintains current member assessment requirements at a \$1 billion level and those assessments should continue to be placed after the use of available CRTF and any other funding mechanism, excluding reinsurance. Note that member insurers remain ready to support TWIA losses through our \$1 billion assessment commitment, but also must maintain their ability to help policyholders statewide recover after losses. For reference, in 2023, property and casualty insurers paid over \$45 billion in direct losses representing a 22% increase from 2022 losses, of which nearly \$10.5 billion was for homeowner insurance losses. Homeowner losses were up nearly 50% over 2022 levels.

Again, we appreciate the opportunity to provide this input and are available to answer any questions you may have.

Sincerely,

Albert Betts, Jr.
Albert Betts, Executive Director, ICT

Beaman Floyd (Jun 14, 2024 06:54 CDT)
Beaman Floyd, Lobbyist, TCAIS

Scot Kibbe
Scot Kibbe (Jun 12, 2024 16:54 CDT)
Scot Kibbe, VP Government Relations, APCIA

Jon Schnautz, VP State Affairs, NAMIC

5508 W US Hwy 290 (78735) | 512-444-9611 | www.insurancecouncil.org

RAA
REINSURANCE ASSOCIATION OF AMERICA
1445 New York Avenue, N.W., 7th Floor
Washington, D.C. 20005

Telephone: (202) 638-3690
Facsimile: (202) 638-0936
www.reinsurance.org

June 14, 2024

Mr. David Durden
Texas Windstorm Insurance Association

Via email

RE: RAA Comments on TWIA Funding Recommendations

Mr. Durden:

We appreciate the opportunity to share our thoughts on the proposals you provided on May 29.

One of the fundamental tenets of the Reinsurance Association of America's ("RAA") advocacy priorities is ensuring maximum opportunities for the private insurance market to participate in risk transfer. What follows are some thoughts on the proposals with that advocacy goal in mind.

Overall Observations

We are mindful that:

- In addition to the potential assessments, member companies have their own obligations to policyholders beyond their TWIA obligations.

- Mandating PML calculations creating artificially low funding levels imperils TWIA's solvency after a large event.

Given that, policy decisions should be made with an eye towards balancing the demands on the private market while keeping TWIA financially sustainable to meet current and future obligations.

TWIA Public Security Funding

We appreciate TWIA's concerns about its current debt structure and are supportive of considering alternatives to it. We remain engaged with other industry stakeholders in exploring options to help alleviate the problems associated with the current bonding structure.

TWIA Reinsurance Funding

We can appreciate TWIA's desire to reduce reliance on reinsurance. We also remain concerned that increasing the obligations on member companies will discourage additional insurance capital coming into the state.

To that end, the RAA supports efforts to bolster the CRTF to put TWIA on better financial footing, which in turn will help reduce the amount of reinsurance needed to meet its obligations. We look forward to hearing more details about proposed mechanisms which would do that.

As we approach the upcoming legislative session, we look forward to ongoing conversations with you and other stakeholders as you chart the course for TWIA. Please let us know how we can help.

Sincerely,

Paul Martin
Vice President-State Relations