

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Wednesday, December 12, 2018 1:54:27 PM

-----Original Message-----

From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Wednesday, December 12, 2018 1:49 PM
To: Sunset Advisory Commission <Sunset@sunset.texas.gov>
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS WINDSTORM INSURANCE ASSOCIATION

First Name: JAY

Last Name: THOMPSON

Title: COUNSEL

Organization you are affiliated with: ASSOCIATION OF FIRE AND CASUALTY COMPANIES OF TEXAS (AFACT)

Email: jthompson@thompsoncoe.com

City: AUSTIN

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Written comments have been submitted to Sunset staff with specific modifications requested on Issue #1, Recommendation 1.2; Support for recommendations on Issues #2 and #3. Request for modification or elimination on Issue #4, Recommendation 4.1; and comments on Issue #5.

Any Alternative or New Recommendations on This Agency: Alternative Language is suggested on Recommendation 1.2; and Recommendation 4.1.

My Comment Will Be Made Public: I agree

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Wednesday, December 12, 2018 1:54:37 PM

-----Original Message-----

From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Wednesday, December 12, 2018 1:52 PM
To: Sunset Advisory Commission <Sunset@sunset.texas.gov>
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS WINDSTORM INSURANCE ASSOCIATION

First Name: JAY

Last Name: THOMPSON

Title: COUNSEL

Organization you are affiliated with: INSURANCE COUNCIL OF TEXAS (ICT)

Email: jthompson@thompsoncoe.com

City: AUSTIN

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Written comments have been submitted to Sunset staff with specific modifications requested on Issue #1, Recommendation 1.1; and Recommendation 1.2; Support for recommendations on Issues #2 and #3.

Request for modification or elimination on Issue #4, Recommendation 4.1; and comments on Issue #5.

Any Alternative or New Recommendations on This Agency:

Alternative recommendations are included in written comments on Issue #1, by removing specific recommendation under Recommendation 1.1; and amendments to Recommendation 1.2.

Support for recommendations on Issues #2 and #3. Request for modification or alternative language on Issue #4, Recommendation 4.1.

My Comment Will Be Made Public: I agree

J. Thompson

THOMPSON COE

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Austin
Dallas
Houston
Los Angeles
New Orleans
Saint Paul

December 12, 2018

Jennifer Jones, Acting Director
Sunset Advisory Commission
P. O. Box 13066
Austin, Texas 78711-3066

Re: TWIA Sunset Review

Dear Ms. Jones:

These comments are submitted on behalf of the Association of Fire and Casualty Companies of Texas (AFACT), a trade association composed of property casualty insurance companies that are domesticated in Texas or primarily do business in Texas. Members of AFACT that are licensed to write property insurance in Texas are required to be members of TWIA and are subject to assessments of up to \$1 Billion per year if funds are needed by TWIA to pay claims after a catastrophic event in a calendar year.

We appreciate the opportunity to provide public input on this important report. The following comments are provided on some of the recommendations in this report:

Issue #1. TWIA's Competing Statutory Mandates Leave Its Sustainability in Question. Key Recommendations: 1.1 Continue TWIA as an insurer of last resort, or 1.2 continue TWIA as an insurance company reliant primarily on premium funding.

Comments: *The report on this issue is misleading and confusing. TWIA is very similar to other property plans created in the United States such as FAIR Plans and beach plans that provide insurance to property owners for risks that cannot be insured in the voluntary market. As such it is a type of insurer of last resort but has many differences than what is required for a licensed insurer. For example, licensed insurers must maintain certain minimum levels of capital/surplus in order to be able to continue to do business. TWIA does not have any capital or surplus. It has been able to accumulate a type of surplus through the Catastrophe Reserve Trust Fund (CRTF), but it technically has no capital/surplus. Its current financial statement shows it has a negative surplus of over \$500 Million. If TWIA was a licensed insurer, it would be insolvent.*

TWIA relies on the ability of member licensed insurers to pay assessments and collect surcharges to pay for bonds in the event TWIA does not have enough funds to pay for a catastrophe loss. This structure has been workable even after Hurricanes Ike and Harvey.

1. AFACT recommends that Recommendation 1.1 on page 21 be maintained but that the report be modified by eliminating the bullet recommendation on page 21. This bullet point recommends restructuring of the funding structure for TWIA. The funding structure has been changed several times since the inception of TWIA in 1971. The most recent funding structure was changed in 2015 by SB 900 as a result of stakeholder input. Moving assessments of \$500 Million to a lower level only shifts the burden of paying for TWIA losses from TWIA policyholders to homeowners and property owners on a statewide basis.

2. AFACT recommends that Recommendation 1.2 on page 22, as currently worded should be eliminated or changed. Recommendation 1.2 now reads:

1.2 Continue TWIA as an insurance company reliant primarily on premium funding.

This recommendation is very broad and implies that the current funding structure in the law should be changed or eliminated and TWIA should be reconstituted in some manner to use only its premium revenue. There are numerous details and complexity in this approach that are not discussed in the Sunset report. For example, some types of licensed insurance companies, such as a mutual or reciprocal, are reliant primarily on premium to maintain minimum levels of capital/surplus. Before TWIA could effectively do this, it would need to be capitalized by some source and considerable planning would be necessary to accomplish this. Based on its premium volume of approximately \$500 Million, it would need free surplus of at least \$500 Million or more.

3. If Recommendation 1.2 is not eliminated, AFACT recommends that the report be amended or modified on page 22 by amending 1.2 to read as follows:

“1.2 Continue TWIA but make improvements in the law to its ability to achieve actuarial sound rates, increase investment income, and improve depopulation plans.”

4. AFACT recommends that the following bullet points on page 22 be eliminated from the report:

- **Direct TWI and TDI to adopt an investment plan for the CRTF. There are several bullet points under this recommendation.**

This is not necessary. The CRTF is managed by the Comptroller's office with investment plan guidelines.

- **Direct the TDI to reduce TWIA commission rates paid to agents.**

This is not necessary. The Board has the authority to set commission rates.

- ***Remove requirements in statute that TWIA not compete with private industry and that TWIA function only as an insurer of last resort.***

This is misleading and confusing. An insurer of last resort should not compete with the voluntary market unless they are adequately funded in ways such as Texas Mutual, which has over \$5 Billion in surplus, to write workers compensation insurance. TWIA has no surplus.

- ***Abolish the depopulation programs required in statute and the declination requirements to qualify for coverage, allowing TWIA to increase its revenue pool.***

This is misleading and confusing. Depopulation plans also reduce TWIA's exposure to loss. This decrease may be more beneficial than increasing revenue.

Other comments relating to recommendations on page 22 include:

- ***Require TWIA to recommend and the TDI to approve actuarially sound rates within five (5) years.***

AFACT agrees with this but this may be very difficult to implement. Under current law, rates must be based on sound actuarial principles as required in Tex. Ins. Code §2210.353. Despite this requirement, rate recommendations frequently are made for only 5% because of the limitations in current law. The rate caps in Tex. Ins. Code §§2210.351(d), 2210.352(a-1) effectively limit rate increases to either 5 or 10% per year. These rate caps apply to both commercial and residential risks. The 2018 actuarial indicated change for residential risks was approximately 32.3% while the actuarial indicated change for commercial risks was 37.3%.

Limitations on rate changes for commercial risks could be removed and this would help TWIA come closer to actuarially sound rates. The rate caps in current law apply to both commercial and residential risks. Rate caps, if needed to prevent rate shock, should be limited to lower value residential risks or small commercial risks.

TWIA could better achieve actuarial sound rates without increases on each type or class of business by reviewing all of its rating classes, including territories, and charging those classes a sound rate. Some residential risks, located inland, also are required to pay the same rates as risks located on the beach. The same is true for commercial risks. The current risk classifications used by TWIA have not been reviewed or changed in decades. These could be updated and more closely reflect the risk of different types of structures and businesses. Better built structures could be offered discounts or lower rates. This could be done for both residential and commercial risks.

5. AFACT recommends that the Sunset report be amended on page 22 under actuarial sound rates to add the following additional recommendations:

- *It is recommended that TWIA should be required to conduct a review of the current classifications and relativities it uses for residential and commercial rates.*
- *It is recommended that the rate caps in Tex. Ins. Code §§2210.351(d), 2210.352(a-1) be either eliminated or amended to apply only to residential risk rate filings.*

Other Alternative Mechanisms. On page 17, the report mentions other mechanisms such as structuring TWIA as an assigned risk pool, abolishing TWIA, creating a reinsurance mechanism, or limit the maximum coverage limits such as North Carolina. AFACT members do not support an assigned risk pool or reinsurance mechanism. Florida has a reinsurance mechanism that is underfunded and could jeopardize the solvency of licensed insurers required to buy reinsurance from this entity. Assigned risk mechanisms have never proven to be a viable type of property residual market mechanism in any state. Assigned risk has worked in Texas for personal automobile for liability insurance. These are materially different risks than the hurricane exposure on coastal property in concentrated areas. The limits of liability offered through TWIA should be carefully reviewed. TWIA has some of the highest limits available of any similar type of mechanism.

Issue #2. TWIA is inefficient leading to higher costs for consumers.

Key Recommendations:

2.1 Require TWIA to automatically offer policy renewal unless new information is necessary.

2.2 Authorize TWIA to accept installment premium payments and credit card payments.

2.3 Establish separate insurance agent commission rates for new applications and automatic renewals.

2.4 Direct TWIA to directly bill customers for premiums for automatic renewals.

Comments: *AFACT supports these changes to improve efficiency. It should be easier for both consumers and agents if these changes were implemented. Agent commissions should be determined by the TWIA board after changes have been made that would reduce workloads by agents.*

Issue #3 TWIA Claims Handling After Harvey

Key Recommendations

3.1 Authorize TWIA to issue supplemental payments.

Comments: *AFACT supports even though it believes that TWIA already has the authority to issue supplemental payments.*

3.2 Require TWIA to only assess the replacement cost of a property at the time TWIA issues or renews the policy.

Comments: *AFACT supports even though the replacement cost when elected by a policyholder should be the same or similar to replacement cost of a policy that excludes wind. This may be an efficiency where replacement cost data does not need to be determined twice.*

3.3 Direct TWIA to track and report more comprehensive information regarding claims including performance.

3.4. Direct TWIA to develop a post-hurricane communication plan with more input from stakeholders.

3.5 Direct TWIA to full implement a risk-based approach to monitoring insurance adjusters.

Comments: *AFACT supports recommendations 3.3-3.5.*

Issue #4 Assumption Reinsurance

Key Recommendation

- Eliminate the Assumption Reinsurance Depopulation Program

COMMENTS: AFACT recommends this recommendation not be adopted at this time and this program should be given additional time to work. Rather than eliminate it, amend the law to give the TWIA board more flexibility in administering this program. Depopulation through assumption reinsurance has reduced TWIA's exposures and potential losses.

#5. TWIA Program for Compliance with WP-8.

Key Recommendations

5.1 Transfer the issuance of WPI-8-C windstorm certificates from TWIA to TDI.

5.1 Remove the ability to obtain a WPI-8-C windstorm certificate based on design alone.

COMMENTS FOR DISCUSSION: AFACT generally supports these recommendations. If transferred to TDI, there should be adequate funding made available through fees or other revenue to be able to effectively manage this program.

#6 TWIA Governance, Accountability & Transparency

Key Recommendations

6.1 Authorize TWIA to formally propose rules to TDI.

6.2 Apply standard across-the-board requirements related to board member training.

Comment: This may not be necessary. Board members are appointed by the Commissioner who should have determined sufficient standards for board membership.

6.3 Apply standard across-the-board requirements related to public membership.

Comment: This may not be necessary. Board members are appointed by the Commissioner who should have determined sufficient standards for board membership.

6.4 Require TWIA board members to publicly disclose specific conflicts of interest.

6.5 Eliminate the duplicative Bimonthly Report Card reporting requirement and continue TWIA's two other required reports.

COMMENTS FOR DISCUSSION: AFACT agrees with this recommendation.

Please contact me if you have questions or need additional input on these comments.

Sincerely,

/s/ Jay Thompson

Jay A. Thompson

Cc: AFACT Legislative Committee