

# EXECUTIVE SUMMARY

## *Texas Windstorm Insurance Association*

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The Legislature created what is now known as the Texas Windstorm Insurance Association (TWIA) in 1971, after Hurricane Celia caused significant damage to the coast. For the next 30 years TWIA operated largely under the radar until 2008, when Hurricane Ike exposed how unprepared TWIA was to handle a major storm. TWIA received more than 90,000 claims, swamping its small and inexperienced staff. TWIA took more than 250 days on average to pay out the claims, policyholders ended up disputing 10,000 of the claims, and lawsuits from these claims continue to this day. In 2009, in response to TWIA's poor handling of Hurricane Ike claims, the Legislature began reshaping TWIA, making significant changes to its statute and funding structure, and charging the Texas Department of Insurance with more oversight of TWIA's operations. This Sunset review is the latest in a long line of reviews and audits of TWIA, but it is particularly timely, as Hurricane Harvey presented the first true test of TWIA since its overhaul. Although TWIA's operations demonstrate significant improvement, Hurricane Harvey revealed fundamental flaws in the design of TWIA's funding structure and highlighted TWIA's contradictory directives.

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*TWIA's long-term stability and financial health ultimately depend on legislative action.*

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In the aftermath of Hurricane Harvey, TWIA is broke, in debt, and facing a shrinking revenue pool. The Legislature designed TWIA to balance competing interests: first, to provide insurance to those who cannot purchase it elsewhere and second, to rely primarily on premiums and debt repaid by policyholders for its funding, with TWIA receiving no general revenue or tax dollars. These mandates create an inherent tension. Despite complaints from coastal communities about the cost of windstorm insurance, TWIA provides the majority of residential windstorm insurance on the coast, providing a large pool of premiums. However, TWIA's premiums are not high enough to cover the cost of future claims and expenses. Keeping premiums as they are means financing these future claims with debt, which is expensive for the policyholders who have to repay it. At the same time, raising premiums to make TWIA's funding design sustainable may make windstorm insurance too expensive for some coastal residents. In effect, this system of opposing forces leaves TWIA policyholders alone to weather the storms.

TWIA is only subject to review, not abolishment, under the Sunset Act, so the Sunset Commission and Legislature do not have to take any action to continue

TWIA.<sup>1</sup> However, the Sunset review found Texas has a continuing need for adequate windstorm insurance, but TWIA's current structure, particularly its funding arrangement, is too uncertain to endorse. While Sunset staff would normally provide recommendations to help improve TWIA's structure, staff cannot recommend a clear path to a sustainable structure that does not run afoul of one or the other legislative mandates presently controlling TWIA. Ultimately, TWIA's long-term stability and financial health depend on the Legislature taking action.

Stabilizing TWIA's structure would require the Legislature to focus on either ensuring TWIA insurance is available and affordable to those who need it most, or supporting and shoring up TWIA's current funding structure by allowing TWIA to function like an independent insurance company with adequate (higher) rates and fewer restrictions. In Issue 1, Sunset staff outlines steps the Sunset Commission or Legislature could take to help stabilize TWIA by supporting one mandate over the other, and provides information on entirely different structures that could also be considered. Sunset staff does not take a position on any of these options, but felt the review of TWIA would be incomplete without providing information needed to help the commission or the Legislature improve TWIA's structure and stability, should either choose to do so.

The subsequent issues in the report include more typical Sunset staff recommendations to improve the effectiveness and efficiency of TWIA's operations and focus TWIA on its core functions, regardless of its structure. Sunset staff recommends changes to improve TWIA's customer service, decrease costs to policyholders, and ensure TWIA can respond more quickly to legislative changes. For example, Sunset staff recommends allowing policyholders to pay premiums in installments and streamlining policy renewal, allowing policyholders to avoid the cost of premium financing and reducing administrative burdens. Additional recommendations would ensure TWIA communicates better with its stakeholders, handles claims in a timely and fair manner, and minimizes surprises when policyholders go through the claims process. While these recommendations would work within any structure, they would do little to improve the state of windstorm insurance along the Texas coast without additional solutions to address TWIA's underlying design. The following material summarizes Sunset staff recommendations on the Texas Windstorm Insurance Association.

## Issues and Recommendations

### *Issue 1*

#### **TWIA's Competing Statutory Mandates Leave Its Sustainability in Question.**

To ensure Texans can continue to live and work in our coastal communities, the state has a continuing need for adequate windstorm insurance. However, the Legislature has given TWIA opposing mandates that are driving TWIA to the brink of financial extinction. TWIA's current funding structure centers on premiums and debt repaid by premiums. TWIA's revenue from premiums is not enough to pay future claims, meaning TWIA will likely have to go into more debt if there is another hurricane — further increasing costs to policyholders. At the same time, the Legislature designed TWIA to provide insurance for those who cannot purchase it elsewhere. If TWIA were to regain financial stability through raising premiums, TWIA may become too expensive for coastal residents. Restructuring TWIA to embrace one mandate or the other would ensure TWIA can sustainably fulfill its mission. Either method would improve the financial health and long-term outlook of TWIA.

**Key Recommendation**

- Continue TWIA as an insurer of last resort, or continue TWIA as an insurance company reliant primarily on premium funding.

**Issue 2****Inefficient Renewal Requirements and Payment Policies Increase Costs for Policyholders.**

TWIA's insurance policy renewal process is unnecessarily burdensome, increasing costs for policyholders and workloads for insurance agents. Further, TWIA's statutory inability to accept installment payments causes some policyholders to incur additional financing costs on top of their premium payments. TWIA also increases workload by not billing policyholders directly or accepting credit card payments. Streamlining renewal and payment processes would allow TWIA to provide better customer service and reduce workload for insurance agents.

**Key Recommendations**

- Require TWIA to automatically offer policy renewal unless new information is necessary.
- Authorize TWIA to accept installment premium payments and credit card payments.
- Establish separate insurance agent commission rates for new applications and automatic renewals.
- Direct TWIA to directly bill customers for premiums for automatic renewals.

**Issue 3****Despite Improvements in Claims Handling, TWIA's Hurricane Harvey Response Highlights Difficulties for Policyholders.**

Although TWIA has greatly improved its claims handling since Hurricane Ike in 2008, confusion over TWIA's claims process has led to frustration for policyholders, and the Sunset review found areas where TWIA could benefit from further improvements. Specifically, having clear authority in statute to issue supplemental payments, a standard tool private insurers use to settle claims more quickly, would help TWIA address policyholder concerns about delayed claims processing and low claims payments. Additionally, removing the statutory requirement to assess the replacement cost of a property at the time of loss would help limit confusion and uncertainty for TWIA policyholders. Finally, TWIA could improve its response to policyholder frustration over claim resolution by implementing a post-hurricane communication plan with more continuous input and feedback from policyholders.

**Key Recommendations**

- Authorize TWIA to issue supplemental payments.
- Require TWIA to only assess the replacement cost of a property at the time TWIA issues or renews the policy.
- Direct TWIA to develop a post-hurricane communication plan with more input from stakeholders.

## ***Issue 4***

### **TWIA's Assumption Reinsurance Depopulation Program Is Unnecessarily Complicated and Inefficient.**

Statute requires TWIA to administer two depopulation programs to reduce the number of TWIA policies. While both programs have moved thousands of policies to the private market, the Assumption Reinsurance Depopulation Program is extremely complex to administer and creates unnecessary confusion. The program's complexity requires logistical and financial gymnastics for both TWIA and the participating insurance companies, and understandable policyholder confusion causes delays in claims handling. Further, insurance company interest in the Assumption Reinsurance Depopulation Program is limited and many insurance agents either cannot or choose not to participate, making the program inefficient. Discontinuing the Assumption Reinsurance Depopulation Program would allow TWIA to operate more efficiently and decrease policyholder confusion. TWIA would continue to see the benefits of depopulation through the administration of its other, less complicated depopulation program.

#### **Key Recommendation**

- Eliminate the Assumption Reinsurance Depopulation Program.

## ***Issue 5***

### **TWIA's Process for Issuing Windstorm Certificates of Compliance Is Duplicative and Poses Risks to Public Safety.**

The Texas Department of Insurance (TDI) sets the windstorm building code to ensure buildings along the coast can weather serious storms. Both TDI and TWIA issue a certificate of compliance to certify buildings meet the windstorm code. However, TWIA is ill suited to ensure windstorm code compliance, as TWIA is not a regulatory state agency. Additionally, the existing process at TWIA for property owners to get a certificate is insufficient to account for any construction errors and potentially exposes TWIA to additional liability when insuring properties. TDI has an existing regulatory framework to ensure compliance, respond to complaints, and provide necessary expertise. Consolidating all windstorm certificate issuance at TDI would increase customer service, decrease duplication of efforts, and ensure certified buildings meet windstorm code.

#### **Key Recommendations**

- Transfer the issuance of WPI-8-C windstorm certificates from TWIA to TDI.
- Remove the ability to obtain a WPI-8-C windstorm certificate based on design alone.

## ***Issue 6***

### **TWIA Lacks Certain Good Government Standards That Would Enhance Responsiveness, Transparency, and Accountability.**

The Sunset review found TDI's current rulemaking process for TWIA impedes TWIA's ability to quickly implement statutory changes and respond nimbly to stakeholder needs. Since TWIA is not a state agency it cannot have rulemaking authority, but it could operate in a manner similar to an advisory board under a regulatory agency. Expressly authorizing TWIA to propose rules and requiring TDI to

take action would give TWIA's stakeholders another forum to provide feedback, and also would allow TWIA to react to circumstances more efficiently. Additionally, TWIA could benefit from applying several standard elements considered in all Sunset reviews to ensure open, responsive, and effective government. TWIA's governing statutes do not include a standard provision relating to board member training, which would ensure members understand the board's role in rulemaking, nor does statute include a provision about public member conflicts of interest, which would provide some measure of accountability to ensure board members do not take advantage of their official positions.

### Key Recommendations

- Authorize TWIA to formally propose rules to TDI.
- Apply standard across-the-board requirements related to public membership.
- Require TWIA board members to publicly disclose specific conflicts of interest.

### Fiscal Implication Summary

Overall, the recommendations in this report would have no fiscal impact to the state, as TWIA is not a state agency and receives no funding from tax dollars or the General Revenue Fund. However, as summarized below, some recommendations could have a fiscal impact to TWIA or the state that cannot be determined at this time.

*Issue 1* — The recommendations would have a significant impact on ensuring TWIA is financially solvent and able to provide windstorm and hail insurance on the Texas coast.

*Issue 5* — TDI already has processes in place for issuing and managing certificates of compliance that could be used for issuing TWIA's certificates of compliance. While TDI currently provides certificates of compliance at no cost, statute authorizes TDI to charge a fee for certificates of compliance, and TDI can ensure the fee covers the cost of issuing the additional certificates if necessary.

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<sup>1</sup> All citations to Texas statute are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2210.002(b), Texas Insurance Code.

