

2009 Legislative Update

SWAF Meeting

June 12, 2009
Austin, Texas

Panel Discussion: Carol Cates, TDI
Joe Woods, Regional VP, PCI
Bo Gilbert, USAA
Jay Thompson

INTRODUCTION

- Numerous Difficult Issues Confronted the 2009 Legislature
 - Transportation Funding
 - Sunset Legislation: TDI; TxDOT; DPS
 - Funding for Hurricanes after Ike
 - Education
 - Health Insurance and Health Care

TDI Sunset Legislation

- SB 1007-Continuation of TDI
 - 9 Issues Identified in Sunset Process
- Issue 1: Rate Regulation for Homeowners Lacks Clarity, Predictability & Transparency
- Issue 9: State has a Continuing Need for the TDI
- Senate Amendments
 - Data Mining Study
- 179 Proposed Amendments in House

2008 TDI Self Evaluation Recommendations

Data Mining

- TDI sought greater *policymaking authority* to address technological advances that impact type of products; the classifying of individual risks; and rating of insurance products.
- SB 1 requires TDI study of use of data mining in residential property, personal auto, and health insurance

Sunset Issue 1

Transparency

- Prior Approval of Individual Insurers
 - Require TDI to define what “rating practices” are bad by rule
- Rate Standards
 - Define excessive rates based on competition

2009 Sunset Issues & Recommendations

- Issue 2: TDI Involvement in TWIA
- RECOMMENDATIONS:
 - Increase # of public members on TWIA board
 - Replace TDI authority to modify rates with more traditional process
 - Transfer inspections to TWIA
 - Remove unnecessary rate restrictions
 - Require proof of declinations for TWIA eligibility

Special Session

- HB 1959 Sunset Schedule and Safety Net
 - Move TDI Sunset to 2011
 - Move OPIC sunset to 2011
 - Move WC Division to 2013

2008 Sunset Staff Report Issues & Recommendations

OFFICE OF PUBLIC INSURANCE COUNSEL

- Issue 1: Texas needs Consumer Representation but no longer needs a separate state agency to advocate

- RECOMMENDATIONS by Sunset Staff:
 - Abolish OPIC and create a Consumer Representative within the TDI
 - Transfer OPIC board positions to Consumer Representative
 - Transfer authority to assess insurers from OPIC to TDI.
 - Not Adopted by Sunset Commission

 - SB 1001 Failed to Pass. OPIC Must be included in Safety Net to be Continued

Major Issues Discussed as Amendments to Insurance Sunset

- Prior Approval for Homeowners
- Limit use of rating territories
- Ban the use of credit scoring
- Limit use of rating categories in auto insurance—occupation and education
- Require standardized homeowners policies
- Make the Commissioner an elected official
- Trial lawyer changes: UM, paid/incurred, subrogation

Other Major Issues

Insurance Sunset

- Other recommendations
 - Expand the High Risk Pool
 - Regulate health insurance rates
 - Regulate Silent PPO or PPO Networks
 - Medical Loss Ratios
 - Recission of Health policies
 - Health Insurance Labels

Property Casualty Insurance Issues

- TWIA Funding
- Tort Reform Issues
- Auto Insurance
- Data Mining
- Rate Regulation

Current Funding Formula Hurricane Losses for the Texas Windstorm Insurance Association

Unlimited \$\$\$

Assessment on Property Insurers w/ tax credits

\$1.5B ??

Reinsurance

\$200 Million

Assessment on Insurers no tax credits

\$100 Million

Assessments on Property Insurers no tax credits

\$100 Million- Premiums available from Policyholders of TWIA

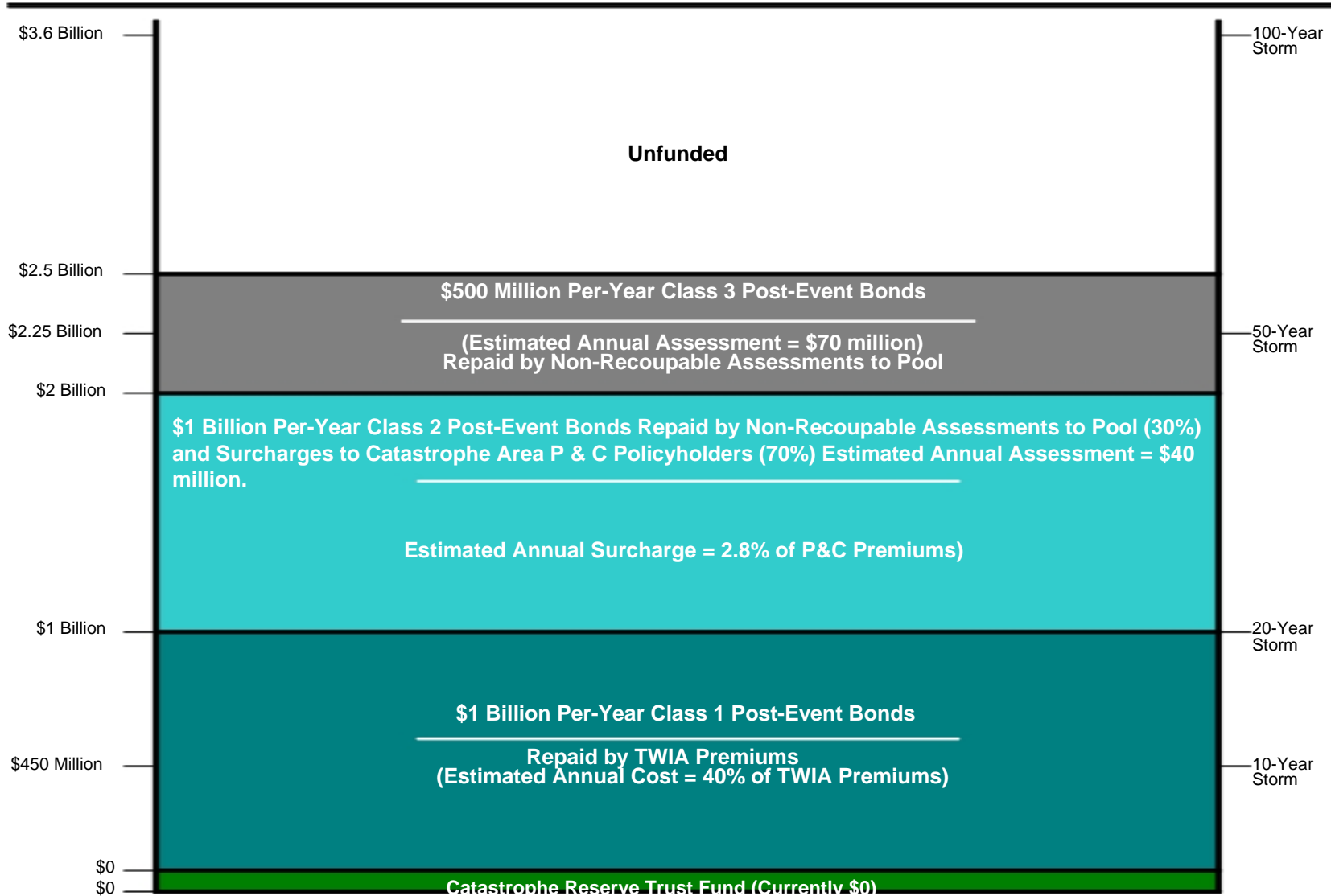
Historical Hurricane Losses TWIA

- Texas Windstorm Insurance Association Losses
 - Hurricane Ike---\$2.1 B 2008
 - Hurricane Dolly--\$200 M 2008
 - Hurricane Rita--\$180 M 2005
 - Hurricane Alicia--\$157M 1983

HB 4409 New TWIA Funding

- TWIA funds and CRTF
- \$1B Class 1 Bonds repaid by TWIA
- \$1B Class 2 Bonds; 30% repaid by TWIA members; 70% repaid by surcharges on coastal P & C policies
- \$500M Class 3 Bonds; Repaid by TWIA members
- TWIA *may* buy reinsurance at any level

Texas Windstorm Insurance Association
 Funding as Provided by HB 4409 per
 Conference Committee Report



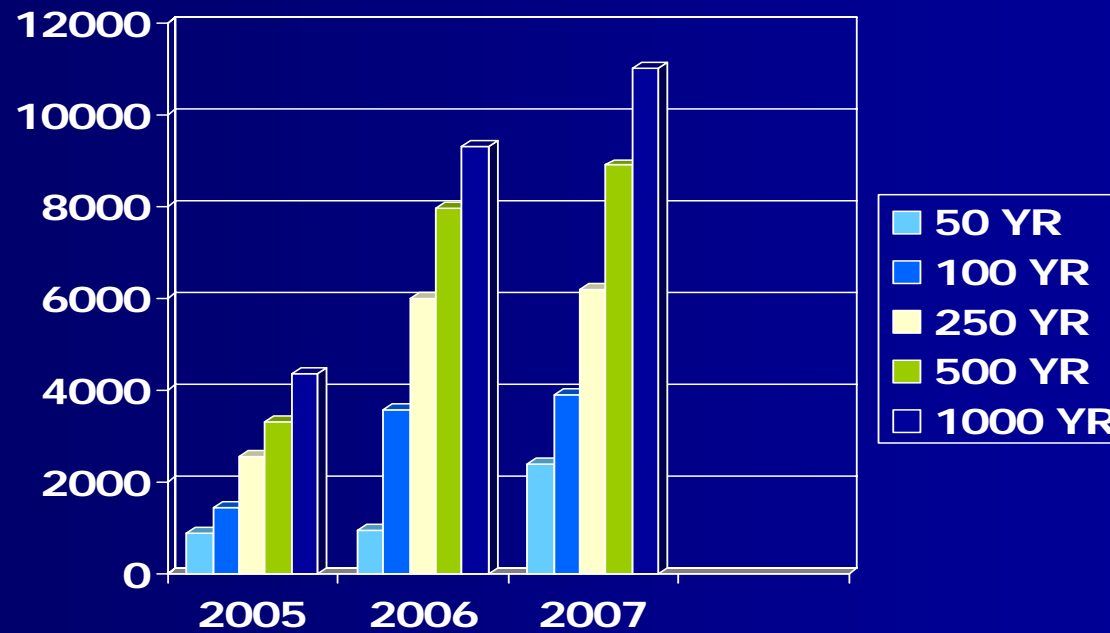
Notes: Storm frequencies based on an average of AIR and RMS modeled losses using TWIA exposures as of 12/31/08
 Bond costs estimated based on 10-year terms and 6% interest
 Estimated annual costs assume the maximum amount of each class of bonds are issued Financial instruments, including commercial paper, may be used to pay losses until post-event bonds are issued

Other TWIA Issues in HB 4409

- Rate Regulation
- Use of Models
- Use of Territory Rating
- Mandatory Flood Coverage Zone V
- Compliance with Building Codes
- Legislative Oversight

TWIA POTENTIAL MAXIMUM LOSSES

Texas Windstorm Insurance Association/Expressed in Billions



Tort Reform Issues 2009

- RECOUPMENT OF HEALTH CARE EXPENSES IN CIVIL ACTIONS aka Paid/ Incurred
 - House Bill 3281—passed in tandem with Jones Act venue changes—would have changed part of the 2003 reform law dealing with recoupment of medical costs. Prior to 2003, plaintiffs could recover damages for medical costs that were not actually charged and will never be paid. Insurance providers would be required to reimburse claimants at the highest “rack rate” for medical care, rather than negotiated lower rates.
 - Governor Rick Perry vetoed this legislation in 2007
 - This bill passed the Senate but died in the House in 2009

Insurance Issues 2009

- Contractual and Equitable Subrogation
 - Legislative issues after *Fortis Benefits v. Cantu*, 50 Tex. Sup. Ct. J. 965 (2007)
 - The court held that the equitable “made whole” doctrine does not trump an insurer’s contract-based subrogation rights.
 - Important for insured and self-funded health benefit plans where medical expenses have been paid by the plan.
 - Legislation died in the House

Property Casualty Insurance Issues

- Liability of Owners in Construction Accidents
 - Texas Supreme Court held in *Entergy v. Sommers* that owner who paid for workers compensation was entitled to “exclusive remedy” under the law based on interpretation of recodified Labor Code provisions.
 - House and Senate committees have studied this in the interim.
 - Bill to reverse the *Entergy* decision passed the House; died in the Senate

Property Casualty Insurance Issues

- Auto Insurance
 - Uninsured Motorist Coverage
 - Mandatory Liability Insurance Enforcement
 - Use of Traffic Violations in Rating
 - Vehicle Accident Reports
 - Exclude Phone Numbers
 - Delay reporting for 30 days

Property Casualty Insurance Issues

- Rate Regulation
 - File and Use v. Prior Approval
 - Residential Property & Personal Auto
 - Commercial Lines
 - Lloyds Exemption
 - Use of Competition

Property Casualty Insurance Issues

- Data Mining Study required by SB 1
 - Study of Use of New Technology in rating, classification and underwriting
 - Study on Use in Personal Auto, Residential Property, and Health Insurance
 - TDI must report findings and recommendations

Other Legislation Passed

- HB 1476 Capital Surplus Requirements
- HB 2877 Liability Insurance Closed Claim Reports
- HB 4339 Unauthorized Guaranty Fund
- HB 4358 TDI Rulemaking on Penalties
- HB 2449 County Mutual Requirements
- Misc. WC Bills



CONCLUSIONS

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