

SUBJECT: Continuing the Texas Workers' Compensation Insurance Fund

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Brimer, Brady, Corte, Crabb, Eiland, Giddings, Janek, Rhodes, Solomons

0 nays

WITNESSES: For — Richie Jackson, Texas Restaurant Association; Pam Beachley, Business Insurance Consumers Association; George B. Allen, Texas Apartment Association; Larry K. Durrett; Joe Hanson and Ted Roberts, Texas Association of Business and Chambers of Commerce; Don Summers, National Federation of Independent Business

Against — None

On — David Holland, Ken Levine and Lisa Conley, Sunset Advisory Commission

BACKGROUND: The Texas Workers' Compensation Insurance Fund was created in 1991, in HB 62 by Counts, to increase the availability of insurance and serve as the insurer of last resort for high-risk employers. It was set up to replace the Texas Workers' Compensation Insurance Facility, also known as the assigned risk pool, which experienced significant losses in the late 1980s.

The fund wrote its first policy on January 1, 1992, began accepting facility risks on January 4, 1994, and is to assume all claim liabilities from the facility by January 1, 1999, if continued by the Legislature past its September 1, 1995, sunset date.

The fund is required by law to be self-supporting and to meet many control standards and procedures not required of the facility. The fund is governed by a nine-member board of policyholders appointed by the governor. Fund operating and other revenues are generated from premium and investment income. The fund was initially capitalized through the sale of \$300 million in state revenue bonds, which will be bought back by the fund.

DIGEST: CSHB 1090 would continue the Texas Workers' Compensation Fund until September 1, 2007, and amend requirements for audits and reports, investigations, application information, service charges, board membership and staff administration. CSHB 1090 would take effect September 1, 1995.

Audit and report requirements. The fund's board would be required to file with the Texas Department of Insurance an annual report accounting for all funds received and disbursed during the fiscal year by March 1, instead of within 30 days after the end of the fiscal year. The state auditor would be required to periodically identify issues related to fund efficiency, effectiveness and statutory compliance, and the fund would be required to include these issues in the annual independent and internal audit plans. Copies of fund audit reports would be sent to the state auditor.

The board would also be required to appoint an internal auditor, who would be required to submit the internal audit report directly to the board and a summary of the report to the governor, lieutenant governor and speaker. The report would be required to include an analysis of use by the fund of historically underutilized businesses.

Policy applications. The fund would not be required to appoint a local recording agent, and an agent transacting business with the fund would represent the applicant and not the fund. Employer information submitted to the fund by the agent could not be used in any marketing or direct sales activity, and could not be provided to another agent except as permitted under the Open Records Act. The fund could use the information for the purposes of underwriting or fraud investigation, and would be required to adopt reasonable guidelines to implement these requirements.

The fund could require a high risk applicant to insure all business entities that are owned or controlled by the applicant.

The insurance commissioner's review of a board's decision to deny, cancel or refuse to renew a high risk policy would not suspend any rule or order of the fund unless ordered by the commissioner on a showing of immediate, irreparable damage.

Accident prevention fee. The fund would be required to charge policyholders for the reasonable cost of follow-up inspections of an employer's premises following the development of an accident prevention plan, in addition to current requirements to charge for safety consultations and plan development.

Investigations. The fund would be allowed to investigate health care providers and other persons for fraud and violations in addition to applicants, policyholders, claimants, agents and insurers as currently provided. The fund would be required to coordinate its investigations with those conducted by the commission. Investigation information would be confidential and could only be disclosed under certain circumstances.

Standard administrative provisions. CSHB 1090 would also add standard provisions recommended by the Sunset Commission relating to board qualifications, training and grounds for removal, governor designation of the board chair, conflict-of-interest prohibitions, equal employment opportunity, a career ladder program, public information and complaint resolution.

CSHB 1090 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

The Texas Workers' Compensation Insurance Fund was created to stabilize the workers' compensation insurance market and serve as insurer of last resort. The Sunset Commission review certifies that the fund has met these obligations and should be continued.

Data show that the financial soundness and success of the fund has contributed to increased competition, affordability and availability of insurance for high-risk employers. More private carriers have entered the market, rates have gone down and more businesses are finding coverage.

The bill would impose more stringent oversight provisions, including reviews by the State Auditor's Office and the Attorney General's Office, and would mandate compliance with certain Internal Audit Act provisions. The legislation would also ensure that specific requirements contained in the general appropriations act are observed relating to hiring women and minorities.

CSHB 1090 would authorize the fund to require commonly-owned or controlled businesses to have workers' compensation insurance when buying insurance through the fund. Granting this authority would help prevent certain types of fraud.

The bill would make the fund's reporting requirements to the Texas Department of Insurance (TDI) consistent with those for other insurance carriers by setting an annual deadline of March 1. Also, filing its annual report with TDI by March 1 instead of February 1 would give the fund staff extra time to comply and save about \$109,000 a year in overtime costs.

Letting the fund require a business owner seeking workers' compensation insurance from the fund through the insurer-of-last-resort program to insure all commonly owned or commonly controlled businesses could reduce premium loss and inappropriate claims payments by an indeterminate amount.

OPPONENTS
SAY:

The fund has successfully fostered competition in the high risk pool. But as employers find private workers' compensation insurance rates more attractive, they will opt to move to the private coverage system and the fund will be left with only the riskiest companies.

OTHER
OPPONENTS
SAY:

The fund is working so well that the state should consider moving toward a completely state-run version of the present workers' compensation insurance system. Insurance companies may now use higher premiums to offset losses caused by high-risk clients, and Texans should not have to subsidize these costs.

NOTES:

The committee substitute would add provisions to:

- specify that the review of a decision by the board does not suspend the operation of any act, ruling, decision or order of the fund unless the commissioner of insurance so orders;
- clarify that the fund is not required to appoint a local recording agent to act as its agent and specify that an agent transacting business with the fund does so as the agent for the applicant;

- specify that information submitted to the fund by a licensed agent on behalf of an employer is the work product of the agent, and the fund may not use it for any marketing or direct sales activity;
- require the fund to include health care providers or other persons in the program that identifies and investigates fraud and violations relating to workers' compensation insurance;
- authorize the fund to conduct fraud investigations and require the fund to coordinate its investigations with the commission to avoid duplication of efforts;
- require the fund to hold information in investigation files confidential except under certain conditions and specify that fund investigation files are not open records for purposes of the Open Records Act; and
- authorize the fund to require a business owner seeking workers' compensation insurance from the fund's insurer of last resort program to insure all commonly owned or controlled businesses.

Also on today's calendar are HB 1089, continuing the Texas Workers' Compensation Commission, and HB 1091, creating the Workers' Compensation Research and Oversight Center.