

SUBJECT: Insurance department staff as parties to rate hearings

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Van de Putte, Averitt, Bonnen, Eiland, G. Lewis, Wise
2 nays — Burnam, Olivo

WITNESSES: For — None
Against — Richard Geiger, Texas Association of Fire and Casualty Companies; Rob Schneider, Consumers Union; Birny Birnbaum
On — Elton Bomer, Texas Department of Insurance; Rod Bordelon, Office of Public Insurance Counsel

BACKGROUND : The 1991 insurance reform legislation prohibited the Texas Department of Insurance (TDI) from appearing as a party of record in rate hearings before the three-member State Board of Insurance. In 1993, the Legislature eliminated the State Board of Insurance, giving the insurance commissioner authority to set insurance rates, and transferred the rate hearings process to the State Office of Administrative Hearings (SOAH).
Under current law, all rate hearings are considered by SOAH hearings examiners, and the commissioner makes a final rate determination based on SOAH recommendations. TDI staff may not appear as a party, present evidence, or question witnesses in most rate hearings.

DIGEST: HB 2062 would allow TDI staff to appear as a party of record, present evidence, or question witnesses in rate hearings before the insurance commissioner or designated hearings officers.
HB 2062 would take effect September 1, 1997.

SUPPORTERS SAY: HB 2062 would eliminate a prohibition that has served only to create cumbersome barriers and shortchange the public by impeding access to all available information in important rate hearings. The Texas Department of Insurance has undergone significant changes since 1991, when the

prohibition against staff participation was enacted. Concerns in 1991 about staff biases in favor of the insurance industry are no longer as pressing because the insurance department is much more balanced in the interests it serves. Consequently, the drawbacks of the 1991 prohibition now far outweigh the benefits.

Because TDI staff are prohibited from appearing in rate hearings, the insurance commissioner often cannot get information that is critical to the ratemaking decision. For example, in 1995 and 1996, the commissioner had to call additional rate hearings because information he had requested regarding rate discounts was not introduced as evidence by any of the parties. If TDI staff been party to the hearing, they would have included the requested data, eliminating the need for a special hearing.

The insurance department is the only state agency in which staff are prohibited from participating in rate hearings. There is no longer any reason to continue such a prohibition.

**OPPONENTS
SAY:**

HB 2062 would be the wrong solution to a serious problem with the insurance ratesetting process in Texas. The real problem is that major rate cases are conducted at SOAH, rather than before the insurance commissioner, where they should be held. As a result, the commissioner is dependent on hearings officers for getting all the information needed to make a decision in a major rate case.

This problem would remain even if TDI staff were allowed to participate as a party in rate hearings. Since the staff, as a party in the hearing, would be prohibited from discussing the case with the commissioner, the commissioner would be no more likely to get the information than he is under the current system. The staff would also be prohibited from providing technical advice once the administrative law judge issued a proposal for a decision. This technical advice is also critical to the commissioner's ability to make a decision. Rather than allowing staff to participate as a party in the current hearings process, the law should be changed to require that the entire rate hearing be held before the insurance commissioner.

HB 2063 would give TDI staff disproportionate influence with the commissioner because the commissioner has a stronger working relationship

with the staff and has a stake in maintaining that relationship. Other state agencies that allow staff to participate as parties in hearings have a board/commissioner structure, which creates a wall between the decisionmakers and the parties in the hearings. Since TDI no longer has a board to decide rate hearings, there is no barrier separating the decisionmaker and the staff members who would also be parties in the hearing.

**OTHER
OPPONENTS
SAY:**

TDI staff should be allowed to participate as a party in hearings about individual rate filings when no other party has contested the filing. TDI should not have to hope the public insurance counsel or some other party would carry a case against an insurer. If there is no other party to contest a filing that TDI wished to contest, TDI should be allowed to participate.