

SUBJECT: Immunity from liability for CatPool board of directors

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Gray, Hilbert, Bosse, Dutton, Nixon, Roman, Zbranek  
0 nays  
2 absent — Alvarado, Goodman

WITNESSES: For — Lloyd Grove and Jim Shawn, Texas Catastrophe Property Insurance Association; Robert Huxel, Texas Association of Insurance Agents; State Farm Insurance Company and the Texas Catastrophe Property Insurance Association; Lee Otis Zapp, Jr.  
Against — None

BACKGROUND : The Catastrophe Property Insurance Pool Act governs the availability and issuance of insurance coverage for coastal areas subject to frequent and severe windstorm or hail damage. Under the act, the Texas Catastrophe Property Insurance Pool Association (“CatPool), composed of all property and casualty insurers doing business in Texas, is charged with developing a plan of operation for windstorm and hail insurance in catastrophic areas, issuing policies, proposing rates within statutory guidelines, reinsuring and ceding reinsurance. The CatPool serves as the insurer of last resort for residential and commercial properties unable to get insurance through the regular market.

The CatPool is governed by a nine-member board of directors. Five members represent insurance companies and are elected by CatPool member companies. Two members represent insurance agents, and two members are consumers who represent policyholders. The insurance commissioner appoints the agent and consumer representatives. All CatPool board members serve on a volunteer basis and are not compensated for their services.

DIGEST:	<p>CSHB 1477 would shield the members of the CatPool board of directors from liability for any action or failure to act in the performance of the board's official duties. Board members would not have immunity for bad faith actions or actions that involve gross negligence, intentional misconduct, or a knowing violation of the law.</p> <p>CSHB 1477 would take effect September 1, 1997, and would apply only to a cause of action that accrued on or after that date.</p>
SUPPORTERS SAY:	<p>CSHB 1477 would encourage citizens to serve on the CatPool board of directors by providing limited immunity against lawsuits. Without this immunity, many qualified individuals are reluctant to serve on the board because they are concerned about being held personally liable in a lawsuit against the CatPool. Board members serve on a volunteer basis and receive no compensation, and they should not have financial liability in lawsuits against the CatPool.</p> <p>The bill would not relieve the CatPool itself from liability, nor would it extend to acts of gross negligence, intentional misconduct, or knowing violation of the law.</p>
OPPONENTS SAY:	<p>If board members are indemnified for any wrongdoing, it gives them less of an incentive to use the highest degree of care in making a decision.</p>
NOTES:	<p>The committee substitute provided that immunity from liability would be extended only to directors of the association, not to officers, agents or employees. The substitute also stipulated that immunity would apply only to the performance of official powers and duties and not to acts of gross negligence.</p> <p>The companion bill, SB 949 by Patterson, has been referred to the Senate Economic Development Committee.</p>