

SUBJECT: Transferring responsibilities of Workers' Compensation Insurance Facility

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Rhodes, Corte, Elkins, Giddings, Janek, Solomons,  
Woolley

0 nays

1 absent — Dukes

WITNESSES: For — Gene Fondren, Texas Workers Compensation Insurance Facility

Against — None

On — Nancy Moore, Texas Department of Insurance

BACKGROUND : In 1989, the Legislature revamped the state's workers' compensation system by enacting the Texas Workers' Compensation Reform Act. The act replaced the state's insurer of last resort, the Texas Workers' Compensation Assigned Risk Pool, with the Texas Workers' Compensation Insurance Facility. In 1991, the facility board was restructured, and the facility was required to stop writing new policies as of January 1, 1994. The role of insurer of last resort was transferred to the newly created Texas Workers' Compensation Insurance Fund, an independent corporation that sells workers compensation coverage through the regular market and has become the state's largest workers' compensation carrier.

The Texas Workers' Compensation Insurance Facility was scheduled to transfer its assets and liabilities to the Texas Workers' Compensation Insurance Fund in 1999.

The Insurance Code specifies that if the facility has a deficit or surplus from operations, the amount of the deficit or surplus is either assessed or rebated to the insurance carriers. This section also directs the insurance commissioner to establish the amount of assessment or rebates insurers must pass on to employers. The size of the assessment or rebate is based on the insurers' portion of all policies sold in the voluntary market. The Texas

Property and Casualty Insurance Guaranty Association is a nonprofit legal entity composed of all insurers in the state. The association serves as a mechanism for paying claims when a workers' compensation or property and casualty insurer becomes insolvent.

DIGEST:

CSHB 976 would authorize the Texas Property and Casualty Guaranty Association to assume control of the operations and all of the assets, liabilities and obligations of the Texas Workers' Compensation Insurance Facility. The guaranty association would operate the facility and all of its accounts separately from its other accounts. The association would be required to report annually to the insurance commissioner its operating profits or losses.

If there was a deficit or surplus from the operation of the account, the association would have to assess insurers or issue a rebate based on the insurers' portion of all policies sold in the voluntary market and the date of the claim.

The guaranty association would be required to develop and a plan of operation to ensure the fair, reasonable, and equitable administration of the facility account within 30 days of the effective date of CSHB 976.

CSHB 976 would establish immunity provisions for the board and facility.

CSHB 976 would authorize the guaranty association to enter in to negotiations for the privatization of the facility accounts by a single insurer. The insurance commissioner would have to approve a decision to privatize the fund. Any net proceeds from operation of the fund would be subject to the rebating and assessment arrangement outlined in CSHB 976.

CSHB 976 would repeal Article 5.76-2 of the Insurance Code, the authorizing statute for the facility, but would specify that the repeal did not affect rights and liabilities accruing before the effective date of the bill. Existing provisions of the Insurance Code would continue to be in effect to govern such rights and responsibilities. CSHB 976 would repeal laws requiring that operation of the facility be transferred to the fund by January 1, 1999.

CSHB 976 would take effect September 1, 1997.

**SUPPORTERS  
SAY:**

CSHB 976 would provide for the transfer of the Texas Workers' Compensation Insurance Facility to an appropriate agency if efforts to privatize the fund were unsuccessful. Even though current law requires that the fund's assets and liabilities be transferred to the Texas Workers' Compensation Insurance Fund, the fund is not equipped to handle this responsibility. There is enough overlap in the responsibilities of the facility and the Texas Property and Casualty Guaranty Association to make the association a more logical place for the fund to be transferred.

The transfer is a planned part of the process of restructuring the Texas workers' compensation system. Most of the facility's original responsibilities have already been transferred to the fund. The facility's remaining responsibilities include collecting monies owed on policies issued before 1994, litigating fraud, and supervising payment of claims. These responsibilities parallel the responsibilities of the guaranty association.

Under the Insurance Code, the facility is required to rebate to insurers any surplus money the facility takes in. Because the facility had surplus income between 1991 and 1993, insurance companies received rebates amounting to \$254 million in 1991, \$315 million in 1992, and \$132 million in 1993. Insurers have not passed on this money to employers because the insurance commissioner has not yet promulgated rules specifying how the companies should calculate the rebate to employers. Some have questioned whether the statutes governing these rebates would still apply under CSHB 976, and whether insurers would still be required to rebate this money to employers. The savings clause in CSHB 976 is intended to specify that insurers would still be subject to prior law directing them to rebate the surplus to qualified employers.

**OPPONENTS  
SAY:**

It is unclear why the remaining operations of the facility should be transferred to the guaranty association. The facility is scheduled to go out of business anyway in two years. The transfer should be allowed to proceed as planned and the facility's remaining responsibilities transferred to the fund, which has the expertise to handle them. The facility has been aggressive in pursuing claims against insurers and should be allowed to continue to do so, rather than being transferred to an agency that has little expertise in this area.

CSHB 976 may allow insurers to keep \$700 million that should be passed on to employers. Before 1991, when the facility ran a deficit, insurers passed on the cost of these deficits to employers. But when the facility ran a surplus between 1991 and 1993, insurers kept the \$700 million in rebates they received from the facility. Current law states that this money should be refunded to employers, and the insurance commissioner is in the process of developing rules that would clarify how insurers should calculate the rebate so that companies can proceed in passing on the money to employers.

CSHB 976 does not specifically include provisions in current law that would allow insurers to pass on assessments and require them to refund surpluses. If CSHB 976 is enacted, insurers could argue that they no longer have to refund the \$700 million to employers because these sections were not included in the bill, indicating that the Legislature did not intend for any aspect of this “pass through” law to continue in effect. The “safety clause” in CSHB 976 may not be specific enough about this issue to require that the rebate be passed on to employers. Not only should the rebate issue be clarified beyond question, but CSHB 976 should authorize the insurance commissioner to assess penalties on insurers who fail to pass on surplus money to employers in a timely manner.

NOTES:

The committee substitute made non-substantive clarifications to language in the original version of the bill.

A related bill, HB 3575 by Brimer, scheduled to be considered by the Business and Industry Committee yesterday, would authorize privatization of the Texas Workers' Compensation Insurance Facility.

A similar bill, SB 1740 by Armbrister, has been referred to the Senate Economic Development Committee.