

SUBJECT: Changes in operation of the Workers' Compensation Insurance Fund

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Brimer, Dukes, Corte, Ritter, Siebert, Solomons, Woolley
0 nays
2 absent — George, Giddings

WITNESSES: For — Ramon Class; Andrew J. Hillman
Against — None
On — Nancy Moore, Texas Department of Insurance; Russell R. Oliver and Martin H. Young, Texas Workers' Compensation Insurance Fund

BACKGROUND: The Legislature created the Texas Workers' Compensation Insurance Fund in 1991 to inject competition into the workers' compensation insurance market, to guarantee the availability of workers' compensation insurance, and to serve as Texas companies' insurer of last resort. The fund is not operated by the state. It provides insurance primarily to small businesses that otherwise could not receive coverage, either for financial reasons or because their businesses are high-risk.

The fund was started with \$300 million in revenue bonds provided by the Texas Public Finance Authority (TPFA). All workers' compensation insurers in Texas began paying a maintenance tax surcharge on each year's gross premiums to cover debt service on the bonds.

Membership in the Texas Property and Casualty Insurance Guaranty Association is required of every Texas workers' compensation insurer. If an insurer becomes insolvent, the guaranty association assesses a fee based on the gross dollar amount of the claims held by that company, then collects the proportionate fee from each member company. The guaranty association, using the fees collected from its members, then continues to extend coverage to the policyholders of the insolvent company.

DIGEST: CSHB 3697 would change practices of the Texas Workers' Compensation Insurance Fund by refunding maintenance tax surcharges, revising the process of establishing premiums, requiring the fund's membership in the Texas Property and Casualty Insurance Guaranty Association, and providing for interim studies.

Refund of maintenance tax surcharges. The bill would require the comptroller and the Texas Department of Insurance (TDI) to prepare a list, by year, of insurance companies and self-insurers who paid a maintenance tax surcharge assessed for calendar years 1991 through 1997. The list would have to include the amount, by year, paid by each carrier or self-insurer. The comptroller would have to provide these lists to the fund within 60 days of the effective date of the bill.

Within 45 days of receiving the lists, the fund would have to issue separate checks from the fund surplus to each insurance firm and self-insurer for each year in which they had paid the surcharge.

Each policyholder would be entitled to a proportionate share of the refund paid to an insurance company. The formula for determining a policyholder's refund would be figured for each recoupment year as follows:

$$\begin{aligned} & \text{Maintenance tax surcharge (based on prior calendar year's premiums)} \div \\ & \text{policyholder's total gross premium for given recoupment year} = \\ & \text{percentage factor to be applied to each policyholder's premium.} \end{aligned}$$

The percentage factor would be multiplied by each policyholder's gross premium for a given recoupment year, and each insurer would have to refund the resulting amount to each policyholder by September 1, 2000.

If an insurer could not locate a policyholder, the insurer would have to notify TDI and deposit that policyholder's refund amount into the fund surplus. TDI would have to attempt to locate the policyholder. TDI could deduct from the refund amount the costs of attempting to locate the policyholder. If TDI could not locate the policyholder after making a reasonable effort, the agency would have to deposit the amount of the refund, less costs, into the surplus fund. The bill would require the insurance commissioner to establish rules regarding the distribution of refunds.

Using the same procedure, the Workers' Compensation Insurance Fund would have to provide refunds to policyholders of the fund who voluntarily paid a proportionate share of the amount of maintenance tax surcharge in calendar years 1994 and 1995. By January 1, 2001, each insurance company would have to file a report with TDI on refunds made for each recoupment period.

Setting premiums. CSHB 3697 would allow the Workers' Compensation Insurance Fund to establish multitiered premiums to set prices for insurance policies in the fund's programs. The premium pricing systems could provide for lower premium payments.

Association membership. The bill would provide that the Workers' Compensation Insurance Fund is a member of and protected by the Texas Property and Casualty Insurance Guaranty Association. As such, the fund would be subject to assessment under the Texas Property and Casualty Insurance Guaranty Act.

Interim studies. CSHB 3697 would require the Workers' Compensation Insurance Fund to enter into a joint venture with the Research and Oversight Council on Workers' Compensation (ROC) to provide data for interim studies that would examine:

- ! ways to improve worker safety and facilitate return-to-work programs;
- ! the quality and cost-effectiveness of the current health-care delivery system; and
- ! medical providers' treatment patterns and insurance carrier utilization review practices.

The studies would be funded from the fund surplus. The ROC, aided by the comptroller, would have to solicit proposals from private vendors to perform the studies. The council would have to report results and recommendations to the 77th Legislature by February 1, 2001, and to provide copies of the report to the governor, the lieutenant governor, and the speaker.

CSHB 3697 would eliminate the Workers' Compensation Insurance Fund's current tax credit of 2 percent of gross workers' compensation premiums written during the period for which taxes are assessed.

CSHB 3697 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. The Workers' Compensation Insurance Fund would not be liable for any assessment by the Property and Casualty Insurance Guaranty Association before January 1, 2000.

SUPPORTERS
SAY:

The Texas Workers' Compensation Insurance Fund needs to be changed to ensure that it does not have advantages over other workers' compensation carriers in Texas. Currently, the fund has a distinct advantage over other insurers because it is tax-exempt and does not have to be a member of the Texas Property and Casualty Insurance Guaranty Association.

The fund is intended to serve as a competitive force in the market and as the insurer of last resort for companies that otherwise could not obtain coverage. However, the fund is actuarially sound enough that it could insure the entire Texas market. The fund, which requires \$400 million to cover pending and anticipated claims, now contains \$800 million. This \$400 million surplus should be refunded to insurers and policyholders.

Insurers and policyholders deserve rebates from the fund. When TPFAs issued revenue bonds to start the fund, workers' compensation carriers were charged a maintenance tax surcharge to pay for debt service on the bonds. The money in the fund was intended to be used for workers' compensation coverage. It should not be appropriated for causes for which it was not intended.

The fund no longer should receive the 2 percent tax credit on the previous year's premiums. The tax credit gives the fund an unfair competitive advantage over other insurers who must pay the tax, because the fund can write premiums at a lower rate than can other insurers. Moreover, the fund now has only 10 percent of the market, down from a peak of 32 percent in early 1995. This shows that other insurers are narrowing the competitive gap, so the fund no longer needs the tax credit to ensure its competitiveness. The fund's tax credit also reduces the funds used to support TDI and the Texas Workers' Compensation Commission.

The fund should have to become a member of the Texas Property and Casualty Insurance Guaranty Association like all other similar insurers, because it is a viable part of the workers' compensation market. When the fund was created, the insurance industry did not expect the fund to succeed and did not want it to be a part of the guaranty association, lest the industry

be required to pay for the fund's liquidation. Today, the fund is more successful than many private insurers, and it should pay assessments to the association like all other insurers.

The fund should be a member of the guaranty association also because there is no defined process for what would happen if the fund failed. Although that scenario is unlikely, policyholders should have the peace of mind of knowing that their coverage will be maintained if the fund should go insolvent.

The fund needs statutory authority to set different pricing systems for different policies. Other insurers may set only one rate per company, so they create subsidiaries for each different rate they offer. When the fund was created, it was prohibited from creating subsidiaries. This bill would codify the fund's current practice and conform to the original intent for the fund's pricing system.

**OPPONENTS
SAY:**

The surplus in the Texas Worker's Compensation Insurance Fund should revert to the state's general revenue account because the state provided the initial bonds to start the fund. In general revenue, the surplus funds could help offset a general tax cut, boost education spending, or be put to many other worthy uses.

The fund should retain the 2 percent tax credit instituted when the fund took over the policies of the state's previous insurer of last resort. At that time, the fund inherited many high-risk policies, and the tax credit was intended to offset the losses involved in writing these risky policies. As the state's insurer of last resort, the fund still provides coverage for businesses that private insurers will not insure. Therefore, the need for the tax credit remains.

**OTHER
OPPONENTS
SAY:**

The fund surplus should be used to lower premiums, increase benefits for workers, or guarantee future coverage for Texas' growing number of businesses.

NOTES:

The original bill would have provided only for the legislative appropriation of unassigned surplus funds into the state's general revenue fund, subject to the approval of the insurance commissioner.