

SUBJECT: Political subdivision premiums for mutual property and casualty insurance

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — G. Lewis, B. Brown, Chisum, Farabee, Salinas, Swinford

0 nays

3 absent — Ramsay, Hilderbran, Krusee

WITNESSES: For — Ronald H. Cobb, American Insurance Association

Against — None

BACKGROUND: The Texas Constitution, Art. 3, sec. 52(a) prohibits a political subdivision of the state from becoming a stockholder in any corporation, association, or company. This prohibition arose from failed state investments in railroad companies before and during the Civil War. These failed deals embarrassed Texas greatly and caused the Legislature to introduce provisions in the Constitution against involvement in private corporations by the state's political subdivisions, including lending the credit of the state, granting public funds, or becoming a stockholder.

The Texas Commission of Appeals in 1926 and the Texas Supreme Court in 1942 ruled that this section of the Constitution prohibits political subdivisions from buying insurance from insurance associations or from mutual insurance companies, called mutuals. In a mutual, the insurance policyholders act as stockholders and own the company entirely. The courts determined that this combined status as policyholder and stockholder barred political subdivisions from paying for such insurance. Stock companies are alternatives to mutuals in which policyholders pay the premiums and hold no ownership in the company.

These rulings have been cited repeatedly in attorney general opinions that found that political subdivisions could not participate in various kinds of insurance funds under the Constitution. Other court rulings and attorney general opinions have held that state agencies are not considered political subdivisions and are

not covered by the constitutional prohibitions against involvement with private entities.

HJR 73, approved by voters in 1986, amended the Constitution to allow political subdivisions to use public funds or credit to pay premiums on nonassessable life, health, or accident insurance policies and on annuity contracts issued by authorized mutual insurance companies. "Accident" insurance policies cover only accidental injuries and often are linked to health insurance policies.

Only nonassessable policies are allowed by the Constitution. In nonassessable policies, the policyholder has no further obligation to the mutual company for the duration of the policy once the premium has been paid. In assessable policies, the policyholder may have to make additional payments to the mutual company, depending on the number of claims and the contributions from other policyholders.

DIGEST:

HJR 69 would amend art. 3, sec. 52(a) of the Texas Constitution to add property and casualty lines to the types of nonassessable insurance policies offered by mutuals whose premiums can be paid by a political subdivision using public funds or credit.

The proposed amendment would be presented to Texas voters at an election on November 2, 1999. The ballot proposal would read: "The constitutional amendment permitting a political subdivision to purchase nonassessable property and casualty insurance from an authorized mutual insurance company in the same manner that the political subdivision purchases life, health, and accident insurance."

**SUPPORTERS
SAY:**

Since Texas has allowed political subdivisions to hold policies for life, health, or accident insurance issued by mutuals since 1986, there is no reason to maintain the prohibition against paying premiums for property or casualty insurance policies issued by mutuals. Allowing nonassessable mutuals to vie for property and casualty insurance contracts with political subdivisions would increase competition without undermining the fundamental policy against local government investment in private ventures. Some of the largest property and casualty companies in Texas are mutuals.

The existing prohibition against assessable policies would remain in effect. The difference between a nonassessable property or casualty policy issued by a mutual and a property or casualty policy issued by a stock company is a technical one and would not affect the political subdivision's risk or coverage.

OPPONENTS
SAY:

The original reason for the constitutional provision in response to the failed railroad deals of the 1800s is still valid. It is dangerous for the state's political subdivisions to lend their credit to private entities by becoming stockholders. While it might seem innocuous to allow a political subdivision to own part of a mutual as a policyholder, it would be one step closer to the risky prospect of using local government funds to speculate in private enterprises.

OTHER
OPPONENTS
SAY:

This proposal is necessary because the 1986 amendment allowing political subdivisions to pay premiums for life, health, or accident policies issued by mutuals was too restrictive. Rather than ask the voters to approve piecemeal constitutional changes every few years, the Legislature should allow political subdivisions to pay premiums for *all* types of insurance or even eliminate this antiquated restriction entirely.