HOUSE
RESEARCH
ORGANIZATION bill analysis 7/10/2003

HB 56
Callegari

SUBJECT:	Changing the term and qualifications of the insurance commissioner
COMMITTEE:	Government Reform — favorable, without amendment
VOTE:	4 ayes — Swinford, Callegari, Casteel, R. Cook 0 nays 3 absent — Gallego, Allen, T. Smith
WITNESSES:	None
BACKGROUND:	Insurance Code, sec. 31.022(a) requires the governor, with advice and consent of the Senate, to appoint the insurance commissioner to a two-year term expiring on February 1 of odd-numbered years. Sec. 31.023 requires the commissioner to have at least 10 years of experience as an executive in the administration of business or government or as a practicing attorney or certified public accountant, with at least five years in the field of insurance or insurance regulation. Texas Constitution, Art. 4, sec. 12 requires that gubernatorial appointments be made with the advice and consent of two-thirds of the Senate. An appointee nominated while the Senate is recessed must be confirmed by the Senate in the first 10 days of the next legislative session following the appointment.
DIGEST:	HB 56 would reduce the term of the insurance commissioner to one year and would change the commissioner's qualifications to require only "experience in the administration of business or government." The bill would take effect November 1, 2003.
SUPPORTERS SAY:	A one-year term would make the insurance commissioner more accountable and would be more appropriate to market conditions. Insurance is a rapidly evolving industry, with major changes in the marketplace occurring on a quarterly or even a monthly basis. Insurance markets are on edge now, and missteps by an insurance commissioner could put $70 billion in premiums on the line. Because insurance markets do not wait two years to adjust, the

governor should not have to wait two years to respond to an insurance commissioner's missteps. HB 56 would give the governor flexibility to respond to a bad situation before it became worse, but it also would allow a high-performing commissioner to be rewarded on an annual basis.

HB 56 would broaden the qualifications for the insurance commissioner's job. The current requirements are unnecessarily restrictive and limit the pool of qualified appointees. Allowing the governor to draw from a broader field of expertise could make the critical difference in being able to fill such an important job quickly and efficiently. The Texas Department of Insurance is scheduled for sunset review in 2006-07, and HB 56 would be a small start toward making some of the changes likely to arise during that process.

The Texas Constitution provides a method for the governor to nominate an appointee while the Senate is recessed and allow that person to serve until the next legislative session. Thus, no practical implementation problem exists with a one-year appointment.

OPPONENTS SAY:

A one-year term for the insurance commissioner would be impractical at best and would expand the governor's power inappropriately. A one-year term for a position as important as insurance commissioner is unrealistic. No qualified appointee could be expected to hire key staff and get up to speed in such a short period. Also, since the job description no longer would require five years of experience in insurance, a new commissioner could need extra time to develop expertise on the issues.

Reducing the commissioner's term to one year essentially would make the commissioner an "at-will" employee serving at the governor's pleasure. This would give the governor more power than the framers of the Constitution intended and could lead the commissioner to make short-sighted decisions to please the governor rather than long-term decisions for the health and well-being of the marketplace and consumers. Technical expertise is critical in the commissioner's position, and many unintended consequences could result from a ratemaking process led by someone who did not fully understand the complexity of the issues or who felt pressured to make the "right" decisions to keep his or her appointment for longer than one year.

Because the Senate ordinarily meets every two years, HB 56 would allow the governor to make an "end run" around the confirmation process. The Constitution allows the Senate to confirm interim appointments early in each session, but under HB 56, the governor could appoint a commissioner in January of an even-numbered year whose term would expire before the Senate had a chance to consider the appointment. In order for the Senate to be able to exercise its constitutional duty to advise and consent, the governor would have to call the Senate into special session once a year to review and confirm a single annual appointment because the Senate cannot convene itself for this purpose. No other high-level official or commissioner is appointed for a one-year term, and no adequate justification or precedent exists for singling out the insurance commissioner for such treatment.

NOTES:

SB 19 by Ellis, pending in the Senate Government Reorganization Committee, would eliminate the requirement that the insurance commissioner have at least five years of experience in the field of insurance or insurance regulation but would keep the commissioner's term at two years.