HOUSE
RESEARCH
ORGANIZATION bill analysis 8/5/2003

HB 16
Swinford

SUBJECT:	Changing the qualifications of the insurance commissioner
COMMITTEE:	Government Reform — favorable, without amendment
VOTE:	4 ayes — Swinford, Allen, Casteel, R. Cook 0 nays 3 absent — Gallego, Callegari, T. Smith
WITNESSES:	No public hearing
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.
DIGEST:	HB 16 would eliminate the requirement that the commissioner of insurance have at least five years of experience in the field of insurance or insurance regulation. The bill would take effect December 1, 2003.
SUPPORTERS SAY:	HB 16 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 16 would be a small start toward making some of the changes likely to arise during that process. Reducing the term of office for the insurance commissioner for two years to one 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, as proposed in earlier versions of the bill, 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.

Because the Senate ordinarily meets every two years, changing the appointment to a one-year term could 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 if the governor appointed a commissioner in January of an even-numbered year, his or her term would expire before the Senate even 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.

OPPONENTS SAY:

Eliminating the requirement that the insurance commissioner have five years of insurance experience could imperil the rate-making process. 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.

OTHER OPPONENTS SAY:

HB 16 should reduce the insurance commissioner's term from two years to one year in order to make the insurance commissioner more accountable. 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 16 should give the governor flexibility to respond to a bad situation before it becomes worse, and it also should allow a high-performing commissioner to be rewarded on an annual basis.

The Texas Constitution provides a method for the governor to nominate an appointee while the Senate is not in session and allow that person to serve until the next legislative session. Thus, no practical implementation problem would exist with a one-year appointment.

NOTES: During the first called session, HB 56 by Callegari, which would have reduced the insurance commissioner's term from two years to one and also would have deleted the five-year insurance experience qualification, passed the House on July 10 by 80-65, but died in the Senate. Art. 4 of SB 22 by Ellis, first called session, an omnibus government reorganization bill, was identical to HB 16. SB 22 passed the Senate, but died in the House Government Reform Committee.