

SUBJECT: Continuation and operation of the Office of Public Insurance Counsel

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Martinez Fischer, Deshotel, Eiland, Hancock, Hunter, Taylor, Thompson

0 nays

1 absent — Isett

SENATE VOTE: On final passage, April 2 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* Pamela J. Bolton, Texas Watch; Patricia Kolodzey, Texas Medical Association; Joe Sanchez, AARP; Annie Spilman, Independent Insurance Agents of Texas; Jared Wolfe, Texas Association of Health Plans)

Against — Mark Kincaid

On — Deeia Beck, Office of Public Insurance Counsel

BACKGROUND: The Office of Public Insurance Counsel (OPIC) was established as an independent agency in 1991 to represent the interests of consumers in insurance matters. An Office of Consumer Protection established in 1987 preceded OPIC, but was a division of the State Board of Insurance. OPIC advocates for consumers in insurance rate, form, and rule proceedings, primarily at the Texas Department of Insurance (TDI).

Specifically, OPIC reviews rate changes filed with TDI by individual companies and may attempt to negotiate changes to rates in the consumer's interest. The agency reviews changes to insurance policy forms for coverage adequacy and the appropriateness of exclusions. OPIC represents consumers in contested-rate cases and industry-wide rate hearings and may participate in judicial appeals of rate cases. OPIC also reviews and publishes consumer education materials.

The governor appoints the OPIC public counsel, and the Senate must confirm this two-year appointment. The public counsel must be licensed to practice law in Texas and must have demonstrated dedication to protecting the rights of the public. There is no policymaking body for OPIC. The public counsel sets agency policy, hires staff, prepares the agency budget, and approves agency expenditures. OPIC is permitted 16.5 full-time equivalent positions, and its fiscal 2008-09 budget is about \$2.1 million.

OPIC last underwent Sunset review in 1993 and was continued by the 73rd Legislature. If not continued by the 81st Legislature, OPIC will be abolished September 1, 2009.

DIGEST:

SB 1001 would continue OPIC until September 1, 2021. The bill would add standard Sunset provisions governing conflicts of interest of the public counsel and agency staff, use of technology to increase public access, and alternative rulemaking and dispute resolution procedures.

The bill would take effect September 1, 2009. The conflict-of-interest provisions relevant to eligibility to serve as public counsel would apply to a public counsel appointed after this date.

**SUPPORTERS
SAY:**

SB 1001 would acknowledge the critical need to maintain OPIC as an independent advocate for insurance consumers and would implement three standard Sunset recommendations. TDI cannot act both as the final judge on adoption of rules that govern insurance regulation and perform an unbiased review of those rules from the perspective of a consumer. The most effective way to represent consumers is to assist them independently of the regulatory body that may have authorized the activity the consumer finds injurious. Although OPIC conducts many of the same activities TDI does in reviewing rate and form filings, OPIC reviews this information with the intent to gather data for a distinctly different purpose. Only some of the review processes, and not the information gathered, are duplicative.

OPIC plays a separate and important role in consumer education. OPIC not only produces 10 publications for which the content is determined, most appropriately, by a consumer representation agency, but also reviews TDI publications from a consumer perspective to ensure that they are understandable to those without complex industry knowledge.

Consumer protections would not be stronger if the public counsel were under TDI. Any perception of a diminished consumer protection role for

OPIC following revisions to the auto and property insurance rate filing system in 2003 were a consequence of accommodating a new regulatory environment that was designed to allow consumers to govern the rates set in the insurance marketplace by “voting with their pocketbooks” if they had a concern about an insurance company’s rate. OPIC’s ongoing review of insurer rate and form filings and ability to petition TDI to hold a rate hearing is adequate under the current regulatory structure, yet does not diminish the need for these reviews to occur independently of TDI. OPIC still presents evidence and represents consumers at industry-wide hearings, hearings convened by TDI dealing with individual rate filings, and hearings that occur for each rating change in certain insurance lines.

OPIC serves in its consumer protection role more effectively than non-governmental consumer advocates would, because OPIC has a more extensive budget, more extensive actuarial expertise, and access to any information available to TDI, enabling OPIC to assess better the legitimacy of consumer concerns or to uncover consumer issues that other advocates lack the information to pinpoint. OPIC also has an ongoing ability to communicate with the TDI commissioner or other agency personnel as needed, whereas non-governmental advocates do not.

SB 1001 appropriately would not grant authority to OPIC to lobby the Legislature. No exceptions should be made to the prohibition on state agency representatives advocating for or against legislation, because this would represent a misuse of public funding. Also, OPIC’s ability to petition TDI to initiate a rate hearing provides sufficient intervention on behalf of consumers. Allowing OPIC to initiate a hearing directly would duplicate the regulatory authority of TDI and cause undue interference in insurer rate implementation.

**OPPONENTS
SAY:**

SB 1001 could have saved money and prevented duplication of agency functions if OPIC had been abolished and replaced with a consumer representative within TDI, as the Sunset Commission staff recommended. Consumers should be represented in insurance regulation, yet a separate agency is not necessary to perform this function. Consumers already may participate in TDI rulemaking hearings, and consumer protection is an inherent duty of TDI as a regulatory agency.

OPIC undertakes many of the same administrative functions performed by TDI in reviewing rates, forms, and rulemaking, only examines these filings and rules from a consumer’s perspective, which could be done

within TDI. Consumer representation through TDI could save money by reducing duplication and making use of TDI's existing administrative structure.

A consumer representative within TDI could be more effective than OPIC in negotiating rate and form filings, because an internal consumer representative would have the authority of operating as a part of the agency regulating the insurer. OPIC's consumer-education role is more limited than that of TDI because OPIC has a smaller consumer education budget, fewer consumer education employees, and less regular contact with consumers.

OPIC was established to act as an independent consumer advocate under a different insurance regulatory scheme. Since property and casualty rate regulation was revised in 2003, ratemaking hearings no longer occur for these major insurance lines prior to rate changes, so there is not an opportunity for OPIC to represent consumers in ratemaking hearings. OPIC's ability to petition TDI to hold a rate hearing under the new regulatory scheme hinders the state's objectives in implementing that scheme, which allows the marketplace to set rates unless the rates are deemed excessive, inadequate, unreasonable, or unfairly discriminatory.

OTHER
OPPONENTS
SAY:

While SB 1001 appropriately would continue OPIC as an independent agency, OPIC would be more effective if it was afforded greater authority to act on behalf of consumers. OPIC was established to advocate for consumers, yet has not been equipped with all the tools necessary to perform this role adequately. OPIC should have more authority to advocate for consumers, both in the Legislature and through TDI proceedings.

In its unique role as a state agency tasked with advocating for consumers, OPIC should be allowed to testify on behalf of consumers before legislative committees in support of or opposition to legislation. It is misleading to members of the public trying to determine the effect of legislation to learn that their consumer advocacy agency testified neutrally on a bill that either could be very good or very bad for consumers. OPIC at least should be able to make recommendations to the Legislature on statutory changes that could benefit consumers.

OPIC formerly had the ability to force a hearing on a rate filing if an agreement with the insurer could not be reached. This was the agency's

strongest consumer protection. Today, OPIC only may petition TDI to hold a hearing and appear for or intervene on behalf of consumers if TDI chooses to initiate a hearing. TDI refused half of the rate objections made by OPIC in 2007. OPIC should be authority to initiate rate hearings before the State Office of Administrative Hearings rather than petition TDI to initiate such hearings.