

SUBJECT: Continuing the Office of Public Insurance Counsel

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Eiland, Hancock, Nash, L. Taylor, Vo, Walle
2 nays — Sheets, Torres

WITNESSES: For — (*Registered, but did not testify*: Lauren Dimitry, Texans Care for Children; Erin Gámez, National Multiple Sclerosis Society; Patricia Kolodzey, Texas Medical Association; Tim Morstad, AARP; Stacey Pogue, Center for Public Policy Priorities)

Against — None

On — Deeia Beck, Office of Public Insurance Counsel; Fred Bosse, American Insurance Association; Mike Geeslin, Texas Department of Insurance; Chloe Lieberknecht, Sunset Advisory Commission; Ware Wendall, Texas Watch

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 15 full-time equivalent positions, and its fiscal 2010-11 budget is about \$1 million.

OPIC last underwent Sunset review in 2009. The agency's Sunset bills, HB 2233 by Isett and its Senate companion bill, SB 1001 by Deuell, were not enacted during the regular session. During the first called session of the 81st Legislature in 2009, SB 2 by Hegar extended OPIC until September 1, 2011. The agency then underwent a special purpose Sunset review to be considered by the current Legislature. If not continued by the 82nd Legislature, OPIC will be abolished September 1, 2011.

DIGEST: HB 1950 would continue OPIC until September 1, 2023. The bill would add standard sunset provisions governing alternative rulemaking and dispute resolution procedures.

The bill would take effect September 1, 2011.

SUPPORTERS SAY: HB 1950 would address the critical need to continue OPIC as an independent advocate for insurance consumers in Texas. As the Sunset Advisory Commission staff found, the independence of OPIC outweighs any potential of changing the office's structure, including shifting some of its functions to TDI.

OPIC should not be absorbed into TDI because TDI cannot act both as 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 help them independently of the regulatory body that may have authorized the activity the consumer finds injurious. The insurance industry is well represented through attorneys and rate and form filings, so it is critical that OPIC continue because without the agency, consumers would be left without an advocate.

The function of the TDI commissioner in insurance oversight is similar to that of a referee. By continuing OPIC, the commissioner could remain impartial, and OPIC could advocate effectively on behalf of Texas consumers.

Without OPIC's presence to represent the average Texan, residential consumers and small businesses would have no leverage in negotiating

fair rates with corporate giants and could pay a disproportionate share for insurance coverage. In one instance, OPIC helped secure almost \$4 million in rebates during 2010 for homeowners' insurance consumers as a result of the office's protection function.

Because evaluating rates requires actuarial assistance and other research, the types of service OPIC provides would be cost-prohibitive for consumers to secure. OPIC's and TDI's complementary working relationship allows both agencies to address consumer issues before reaching the level of enforcement action, which saves time and other resources.

Although OPIC conducts many of the same activities as TDI in reviewing rate and form filing, 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 provides a tremendous return on taxpayer dollars, and discontinuing the agency would cause a negative impact on general revenue funds. OPIC receives its funding from assessments on insurers, part of which is allocated to the state. On average, the assessment generates \$2.3 million for state general revenue, and OPIC receives \$1 million for operations. Without OPIC, the state would lose funding that is important to its budget, particularly during these lean economic times. Abolishing OPIC would not make fiscal sense, and the budget shortfall should not be used as an excuse to cut back on consumer protection.

OPIC plays a separate and important role in consumer education. OPIC not only produces 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. Placing the burden on companies to provide consumer education instead of OPIC would only result in increased costs and ultimately higher premiums.

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.

The bill 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.

OPPONENTS
SAY:

The state could save money and prevent duplication of agency functions if OPIC were abolished and replaced with a consumer representative within TDI. 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. Consumer representation through TDI could save money by reducing duplication and making use of TDI's existing administrative structure. OPIC undertakes many of the same administrative functions performed by TDI in reviewing rates, forms, and rulemaking, yet only examines these filings and rules from a consumer's perspective, which could be done within TDI. Duplication is a waste of taxpayer dollars, especially during the current budget shortfall. Therefore, either certain sections within OPIC, or the entire agency, should be abolished.

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.

OTHER
OPPONENTS
SAY:

While HB 1950 appropriately would continue OPIC as an independent agency, OPIC would be more effective if it were given greater authority to act on behalf of consumers. OPIC was established to advocate for consumers, yet has not been equipped with all necessary tools to perform this role adequately.

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 may only petition TDI to hold a hearing and appear for or intervene on behalf of consumers if TDI chooses to initiate a hearing. OPIC should be authorized to initiate rate hearings before the State Office of Administrative hearings rather than petition TDI to initiate such hearings.

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 in 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.

NOTES:

The companion bill, SB 647 by Hegar, passed the Senate by 30-0 on March 21 and was reported favorably, without amendment, by the House Insurance Committee on May 4, making it eligible to be considered in lieu of HB 1950.