

- SUBJECT:** Amending the authority and operations of TPCIGA
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 8 ayes — Lucio, Oliverson, G. Bonnen, S. Davis, Julie Johnson, Lambert, Paul, C. Turner
- 0 nays
- 1 absent — Vo
- SENATE VOTE:** On final passage, April 11 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** *On House companion bill, HB 1982:*
For — (*Registered, but did not testify:* Jay Thompson, Afact; Joe Woods, American Property Casualty Insurance Association; Paul Martin, National Association of Mutual Insurance Companies; Ashley Morgan, Nationwide; Susan Ross, State Farm Insurance; Jessica Boston, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Burnie Burner, Texas Title Insurance Guaranty Association; Cathy DeWitt, USAA)
- Against — None
- On — Shelby Baetz, Texas Property and Casualty Insurance Guaranty Association; (*Registered, but did not testify:* Jamie Walker, Texas Department of Insurance)
- BACKGROUND:** Insurance Code ch. 462 establishes the Texas Property and Casualty Insurance Guaranty Association (TPCIGA) as a nonprofit unincorporated legal entity composed of all member insurers. Member insurers have to remain members of TPCIGA as a condition of engaging in the business of insurance in Texas.
- The association's powers are exercised through a nine-member board of directors. Member insurers select five industry board members, and the

insurance commissioner appoints four board members to serve as public representatives.

DIGEST: SB 1063 would amend statutes governing the authority and operations of the Texas Property and Casualty Insurance Guaranty Association (TPCIGA), and would authorize the association to recover costs and attorney's fees incurred in certain enforcement proceedings.

Definitions. The bill would change the statutory definition of an "impaired insurer" to a member insurer that was subject to a final, nonappealable order of liquidation that included a finding of insolvency issued by a court of competent jurisdiction in Texas or the insurer's state of domicile.

Operations. SB 1063 would amend the process for filling certain vacancies on the TPCIGA board of directors. Under the bill, a vacancy for the unexpired term of a director who served as an insurance industry board member would be filled by a majority vote of the remaining board members, subject to the commissioner's approval. The commissioner would fill a vacancy for the unexpired term of a director who served as a public representative on the board by appointment.

The bill would remove a stipulation that TPCIGA could hold an open meeting by conference call only under certain circumstances and would establish new requirements for open meetings held by conference call. Under the bill, a meeting held by telephone conference call would have to be audible to the public at a specified location and would have to allow two-way audio communication between board members during the entire meeting. If the two-way audio communication was disrupted during a meeting so that a quorum of the board was no longer able to participate, the meeting could not continue until the two-way audio was reestablished. An audio recording of the open portion of the meeting would have to be made publicly available on TPCIGA's website.

SB 1063 also would authorize TPCIGA to handle claims through contract claims adjusters and to use an insurer designated as a servicing facility

under a servicing agreement or loss portfolio transfer agreement, subject to the approval of the insurance commissioner.

Cost recovery. TPCIGA would be entitled to recover costs and attorney's fees incurred in defending the association or an impaired insurer's insured against a claim brought in violation of statute by a reinsurer, insurer, self-insurer, insurance pool, or underwriting association, on that entity's own behalf or on behalf of the entity's insured, after the date that the entity was provided applicable notice.

TPCIGA also would be entitled to recover costs and attorney's fees incurred in contesting claims based on certain judgments, settlements, or releases on the association's behalf or on behalf of an impaired insurer's insured after the date on which the party asserting the claim was provided notice by the association.

TPCIGA's right to recover the proceeds from the sale of salvage property related to a covered claim could not be reduced in the amount of any pre-impairment costs, fees, or expenses related to the salvage property that were not part of the covered claim under statute. A person or entity in possession of salvage property subject to TPCIGA's right of recovery could not seek recovery from the association for any pre-impairment costs, fees, or expenses.

For a claim arising from certain insured entities that had filed for bankruptcy, insolvency, or liquidation, a court would have to award TPCIGA the costs and attorney's fees incurred in seeking recovery or attempting to obtain the insured's financial information.

SB 1063 also would authorize the association to recover the amount of a covered claim for workers' compensation insurance benefits and the costs of administration and defense of the claim from certain successor entities. A court would be required to award costs and attorney's fees related to recovering the claim to the association.

The bill would take effect September 1, 2019, and would apply only with

respect to a property and casualty insurance company that was designated as an impaired insurer on or after the effective date.

**SUPPORTERS
SAY:**

SB 1063 would streamline the administration and other processes for the Texas Property and Casualty Insurance Guaranty Association (TPCIGA), a nonprofit organization created by the Legislature to serve as a safety net to protect insurance consumers. The bill would allow the association greater flexibility in conducting meetings and would appropriately expand the association's ability to obtain reimbursements for attorney's fees and certain other costs.

The bill would streamline the process by which TPCIGA could fill vacancies on the association's board of directors by allowing the insurance commissioner to appoint public members, which would help avoid delays in filling board vacancies. SB 1063 would bring TPCIGA's meeting requirements in line with the Texas Windstorm Insurance Association by allowing the board to conduct meetings over conference call.

SB 1063 also would allow the association to obtain reimbursement of attorney's fees and expenses incurred in defending against claims for which current law expressly and unambiguously precludes recovery and would ensure that TPCIGA was clearly authorized to recover workers' compensation from the successor entities of high net worth insured employers.

**OPPONENTS
SAY:**

No concerns identified.