SUBJECT: Privatizing the Texas Workers' Compensation Insurance Facility

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Brimer, Rhodes, Dukes, Elkins, Solomons, Woolley

0 nays

3 absent — Corte, Giddings, Janek

WITNESSES: For — Barbara Bufkin and Burnie Burner, Swiss Re Service Corporation; Gene Fondren, Texas Workers' Compensation Insurance Facility

Against — None

On — Jan Ferguson, Texas Property and Casualty Guaranty Association; Jose Montemayor, Texas Department of Insurance

BACKGROUND: In 1989, the Texas Legislature revamped the state workers compensation system by enacting the Texas Workers' Compensation Reform Act. The act replaced the state's insurer of last resort, the Texas Workers' Compensation Assigned Risk Pool, with the Texas Workers' Compensation Insurance Facility. In 1991, the facility board was restructured and the facility required to stop writing new policies as of January 1, 1994. The role of insurer of last resort was transferred to the newly created Texas Workers' Compensation Insurance Fund, an independent corporation that sells workers' compensation coverage through the regular market and has become the state's largest carrier of workers' compensation insurance.

The Texas Workers' Compensation Insurance Facility is scheduled to transfer its assets and liabilities to the Texas Workers' Compensation Insurance Fund in 1999.

The Insurance Code specifies that if the facility has a deficit or surplus from operations, the amount of the deficit or surplus is either assessed or rebated to the insurance carriers. The insurance commissioner establishes the amount of assessments or rebates insurers must pass on to employers, based on the insurers' portion of all policies sold in the voluntary market.

The Texas Property and Casualty Insurance Guaranty Association is a nonprofit legal entity composed of all insurers in the state. The association serves as a mechanism for paying claims when a workers' compensation or property and casualty insurer becomes insolvent.

DIGEST:

HB 3575 would allow the Texas Workers' Compensation Insurance Facility to be converted into a stock insurance company with full authority to enforce the rights of the facility that existed before the conversion. The facility would be transferred to the Texas Property and Casualty Insurance Guaranty Association if a conversion agreement could not be made or approved by August 31, 1997.

A conversion agreement would have to be approved by the facility board and the insurance commissioner. The converted facility would not have the authority to assess insurers for losses.

The converted facility would have to comply with the Insurance Code and rules adopted by the commissioner. If the converted facility did not issue any new policies, it would be exempt from capital requirements and other provisions governing other insurers. The exemption would no longer apply if the converted facility began to sell policies.

HB 3575 would apply if a conflict existed between its provisions and any other provisions.

The privatization provisions of HB 3575 would take effect immediately if finally approved by a two-thirds record vote of the membership in each house, or on September 1, 1997, if the facility was transferred to the guaranty association.

SUPPORTERS SAY:

HB 3575 would allow the Texas Workers' Compensation Insurance Facility to be sold to a private company with the expertise and financial incentive to efficiently manage remaining claims. Even though the facility is scheduled to be phased out of existence in 1999, the liabilities for existing policies will remain for 20 or 30 years. These responsibilities should be assumed by a private business that can handle them efficiently.

The sale of the facility to a private company would relieve the state of all remaining responsibility for managing policies sold before 1994 and would eliminate the need for a state agency that has been less than efficient in reducing its operations and preparing to go out of business. The facility should be sold or transferred this year because it is not scaling back operations as rapidly as it should be.

HB 3575 would not allow insurers to keep any money that should be passed on to employers. The $700 million rebated to insurers in 1991 to 1993 will be refunded to employers once the insurance commissioner promulgates rules specifying how the companies should calculate the refunds. Some have questioned whether the statutes governing these rebates would still apply under HB 3575 and whether insurers would still be required to rebate this money to employers. The saving clause in HB 3575 would specify that insurers would still be subject to current laws directing them to rebate the surplus to qualified employers.

OPPONENTS SAY:

The facility should not be sold to a private company just to relieve the state of responsibility for managing policies and claims a few years earlier than planned. The facility has been aggressive in pursuing claims against insurers and should be allowed to continue to do so rather than being privatized or transferred to an agency that has little expertise in this area. There is no compelling reason for transferring or privatizing the facility this year. The facility is scheduled to go out of business anyway in two years. The transfer should be allowed to proceed as planned, and the facility's remaining responsibilities transferred to the fund, which has the expertise to handle them.

HB 3575 may allow insurers to keep $700 million that should be passed on to employers. Before 1991, when the facility ran a deficit, insurers passed on the cost of these deficits to employers. But when the facility ran a surplus between 1991 and 1993, insurers kept the $700 million in rebates they received from the facility. Current law states that this money should be refunded to employers, and the insurance commissioner is in the process of developing rules that would clarify how insurers should calculate the rebate.

However, HB 3575 lacks any provisions similar to current law that would require insurers to pass on assessments as refund surpluses. If HB 3575

were enacted, insurers may go to court to argue that they do not have to refund the $700 million to employers because these sections were not included in HB 3575, indicating that the Legislature did not intend for any aspect of this pass through law to continue in effect. The "saving clause" in HB 3575 may not be specific enough about the rebates, and the bill should clarify the issue beyond question.

NOTES:

HB 976 by Brimer, which authorized privatizing or transferring the facility to the Property and Casualty Guaranty Fund, was approved by the House on April 18 and was reported favorably, as amended, by the Senate Economic Development Committee on May 12.