

SUBJECT: Changing the workers' compensation insurance fund to a mutual company

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — Brimer, Corte, J. Davis, George, Woolley

0 nays

4 absent — Dukes, Elkins, Giddings, Solomons

WITNESSES: For — Richie Jackson, Texas Restaurant Association

Against — None

On — Nancy Moore, Texas Department of Insurance

BACKGROUND: The Legislature created the Texas Workers' Compensation Insurance Fund in 1991 to stimulate competition in the workers' compensation insurance market, to guarantee the availability of workers' compensation insurance, and to serve as the insurer of last resort. The fund is not operated by the state. It does not receive state money, nor are its personnel classified as state employees. The fund is governed by a nine-member board of directors, appointed by the governor and approved by the Senate.

The Texas Public Finance Authority issued \$300 million in revenue bonds on behalf of the fund, although the bonds were the obligation solely of the fund and not of the state. After startup, all workers' compensation carriers in Texas began paying a maintenance tax surcharge on each year's gross premiums to cover debt service on the bonds. The fund completely paid off its bond obligation in 1998.

By 1999, the fund, which required \$400 million to cover pending and anticipated claims, contained \$800 million. That year, the 76th Legislature enacted HB 3697 by Brimer, refunding the fund's surplus of \$400 million to insurance companies and self-insurers who had paid the maintenance tax surcharge assessed for calendar years 1991 through 1997, because the fund was considered actuarially sound and because that money had been intended

for workers' compensation coverage. Each policyholder also received a proportionate share of refunds paid to insurers on the assumption that the cost of the maintenance tax was passed on to the insured.

HB 3697 also removed the fund's 2 percent tax credit on the previous year's premiums. The consensus was that the tax credit gave the fund an unfair competitive advantage over other insurers who had to pay the tax, since the fund could write premiums at a lower rate than other insurers.

Every Texas workers' compensation insurer must be a member of the Texas Property and Casualty Insurance Guaranty Association. If an insurer becomes insolvent, the guaranty association assesses a fee based on the gross dollar amount of the claims held by that company, and then collects a proportionate fee from each member company. Using these fees, the guaranty association continues to extend coverage to the insolvent company's policyholders.

Enactment of HB 3697 also brought the fund, because it had evolved as a viable part of the workers' compensation market, into the guaranty association.

DIGEST:

CSHB 3458 would convert the Texas Workers' Compensation Insurance Fund to a domestic mutual insurance company, the Texas Mutual Insurance Co., with assets owned by the policyholders. The insurance commissioner would have to issue a certificate of authority to the company to write workers' compensation insurance. The company could exercise all rights, privileges, powers, and authority of any other mutual corporation organized to transact workers' compensation insurance business in Texas. It could not be dissolved except by action of the Legislature.

The company would be governed by a board of nine directors who would serve staggered six-year terms. Five members would have to be appointed by the governor with the remaining four elected by the company's policyholders. The bill would establish qualifications for board members and would require the governor to name a chairman. It would include provisions regarding potential grounds for removing board members and for filling vacancies on the board under the company's bylaws. The board members of the Workers' Compensation Insurance Fund serving on the bill's effective date would serve as the company's initial board of directors.

In addition to expenses incurred for travel and in performance of duties, as authorized by current law, each board member would receive fees for service on the board commensurate with industry standards. The board would have to elect annually any other officers necessary for the performance of its duties, and it could create committees and subcommittees. The board would have to maintain the company's principal office in Travis County.

The board would have to hire a president with proven successful experience as an executive at the general management level in the insurance business. The president would receive compensation as set by the board.

The company would have to pay premium taxes, maintenance taxes, and the maintenance tax surcharge in the same manner as a domestic mutual insurance carrier authorized to write workers' compensation insurance. The company would be liable only for assessments by the Texas Property and Casualty Insurance Guaranty Association regarding a claim with a date of injury that occurred on or after January 1, 2000, and the association, with respect to a company's insolvency, would be liable only for such a claim.

All revenues, monies, and assets of the company would be governed by the laws applicable to domestic mutual insurance companies. The state would have no liability or responsibility to the policyholders, recipients of workers' compensation benefits, or creditors of the company if the company were placed in conservatorship or receivership or became insolvent.

Funding for a grant from the company to the Texas Workers' Compensation Commission could come only from the company's surplus. The amount of the grant could not exceed \$2.2 million for a four-year period ending September 1, 2003.

Not later than October 15, 2001, the company would have to make a one-time deposit from its surplus of \$150 million to the Texas Mutual Insurance Co. stabilization fund, established for the sole benefit of the company. The state would covenant with the company's policyholders, recipients of workers' compensation benefits through the company, and the company's creditors that the state would not borrow, appropriate, or direct payments for any purpose from the stabilization fund. The fund could not be used by or for the benefit of the state or of a creditor of the state and could not be

commingled with other assets. The bill would establish provisions to ensure, through an independent auditor, that the company had sufficient monies available to deal with various possible market conditions.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 3458 would require the workers' compensation insurance fund to operate as a mutual insurance company. The company would have to deposit \$150 million from its surplus into a stabilization fund set up to protect against any future adverse market conditions. The bill also would put in place certain safeguards to deal with downturns in company operations or in the workers' compensation market.

The bill would not privatize the fund, but would protect against appropriation of its surplus and would ensure that it could continue to act to fulfill its original legislative mandates: to be a competitive force in the market, to guarantee availability of coverage, and to act as the insurer of last resort. The new company would retain state government oversight, as a majority of the company's board of directors would have to be appointed by the governor and confirmed by the Senate, and the company would remain subject to the open-meetings and open-records laws. Also, the Research and Oversight Council on Workers' Compensation and the legislative committees with jurisdiction over workers' compensation would retain oversight authority, while the Texas Department of Insurance would have ongoing regulatory authority.

The bill would protect the assets of the fund further by making it a mutual company. As such, its surplus could not be appropriated as state revenue. This legislation would reinforce the Legislature's intent when it created the fund in 1991.

Twenty-six other states have created insurers similar to this fund, some of which were authorized as or converted to mutual insurance companies.

**OPPONENTS
SAY:**

A mutual company's assets are owned by its policyholders. In changing the fund to a domestic mutual insurance company, CSHB 3458 would not prevent those policyholders from voting to convert it to a stock company. Under that scenario, the company could have more latitude to divest assets

as it pleased, possibly reducing money for losses and potentially resulting in less coverage in the Texas workers' compensation market.

NOTES:

A proposed floor amendment by the author would prohibit the company from becoming a stock company.

The committee substitute differs from the original bill by requiring the governor to appoint five members of the board of directors with the remaining members elected by the company's policyholders. The substitute also would establish the stabilization fund and would prohibit the state from borrowing, appropriating, or directing payments from the fund. It also added a provision regarding liability of the company and the guaranty association, and it removed the severability clause in the filed version.