Sunset Advisory Commission

Final Report

Texas Department of Insurance

Office of Public Insurance Counsel

July 2009

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* Senator Kim Brimer served on the Commission from December 2005 through December 2008.

** Charles McMahen was appointed to fill the unexpired term of Michael Stevens.

Joey Longley

Director

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

Texas Department of Insurance

Office of Public Insurance Counsel

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This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission and the Legislature for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and members of the public, as well as action taken by the Sunset Commission and the Legislature in each step of the Sunset process.

- *Sunset Staff Report* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.

- *Hearing Material* – Summarizes all responses from agency staff and members of the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission.

- *Decision Material* – Includes additional responses, testimony, or new policy issues raised during the public hearing for consideration by the Sunset Commission in its decision meeting on an agency.

- *Commission Decisions* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.

- *Final Report* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's Sunset bill.

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Summary

Summary

Texans use insurance everyday, whether to get a bumper fixed after a fender bender, get a yearly physical, or replace a roof on a house after a hail storm. Today, to help pay for unknown risks, consumers are often required by law or practice to purchase at least some of the many different types of insurance in the market: personal or commercial property or automobile, title, health, life, or annuity insurance. States primarily regulate insurance to protect consumers from financial harm by ensuring that companies offering insurance products are solvent, can pay for claims, and make good on coverage promised for the policy sold. In Texas, insurance regulation is especially critical due to the size of the state's market: companies collect about $90 billion in insurance premiums each year.

The Sunset reviews of the Texas Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC) began among growing concerns about the availability and affordability of insurance of all types in Texas. Questions relating to what the State's role should be in ensuring both that consumers have access to affordable insurance and that insurance markets are competitive in Texas arose during the review. The Legislature has charged TDI with aspects of these functions. For example, the agency's role in overseeing statutorily created residual markets, which provide policies for Texans who have difficulty obtaining insurance, and in regulating the rates and forms that insurers offer consumers, indicate that the Legislature contemplated TDI having some role in these issues. However, the extent to which the State, and TDI, as the agency that regulates insurance, should be involved in ensuring that companies offer fair, competitive, and affordable insurance products to all Texans remains unclear.

TDI works well, but discussion is needed about the State's overall approach to insurance regulation.

Although these concerns were ever-present during the TDI review, Sunset staff determined that many of the long-standing questions regarding the State's role were outside the scope of a review aimed at evaluating the continuing need for TDI, and the effectiveness and efficiency of the agency's implementation of statutory programs. However, many of these questions directly relate to the agency's current functions, and staff was unable to completely sever the contemplation of these larger concerns from the review. To this end, the review focused on evaluating the agency's programs and recommending changes to improve the transparency and accountability of these programs. Many of the issues contained in this report, while focusing on the agency's current statutory responsibilities, set the stage for a more comprehensive discussion about the state of insurance in Texas by the Legislature.

In evaluating TDI's programs, Sunset staff found that the agency works well. For example, its financial regulation of insurance companies is effective, proactively identifying solvency concerns and working with companies to address financial problems before consumers are adversely impacted. The review also found that TDI is effective in its efforts to help consumers resolve complaints against insurance companies relating to coverage and claims paid, assisting consumers in receiving an additional $34 million in claims payments in fiscal year 2007.

In its assessment of TDI's regulation of property and casualty insurance rates, staff found that the agency's implementation of statutory changes to the rate regulatory system lacks transparency and can cause unpredictability in regulation. However, staff's analysis was confined to evaluating the system that is currently in place in statute; the recommendations contained in this report do not make judgments about the regulatory system itself, believing that the larger decision of whether to increase or decrease rate regulation is an issue to be considered by the Sunset Commission and the full Legislature, as necessary.

Similarly, staff's analysis of the continuing need for OPIC concluded that while consumer representation is important, the way that Texas regulates insurance no longer justifies a separate agency to advocate for consumers as a class in insurance matters. Because most insurance rates and forms are now developed by companies and submitted to TDI for review or approval, rather than promulgated through a hearings process at TDI, staff concluded that consumer representation functions would be more effective within TDI's regulatory regime than outside it. If the Legislature decides to regulate insurance rates in a different way, the independent advocacy role of OPIC may need to be preserved.

Staff also found that the current separation of duties between TDI and the Texas Windstorm Insurance Association (TWIA) limits the State's ability to oversee the Association's role as a market of last resort for windstorm insurance in Texas. Staff recognized that many of the issues related to TWIA's accountability link to its overall funding structure, which was outside the staff's scope of evaluating TDI. Instead, the recommendations contained in this report are confined to more clearly delineating the roles of, and relationship between, TDI and TWIA.

Sunset staff also chose not to make recommendations about what TDI's role should be in the broader issue of making health insurance available and affordable to the estimated 25 percent of Texans that do not currently have health insurance. However, Sunset staff found that while most insured Texans receive their health care through Preferred Provider Organizations (PPO) networks, the State does not have any regulatory authority over this key component of the health insurance market. With the potential for consumer harm, TDI would benefit from certifying PPOs to better understand how these organizations operate in Texas.

The Sunset review examined additional issues related to TDI's financial monitoring of title insurance agents, the equity of the maintenance tax system that funds TDI, the flexibility with which the Department can create and terminate advisory committees to assist it, and the need for additional regulatory tools at the State Fire Marshal's Office to protect Texans from fire hazards. These issues are described more fully within the report.

Finally, although TDI administers Texas' workers' compensation system, the Legislature postponed the Sunset review of TDI's Division of Workers' Compensation until 2011. Because of this, the staff review did not contemplate changes to the structure or administration of workers' compensation insurance, and these issues are not discussed in the report.

A summary follows of the Sunset staff recommendations on the Texas Department of Insurance and the Office of Public Insurance Counsel.

Issues and Recommendations

Texas Department of Insurance

Issue 1

Rate Regulation for Homeowners Insurance Lacks Clarity, Predictability, and Transparency.

Key Recommendations

- Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.
- Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.
- Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.
- Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.

Issue 2

TDI's Involvement in TWIA's Operations, Along With Other Restrictions in Law, Limit the Department's Ability to Effectively Oversee TWIA as a Market of Last Resort.

Key Recommendations

- Increase the number of public members on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.
- Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.
- Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.
- Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.
- Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

Issue 3

The State's Lack of Regulation of Preferred Provider Organizations Does Not Correspond With Changes in the Texas Healthcare Market.

Key Recommendation

- Require all Preferred Provider Organizations to obtain a certificate of authority from the Texas Department of Insurance to operate in Texas.

Issue 4

TDI Cannot Effectively Regulate Title Insurance Without Independent Financial Examinations and More Comprehensive Reporting.

Key Recommendations

- Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.
- Require title agents to annually submit audited financial statements of operating accounts to TDI.
- Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

Issue 5

The Statutory Cap on the Maintenance Tax of One Insurance Line Forces TDI to Inequitably Spread Costs Across Other Insurance Lines.

Key Recommendation

- Increase the life, accident, and health insurance maintenance tax cap to allow TDI to equitably cover the cost of this regulation.

Issue 6

Most of TDI's Advisory Committees No Longer Need to Be in Law.

Key Recommendations

- Eliminate all but two TDI advisory committees from statute.
- Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.
- Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.

Issue 7

To Reduce the Risk of Fire Hazard, the State Fire Marshal's Office Needs Direction to Target Its Inspections of Buildings.

Key Recommendations

- ◆ Require the SFMO to periodically inspect state-leased buildings.
- ◆ Require the SFMO to create a risk-based approach to conducting routine inspections of state buildings.
- ◆ Authorize the SFMO to charge a fee for inspections of privately owned buildings.
- ◆ Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.

Issue 8

The State Fire Marshal's Office Lacks the Ability to Issue Fines to Ensure Licensee Compliance.

Key Recommendation

- ◆ Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.

Issue 9

The State Has a Continuing Need for the Texas Department of Insurance.

Key Recommendations

- ◆ Continue the Texas Department of Insurance for 12 years.
- ◆ Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

Office of Public Insurance Counsel

Issue 1

Texas Needs Consumer Representation in Insurance Regulation, But No Longer Needs a Separate State Agency to Advocate on Behalf of Consumers.

Key Recommendations

- ◆ Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance.
- ◆ Transfer the Public Counsel's statutory board positions and nomination duties to the Consumer Representative at TDI.

- Transfer the responsibility for OPIC's consumer publications to TDI.
- Transfer the authority to assess insurers to pay for consumer representation from OPIC to TDI.

Fiscal Implication Summary

None of the recommendations in this report would have a net fiscal impact to the State's General Revenue Fund, since both TDI and OPIC are funded through taxes and assessments on insurers. However, one of the recommendations would cut 28 full-time equivalent positions from TDI, and others would have fiscal impact to the agencies' appropriations patterns, as described below.

Texas Department of Insurance

- **Issue 2** – Transferring windstorm inspection responsibilities from TDI to TWIA would result in a reduction of $1,545,559 in appropriations and staffing reductions of 28 full-time equivalents (FTEs). This reduction would be reflected in TDI's appropriations but, due to the self-regulating nature of the Department's funding, any savings would result in a reduction in maintenance taxes on insurers, and the costs insurers pass on to policyholders, but would not create a positive fiscal impact for the State.
- **Issue 3** – Registering PPOs would result in additional administrative costs to TDI, and may increase appropriation levels. However, the Department would be authorized to charge certification fees, to the level necessary to regulate PPOs, to offset the costs.
- **Issue 7** – Authorizing the State Fire Marshal's Office (SFMO) to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.
- **Issue 8** – Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO, and cannot be estimated. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

Texas Department of Insurance

Fiscal Year	*Savings to the General Revenue Fund, Account 36*	*Loss to the General Revenue Fund, Account 36*	*Net Effect to the General Revenue Fund, Account 36*	*Change in the Number of FTE's From FY 2009*
2010	$1,545,559	($1,545,559)	0	-28
2011	$1,545,559	($1,545,559)	0	-28
2012	$1,545,559	($1,545,559)	0	-28
2013	$1,545,559	($1,545,559)	0	-28
2014	$1,545,559	($1,545,559)	0	-28

Office of Public Insurance Counsel

- **Issue 1** – Transferring OPIC's functions to TDI would not have an overall net fiscal impact to the State. OPIC's annual budget of $1 million and its authorized 16.5 FTE positions would be transferred to TDI, and funded by the assessment authority also transferred from OPIC to TDI.

Summary of Legislative Action
S.B. 1007 Hegar (Isett)

Texas Department of Insurance

Senate Bill 1007 contained the Sunset Commission's recommendations on the Texas Department of Insurance (TDI), as well as additional statutory modifications made by the Legislature. However, the Legislature did not pass S.B. 1007. The Department was continued in separate legislation in the 1st Called Session, 81st Legislature. Senate Bill 2 continues the agency until 2011, and requires the Sunset Commission to focus its next review of the Department on the appropriateness of its previous recommendations to the 81st Legislature. Continuing the agency for two years will allow the Sunset Commission to re-examine the Department and make recommendations to the 82nd Legislature.

Summary of Legislative Action
S.B. 1001 Deuell (Isett)

Office of Public Insurance Counsel

Senate Bill 1001 contained the Sunset Commission's recommendations on the Office of Public Insurance Counsel (OPIC), as well as additional statutory modifications made by the Legislature. However, the Legislature did not pass S.B. 1001. The Office was continued in separate legislation in the 1st Called Session, 81st Legislature. Senate Bill 2 continues the agency until 2011, and requires the Sunset Commission to focus its next review of the Office on the appropriateness of its previous recommendations to the 81st Legislature. Continuing the agency for two years will allow the Sunset Commission to re-examine the Office and make recommendations to the 82nd Legislature.

Texas Department of Insurance Issues

Issue 1

Rate Regulation for Homeowners Insurance Lacks Clarity, Predictability, and Transparency.

Summary

Key Recommendations

- Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.
- Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.
- Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.
- Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.

Key Findings

- In 2003, the Legislature established a system of rate regulation for homeowners insurance that incorporated both pre-market and post-market regulatory tools.
- TDI uses statutory pre-market regulatory tools without defined practices, making aspects of rate regulation unpredictable.
- The processes for placing insurers under prior approval and releasing insurers from prior approval are not defined, creating uncertainty in the system.
- The Legislature cannot judge the success of the shift to file-and-use rate regulation because the system has not been fully implemented.

Conclusion

During the last several years Texas' residential property insurance market has undergone a number of significant changes. These changes began with the dramatic rise in mold claims, and the corresponding increase in premiums for homeowners. Following these developments, the Legislature overhauled insurance rate regulation, bringing all insurers writing homeowners insurance under one system, calling for rate reductions, and establishing a new process for rate and form regulation.

The new system subjects the entire market, including the 95 percent that was previously unregulated, to rate and form regulation; albeit, a less strict form of regulation than what had been in place. Though the Legislature moved the State toward less regulation of rates and forms, state law still authorizes TDI to exercise a number of regulatory tools as safeguards to protect consumers from high rates. However, TDI's use of these safeguards, which remain relatively undefined, creates uncertainty in the regulatory system. Without sufficient clarity and transparency of regulation, Sunset staff could not fully evaluate the new system's success. Instead, staff recommendations attempt to hone the system as it exists in statute, bringing transparency and predictability to the system by requiring the Department to define and track its use of various regulatory tools.

The Legislature enacted a file-and-use system for homeowners rate regulation in 2003.

Support

In 2003, the Legislature established a system of rate regulation for homeowners insurance that incorporated both pre-market and post-market regulatory tools.

- In 2003, the Legislature shifted the rate regulation of personal property and casualty insurance, including homeowners, from a promulgated-benchmark system to a time-limited "prior-approval" system, then finally to a less regulated "file-and-use" system.[1] The textbox, *Types of Rate Regulation*, provides additional information on these regulatory systems.

> ***Types of Rate Regulation***
>
> A rate is the price per unit of risk, used to determine a policyholder's premium amount.
>
> **Promulgated Benchmark –** The Commissioner sets an acceptable range for the rate. Filed rates within a designated band may be used without prior approval. Rates outside the band must be approved prior to use.
>
> **Prior Approval –** Insurers develop rates and must submit them to TDI for approval before their use. The Commissioner may disapprove the rates within a specified time or request changes in the filing.
>
> **File-and-Use –** Insurers develop and must file rates, but may use the rates immediately once filed. The Commissioner may administratively disapprove rates before their use, assuming they are not used immediately.

The legislation brought many formerly unregulated insurers, including Lloyd's and County Mutual companies, under TDI regulation. By bringing all companies under one regulatory scheme, requiring insurers to file their rates, with a reduction, with TDI, reducing barriers to market entry, and permitting companies to get rates and products into the market more quickly, the new file-and-use system intends to bring down rates through increased competition.

This regulatory shift reflects a general trend toward deregulation of several of Texas' largest industries. Over the last three decades Texas has slowly decreased regulation in insurance, electricity, and telecommunications by reducing rate regulation and increasing market competition. With respect to insurance, lawmakers responded to rapid increases in claims and rates by bringing all companies under the same system, and lessening rate and form regulation to increase competition within the market.

- Generally, insurance rates can be regulated before rates go to market, after they go to market, or a combination of both. File-and-use regulation relies less on pre-market or front-end regulation, in favor of limited post-market regulation once rates are in use. The purpose of pre-market regulation is to prevent problems from occurring in the market through review of rates and materials before their use. In contrast, review that follows rate use reflects a more deregulated approach that lets a company file and use rates until it is told otherwise, permitting market pressures and competition to regulate, and allowing the Department to intervene in the event of significant problems.

- The current file-and-use system permits companies to quickly file and use rates, but authorizes the Commissioner to use both pre-market and post-market regulatory tools. All insurers who write homeowners insurance must file rates with TDI before using them, but companies can use the rates immediately and without Departmental approval. The Department can review rates, request additional information on rates, and administratively disapprove rates before insurers use the rates. A rate that is disapproved cannot be used or charged to consumers. Statute requires TDI to disapprove rates that are excessive, inadequate, or unfairly discriminatory.

  TDI can also review and disapprove rates after rates go to market, and, if warranted, require select companies to go through a more rigorous prior-approval review for subsequent filings. TDI faces a higher burden of proof to disapprove a rate-in-effect than to administratively disapprove a filed rate. To disapprove a rate-in-effect the Department must go through a contested-case hearing process at the State Office of Administrative Hearings. Insurers may use rates during the hearings process, though companies are liable for refunds to policyholders if a rate is ultimately found to be excessive. The textbox, *TDI's Rate Regulation Tools*, provides a summary of TDI's rate regulation tools.

TDI reviews rates and will disapprove rates if they are excessive, inadequate, or unfairly discriminatory.

TDI's Rate Regulation Tools

Under the current regulatory system, insurers can file and use rates, bypassing pre-market review. However, TDI has both pre-market and post-market tools to regulate insurance rates, as described below.

Pre-Market Tools

- Review all rates, as necessary.
- Request additional information on rate filings.
- Administratively disapprove rates prior to their use.

Post-Market Tools

- Review and disapprove a rate-in-effect.
- Place a company under prior-approval regulation for future filings.

- State law clearly establishes a regulatory system that features both pre-market and post-market regulatory tools, with an overall intent to reduce oversight in the process for approving insurance rates. The current hybrid file-and-use system lessens regulation standards, and should facilitate rapid use of rates and competition among insurers, while maintaining some safeguards to protect insurance consumers. However, TDI's use of both pre- and post-market regulatory tools prevented Sunset staff from drawing conclusions relating to the Legislature's shift to a market-based rate regulation system. Instead, staff focused its review on the effectiveness of this hybrid system, identifying areas in which clarifying the Department's use of both pre- and post-market tools could bring more transparency to rate regulation.

State law clearly establishes a regulatory system with both pre-market and post-market tools.

TDI uses statutory pre-market regulatory tools without defined practices, making aspects of rate regulation unpredictable.

- Most insurers do not file and use rates immediately, as allowed under state law.[2] Despite the shift to file-and-use, TDI reviews the majority of rates before their use, which may create uncertainty for insurers about when they can implement rates. Both TDI and insurers indicate that some companies voluntarily delay using rates pending some indication from the Department that the filing review is complete.

- TDI's internal process for prioritizing rate filing reviews guarantees that rates affecting the majority of the homeowners market will be reviewed. Filings from top 10 companies, residual markets, advisory organizations such as the Insurance Services Office, or filings with changes of 10 percent or more receive top priority. In Texas, the top 10 companies alone account for 84 percent of the market, indicating that TDI's system effectively assigns a priority to almost all homeowners filings.

TDI reviews rates affecting the majority of the homeowners market.

Homeowners rate filings may receive a higher priority and level of scrutiny than other lines of insurance for several reasons. For example, high premiums, coupled with rate increases in the beginning of the decade and recent insurer profits, have made homeowners insurance the subject of public and legislative interest.

- Some homeowners filing reviews can trigger multiple requests for information from TDI, leading to extensive dialogue and negotiations between TDI and insurers, and possibly resulting in delays in getting products to market. Insurers are free to use rates in this period, but may choose to wait pending resolution of negotiations with the Department.

Statute requires insurers to file their rates, applicable rating manuals, supplementary rating information, and additional information as required by the Commissioner. Since statute permits TDI to request additional information, staff may make multiple requests on various topics. According to TDI, staff make requests for supplementary rating and additional information to help clarify whether rates are appropriate, and to educate companies in preparation for future filings. Specifically, these requests can help TDI identify technical and substantive errors in rate development or with statutory compliance. The textbox, *Supplemental Information Requests*, provides additional detail on what TDI typically asks for from insurers.

Supplemental Information Requests

In reviewing rates before their use, TDI may ask insurers to provide additional information, including the following:

- providing additional actuarial support;
- clarifying details in the filing, for example, if apparent inconsistencies exist in rating rules;
- providing rating information related to changes in coverage, for example, if a new policy exclusion doesn't show a corresponding reduction in rates; and
- modifying a rate or rating rule, for example, if a filed rate violates statute.

While additional information is necessary to help TDI determine rate-appropriateness, frequent information requests can result in the perception of an informal, de facto, prior-approval negotiation about what an appropriate rate should be. Responding to the Department and developing new rates and policies takes time, which may delay companies from getting rates to market quickly.

From a business standpoint, insurers may not want to implement rates while uncertain about TDI's acceptance of these rates. For example, if an insurer faces outstanding information requests, or is uncertain about whether the Department will make additional requests or request changes to a filed rate, it may not use the rate until assured that TDI has at least tacitly approved the rate, even though the law does not require the approval of rates prior to their use.

TDI does not track or analyze information requests to insurers.

- TDI does not track or analyze information requests, making it difficult to determine the real impact of the requests on regulation. TDI does not track formal or informal requests for information, how long it takes companies to fulfill requests, or how often information requests turn into negotiations about appropriate rates. According to TDI, at a minimum, Department staff typically request additional information on filings for the largest companies. As a result, the true impact of these requests on insurers and the system cannot be measured.

- In addition to the review process, the Commissioner's use of administrative disapproval, a pre-market regulation tool, continues to affect a large portion of the homeowners market. Under file-and-use, TDI retains the authority to disapprove rates before their use. In 2006 and 2007, TDI disapproved only five of 415 homeowners rate filings. However, the two companies affected by these administrative disapprovals provide homeowners insurance to about 45 percent of the market.

  By disapproving these rates before their implementation, TDI exerted regulatory control over a large segment of the market, instead of relying on the market to regulate rates. Further, by disapproving such a large segment of the market, TDI's disapprovals make it difficult to assess the market's impact on price competition, and underscore insurers' uncertainty about using rates before they are tacitly approved by the Department.

The Commissioner rarely disapproves rates, but recent disapprovals affect almost half of the market.

The processes for placing insurers under prior approval and releasing insurers from prior approval are not defined, creating uncertainty in the system.

- Statute authorizes most insurers to file rates under file-and-use, although, in specific circumstances, statute authorizes the Commissioner to subject individual companies to prior approval for rates. Statute permits the Commissioner to place insurers under prior approval in the event of a statewide emergency, or if the insurer's rates require supervision due to the insurer's financial condition or rating practices.

  Since the implementation of file-and-use, the Commissioner has only placed two insurer groups under prior approval for their rating practices. However, the two groups placed under prior approval hold about 45 percent of the market share for homeowners insurance, resulting in a large portion of the market operating under a different system of regulation.

- Placing insurers under prior approval is an important tool for the Department in its efforts to protect consumers from excessive rates. However, TDI has not defined the factors that contribute to a company being placed under prior approval, nor the factors that lead to a company getting out from under prior approval, which can create uncertainty about regulation for insurers.

Placing insurers under prior approval is an important tool to protect consumers.

- To date, the factors that could lead a company to be placed under prior approval remain unclear, creating unpredictability for insurers who may be uncertain about the regulatory standards they may face. In recent Commissioner orders, the Department indicated that repeated filings of excessive rates, coupled with insurers' large shares of the market, constitute "rating practices" for certain companies, and require supervision through prior approval.

  The Department has been in litigation with the two companies that were placed under prior approval; one case has recently been settled. In the future, on a case-by-case basis, the court may more specifically define rating practices; however, such a specific definition would not necessarily extend to TDI's regulation of rates for other companies and how the agency defines rating practices.

  Though no companies have yet to be placed under prior approval for financial condition or due to a statewide emergency, these factors are also not well defined. TDI has defined what constitutes a "hazardous financial condition" for the purposes of regulatory intervention in a company that may be financially unsound, but the Department has not defined financial conditions that would require a company to go through prior approval for rates.[3]

The agency has not defined the factors that lead to being placed under prior approval.

  Likewise, the Department has not provided guidance on what kinds of events would constitute an emergency requiring companies to go through a different kind of rate regulation. State law gives TDI the flexibility to require prior approval so the Department can thoroughly examine filings that could adversely affect consumers. While TDI cannot anticipate or clearly predict every potentially problematic practice, without some general guidance on the practices that could lead to prior approval, the system will continue to be unpredictable.

- Once the Commissioner places a company in prior approval, the process for getting out of prior approval is unclear, and may prevent insurers from ever returning to the original file-and-use system. By statute, the Commissioner may keep a company in prior approval until the conditions for which the company was put under prior approval no longer exist. To date, the Commissioner has not established a standard process by which a company can return to file-and-use review.

Statute also dictates that once a company's rate is approved, the insurer may file and use any subsequent rate as long as the rate is not more than 7.5 percent higher than the Commissioner-approved rate, or 10 percent higher than a rate used in the previous year. This provision appears to allow some companies to return to a quasi file-and-use system, though any new rates would still be tied to the older, approved rate. To date, TDI has not released either insurer group from prior approval, so the process for getting out of prior approval regulation has not yet been tested.

The Legislature cannot judge the success of the shift to file-and-use rate regulation because the system has not been fully implemented.

The multitude of market dynamics and the use of a hybrid system make evaluating the impact of regulatory changes difficult.

- The Legislature contemplated certain benefits for consumers and the industry under a file-and-use system; however, TDI's use of pre- and post-market regulatory tools may prevent the State from realizing these benefits. A file-and-use approach to regulation may increase competition among insurers, potentially drawing new companies into the market and resulting in lower prices for consumers.

  However, many insurers, including a significant portion of the market, may choose not to file and use freely as a result of regulatory unpredictability caused by information requests, disapprovals, or the requirement that the company go through prior-approval reviews. If the market is not freely competing, Texas insurance markets may be less attractive to new entrants and companies looking to increase their business, limiting consumer options and savings.

- The purpose of changing rate regulation was to create a better environment for consumers and insurers in Texas. While some recent data suggests increased competition in the homeowners market, the implementation of a hybrid file-and-use structure makes it difficult for the Legislature to evaluate the current system and determine what form of regulation is best for Texans. The textbox, *Snapshot of the Texas Homeowners Market*, provides some data indicating that the overall health of the homeowners market has improved since the implementation of the hybrid system.

Snapshot of the Texas Homeowners Market

Since 2003, several factors point to increased competition and product variety in the homeowners market, indicating that market health may be improving.

- Overall rates have declined by 6 percent, though rates in some areas have increased.
- Average premiums have declined by 3.5 percent.
- 52 new companies have had policy forms approved and approximately 29 companies have begun writing insurance. In 2006, these new companies combined to comprise 3.7 percent of the total homeowners market.
- Policy counts for the homeowners market of last resort have declined by 32 percent.

However, given the multitude of insurance market dynamics, as well as the use of a hybrid system, it is difficult to assess the impact of any regulatory change. Since file-and-use has not been fully tested, it is impossible to measure benefits or problems caused by the shift in regulation. Without a uniform system in place, it is more difficult to attribute changes in insurance prices, availability, or market competition to any particular factor, or to assess whether or not the current system works well for Texas consumers.

Recommendations

Change in Statute

1.1 Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.

This recommendation would establish deemer dates – a date on which a filing is "deemed approved" after a specified number of days has elapsed from receipt of the filing – for the Department's review of property and casualty rate filings. While the problems identified in this issue pertain primarily to residential property insurance filings, state law requires similar regulation of all property and casualty rates, and these changes would affect all lines.

Similar to the deemer dates that exist under prior-approval regulation, and exist for some life and health filings, the Department would have 30 days to request information from insurers and conclude rate review. The Commissioner would be authorized to extend the review period for an additional 30 days for good cause.

If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests would not count against the Department's review period. Insurers would continue to be permitted to use rates as soon as they are filed, if they choose. These recommendations would only affect filings not immediately used.

TDI would be permitted to administratively disapprove rates until the point that companies implement rates, or the expiration of the review period, whichever event occurs first. If TDI wanted to disallow a rate following the review period, the Department would have to disapprove the rate following its implementation, using the contested-case process, as currently laid out in state law.

This recommendation would create a time limit for information requests and provide insurers with a reasonable idea of when they may use rates. This recommendation creates a clear beginning and end point for pre-market reviews, enabling insurers to better predict when they can use products and to plan accordingly. In addition, by creating more transparency in the rate regulation process this recommendation could encourage more competition among insurers, enabling lawmakers to more fully evaluate the file-and-use system.

1.2 Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.

This recommendation would require TDI to further define, through rulemaking, the process for requesting supplemental information from insurers during its review of property and casualty rates. The review process should require, at a minimum, that TDI:

- make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;
- reduce the number of separate requests;
- more specifically define the kinds of information that the Department can request during a rate review; and
- track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

The Department would use data on requests to better focus education efforts for both TDI review staff and insurers, and to streamline future requests. This would also help the Department ensure that requests are fair and practical.

This recommendation would also require the Department to track and analyze the factors that contribute to administrative disapproval of rates. TDI would track precedent related to disapprovals to help ensure that the Department consistently applies rate standards. In conjunction with analyzing disapprovals, TDI would make general information about best practices for rate development, and factors that contribute to disapprovals, available to the public. All information provided to the public would be general, so as not to infringe upon an individual company's proprietary rate development data or techniques.

These recommendations would improve transparency and the exchange of information between insurers and TDI. Insurers would have a clearer idea of Department expectations and timelines, potentially increasing the speed at which products get to market. Developing a process to analyze information requests and rate disapprovals would provide TDI with improved information on filings and the rate review process.

1.3 Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.

Under this recommendation, TDI would further define, through rulemaking, what constitutes rating practices, financial conditions, or statewide emergencies that could subject an insurer to prior-approval review. This recommendation would not require the agency to enumerate specific practices or circumstances. Recognizing that determining if certain practices or conditions exist requires flexibility and depends on the specific circumstances of a filing, this recommendation aims only to more generally define conditions that might contribute to a company being placed under prior approval. The Commissioner would maintain the authority to determine if an individual company's practices or statewide situations warranted additional scrutiny though prior approval. This recommendation would clarify TDI's use of prior approval as a review mechanism and sanction against insurers, creating more predictability and transparency in rate regulation.

1.4 Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.

Under this recommendation, TDI would periodically assess whether insurers need to remain under prior approval for rate filings. Similar to other probationary measures, prior-approval review can be used as a method to more closely monitor insurer ratings practices or financial conditions. To clarify expectations, the recommendation would require TDI to provide companies with written information, when they are placed under prior approval, detailing the steps they must take to return to file-and-use review. When an insurer meets the stated conditions, this recommendation would require the Commissioner to issue an order stating that the financial condition, rating practices, or statewide emergency no longer exists, and that future company filings will be subject to file-and-use.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

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[1] Texas Senate Bill 14, 78th Legislature (2003).

2 According to TDI, in 2007, insurers did not use 81 percent of filed rates immediately.

[3] Texas Administrative Code, Title 28, rule 8.3.

Responses to TDI Issue 1

Recommendation 1.1

Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.

Agency Response to 1.1

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.1

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Against 1.1

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Modifications

1. Require the Sunset Commission to investigate and discuss the merits of a prior-approval system and determine whether most Texans are realizing the promise of the reforms of over five years ago, and if not, why. (Senator Royce West, Member – Texas Senate)

2. Institute an objective threshold that TDI must meet before engaging in administrative efforts to control the rates of individual companies. (Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin)

3. Make the insurance system a true file-and-use system by allowing the Commissioner to disapprove only those rates that are already in use. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

Recommendation 1.2

Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.

Agency Response to 1.2

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.2

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Against 1.2

Senator Eddie Lucio, Jr., Member – Texas Senate

Modifications

4. Require the Texas Department of Insurance (TDI) to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims, with the goal of ensuring that insurers are meeting their responsibilities assumed under policies of insurance. The plan would:

   - provide for the collection of claims data, including information on the number of claims filed and pending on a quarterly or annual basis; number of claims paid, denied, or pending litigation; number of claims that carry over from the previous reporting period; and any other relevant information relating to the processing of claims; and

   - include a means of publishing or disseminating the collected information to the general public via TDI's website.

   Authorize TDI to adopt rules as necessary to implement a plan for collecting and publishing claims data. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)

5. Strike Section 2251.002(8)(d) of the Code, which includes in the reach of supplementary information insurers may be required to submit to TDI "any other information the department requires to be filed." (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

Recommendation 1.3

Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.

Agency Response to 1.3

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.3

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

For 1.3 (continued)

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Against 1.3

None received.

Modification

6. Allow the Commissioner to place under prior approval only those companies whose financial position warrants increased supervision for the purposes of maintaining solvency by striking "or ratings practices" from Section 2251.151(a)(1), Texas Insurance Code, and repealing Section 2251.151 (a)(2), Texas Insurance Code. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

   Staff Comment: Section 2251.151 (a)(2) of the Texas Insurance Code permits the Commissioner to place a company under prior approval if a "statewide insurance emergency exists."

Recommendation 1.4

Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.

Agency Response to 1.4

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.4

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Against 1.4

None received.

Commission Decision

Adopted Recommendations 1.1 through 1.4 and Modification 4.

Legislative Action

The statutory recommendations were not adopted, as S.B. 1007 failed to pass.

Issue 2

TDI's Involvement in TWIA's Operations, Along With Other Restrictions in Law, Limit the Department's Ability to Effectively Oversee TWIA as a Market of Last Resort.

Summary

Key Recommendations

- Increase the number of public representatives on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.
- Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.
- Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.
- Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.
- Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

Key Findings

- TWIA's Board structure limits the Board's accountability to the Commissioner, and prevents the Association from taking advantage of an opportunity to reduce its federal tax burden.
- The Commissioner's direct involvement in TWIA's operations conflicts with TDI's broader regulatory role and with the duties of TWIA's Board.
- The hearings process through which the Commissioner approves TWIA's operational decisions wastes resources, limits the Board's ability to react quickly, and does not add benefit for consumers.
- With the overall goal of increasing insurance availability, TDI is not well-positioned to oversee inspections that may restrict entry into the pool.
- Statute restricts the factors that the Association may use in developing rates, limiting its ability to accurately project future losses.
- Statute does not allow the Association and the State to request proof of insurance declinations from applicants, preventing the State from ensuring that the pool operates as a market of last resort.

Conclusion

Texas' system for providing windstorm insurance on the Coast is at a critical juncture. Following recent hurricanes, the number of insured properties in the risk pool has been growing steadily, increasing liabilities for Texas insurers and possibly the State. While the Legislature is faced with a significant

decision relating to how to fund the Texas Windstorm Insurance Association (TWIA), Sunset staff determined that this larger funding decision, affecting state revenue, was outside of the scope of its review of the Texas Department of Insurance. However, recognizing that these issues are important to the overall financial health of both TWIA and the State, Appendix A provides information on TWIA's funding mechanism and past legislative recommendations for restructuring it.

Instead, Sunset staff focused its review on the intersection of responsibilities between the Department and TWIA. Staff evaluated the relationship between TDI and TWIA, and found that many of their oversight responsibilities overlap, inappropriately placing TDI in the position of making some operational decisions for TWIA's Board. This overlap in authority limits the Board's accountability to policyholders, and interferes with TDI's ability to ensure that windstorm coverage remains adequate and available.

Sunset staff identified several areas in state law that limit TWIA's ability to develop accurate rates and perform as a market of last resort, preventing TWIA from operating as intended. Without the ability to develop the most accurate rates, TDI cannot perform its regulatory duties to protect the State's General Revenue Fund in the event of significant losses.

By clarifying the duties and responsibilities of both TDI and TWIA, both entities would be better able to perform their respective functions. TWIA would be more accountable to policyholders and the State. TDI would have better information with which to make regulatory decisions, helping the Department maintain a healthy market for insurance while protecting the State from financial risk.

Support

The Department oversees the Texas Windstorm Insurance Association, which acts as the State's insurer of last resort for coastal windstorm insurance.

- Recognizing that an adequate market for wind and hail insurance is essential to the economic welfare of Texas, the Legislature created the Texas Windstorm Insurance Association's precursor in 1971. Today, TWIA operates as a residual market, or risk pool, providing windstorm and hail insurance for Texas Gulf Coast residential and commercial property owners who have difficultly obtaining insurance in the voluntary market.[1]

TWIA has 220,000 policies and provides more than $65 billion in coverage.

- TWIA's service area includes Texas' 14 coastal counties and designated communities in Harris County. All Texans who own residential or commercial property in the catastrophe area may apply for TWIA coverage. To become insured, property must meet windstorm building code requirements, and other underwriting criteria related to a structure's susceptibility to weather damage. As of April 2008, TWIA had approximately 220,000 policies in force, which provided in excess of $65 billion dollars in coverage.

- Unlike a traditional insurer, TWIA is a membership body composed of all companies licensed to write property insurance in Texas. TWIA provides insurance coverage, but in the event of a catastrophe, TWIA pays claims from a combination of premiums, assessments on members, reinsurance, and a catastrophe trust fund. Each association member's share of losses is based on its participation, or total volume of statewide sales, with credit given for sales within TWIA's service area.

In the event of extreme losses exhausting previously described funding, member insurers would be subject to an additional unlimited assessment, but could recoup their payments to TWIA through state tax credits. While spread out over five or more successive years, these credits ultimately make General Revenue accountable for any losses that exceed Association reserves and insurers' initial assessments. Appendix A provides more detailed information on TWIA's unique funding structure.

TWIA's Board and the Commissioner share oversight of TWIA.

- Both TWIA's Board and the Commissioner of Insurance (Commissioner) share responsibility for oversight of TWIA, though the Commissioner generally maintains regulatory oversight and the Board is responsible for operational oversight. State law holds the Board accountable to the Commissioner. The Board oversees the daily operations of TWIA, including ensuring that TWIA accepts risks, collects premiums, and pays claims, within the funding parameters established by the Legislature. The Board also proposes changes to rates, forms, coverages, deductibles, limits of liability, and other policy terms, and allocates money to the trust fund or reinsurance, with the approval of the Commissioner. TWIA's governing Board consists of nine members who represent member insurers, the public, and insurance agents.

- TDI provides regulatory oversight of TWIA in several ways. TDI reviews and approves all changes to TWIA's rates and forms, Plan of Operation, levels of reinsurance, coverages, deductibles, and limits of liability. The textbox, *Insurance Terms*, further defines the aspects of TWIA that the Commissioner actively regulates.

Insurance Terms

Rates – The price per unit of insurable risk. Insurers use rates to determine a policyholder's premium payment.

Forms – All documents, such as policies, endorsements, and cancellations, which describe or affect the contract between the insurer and insured.

Plan of Operation – TWIA's basic governing document, which provides for administration of the Association and outlines all major standards and procedures, such as processing applications, underwriting risks, assessing insurers following losses, and obtaining reinsurance.

Reinsurance – A form of insurance that insurance companies buy for their own protection.

Coverage – Monetary limits for the risks and items covered as set out in an insurance policy.

Deductibles – The portion of a loss that the insured must pay before the insurance company provides the balance.

Limits of Liability – The limits of protection in a policy, or the maximum dollar amount the insurer will pay an insured in the event of a claim.

The Commissioner must ensure rates are reasonable while balancing risks to General Revenue.

The Commissioner is responsible for protecting the State's interests by ensuring that rates are "reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer."[2] Unlike in the private market, TDI does not financially regulate TWIA for solvency since TWIA is backed by both insurers and the State's General Revenue Fund and, therefore, does not have to be solvent in the traditional sense.

However, since TWIA's funding structure ultimately relies on the State's General Revenue Fund to pay claims, the Commissioner must balance TWIA's rates with the potential impact of catastrophes on state revenues. In addition to protecting General Revenue, the Commissioner is charged with maintaining a viable coastal insurance market and must work to make certain that insurers remain solvent and continue to write coverage in the wake of a catastrophic event.

TWIA's Board structure limits the Board's accountability to the Commissioner, and prevents the Association from taking advantage of an opportunity to reduce its federal tax burden.

- Statute requires the Association's Board to be responsible and accountable to the Commissioner. However, five of the Board's nine members are not appointed by the Commissioner, and instead are insurer representatives elected by Association members. The Board elects the Chair. Not appointing all TWIA Board members or the Board Chair limits the accountability of the Board to the Commissioner. The textbox, *Board Composition*, provides additional detail on the Board.

Board Composition

Five Insurer Representatives – Elected by Association members according to the Plan of Operation.

Two Public Representatives – Representatives must live in the catastrophe area and be policyholders. Nominated by the Office of Public Insurance Counsel, appointed by the Commissioner.

Two Property and Casualty Agents – Appointed by the Commissioner.

- Having a majority of the board members elected by the Association member companies prevents the Association from obtaining federal tax-exempt status, which would save TWIA money. While Internal Revenue Service (IRS) rules vary, at a minimum, the IRS requires that a statewide official appoint all board members of entities, like TWIA, seeking tax-exempt status. IRS rules also do not allow insurer representatives to comprise the majority of a tax-exempt board. Since 2003, TWIA has paid an average of $1.7 million in annual taxes.

The Commissioner's direct involvement in TWIA's operations conflicts with TDI's broader regulatory role and with the duties of TWIA's Board.

- Unlike the regulation of other insurance companies, the Commissioner has the authority to modify proposed changes to many aspects of TWIA's operations. Following Board approval, all proposed changes to rates, forms, coverages, deductibles, limits of liability, and other policy terms must be filed with the Department. The Department hears each proposal in a public hearing, and the Commissioner may approve, disapprove, or, in some cases, modify each proposal in response to new information presented in a hearing.

Since 2003, the Commissioner has modified rate or surcharge filings down 77 percent of the time.

- The Commissioner's ability to modify proposed changes to aspects of TWIA's operational policies pre-empts the Board's ability to set policies for the Association. By modifying, instead of approving or disapproving, a proposal, the Commissioner can determine both what a TWIA policy might cost, as well as the coverage it contains. For example, the Commissioner has regularly used the modification authority to set TWIA rates and surcharges. Since 2003, TWIA has filed for rate or policy surcharge increases nine times, with the Commissioner modifying the filings to a lower rate 77 percent of the time. By choosing a specific and lower rate than the Board's proposed rate, the Commissioner restricts the Board's ability to decide how best to manage and oversee the Association.

- The Commissioner's modification authority also limits the Board's accountability to Association members, policyholders, and the public. Board proposals reflect the will of the Board, most of whom are either policyholders or Association members. The Board deliberates and frequently takes public comment on filings during board meetings. By modifying proposals, which TWIA must then adhere to, the Commissioner's final orders limit the Board's ability to be accountable to its stakeholders and represent their interests.

Setting rates or policy terms through modification requires the Commissioner to make operational decisions for TWIA.

- Modifying TWIA's policies or rates also places the State in the position of operating TWIA – a role that conflicts with the Department's role of regulation. By setting rates or policy terms through modification, the Commissioner makes operational decisions about how the Association will function. These kinds of decisions are typically reserved for insurers' boards, and conflict with the Department's responsibilities as the state regulator. While the Commissioner has a role in regulating rates and forms, the Commissioner is charged with approving, not promulgating or setting, them. As a regulator, the Commissioner cannot oversee TWIA and hold the Board accountable and also be involved in making operational decisions.

  Further, by setting rates, the Commissioner determines, to a certain extent, what portion of future losses TWIA will cover, and what insurers, and ultimately the General Revenue Fund, will cover. If the Commissioner sets lower rates to keep insurance affordable, that limits the ability to protect General Revenue or limit insurers' exposure in the event of a catastrophe. If insurers face heavy liabilities, companies could go insolvent or stop writing on the Coast, further disrupting the Department's efforts to maintain an adequate market.

- In most rate regulation, including the processes for voluntary market insurers and other residual markets, the Commissioner cannot modify rates, forms, or other insurer proposals. Instead, the Commissioner may simply approve or disapprove rates, forms, and other operational decisions. The chart, *Comparison of Property and Casualty Filing Processes*, compares regulation of rates, forms, and plans of operation for voluntary and residual markets.

Comparison of Property and Casualty Filing Processes

	Rates		Forms		Plans of Operation	
Market	**Residual**	**Voluntary**	**Residual**	**Voluntary**	**Residual**	**Voluntary**
Windstorm (TWIA)	Hearing	File-and-Use	Hearing	Prior Approval	Hearing	Not Applicable
Homeowners (FAIR Plan)	Prior Approval	File-and-Use	Prior Approval	Prior Approval	Rulemaking	Not Applicable
Medical Liability (JUA)	File-and-Use	File-and-Use	Prior Approval	Prior Approval	Rulemaking	Not Applicable
Automobile (TAIPA)	Hearing[3]	File-and-Use	Prior Approval	Prior Approval	Prior Approval	Not Applicable

Companies subject to file-and-use regulation must file rates and may use them immediately, if they are not disapproved first by the Commissioner. Under prior-approval regulation, insurers file rates and cannot use them until the expiration of a review period during which the Commissioner can disapprove them. In either case, the vast majority of insurers submit proposals and, in the event of a disapproval, resubmit alternate proposals of their choosing.

The hearings process through which the Commissioner approves TWIA's operational decisions wastes resources, limits the Board's ability to react quickly, and does not add benefit for consumers.

TDI holds an average of eight separate TWIA hearings a year.

- The TDI hearings process is time-consuming and redundant, wasting state resources. Most changes to TWIA rates, forms, or policies trigger hearings. Since 2003, TDI has held an average of eight separate TWIA hearings per fiscal year. Each hearing involves as many as seven separate divisions of TDI. In recent years, each hearing included between one and six petitions, with each petition requiring 25 to 45 hours of staff preparation. TDI conservatively estimates that the minimum number of windstorm hearings per year require approximately 235 hours of staff preparation. Since 2005, the number of hearings and proposals has far exceeded the minimum, due to the growth of the Association and concern over coastal insurance availability.

- In some cases the hearings process is in addition to TWIA's public meetings and may not create any additional benefit for consumers or the Department. TWIA is subject to the Opening Meetings Act. As such, all TWIA board meetings are open to the public and posted in the Texas Register. During these public meetings the Board deliberates and takes comment on all proposals for changes to rates, forms, or other aspects of policies before making decisions. While the hearings process provides a means for public testimony, most TWIA board proposals have already been publicly vetted and deliberated on through one or more meetings of the Board.

The lengthy hearings process can prevent the Board from taking quick action in emergencies.

- The long duration of this additional hearings process, including notices, postings, and deliberations, prohibits the Board from taking quick action to respond to changes in insurance markets. For example, recently the Board hoped to move quickly to take advantage of decreases in the costs of reinsurance. However, due to the rapidly changing nature of rates in the reinsurance market, and the length of the hearing process, the Board was not able to move as quickly as they hoped. The length of the hearings process often requires the Board to wait several months for a final decision from the Commissioner. In emergencies or times of market volatility, the delay may prevent the Board from responding to conditions in a timely manner.

- Other property and casualty insurers face less cumbersome filing processes than TWIA. In the voluntary market, insurers must file rates and forms, which are either subject to file-and-use or prior-approval regulation. In either case the process does not require lengthy hearings, since the Commissioner reviews or approves the filing administratively.

  Likewise, the approval process for other residual market filings is generally less stringent than for TWIA. Rates and forms in other markets are subject to file-and-use or prior-approval review with the exception of the residual market for automobile insurance. The homeowners, medical liability, and automobile plans of operation are either approved administratively by the Commissioner, or approved through a standard rulemaking process that does not require a hearing.

With the overall goal of increasing insurance availability, TDI is not well-positioned to oversee inspections that may restrict entry into the pool.

TDI-appointed engineers performed 88 percent of windstorm inspections in 2007.

- State law requires TDI to conduct inspections, and appoint and oversee licensed engineers who conduct inspections, to determine whether applicants may enter TWIA. TDI inspectors tend to inspect smaller remodeling jobs or re-installations of roofs, while anything involving major construction or engineering plans requires the technical expertise of an engineer inspector. In fiscal year 2007, appointed engineers performed 88 percent of all windstorm inspections. At the end of fiscal year 2007, 624 engineers were certified to conduct inspections.

- TDI inspectors certify structures for insurance eligibility through TWIA, directly involving the Department in decisions about who may be insured through the Association. Limiting entry into the pool is at odds with the Department's greater goal of making insurance available. As the state regulator, the Commissioner's role is to ensure an adequate insurance market exists on the Coast, and to increase insurance availability, as needed, through the operations of TWIA. Therefore, overseeing inspections may create conflicting priorities for the Department.

Limiting entry into the pool is at odds with TDI's goal of making coastal insurance available.

- TDI cannot effectively oversee appointed inspectors because state law requires TDI to appoint, rather than contract with, engineers. As a result of the appointment standards, TDI cannot easily take action against engineers who perform poorly or violate code. By law, appointments can only be revoked or suspended following a hearing and a finding of violation. Since inspections typically occur during multiple phases of construction, and TDI may not be able to re-inspect until construction is complete, TDI oversight staff have difficultly establishing the pattern of willful, fraudulent, or negligent violations necessary to revoke an appointment.

  Due to difficulties in revoking appointments, TDI revokes only one or two appointments each year, despite the fact that the majority of re-inspections uncover problems. In fiscal year 2007, TDI inspectors performed 371 oversight inspections; 66 percent of re-inspected structures resulted in a disapproval or other problems that have not yet been resolved. TDI is typically able to resolve some non-compliance through engineer education; however, when the Department cannot resolve problems through education, it is difficult to take additional action against engineers.

Statute restricts the factors that the Association may use in developing rates, limiting its ability to accurately project future losses.

- State law limits the factors TWIA can consider in developing rates, impairing the Association's ability to propose adequate rates for the Commissioner's consideration. All insurers are required to develop rates based on actuarially credible loss experience, or their record of historical losses, among other factors. However, statute prescribes exactly how the Association must calculate loss experience and, in so doing, prevents the Association from using other types of data. Specifically, state law dictates that rates be composed of two parts: a "catastrophe element" based on 30 years of loss history, and a "non-catastrophe element" based on 10 years of loss history.

Voluntary market insurers face less stringent standards for predicting losses.

  By prescribing how TWIA must calculate loss, statute prevents TWIA from developing rates based on any other historical or forecasting data, including data that could more accurately predict future losses. Voluntary market insurers face less stringent standards, and many companies develop rates based on a variety of both historical and forecasting data. Since catastrophe insurance, and the likelihood of a pay-out from a major event, is highly unpredictable, incorporating some forecasting into rate development may allow TWIA to set more accurate rates, improving the Commissioner's ability to protect General Revenue and the health of coastal markets.

Without verifying that policyholders cannot obtain insurance, TWIA may be competing with the private market.

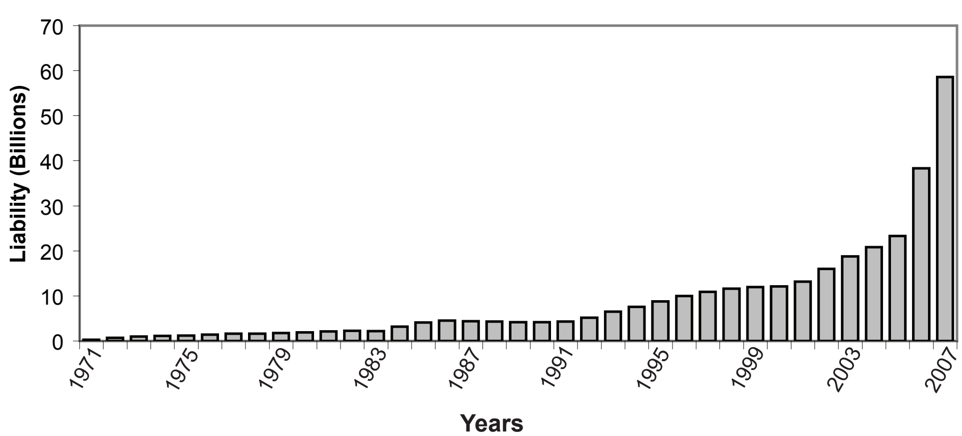
Statute does not allow the Association and the State to request proof of insurance declinations from applicants, preventing the State from ensuring that the pool operates as a market of last resort.

- Unlike other residual markets, state law is silent on TWIA's ability to require applicants to show proof of declinations – or application rejections – by insurers before being admitted to the pool. The rationale for requiring proof of previous application rejections is to help maintain the integrity and purpose of those markets. Without proof of declinations, the State cannot ensure that the residual market remains an insurer of last resort, not simply a cheaper alternative than another private market insurer. State law does require evidence of insurability through inspections; however, this barrier does not preclude applicants from choosing the Association because it is the least expensive insurance alternative.

- The purpose of TWIA is to provide a safety net and to stabilize the insurance market on the Coast, permitting private companies to increase insurance offerings and help depopulate the pool. However, restrictions on TWIA's rate setting methods and procedures tend to keep rates low. By maintaining low rates, and not verifying that policyholders cannot obtain other insurance, TWIA may be directly competing with the private market that it hopes to attract to the Coast.

- As the risk pool grows and potential state liabilities increase, it becomes more important to ensure that TWIA only provides insurance as a last resort. TWIA has grown each year since its inception, but experienced exponential growth following hurricanes in 2005, as demonstrated in the chart, *TWIA's Liability.*

TWIA's Liability (1971 – 2007)



In October 2007, TWIA provided approximately 52 percent of all residential windstorm coverage in the coastal counties. TWIA's largest coverage area is Galveston County, where the Association provides 79 percent of all residential coverage. As TWIA covers ever larger shares of coastal counties, the State's exposure increases exponentially, necessitating stricter enforcement of TWIA as a true market of last resort.

Recommendations

Change in Statute

2.1 Increase the number of public representatives on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.

This recommendation would add two public representatives to the Board, and require the Commissioner to appoint all members and designate the presiding officer. This recommendation brings the Board composition to 11 members, including five insurer representatives, four public representatives, and two property and casualty agents.

The recommendation would require TWIA's member insurers to nominate, from among the members, individuals to fill any vacancies in the five Board seats reserved for insurers. The Commissioner would appoint members from the nomination pool. The recommendation would require the Association to submit a nominee slate containing more names than the number of vacancies. The Commissioner would also appoint a presiding officer from among the Board members. All Board members would be subject to the term limits already in state law.

By requiring the Commissioner to appoint all board members and increasing the number of public representatives, this recommendation could also assist the Board in obtaining tax-exempt status from the Internal Revenue Service.

2.2 Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.

This recommendation would replace hearings and the Commissioner's ability to modify proposals on rates, forms, and operations, with an administrative approval process according to the following provisions.

Rates

- Eliminate rate hearings and instead require the Commissioner to permit file-and-use review for all rate increases of 5 percent or less in a 12-month period, consistent with increases approved by the Commissioner in recent years.
- Require prior-approval review for all filings proposing increases above 5 percent. Authorize the Commissioner to disapprove, but not modify, rates during a standard review period of up to 60 days.
- Maintain the 10 percent per filing rate change cap, and 15 percent rating class cap, that exist in state law, to prevent rates from increasing too rapidly.

- Require the TWIA Board to discuss and make decisions on proposed changes to rates in public Board meetings, and to publish all proposed changes in the Texas Register for public comment before the meetings.

Forms

- Eliminate form hearings and subject all form filings to prior-approval review, consistent with other residual markets and the voluntary market. Authorize the Commissioner to disapprove, but not modify, forms during a standard review period of up to 60 days.
- Require the TWIA Board to discuss and make decisions on proposed changes to forms in public Board meetings, and to publish all proposed changes in the Texas Register for public comment before the meetings.

Operations

- Eliminate hearings on the Plan of Operation, levels of reinsurance, coverages, deductibles, and limits of liability, and require TDI to conduct a rulemaking process to approve proposed changes to TWIA operations.

Under these recommendations the Commissioner would no longer be able to modify filings on rates, forms, or changes to policy content. Instead, the Commissioner would exercise regulatory oversight by approving or disapproving rate and form filings before their use. If the Commissioner disapproved a filing, TWIA would resubmit a board-approved alternative.

To regulate changes in policy content and operations, the Commissioner would conduct a rulemaking process. The recommendation would not require TDI to conduct rulemaking through a public hearing, but the Department could choose to hold hearings at its discretion, or upon request, according to the Administrative Procedures Act. The Department would continue to have hearings on the designation of catastrophe areas and changes to windstorm building code.

These recommendations would clarify lines of authority between the Commissioner and the Board, permitting TDI to obtain better information with which to make regulatory decisions, and helping the Department maintain a healthy market for insurance while protecting the State from financial risk. The recommendation would also increase the Board's accountability to TWIA stakeholders, and expedite the filing approval process, while allowing for necessary public input on changes to TWIA.

2.3 Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.

This recommendation would transfer windstorm inspections, as well as oversight of engineers, to TWIA. This recommendation would retain the basic inspections requirements already in state law, and require TWIA to develop a windstorm inspection program including the following:

- a procedure for contracting with, and terminating contracts with, licensed engineers;
- inspection standards and regulations;
- training and education requirements for engineers, as needed;
- inspection fee guidelines;
- a procedure for handling complaints about inspectors;

- a process for engineer oversight that includes regular re-inspections by TWIA to make certain that inspectors perform duties appropriately;
- a requirement to report possible licensing violations to the Texas Board of Professional Engineers;
- a process for issuing certifications that attest to a structure's insurability through TWIA; and
- a procedure to regularly report to TDI on the inspection program.

This recommendation would require TDI to provide limited oversight of inspections. To facilitate TDI's oversight, TWIA would report monthly to TDI on the following:

- number of inspections performed;
- number of structures inspected;
- the number and a general description of the type of inspection deficiencies discovered through oversight; and
- any actions taken to resolve problems with inspections.

These changes would shift inspection responsibility to TWIA, requiring the Association to verify the insurability of applicants. The inspection program would be included in TWIA's Plan of Operation, and subject to Commissioner approval, as described in Recommendation 2.2. In transferring inspections to TWIA, this recommendation would also eliminate statutory language authorizing the Department to fund the inspection program from investment income of the trust fund.

TDI would retain six full-time staff to provide oversight of the inspection process, protecting the State's General Revenue, and to ensure that neither TWIA nor engineers unfairly limit access to the pool. TDI would also retain authority over the development of building codes and standards to which TWIA inspections must adhere.

This recommendation would help clarify the missions of both TWIA and the Department. TDI would no longer be responsible for both increasing availability and restricting entry to the pool. Eliminating the need for the Department to perform inspections would enable TDI to better focus on setting windstorm building standards, through building code development, to ensure that the Association meets its statutory purpose.

2.4 Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.

This recommendation would retain the general statutory guidelines for developing TWIA rates, but would remove the portions of statute that specify the exact experience that must be used to develop rates. Under this recommendation TWIA would be permitted to develop rates based on the most appropriate data for the specific circumstance. Proposed rates would still be subject to a 10 percent per filing cap overall, and 15 percent cap by ratings class. This recommendation would not affect the requirement that rates be uniform throughout the coastal region. This recommendation would enable the Association to develop more accurate rates, allowing the Commissioner to better protect the revenue of the State and to promote a healthy coastal insurance market.

2.5 Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

Under this recommendation all new windstorm applicants would be required to periodically furnish proof of two declinations, cancellations, or a combination of the two, from Texas-licensed insurers writing in the state. This recommendation would be prospective, affecting new and renewal policies. It would not affect policies currently in effect. This recommendation is consistent with requirements for other state residual markets. By requiring applicants to demonstrate that they could not obtain insurance in the voluntary market, the State will help ensure that TWIA is meeting its intended purpose as a market of last resort.

Fiscal Implication

These recommendations would have no net fiscal impact to the State. Transferring inspection responsibilities from TDI to TWIA would result in appropriations and staffing reductions of 28 full-time equivalents (FTEs), as well as the elimination of windstorm field offices for TDI's windstorm program. This reduction would be reflected in TDI's appropriations but, due to the self-regulating nature of the Department's funding, any savings would result in a reduction in maintenance taxes on insurers, and the costs insurers pass on to policyholders, but would not create a positive fiscal impact for the State.

The FTE reduction would include a combination of windstorm field staff, windstorm intake staff, and engineering staff. The windstorm program would retain sufficient staff to perform oversight of the inspection program at TWIA and to develop windstorm building code. The reduction of FTEs would result in an annual appropriations reduction of $1,344,123 based on salaries and fringe benefits for the positions. The recommendations would also result in appropriations reductions of approximately $201,436 due to reductions in travel costs for inspectors, as well as rent, telephone, equipment, and supply costs for windstorm field offices, based on average reimbursements and budgeted amounts for fiscal year 2007.

Texas Department of Insurance

Fiscal Year	*Savings to the General Revenue Fund, Account 36*	*Loss to the General Revenue Fund, Account 36*	*Net Effect to the General Revenue Fund, Account 36*	*Change in the Number of FTE's From FY 2009*
2010	$1,545,559	($1,545,559)	0	-28
2011	$1,545,559	($1,545,559)	0	-28
2012	$1,545,559	($1,545,559)	0	-28
2013	$1,545,559	($1,545,559)	0	-28
2014	$1,545,559	($1,545,559)	0	-28

TWIA would assume the costs associated with engineer oversight, which would be funded through policyholder premiums. Individual policyholders would pay for inspections by contracted inspectors through inspection fees.

In addition, TDI currently receives approximately $1 million annually from TWIA and the Catastrophe Reserve Trust Fund to subsidize inspections. This recommendation would eliminate that transfer, permitting that funding to remain in the trust fund.

Modifying the Board's structure would likely permit the Association to obtain tax-exempt status. Tax-exemption would allow the Association to save an average of $1.7 million per year, which could be used to pay claims or could be deposited into the Catastrophe Reserve Trust Fund. In the event of excess losses, additional reserves would provide extra protection for the State's General Revenue, though it is not possible to predict or determine actual savings to the State.

....

1 TWIA is also authorized to provide fire and explosion insurance in parts of the state where insurance is not reasonably available; however, TWIA does not currently provide fire insurance. Texas Insurance Code, ch. 2210.

2 Texas Insurance Code, sec. 2210.355(c).

3 Like TWIA, the residual market for automobiles, TAIPA, has a hearing for approval of rates. In this hearing the Commissioner is permitted to modify rates. However, TAIPA is unique among residual markets because TAIPA assigns all policies to private insurers, resulting in a higher level of scrutiny from insurers, and necessitating a hearing and the corresponding ability for the Commissioner to modify filings based on information obtained in a hearing.

Responses to TDI Issue 2

Recommendation 2.1

Increase the number of public representatives on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.

Agency Response to 2.1

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 2.1

None received.

Against 2.1

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin

Jay Thompson, Counsel – Association of Fire and Casualty Companies of Texas and the Insurance Council of Texas, Austin

John Marlow, Assistant Vice President – American Insurance Association, Austin

Modifications

1. Remove Recommendation 2.1 from consideration as part of the Texas Department of Insurance Review. (Senator Mike Jackson, Member – Texas Senate; Lyda Ann Thomas, Mayor – City of Galveston; Lee Otis Zapp, Jr., President and Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston)

2. Require the Governor, the Lieutenant Governor, and the Speaker of the House to appoint the Board of the Texas Windstorm Insurance Association and require appointed board members to elect a Chair. (Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin)

3. Require public membership on the Board of the Texas Windstorm Insurance Association to reflect the statewide insurance market and not be dominated by coastal interests. (Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin)

4. Require a majority of the Board of the Texas Windstorm Insurance Association to be public members and agents who reside in the catastrophe areas and are appointed by, and serve at the pleasure of, the Commissioner of Insurance. (Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston)

Modifications (continued)

5. Restructure the composition of the Board of the Texas Windstorm Insurance Association by increasing the board size to 11, adding one public representative and one property and casualty agent. (Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin)

6. Expand TWIA Board representation to include a homebuilder member. (Ned Muñoz, Director of Regulatory Affairs – Texas Association of Builders, Austin)

7. Make the TWIA Board the same individuals as the FAIR Plan Board. (Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston)

Recommendation 2.2

Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.

Agency Response to 2.2

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 2.2

Robert Gilbert, Assistant Vice President, USAA Government and Industry Relations – USAA, San Antonio

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Against 2.2

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Modifications

8. Remove Recommendation 2.2 from consideration as part of the Texas Department of Insurance Review. (Senator Mike Jackson, Member – Texas Senate; Lyda Ann Thomas, Mayor – City of Galveston; Lee Otis Zapp, Jr., President and Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston)

9. Implement a file-and-use system for TWIA rates by amending Subsections 2210.351(c) and (d), Texas Insurance Code. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

Recommendation 2.3

Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.

Agency Response to 2.3

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 2.3

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin

Against 2.3

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Modification

10. Remove Recommendation 2.3 from consideration as part of the Texas Department of Insurance Review. (Senator Mike Jackson, Member – Texas Senate; Lyda Ann Thomas, Mayor – City of Galveston; Lee Otis Zapp, Jr., President and Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston)

Recommendation 2.4

Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.

Agency Response to 2.4

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 2.4

Robert Gilbert, Assistant Vice President, USAA Government and Industry Relations – USAA, San Antonio

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Against 2.4

Senator Mike Jackson, Member – Texas Senate

Senator Eddie Lucio, Jr., Member – Texas Senate

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston

Modifications

11. Remove Recommendation 2.4 from consideration as part of the Texas Department of Insurance Review. (Senator Mike Jackson, Member – Texas Senate; Lyda Ann Thomas, Mayor – City of Galveston; Lee Otis Zapp, Jr., President and Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston)

12. Create a joint interim committee to study actuarially sound rating methodologies for developing TWIA rates, as well as to make recommendations on whether portions of the current statute should be amended so that TWIA will have the ability to use one, or any combination of new methodologies available to set TWIA rates. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)

13. Authorize TWIA to use modeling to estimate future losses and require models to be filed with TDI before their use. (Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin)

14. Require TWIA to use updated catastrophe modeling methods to calculate rates. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

15. Eliminate the 10-percent cap for TWIA rate changes. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

16. Authorize TWIA to consider all factors when considering a proper rate. (Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin)

Recommendation 2.5

Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

Agency Response to 2.5

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

Agency Modifications

17. Clarify the definition of declination to include an offer to provide coverage at a price that is 25 percent higher than what TWIA should charge for the same risk.

18. Require that declinations come from insurers actively writing windstorm insurance in the designated catastrophe area.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 2.5

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin

Against 2.5

Senator Mike Jackson, Member – Texas Senate

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Lee Loftis, Governmental Affairs – Independent Insurance Agents of Texas, Austin

Modification

19. Remove Recommendation 2.5 from consideration as part of the Texas Department of Insurance Review. (Senator Mike Jackson, Member – Texas Senate; Lyda Ann Thomas, Mayor – City of Galveston; Lee Otis Zapp, Jr., President and Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston)

Commission Decision

Adopted Recommendations 2.1 through 2.5.

Legislative Action

The statutory recommendations were not adopted, as S.B. 1007 failed to pass.

Issue 3

The State's Lack of Regulation of Preferred Provider Organizations Does Not Correspond With Changes in the Texas Healthcare Market.

Summary

Key Recommendation

- Require all Preferred Provider Organizations to obtain a certificate of authority from the Texas Department of Insurance to operate in Texas.

Key Findings

- The method of health insurance delivery to Texans has changed significantly in the last decade, moving towards delivery of care through PPO plans.
- TDI regulates some aspects of health insurance in Texas, but does not regulate Preferred Provider Organizations.
- TDI's lack of authority over PPOs is outdated in the current healthcare environment and may result in consumer harm.
- Although the Legislature has charged TDI with studying some aspects of the unregulated nature of PPOs, the agency lacks the specific regulatory authority needed to be effective.

Conclusion

The Texas Department of Insurance (TDI) only regulates health insurance that is provided through group or individual plans, which affects 5.5 million Texans. More than 80 percent of this group receive their care through Preferred Provider Organization (PPO) plans. The Department does not regulate PPOs, which are the networks that the PPO plans use to assemble and credential providers and negotiate discounts for service. With the migration of the healthcare market toward PPO plans, a significant portion of the healthcare system – PPOs – goes unregulated.

Sunset staff evaluated this lack of regulation and concluded that the prevalence of this type of healthcare delivery system, combined with the potential consumer harm that can result, argued for regulation of PPOs by the State. The complicated system in which PPOs are responsible for a significant amount of healthcare delivery can result in less transparency and accountability about payment and coverage under these plans. Requiring PPOs to obtain a certificate of authority to operate in Texas would ensure that TDI has information about these entities, and could take enforcement action against them if necessary. This minimal certification process would also allow the State to look more closely at the problems that can occur among PPOs, providers, insurers, and consumers.

Support

The method of health insurance delivery to Texans has changed significantly in the last decade, moving towards delivery of care through PPO plans.

- Texas' health insurance market can be broadly broken into four segments, each of which comprise about 25 percent of the market, as described in the textbox, *Texas Health Insurance Market*. The Texas Department of Insurance (TDI) does not regulate health insurance plans provided through self-insured employers, such as the State, due to an exemption in the federal Employee Retirement Income Security Act, or insurance obtained through federal programs.

Texas Health Insurance Market

Fully Insured – Texans who receive insurance through their employer, which contracts with insurers who retain the risk and provide benefits administration. Individuals who are not covered through jobs or spouses may contract directly with insurers.

Self-Insured – Texans who receive insurance through their employers, many of which are large employers like the State, that are self-insured. Self-insured companies insure their employees by retaining the risk of loss, and typically use Third-Party administrators to handle the delivery of health benefits.

Federally Insured – Texans who receive care through federal programs, such as Medicare, Medicaid, or the Children's Health Insurance Program.

Uninsured – Texans who do not have health insurance.

TDI's regulation of health insurance only occurs within the fully insured group, which covers 5.5 million Texans.

Instead, TDI's regulation of health insurance only occurs within the fully insured group, covering individuals who receive care through individual or group policies. Texas has about 5.5 million people who are covered by fully insured plans.

- Two general types of healthcare delivery exist, indemnity plans and managed care plans. Most fully insured Texans receive their health care through managed care plans, which provide health care to policyholders through a network of providers. According to TDI, very few traditional indemnity plans exist in Texas anymore, so exact percentages are not tracked separately from managed care. Two major kinds of managed care plans exist: Health Maintenance Organizations (HMO) and Preferred Provider Organization (PPO) plans. The chart, *Health Insurance Plans*, gives information on all three of these types of plans.

- Over the last decade, the preferred model of healthcare delivery changed from indemnity plans to PPO plans. According to the American Association of Preferred Provider Organizations, 67 percent of Americans who have health insurance are enrolled in PPOs.[1]

Health Insurance Plans

Type of Plan	Description
Indemnity	Plans in which the policyholder pays upfront for medical expenses, up to a deductible. After meeting the deductible, the insurer pays for a percentage, usually about 80 percent, of costs approved by the insurer.
Managed Care – Health Maintenance Organizations Plans	HMO plans provide for services, at a prepaid rate, through a closed-network system of providers. Policyholders pay a co-payment to a provider who is in-network, and generally receive no out-of-network benefits. If the HMO plan exists in an area of the state in which provider options are limited, the HMO must provide for opportunities for policyholders to get all medically necessary services, including going out-of-network.
Managed Care – Preferred Provider Organizations Plans	PPO plans are open-network, including both in-network and out-of-network benefits. PPO plans pay for a percentage of the cost of care, as determined by contract between the PPO and the provider, if the provider is in-network. If the provider is out-of-network, the PPO plan determines the allowable rate for services.

In Texas, in the 1980s, HMOs began to rise in popularity as an alternative to traditional indemnity plans, as a way for consumers to save money by buying into a managed care plan with a predetermined and predictable payment amount. With concerns about the quality and restriction of care patients received through closed-network HMOs, PPO plans gained popularity in the 1990s. As an open-network system, PPO plans give the consumer more choice.

Today, of the 5.5 million Texans who are fully insured in Texas, only one million, or 19 percent, have HMO plans. In contrast, 4.5 million Texans, or 81 percent, have PPO plans.

Today, 81 percent of fully insured Texans have PPO plans.

- As networks, PPOs play a significant role in the business of providing health care. Consumers choose providers on the basis of being in- or out-of- network, and those providers' contractual relationships are with PPOs. The textbox, *Preferred Provider Organizations*, gives more information about how PPOs operate within the health insurance system.

Preferred Provider Organizations

PPOs contract with providers, who give consumers services, in accordance with reimbursement rates agreed to between the provider and the PPO. PPOs may also lease access to provider networks, re-price claims, credential providers, and handle provider relations. As organizations, PPOs work as part of an insurance system. In some cases, large insurers create and own PPO networks. PPOs may also contract directly with a licensed insurer or a Third-Party Administrators (TPA). TPAs are entities that contract with insurance companies to provide administrative services to policyholders. However, the insurers, and not the PPOs or the TPAs, assume the risk.

TDI regulates some aspects of health insurance in Texas, but does not regulate Preferred Provider Organizations.

- The Department regulates aspects of health insurance that are sold to the quarter of the population that is fully insured, as described in the textbox, *TDI's Regulation of Health Insurance.*

TDI's Regulation of Health Insurance

To regulate health insurance, TDI:

- licenses health insurance companies and HMOs to ensure solvency;
- regulates HMO network adequacy to ensure that consumers get necessary care;
- monitors quality of care by regulating Utilization Review Agents and Independent Review Organizations;
- licenses Third-Party Administrators;
- licenses agents and agencies that sell health insurance;
- reviews policy forms that insurers provide to consumers; and
- investigates consumer complaints.

- TDI does not regulate PPOs as entities, but has some authority over preferred provider benefits plans (PPO plans), which are the healthcare plans that use PPO networks. PPOs are the actual organizations that develop a network of healthcare providers and lease the network to health insurance companies to provide in-network services to the insurer's policyholders. PPO plans are the insurance benefit plans through which consumers receive their health care.

  PPO plans are filed with the agency, but state law does not require TDI to review the network provided for in the plan itself. About 150 plans are on file, however, since the PPOs themselves are not regulated, TDI does not have information on how many PPOs exist. The textbox, *Preferred Provider Benefit Plans*, gives more information on the relationship between PPOs and plans.

As PPOs are not regulated, TDI does not even have information on how many exist.

Preferred Provider Benefit Plans

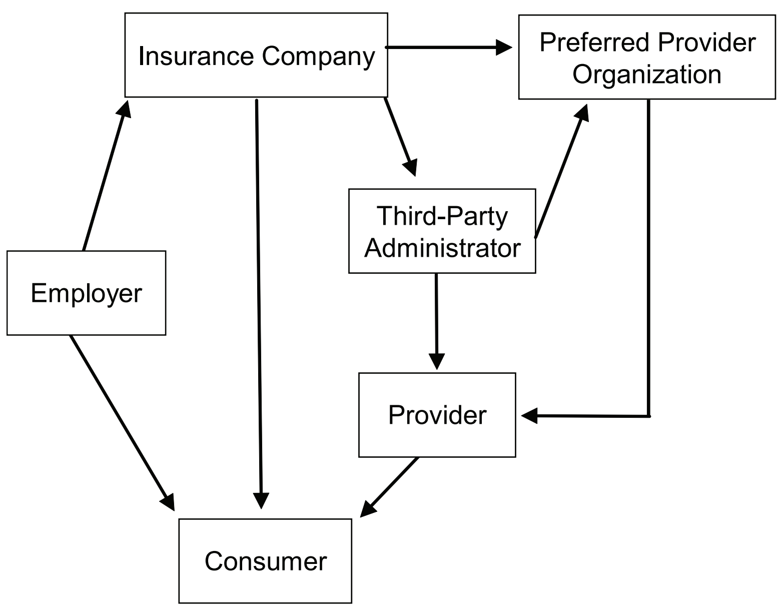
PPOs contract with insurers selling a PPO plan or with a Third-Party Administrator (TPA) selling a PPO plan for an insurer. TDI regulates some components of a company that contracts with a PPO through its financial regulation, such as insurers or Third-Party Administrators, but TDI does not have regulatory authority over the PPO itself. Also, while some insurers or Third-Party Administrators, have their own PPOs, some are independent, contracting directly with the insurer or TPA, and therefore fall entirely outside of TDI's regulatory structure.

TDI's lack of authority over PPOs is outdated in the current healthcare environment and may result in consumer harm.

- PPOs operate within a complicated system of health insurance, as shown in the chart, *Preferred Provider Organizations in the Market*. Within this system, PPOs play a significant role in healthcare delivery to the consumer. The complexity of the system can result in a lack of transparency and accountability, including confusion about the role PPOs play in contracting with providers and negotiating discounts for services provided to consumers. For example, consumers may not receive clear information about services or providers covered. Because the decisions that PPOs make involving these functions can directly affect consumers and the healthcare services they receive, the unregulated nature of PPOs may result in consumer harm.

PPOs play a significant role in healthcare delivery.

Preferred Provider Organizations in the Market



- TDI is charged with regulating insurance to, among other things, protect consumers from harm. While this primarily involves entities that bear risk, TDI does regulate some entities that do not bear financial risk, because they are involved in the system in which consumers receive insurance, and may provide insurance-like functions.

  In the past, the Legislature has recognized the potential for consumer harm caused by HMOs and TPAs, which do not assume the financial risk of providing health care to consumers, but are involved in the system in which consumers receive health care.

  HMOs provide services to policyholders and make claim coverage decisions, affecting consumers' quality of care. TPAs provide some services related to insurance that justify state oversight, such as collecting premiums, handling enrollment, processing claims, and providing other administrative services. As such, the State issues certificates of authority to HMOs and TPAs and monitors their compliance with state requirements.

TDI cannot quantify consumer harm related to PPOs.

- Although PPOs operate in a similar way to TPAs in that they provide operational support to plans, such as contracting with providers, leasing access to provider networks, re-pricing claims, and credentialing providers, the State does not regulate PPOs.

  Even though 81 percent of fully insured Texans receive their care through PPO plans, and these rely heavily on PPOs to administer their provider networks, TDI has little information or authority over this significant portion of the market. TDI cannot quantify consumer harm related to PPOs due to their unregulated nature; however, because PPOs provide health care to consumers, the State has an interest in regulating them.

- Although state law has certain requirements for PPO plans, because TDI does not regulate the PPOs themselves, the Department cannot take enforcement action against PPOs that do not meet those requirements. For example, state law prohibits the use of silent PPOs, a situation in which PPOs may contract with each other giving access to provider discounts not contemplated in the original provider's network contract. This can result in providers receiving lower reimbursements for services provided. However, since TDI does not regulate PPOs, it cannot take enforcement action against those organizations that do not comply with PPO plan requirements.

  State law also prohibits entities that are not authorized by TDI to engage in the business of insurance.[2] Unauthorized insurance plans can result in significant financial and medical harm to consumers, if the entity does not pay claims. In the past, TDI has issued bulletins to the industry warning against the sale of unauthorized insurance and requesting PPOs' cooperation in reporting such plans.[3] Although TDI has taken action against some entities involved in selling unauthorized insurance, it cannot take effective action against PPOs that may be involved in similar situations, since the agency holds no regulatory authority over PPOs.

Although the Legislature has charged TDI with studying some aspects of the unregulated nature of PPOs, the agency lacks the specific regulatory authority needed to be effective.

The Legislature has recognized the potential for consumer harm through PPOs.

- The Legislature has recognized the potential for consumer harm that may occur through delivery of health care through PPOs. To this end, the Legislature created TDI's Health Network Adequacy Advisory Committee to collect data on balance billing and network adequacy issues within both HMOs and PPO plans, and report findings to the next Legislature.[4]

  The Department's Technical Advisory Committee on Claims Processing, also created by the Legislature, examines concerns related to PPO networks. The Committee's most recent report to the Legislature addressed issues like disclosure of fee schedules, silent and rental PPOs, provider contracts, and requests for verification. In response to similar concerns, TDI created the Provider Ombudsman in 2001, a position at the agency that assists healthcare providers in their relationships with PPOs and insurers.

- Despite all these venues to discuss issues related with the PPOs, TDI has no power to address identified problems because TDI has no regulatory authority over PPOs. Consequently, even when TDI receives complaints about the behavior of a PPO, it relies on the obligations of the licensed plan to resolve the consumer's complaint. In fact, although TDI does track some information about consumer complaints involving PPOs, because PPOs are not within the Department's jurisdiction, that information is not comprehensive.

TDI cannot address problems because it has no regulatory authority over PPOs.

Recommendation

Change in Statute

3.1 Require all Preferred Provider Organizations to obtain a certificate of authority from the Texas Department of Insurance to operate in Texas.

This recommendation would require PPOs that operate within Texas to apply for a certificate of authority from TDI. Basic requirements for the process and application for certificate of authority would be similar to those already in law for HMOs and TPAs. The application for a PPO certificate of authority would include requirements for:

- a copy of the applicant's basic organizational document, if it exists, such as articles of incorporation or association;
- a copy of any organization bylaws;
- a list of all members in control of the organization, such as the board of directors or other governing committee, or principal officers or partners; and
- a template of any contract made between the applicant and physicians or providers.

Under this recommendation, state law would provide requirements for approval of the application and recourse for applications denied, similar to requirements for other regulated entities. The certificate of authority would be issued once, and not subject to renewal. The Department would also be authorized to charge PPOs a fee for the certificate of authority, to offset the costs of regulation. The certificate of authority would remain in effect until the Commissioner suspends, revokes, or terminates the certificate. The recommendation would require the Commissioner to adopt rules implementing this program, including any requirements for updates of the information required for the original certificate of authority.

By certifying PPOs operating within Texas, this recommendation would allow TDI to have some regulatory authority over PPOs, and take enforcement action against them if they violate current state law or TDI rules. For example, if a PPO were to engage in the unauthorized practice of insurance, as defined in current law, TDI would be able to administratively enforce against the PPO. To help understand issues related to PPOs, the Department would be required to track and analyze complaints against PPOs.

Recognizing the differences between HMOs and PPOs, the recommendation does not intend to create a regulatory system in which TDI approves or monitors a PPO's network adequacy. Instead, given the percentage of the market that PPOs provide services to, and the potential consumer harm that may result, the recommendation would allow the State to understand more about the PPO market, and enforce against organizations that violate current law.

Fiscal Implication

This recommendation would not have a fiscal impact to the State. Although registering PPOs would result in additional administrative costs to TDI, and may increase appropriation levels, the Department would be authorized to charge certification fees, to the level necessary to regulate PPOs, to offset the costs.

....

[1] American Association of Preferred Provider Organizations, www.aappo.org. Accessed: April 28, 2008.

[2] Texas Insurance Code, sec. 101.051.

[3] Texas Department of Insurance, Commissioner's Bulletin #B-0004-07, (Austin, Texas, February 2, 2007).

[4] Texas Senate Bill 1731, 80th Legislature (2007).

Responses to TDI Issue 3

Recommendation 3.1

Require all Preferred Provider Organizations to obtain a certificate of authority from the Texas Department of Insurance to operate in Texas.

Agency Response to 3.1

The Department agrees with this recommendation.

Agency Modification

1. Define principles that must be adhered to as a condition of maintaining a PPO certificate of authority.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 3.1

Senator Leticia Van de Putte, Member – Texas Senate

Senator Rodney Ellis, Member – Texas Senate

Karen Love, Executive Director – Harris County Healthcare Alliance, Houston

Jennifer Ahrens, Executive Director – Texas Association of Life and Health Insurers, Austin

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin

Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin

Against 3.1

None received.

Modifications

2. Give TDI additional regulatory authority to ensure fair settlement of consumer claims and protect consumers from unnecessary exposure to out-of-pocket costs. (Senator Rodney Ellis, Member – Texas Senate)

3. Clarify that self-funded plans will not be subject to PPO regulation. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

4. Exempt insurers with proprietary PPOs from the certification requirement for PPOs. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

Modifications (continued)

5. If the staff recommendation is adopted, exempt insurers already licensed by TDI from PPO registration. (Jennifer Ahrens, Executive Director – Texas Association of Life and Health Insurers, Austin)
6. Clarify that any insurer that intends to engage in PPO network activities, without regard to other licenses or authorizations it holds, must obtain a new certificate of authority. (Josie R. Williams, MD, President – Texas Medical Association, Austin)
7. Clearly define PPO in statute. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)
8. Amend Chapter 1301 of the Insurance Code to apply current statutory standards to PPOs and require preferred provider benefit plans and PPOs to have appropriate appeal and complaint resolution processes for hospitals and other institutional providers. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)
9. Require PPO certificates of authority to be renewed on a regular basis, either annually or biannually. (Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)
10. Require TDI to review the adequacy of PPO networks and enforce contract provisions. (Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)
11. Set minimum requirements for the issuance of a PPO certificate of authority, including requiring TDI to verify and certify the PPO's network as adequate; and minimum requirements for continued corporate behavior, including protecting the buying, selling, or leasing of a physician or other health care provider's contract rate without their knowledge and prohibiting inappropriate access to a provider's negotiated rate. (Albert Gros, MD – Texas Medical Association, Austin)

Commission Decision

Adopted Recommendation 3.1 and Modifications 3 and 4.

Legislative Action

The statutory recommendation was not adopted, as S.B. 1007 failed to pass.

Issue 4

TDI Cannot Effectively Regulate Title Insurance Without Independent Financial Examinations and More Comprehensive Reporting.

Summary

Key Recommendations

- Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.
- Require title agents to annually submit audited financial statements of operating accounts to TDI.
- Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

Key Findings

- TDI has seen an increase in financial issues among title agents in recent years, causing concerns about potential insolvencies.
- The Department lacks statutory authority to independently examine title agents.
- State law does not require title agents to regularly submit complete, audited financial data, preventing TDI from effectively regulating their solvency.
- Without comprehensive title agent examinations and reporting, TDI cannot ensure the accuracy of expense data used to promulgate title insurance rates.

Conclusion

The Texas Department of Insurance (TDI) regulates title insurance in Texas by licensing title insurers, title agents, and escrow officers; protecting consumers from title insurer and title agent insolvencies; and promulgating statewide rates and policy forms. Sunset staff evaluated TDI's oversight of title insurance, and found that TDI lacks the authority to conduct independent financial examinations of title agents and does not collect the information necessary to monitor title agents' solvency. This seriously limits TDI's ability to protect consumers from economic harm and to promulgate accurate title insurance rates, which must be used in all title insurance transactions in Texas. Sunset staff concluded that independent examinations and more complete and audited financial information from title agents would strengthen the Department's ability to effectively monitor title agents' financial condition, and to ensure that rates are promulgated based on accurate information.

Support

The Department of Insurance regulates title insurance in Texas.

- Title insurance is typically required by lenders in real estate transactions, as a guarantee that the buyer will have clear ownership of the property. A title insurance policy insures a property buyer and lender from claims against the property, such as outstanding liens due to unpaid taxes or improper deed recording that existed at the time of purchase. Typically, the policy does not insure against title defects that arise after the date of sale.

  The insured pays a premium, which is a percentage of the value of the property loan, once, at the time of purchase or refinancing. If a covered claim is made against the property, the title insurer compensates the policyholder up to the amount of the loan or the purchase price. Title insurance for personal property, typically large-ticket items such as ships and equipment, can also be sold in Texas.

A title policy insures a property buyer from claims against the property that exist at the time of purchase.

- To regulate title insurance, the Texas Department of Insurance (TDI) licenses title insurers, title agents, and escrow officers. The textbox, *Texas Title Insurance Landscape*, details the roles of the licensees involved in title insurance. In fiscal year 2007, Texas regulated 33 title insurers, 628 title agents, and 7,058 escrow officers.

Texas Title Insurance Landscape

Title Insurer – An insurance company that underwrites title policies and covers claims.

Title Agent – A business engaged in researching property titles, preparing documents to transfer title, and selling title insurance policies. Title agents maintain indexed databases of local public records such as mortgages, wills, court judgments, and tax records. Title agent staff perform a search for title defects before issuing a policy; if the search reveals a problem, staff can resolve it or choose to include or exclude it from coverage. Title agents also hold escrow money in trust fund accounts during the transfer of property ownership. A direct operations title agent is a title insurer licensed to operate as a title agent.

Escrow Officer – A person who closes real estate transactions and disburses escrow funds.

- Title insurance is one of only two types of insurance for which the Department promulgates rates. This insurance must be used in all title transactions in Texas. Statute requires the Commissioner of Insurance (Commissioner) to set rates that are reasonable to the public and non-confiscatory to title insurers and agents. The Commissioner, by rule, also provides for title agents to retain 85 percent of the premium for their services and commission, and the title insurer to receive 15 percent for underwriting the policy.

- To protect consumers' assets, TDI monitors the solvency of title insurers and title agents. The Department licenses title insurers as financial entities, enforcing financial requirements at licensure and on an ongoing basis, monitoring ownership changes, and performing regular financial examinations to ensure solvency.

To monitor the financial condition of title agents, state law requires title agents to submit annual, audited reports to TDI of the trust fund accounts in which title agents keep escrow funds. The Department also conducts examinations of title agents, on behalf of the Texas Title Insurance Guaranty Association, approximately once every three years. An examination consists of auditing the agent's escrow accounting records for compliance and reviewing the agents' financial statements, or tax records, if financial statements are unavailable. In fiscal year 2007, TDI performed 255 title agent examinations.

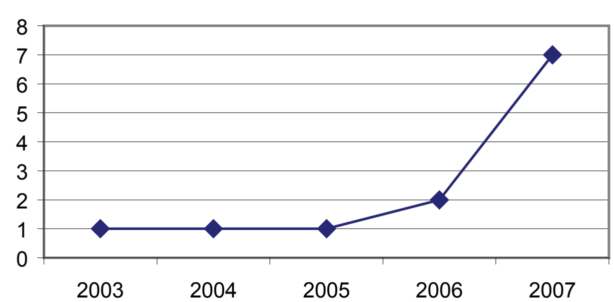
Title agent insolvencies, like insurer insolvencies, can cause substantial consumer harm.

TDI has seen an increase in financial issues among title agents in recent years, causing concerns about potential insolvencies.

- One of TDI's primary duties, as the State's insurance regulator, is to protect consumers from insolvencies of insurance companies and related entities through financial licensure, subsequent surveillance, and, as necessary, regulatory intervention. Title agent insolvencies, like insurer insolvencies, can cause substantial consumer harm. While not typically underwriting policies, title agents bear risk through their fiduciary responsibility for escrow funds held. If title agents misuse escrow funds, homebuyers stand to lose deposits made to buy property. In fiscal year 2007, $243 billion of Texans' money flowed through escrow accounts in Texas.

- In recent years, TDI has seen an increase in title agent financial problems, which tend to increase during real estate market slowdowns. Of the more than 2,500 insurance-related entities licensed under the Department's jurisdiction, TDI held intervention meetings with 31 companies about solvency concerns in fiscal year 2007. Of that, seven related to title agents, even though title agents make up just a small portion of the entire insurance market in Texas. An additional five title agents rose to this level in the first two quarters of fiscal year 2008. The graph, *TDI Financial Intervention Meetings Involving Title Agents*, indicates the increase in the number of meetings held by TDI to address title agent financial issues in recent years.

TDI Financial Intervention Meetings Involving Title Agents



- The Department has acknowledged its concern about title agent insolvencies, and the Commissioner convened an industry working group in 2007 to address the matter. Recommendations of the working group include consideration of expanded financial reporting by title agents.

The Department lacks statutory authority to independently examine title agents.

- Unlike regulation of other types of insurance, state law requires the Texas Title Insurance Guaranty Association (the Association), rather than TDI, to retain staff to examine title agents' escrow accounts, financial condition, and compliance with applicable statutes and rules. TDI is responsible for financial oversight and examinations for all other lines of insurance. The Association is composed of all title insurance companies operating in Texas for the purposes of protecting policyholders from title insurer insolvencies.

  To fulfill these obligations, TDI hires examination staff and is reimbursed by the Association for title agent examinations. The Association approves budget and staffing levels for TDI examiners. In fiscal year 2007, the Association spent about $1 million to fund examinations performed by TDI's 16 allocated title agent examiners. Department examiners file a quarterly report of examination results with the Association.

The Texas Title Insurance Guaranty Association, not TDI, has statutory authority over title agent financial examinations.

- While in practice title examiners are TDI employees and work under the direction of the Commissioner, the lack of statutory authority over examinations limits TDI's ability to fulfill its responsibility to ensure the solvency of title agents, or protect consumers. Without direct authority over examinations of title agents, TDI may lack the flexibility to determine the necessary components of examinations or schedule examinations as needed to take timely action when financial problems arise. Although taxes and assessments on insurance companies fund examinations for other lines of insurance, other lines' guaranty associations do not have direct authority for examinations.

State law does not require title agents to regularly submit complete, audited financial data, preventing TDI from effectively regulating their solvency.

- The Department has developed a financial early warning system to monitor insurance companies and related entities to detect financial concerns and take action to address them, if possible, before consumers are harmed. The early warning system relies on audited, comprehensive annual financial reports from regulated companies to receive timely indicators of their financial health.

  While the Department requires title agents to submit independently audited financial statements of operating accounts or a compilation when first applying for licensure, TDI does not receive this critical information on an annual basis, as it does for other insurance-related companies. The textbox, *Financial Reporting*, details the contents of a financial statement of operating accounts. State law does not require title agents to submit annual financial statements of

Financial Reporting

Financial Statement of Operating Accounts – A balance sheet indicating assets, liabilities, and ownership equity for the company as a whole, audited by an independent certified public accountant.

operating accounts to TDI. However, to effectively protect consumers' assets in escrow accounts, TDI must have a complete picture of a title agent's financial condition.

After the initial license application, TDI only requires that an agent check a box verifying solvency upon licensure renewal. The Department receives annual, audited statements of escrow accounts, but without similar statements of operating accounts, TDI is unable to detect potential solvency problems in a timely manner, putting consumer assets in escrow accounts at risk.

Upon renewal, TDI only requires title agents to check a box verifying solvency.

- The lack of annual, audited financial statements of operating accounts also undermines the effectiveness of title agent examinations. Department examiners review title agents' escrow accounts and financial condition approximately every three years, and request financial statements of operating accounts during examinations.

  Agents may give examiners this data in any format, including tax returns, and the data does not have to be verified by any independent reviewer. Without comprehensive, audited financial statements in a standard accounting format, the Department cannot link the condition of escrow accounts with the financial condition of the title agent as a whole and may not discover potential financial problems. The lack of standard financial reporting for title agents may cause the Department to miss critical signs of financial trouble, preventing TDI from acting before consumer assets are potentially misused.

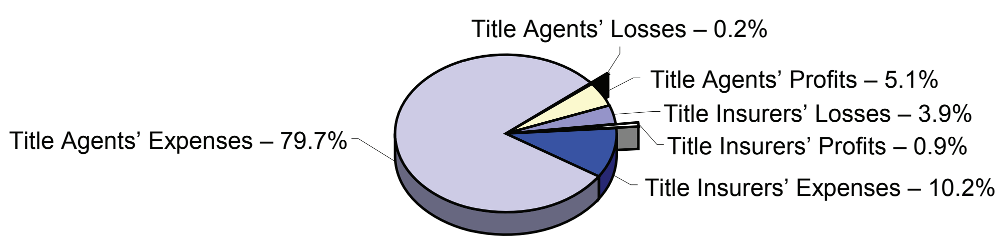
Without comprehensive title agent examinations and reporting, TDI cannot ensure the accuracy of expense data used to promulgate title insurance rates.

Consumers rely on TDI to set title insurance rates accurately.

- Statute prohibits title agents and insurers from charging rates other than those promulgated by TDI. Accurate and verified information from title agents is critical to TDI's rate-setting duties because consumers cannot choose title insurance products based on variations in price.

- To set rates for title insurance, the Commissioner uses expense, profit, and loss data reported annually by all title insurers and agents operating in Texas. The Commissioner prescribes the content of the annual report for rate setting and has not changed it substantially since the 1990s. The pie chart, *Components of the Title Insurance Rate*, depicts the composition of the current title insurance rate.

Components of the Title Insurance Rate



Title agent expenses constitute 80 percent of the title insurance rate.

Expenses make up most of the rate, and title agent expenses outweigh title insurer expenses by far. Title agents bear the costs of performing the title search, maintaining the title records, and marketing their services. Losses comprise a small portion of the title rate because claims against title insurance policies are rare, totaling between three and four percent of premiums collected, compared to between 60 and 70 percent in other property and casualty lines, such as homeowners and automobile.

- Because title agent expenses constitute 80 percent of the rate charged to all title insurance policyholders in Texas, TDI must be able to ensure that expenses are reported accurately. In about 25 percent of its title agent financial examinations, TDI also verifies the expense data used to promulgate rates for all title insurance transactions in Texas. Since title agent examinations occur approximately once every three years and not every exam includes an expense data review component, TDI cannot ensure the accuracy of agents' expense reporting.

  Only one in four title agent examinations includes a review of the expense report submitted for rating purposes. Thus, of the 255 examinations conducted in fiscal year 2007, only 63 included an expense report review. If the examiner runs out of time or the agent doesn't report its expense data on time, the expense data may not be looked at until the next examination, which could be another three years or more. Without direct authority over examinations, the Department may also lack the flexibility to review expense data as needed to ensure its accuracy.

Only one in four title agent exams reviews expense reports.

- The lack of annual, audited financial statements from title agents also prevents TDI from ensuring the accuracy of expense data reported for rate-setting. When TDI examiners do review expense reports, without standard, audited financial statements of operating accounts, TDI cannot independently evaluate if expense data is in line with actual financials.

- In a 2007 report on title insurance, the Government Accountability Office (GAO) found that state regulators have not collected sufficient financial data from title agents to analyze whether the premiums consumers are charged reflect the costs associated with producing a title insurance policy.[1] The GAO recommended that state insurance regulators gather and analyze more extensive financial data from title agents, including balance sheets reflecting assets, liabilities, and ownership equity.

Recommendations

Change in Statute

4.1 Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.

Under this recommendation, the statutory authority for title agent examinations would transfer from the Texas Title Insurance Guaranty Association to the Department, and TDI would be required to conduct regular title agent examinations. Examinations should include a review of the overall financial condition of a title agent, including operating accounts and escrow accounts. Every examination should also include a component to verify the expense, profit, and loss data reported for rate promulgation. This recommendation should apply to all title agents, including direct operations agents.

This recommendation would leave the frequency of title agent examinations to TDI, but examinations should occur at least once every three years. The Department could conduct targeted examinations more frequently if TDI determines a title agent's financial condition warrants closer scrutiny. This recommendation would maintain the statutory requirement that the Guaranty Association reimburse TDI for title agent examinations.

Transferring the examination authority from the Guaranty Association to TDI would give the Department the authority needed to ensure examinations are an effective component of its greater solvency monitoring. It would also give TDI the flexibility to develop and perform examinations as the Department sees fit. Requiring TDI to routinely verify the expense information collected from title agents would improve the Department's ability to promulgate rates that are reasonable to the public and non-confiscatory to title insurers and agents.

4.2 Require title agents to annually submit audited financial statements of operating accounts to TDI.

This recommendation would require title agents to submit audited financial statements of operating accounts to TDI as an annual reporting requirement, in addition to a requirement of initial licensure. The Department should prescribe the form and content of the statement, and the statement should be verified by an officer of the company. Information derived from agents' financial statements would be confidential and not subject to disclosure. The financial statement audit should be performed by an independent certified public accountant in accordance with generally accepted auditing standards of the accounting profession. This recommendation should apply to all title agents, including direct operations title agents.

To ensure that this requirement does not unduly burden small companies that do not write much title business, and do not hold a significant amount of funds at risk, the Commissioner would have the authority to exempt certain title agents with a premium volume of less than $100,000, from the requirement. To implement this, the Commissioner would establish, through rule, a process for exemption, which could include procedures for deciding exemptions on a case-by-case basis.

This recommendation is not intended to replace the requirement that title agents submit annual audited reports of escrow trust fund accounts, and escrow reports could be submitted together with operating account statements. Requiring comprehensive financial statements from title agents would allow the Department to ensure that title agent financial problems are detected in a timely manner and that promulgated title insurance rates are based on accurate information.

4.3 Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

This recommendation would require the Commissioner to assess, every five years, the expense data collected for purposes of promulgating rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary. Routinely evaluating the data would ensure that TDI collects adequate, but not unnecessary, information to promulgate rates in line with statutory requirements.

Fiscal Implication

These recommendations would not have an overall net fiscal impact to the State. Currently, the Department hires examiners through a rider that authorizes full-time equivalent employees (FTEs) for this function, and the Guaranty Association reimburses TDI for the examinations. Under these recommendations, the Department would continue to use these FTEs for title agent examinations, and the Department would require reimbursement from the Guaranty Association for examinations through the authority given the Department in Recommendation 4.1. TDI would determine the budget and staffing levels for title agent examinations, but would continue to bill the Guaranty Association for examinations conducted.

....

[1] United States Government Accountability Office, *Title Insurance: Actions Needed to Improve the Oversight of the Title Industry and Better Protect Consumers,* report no. GAO-07-401 (Washington, D.C., April 2007).

Responses to TDI Issue 4

Recommendation 4.1

Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.

Agency Response to 4.1

The Department agrees with this recommendation.

Agency Modification

1. Statutorily mandate the frequency of examinations and information that should be analyzed during an examination.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 4.1

None received.

Against 4.1

Thomas A. Rutledge, Counsel – Texas Land Title Association, Austin

Recommendation 4.2

Require title agents to annually submit audited financial statements of operating accounts to TDI.

Agency Response to 4.2

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 4.2

None received.

Against 4.2

Thomas A. Rutledge, Counsel – Texas Land Title Association, Austin

Recommendation 4.3

Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

Agency Response to 4.3

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 4.3

None received.

Against 4.3

Thomas A. Rutledge, Counsel – Texas Land Title Association, Austin

Commission Decision

Adopted Recommendations 4.1 through 4.3.

Legislative Action

The statutory recommendations were not adopted, as S.B. 1007 failed to pass.

Issue 5

The Statutory Cap on the Maintenance Tax of One Insurance Line Forces TDI to Inequitably Spread Costs Across Other Insurance Lines.

Summary

Key Recommendation

- Increase the life, accident, and health insurance maintenance tax cap to allow TDI to equitably cover the cost of this regulation.

Key Findings

- Maintenance taxes, paid for by insurance companies, fund TDI.
- The maintenance tax rate cap for one line of insurance is too low to equitably cover the cost of regulation of that line, forcing TDI to rely on other lines to absorb the deficit.

Conclusion

The Department receives most of its funding from maintenance taxes assessed on all companies that sell insurance in Texas. For tax purposes, types of insurance are grouped into nine major lines. State law charges TDI with setting maintenance tax rates to the level necessary to cover the costs associated with regulating insurance, as appropriated by the Legislature. State law also caps the total amount of maintenance taxes that may be assessed on any given line.

Sunset staff evaluated the current maintenance tax structure, and found that the agency cannot set the maintenance tax rate for the life, accident, and health insurance line at a level necessary to cover the costs of regulating that line, as appropriated. Instead, TDI has increased the maintenance taxes assessed on other lines of insurance to make up for this shortfall. Increasing the statutory tax cap for the life, accident, and health line of insurance would ensure that maintenance tax rates fairly cover the costs of regulating insurance among all lines.

Support

Maintenance taxes, paid for by insurance companies, fund TDI.

- Maintenance taxes, assessed on all companies selling insurance in Texas, provide the Texas Department of Insurance (TDI) with the majority of its funding. For tax purposes, the different types of insurance are grouped in nine major lines, each of which has a different maintenance tax rate. For most lines, the State assesses insurance companies based on their premium volume in Texas. In 2007, the State collected about $105 million in maintenance taxes for insurance regulation and administering workers' compensation. Of this amount, the State collected about $52 million for regulating insurance, at TDI and other state agencies that support insurance regulation, and $53 million for workers' compensation.

  State law caps the maximum rate that can be charged to each insurance line.

  State law caps the maximum rate that can be charged to each line, and requires the Commissioner of Insurance (Commissioner) to set the rates on nine lines of insurance each year. The Commissioner must set tax rates each year to cover the funds appropriated to TDI, and other state agencies that support insurance regulation, by the Legislature. Maintenance taxes must generate sufficient revenue to fund the difference between projected revenues from other sources, such as user fees, and projected expenditures. Any excess funds that remain at the end of the fiscal year carry over to the next year, and are reflected in the rates the Commissioner sets in the next year.

- To set tax rates, TDI evaluates how much funding is needed for each of the agency's regulatory programs, and sets the rate on the related line, taking into consideration other sources of funding for each of the lines. For example, in setting the tax rate for motor vehicle insurance companies, TDI assesses the funds needed to regulate automobile insurance and the funds expected to be collected from other sources related to that type of insurance that year, such as licensing fees. Once TDI determines the total revenue needed, the Department calculates the tax rate for the year using the formula, *Maintenance Tax Calculation Formula*.

Maintenance Tax Calculation Formula

$$\boxed{\text{Fund Balance}} + \boxed{\text{Expected Fee Revenue}} - \boxed{\text{Total Revenue Needed}} = \boxed{\text{Maintenance Tax Needs}}$$

$$\boxed{\text{Maintenance Tax Needs}} \div \boxed{\begin{array}{l}\text{Estimated Premium Volume}\\ \text{for Current Calendar Year}\end{array}} = \boxed{\text{Tax Rate}}$$

For each of the nine lines of insurance, the chart, *Maintenance Tax Rates*, shows the rate cap, tax rate for 2008, and the identified revenue needs to cover the cost of regulation for that same year.

Maintenance Tax Rates

Line of Insurance	Statutory Rate Cap	2008 Tax Rate	Maintenance Tax Needs for 2008
Motor Vehicle Insurance[1]	0.2%	0.07%	$8,247,051
Fire Insurance/Catastrophe Pool[1]	1.25%	0.28%	$20,942,503
Compensation Insurance[1]	0.6%	0.069%	$2,702,981
Casualty Insurance[1]	0.4%	0.129%	$5,651,828
Title Insurance[1]	1%	0.127%	$1,720,821
Life, Accident, and Health Insurance[1]	0.04%	0.04%	$20,696,930
Third-Party Administrators[2]	1%	0.149%	$716,139
Health Maintenance Organizations[3] ◆ Single Service ◆ Multi-Service ◆ Limited Service	$2 / enrollee	 $0.41 $1.23 $0.41	$2,579,832
Prepaid Legal Services[4]	1%	0.042%	$1,103
Total			**$63,259,188**

1 Rates for these lines are set as a percentage of dollar premium volume.

2 Rates for this line are set as a percentage of administrative fees.

3 Rates for this line are set as an amount per enrollee.

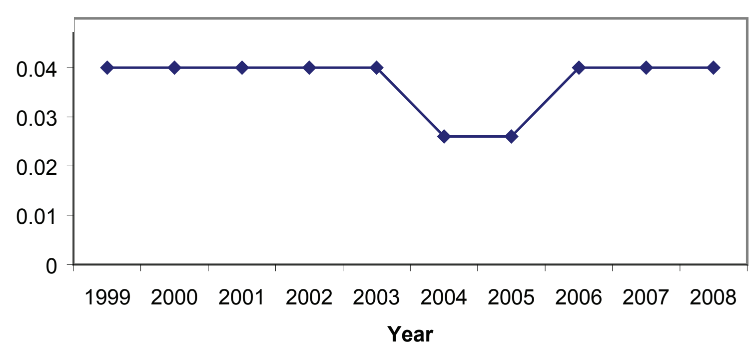
4 Rates for this line are set as a percentage of gross revenues.

The maintenance tax rate cap for one line of insurance is too low to equitably cover the cost of regulation of that line, forcing TDI to rely on other lines to absorb the deficit.

- Since all maintenance tax rates are capped in statute, TDI may only apply a rate to a certain line up to that cap, raising equity and fairness concerns when the amount needed to regulate a certain line requires a higher rate than allowed by statute. Specifically, the maintenance tax rate cap for life, accident, and health insurance is at a level that cannot cover the costs of regulating the line.[1]

  As a consequence, TDI has increased the rate of maintenance taxes assessed on other lines of insurance to cover the cost of life, accident, and health regulation. The chart, *Life, Accident, and Health Insurance Maintenance Tax Rates*, shows how the tax rate for that particular line has been set over the last ten years. With the

Life, Accident, and Health Insurance Maintenance Tax Rates



exception of just a few years, TDI has consistently set the rate for this line at its statutory cap, 0.04 percent.

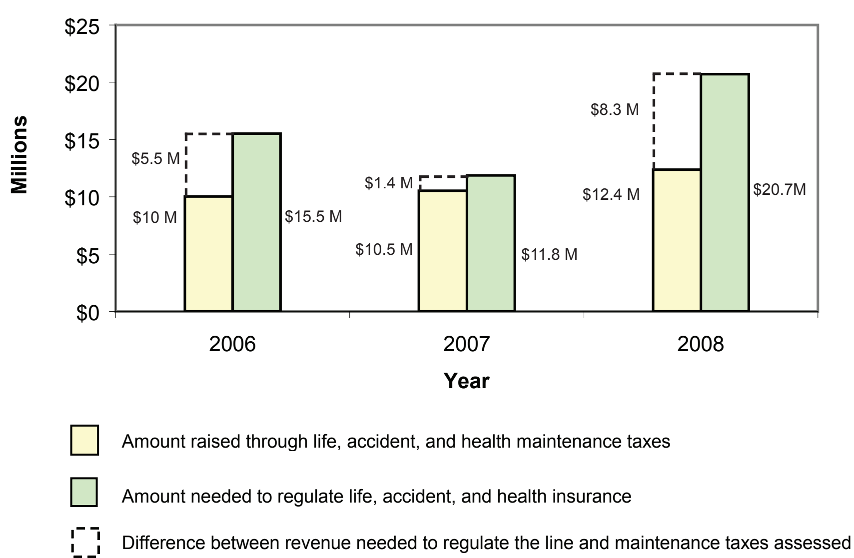
- In recent years, changes in state law and appropriation policy have necessitated an increase in the funds collected to regulate life, accident, and health insurance. For example, the removal of the life valuation statutory fee resulted in a deficit in monies available to regulate the line, increasing the burden of obtaining the funds through taxes. However, the agency could not make up this deficit through a tax rate increase due to the rate cap.

  In addition, several other state programs, related to regulating insurance but housed at agencies other than TDI, receive appropriated funds that are collected from maintenance taxes. For example, in 2007, the Legislature appropriated about $3.6 million in maintenance taxes to the Texas Cancer Council. To cover this appropriation, TDI needs to increase tax collections from life, accident, and health insurance, since the program best relates to that type of insurance. However, TDI has not been able to increase the taxes on this line to make up the difference, due to the rate cap.

For the past three years, life, accident, and health taxes have not covered the cost of regulation.

- The last time the taxes collected for life, accident, and health insurance covered the cost of regulation was in 2005. For the past three years, the funds that the agency can collect through maintenance taxes for life, accident, and health regulation have fallen short of the revenue needed to regulate the line. The chart, *Life, Accident, and Health Insurance Maintenance Tax Shortfall*, shows the difference between what TDI needs to regulate the line and what the agency can collect through taxes.

Life, Accident, and Health Insurance Maintenance Tax Shortfall



- Because TDI cannot fairly assess life, accident, and health insurance lines, due to the statutory cap, the agency disproportionately relies on other regulated lines to cover the regulatory costs. To compensate for insufficient life, accident, and health tax assessments, TDI has increased the tax rates for the other eight insurance lines. The chart, *Distribution of Life, Accident, and Health Insurance Deficit*, shows how much each of the other lines were assessed to cover the $8.3 million shortfall in 2008.

Distribution of Life, Accident, and Health Insurance Deficit – 2008

Insurance Line	Amount
Motor Vehicle Insurance	$1,613,022
Fire Insurance / Catastrophe Pool	$4,096,097
Compensation Insurance	$528,670
Casualty Insurance	$1,105,428
Title Insurance	$336,571
Third-Party Administrator	$140,068
Health Maintenance Organization	$504,584
Prepaid Legal Services	$216
Total	**$8,324,657**

To determine the amount each line is assessed to cover the shortfall, TDI proportionately distributes the need among the lines, based on the total percentage of estimated taxes required, which is then reflected in the tax rate for that line. Although TDI has been able to raise enough revenue to cover appropriations, by distributing the shortfall among all other lines, these lines are in the position of having to subsidize the regulation of life, accident, and health insurance.

- The funding needs for life, accident, and health insurance have consistently been at a level that prevents TDI from setting the line's maintenance tax rate to equitably cover regulatory costs. In addition, because the funding needs of this line have increased in recent years, as discussed above, TDI does not expect that the funding needs will level off.

  In the future, the Department projects a continued shortfall for this particular line, given the programs that are currently funded through the tax. TDI will continue to have to distribute the deficit among the other lines' tax rates. As a result, not only have the other lines assumed the burden of paying for the funding shortfall for this regulation for the past three years, but, barring other regulatory changes, they will continue to do so in the future.

TDI projects a continued shortfall for the life, accident, and health line.

Recommendation

Change in Statute

5.1 Increase the life, accident, and health insurance maintenance tax cap to allow TDI to equitably cover the cost of this regulation.

This recommendation would increase the statutory cap for the maintenance tax rate for the life, accident, and health insurance line from the 0.04 percent currently in statute to 0.2 percent. This increase is based on historical data provided by the agency reflecting past shortfalls, and an assumption that current factors affecting the calculation of the maintenance tax needs remain constant. The recommended cap allows the flexibility to fund future life, accident, and health insurance revenue needs in the event of a decrease in the tax base due to market conditions or statutory changes. The increased rate is also at the level of the next lowest rate cap, that for motor vehicle insurance.

While Sunset staff recognizes that some of the practices of the life, health, and accident insurance market may differ from other lines in the way that they collect premiums, this recommended change intends only that TDI have the ability to set the rate in accordance with needs, not that the rate be necessarily set at the 0.2 percent. State law charges TDI with setting rates only at the amount necessary to cover regulation. For example, although the statutory cap for motor vehicle insurance is at 0.2 percent, the current rate is at 0.07 percent, and has ranged from 0.035 to 0.07 percent in the last decade, as funding needs changed. If the life, accident, and health rate were to cover the cost of regulating the line in 2008, it would have been at 0.07 percent.

Although the recommended increased rate cap could increase the taxes that each company may pay, neither the total amount that TDI will generate, nor the effect on individual companies, can be determined, since it depends on future regulatory needs and unknown premium volumes. If the rate were raised, even though life, accident, and health companies would be paying more, all other companies would pay less, because they would no longer be subsidizing life, accident, and health insurance.

The increased cap would provide the agency with the ability to generate funds to finance current life, accident, and health maintenance tax needs, and the flexibility to fund future legislative appropriations affecting this line of insurance. The recommendation is intended to give the agency the ability to set maintenance tax rates equitably among all lines, therefore removing the current disparity that exists in setting other insurance lines' maintenance tax rates at a level necessary to cover the shortfalls that exist in the life, accident, and health insurance line.

Fiscal Implication

This recommendation would not have a fiscal impact to the State. Although the recommendation may increase the taxes levied on the life, accident, and health insurance line to cover regulatory costs, it would not affect the total amount of revenue the agency needs to collect to regulate insurance. Rather, the revenue would be obtained equitably throughout all lines of insurance, and only to the level that the Legislature appropriates to TDI and other agencies funded through maintenance taxes.

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[1] Texas Insurance Code, sec. 257.002.

Responses to TDI Issue 5

Recommendation 5.1

Increase the life, accident, and health insurance maintenance tax cap to allow TDI to equitably cover the cost of this regulation.

Agency Response to 5.1

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 5.1

Karen Love, Executive Director – Harris County Healthcare Alliance, Houston

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Against 5.1

Jennifer Ahrens, Executive Director – Texas Association of Life and Health Insurers, Austin

Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin

Commission Decision

Not adopted. The Commission took no action on Issue 5.

Legislative Action

No action needed.

Issue 6

Most of TDI's Advisory Committees No Longer Need to Be in Law.

Summary

Key Recommendations

- Eliminate all but two TDI advisory committees from statute.
- Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.
- Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.

Key Findings

- TDI has terminated four advisory committees that have fulfilled their purposes, but these committees still exist in state law.
- Two advisory committees will soon complete their tasks but TDI, by law, is not authorized to terminate their activities.
- One committee does not carry out its duties as intended and drains TDI resources.
- Five of TDI's advisory committees may continue to be useful, but would function better in rule rather than in law.
- TDI has the authority and the demonstrated ability to create advisory committees and informal working groups as needed.

Conclusion

TDI uses advisory committees for input on a variety of topics, including licensing requirements, program development, insurance standards improvement, and for information on insurance market conditions. Many of the existing committees may not be needed or may not perform a useful service for the Department; however, in several cases, the Department cannot easily abolish unnecessary advisory bodies.

Eliminating most committees from state law, except for legislatively authorized committees with time-limited functions, and requiring new advisory committees to meet standard structure and operating criteria, will help the Department ensure the most effective use of these committees.

Support

The Legislature has created fourteen advisory committees to assist TDI in carrying out various aspects of the agency's regulatory functions.

- The Texas Department of Insurance (TDI) has 14 statutorily created advisory committees and councils. TDI receives input from some of these committees, though many no longer meet. The committees advise the Commissioner of Insurance (Commissioner) or the Department on a number of topics, including licensing rules and requirements, program rules, market conditions, or other special projects. The chart, *TDI Advisory Committees*, provides basic information on the committees.

TDI Advisory Committees

Committee	Purpose
Agents Study Proposal/Vendor Committee	Advises the Commissioner on the continuing education program for licensed agents.
Bleeding Disorders Advisory Council	Advises the Commissioners of Insurance and State Health Services on issues that affect the health and wellness of persons living with hemophilia and other bleeding or clotting disorders.
Fire Alarm Advisory Committee	Advises the State Fire Marshal on rules and regulations related to fire detection and alarms.
Fire Extinguisher Advisory Council	Advises the State Fire Marshal on rules related to licensing and regulation of the fire extinguisher industry.
Fire Sprinkler Advisory Council	Advises the State Fire Marshal on rules, forms, and procedures related to the licensing and regulation of the fire protection sprinkler system industry.
Fireworks Advisory Council	Develops and approves all rules related to the licensing and regulation of fireworks.
Health Network Adequacy Advisory Committee	Studies facility-based provider network adequacy of health benefit plans and periodically reports to state leadership and the Commissioner.
Health Maintenance Organization Solvency Surveillance Committee	Assists and advises the Commissioner regarding the detection and prevention of insolvency problems in health maintenance organizations and any health maintenance organization placed in rehabilitation, liquidation, supervision, or conservatorship.
Public Insurance Adjusters Examination Advisory Committee	Develops public adjuster licensing examinations and advises the Commissioner on related matters.
Technical Advisory Committee on Claims Processing	Advises the Commissioner on rules related to health service claims processing.
Technical Advisory Committee on Electronic Data Exchange	Advises the Commissioner on technical aspects of using transaction standards that enable health benefit plan issuers and administrators to provide eligibility information to healthcare providers at the point of service.
Texas Health Coverage Awareness and Education Program Task Force	Advises the Commissioner on the health coverage public awareness and education program, including the content for the public service announcements, the Internet website, and educational materials.
Texas Residential Property Insurance Market Assistance Program Executive Committee	Advises the Commissioner regarding the administration of the assistance program.
Windstorm Building Code Advisory Committee	Advises and makes recommendations to the Commissioner on building specifications.

- Chapter 2110 of the Texas Government Code lays out the basic structure and duties of state agency advisory committees. The chapter authorizes state agencies to create advisory committees as needed to fulfill their duties. The chapter also creates guidelines for committee membership and reimbursement. State law further requires state agencies to define the purpose of each committee, and to regularly evaluate committees to determine their continued usefulness. To ensure that committees remain useful, state law creates automatic expiration dates for committees four years from their creation, and requires agencies to act, through rulemaking, to continue needed committees.[1]

  In addition to the committee abolishment provisions in Chapter 2110, the Legislature also routinely creates expiration dates for time- or purpose-limited committees. For example, the Legislature created specific expiration dates for the Bleeding Disorders Advisory Committee and the Health Network Adequacy Advisory Committee, which will conduct studies and expire in 2009.[2]

State law creates automatic expiration dates for advisory committees to ensure they remain useful.

TDI has terminated four advisory committees that have fulfilled their purposes, but these committees still exist in state law.

- The Legislature routinely creates advisory bodies to fulfill specific functions, such as studying particular issues or devising rules or regulations for new programs. TDI has several such advisory committees that have completed their assigned tasks, are no longer active, but continue to exist in state law.

- ***Agents Study Proposal/Vendor Committee.*** The Legislature authorized this committee to provide advice to the Department on continuing education programs for licensed insurance agents. The appointment of a committee was optional, and the Commissioner never convened this committee. The committee remains in state law.

- ***Public Insurance Adjusters Examination Advisory Committee.*** This committee was a short-term committee, designed to advise the Commissioner on the creation and administration of public insurance adjuster licensing exams. TDI abolished this committee through rule in 2003, once it completed its purpose. The committee remains in law.

- ***Texas Residential Property Insurance Market Assistance Program Executive Committee.*** The Legislature created the Texas Residential Property Insurance Market Assistance Program and its Executive Committee in 1995 to help Texans obtain homeowners insurance in underserved areas of state. Lawmakers replaced the program with the Texas Fair Access to Insurance Requirements Plan in 2003. As a result, the Executive Committee no longer meets, though it continues to exist in law.

Several TDI advisory committees are no longer active but continue to exist in state law.

- ***Texas Health Coverage Awareness and Education Program Task Force.*** The Legislature created the Texas Health Coverage Awareness and Education Program Task Force (Task Force) to advise the Department on a newly created health coverage awareness program and website. TDI has developed the program and completed the website. As such, the Task Force has fulfilled its assigned tasks, making its continued existence in law unnecessary.

Two advisory committees will soon complete their tasks, but TDI, by law, is not authorized to terminate their activities.

- ***Technical Advisory Committee on Electronic Data Exchange.*** The Legislature established the Technical Advisory Committee on Electronic Data Exchange (CEDE) to study and advise the Commissioner on data exchange technologies related to health insurance plans. CEDE is scheduled to issue a final report in December 2008. CEDE is in the process of winding down activities and, following the final report, will no longer have a function. However, CEDE is exempt from Chapter 2110, preventing TDI from terminating it once it concludes its work.

One Committee has never fulfilled its intended purpose.

- ***Technical Advisory Committee on Claims Processing.*** The Legislature created the Technical Advisory Committee on Claims Processing (TACCP) in response to concerns that insurers were not paying claims to providers in a timely manner. TACCP advises the Commissioner on rules related to the technical aspects of health insurance coding and produces a report on its activities every other year. According to the Department, TACCP has largely met the goals established by the Legislature, namely improving the timeliness of carriers' payments to providers.[3] Though TACCP has fulfilled its purpose, in the future it may continue to work on emerging industry issues at the discretion of committee members. Like CEDE, TACCP is exempt from Chapter 2110, preventing the Department from evaluating the Committee and determining if it should be abolished or redirected to serve some new purpose.

One committee does not carry out its duties as intended and drains TDI resources.

- ***Health Maintenance Organization Solvency Surveillance Committee.*** The Legislature created the Health Maintenance Organization Solvency Surveillance Committee to serve an ongoing purpose, but the Committee has never operated as intended and drains TDI resources. The Legislature established the committee to monitor the solvency of HMOs in a period of industry-wide instability. The Committee has two main functions: to advise the Commissioner on specific insolvency cases and the health of the overall market, and to assess HMOs to cover TDI's expenses related to HMO solvency regulation. Despite several HMO insolvencies since the Committee's inception, the Committee has never hired staff or assessed HMOs. As a result, TDI fulfills the Committee's responsibility without Committee support.

The committee rarely meets and no longer receives financial information on individual companies, limiting their ability to advise the Commissioner on specific cases. When the Committee was first created it met quarterly; however, the Committee now has trouble obtaining a quorum and may meet only once or twice a year for updates from TDI. TDI staff estimate that each meeting requires 20 to 30 hours of staff preparation. In addition, TDI can no longer provide updates to the Committee about specific insolvencies since the Committee has not hired legal staff as authorized and, therefore, cannot meet in executive session to receive financial information on individual companies.

Five of TDI's advisory committees may continue to be useful, but would function better in rule rather than in law.

- Five technical advisory entities assist TDI and may perform important functions, but do not need to be in state law. In addition to providing a forum for public input, these committees provide technical expertise in areas of licensing and building code development that may not be very familiar to some TDI staff or to a commissioner of insurance. Despite letting some of these committees expire, TDI is currently re-creating several in rule, demonstrating the Department's intent to preserve important committees. Re-establishing these committees in rule should also provide TDI with more flexibility to structure the committees in the best way to meet the Department's current needs.

Five technical advisory entities assist TDI but do not need to be in state law.

- ***Fire Alarm, Extinguisher, Sprinkler, and Fireworks Advisory Councils.*** The councils that advise on fire alarm, sprinkler, extinguisher, and fireworks licensing present industry and technical perspectives on rules and regulations. These councils may be particularly necessary since members possess technical expertise, in fire suppression and fireworks, needed for TDI to effectively regulate these professions.

  In recent years, due to changes in the structure of the State Fire Marshal's Office, these councils have expired, though both the State Fire Marshal and TDI recognize the need for their continued existence. As a result, TDI is in the process of re-creating these councils in rule, demonstrating the importance of the councils, and underscoring TDI's intent to preserve advisory councils that serve a continuing function.

  Although TDI is re-creating these councils in rule, the Department is bound by what exists in law, and some statutory provisions may limit the councils' effectiveness in the future. For example, current law does not provide for a balance of public and industry members on several of the councils, preventing TDI from establishing this balance when they re-create the councils in rule.

  State law grants the Fireworks and Fire Extinguisher Councils authority that is typically reserved for a Commissioner or policymaking body. Specifically, state law prohibits the Commissioner from adopting rules on fireworks regulation unless they are first approved by the Fireworks

Council. State law also permits the Commissioner to delegate almost all functions related to fire extinguisher licensure to the Fire Extinguisher Council. While the Commissioner has not chosen to delegate authority, this provision could, for example, put the Council in the position of taking enforcement actions. In both cases, statute extends the traditional advisory role of each committee into policymaking and agency administration, roles that TDI will have to duplicate through rule when the Department re-establishes the Councils.

- ***The Windstorm Building Code Advisory Committee.*** The Windstorm Building Code Advisory Committee provides a forum for technical input and advice to the Commissioner. The Committee routinely reviews updates to the International Residential Code and the International Building Code, as promulgated by the International Code Council, as well as proposals for Texas revisions to the codes. Following the review of proposed code changes, the Committee makes recommendations to the Commissioner on adopting the new codes and revisions.

  Despite the continued usefulness of the Committee, TDI does not have the flexibility to set committee meetings to best suit the Department's needs, which may create an unnecessary drain on Department resources. State law requires the Committee to meet twice a year; however, the Committee's workload only requires that the Committee meet once a year or every other year. In addition, statute also requires the presiding officer to convene meetings; however, TDI typically calls meetings since the Committee relies on research materials that TDI prepares.

TDI has the authority and the demonstrated ability to create advisory committees and informal working groups as needed.

TDI has a demonstrated history of creating informal working groups to advise the Department as needs arise.

- Texas general law, under Chapter 2110 of the Texas Government Code, allows state agencies to create, evaluate, and abolish advisory committees. Under this law, the Department is authorized to establish advisory bodies to assist the agency as needed.

  Sunset has made several recommendations in the past to remove specific statutory references to committees, and to clarify each agency's authority to create committees as needed. Past Sunset recommendations also directed agencies to adopt advisory committee rules that comply with the provisions of Chapter 2110.

- The Department has a demonstrated history of creating informal working groups to advise the Department as needs arise. For example, recent legislation required the Department to create a website to provide Texans with more information on residential property and personal automobile insurance.[4] To create this website the Department created two advisory working groups, one for consumers and one for the insurance industry.

Recommendations

Change in Statute

6.1 Eliminate all but two TDI advisory committees from statute.

This recommendation would eliminate 12 of the 14 committees currently in statute. Specifically, this recommendation would eliminate the following committees:

- Agents Study Proposal/Vendor Committee;
- Fire Alarm Advisory Committee;
- Fire Extinguisher Advisory Council;
- Fire Sprinkler Advisory Council;
- Fireworks Advisory Council;
- Health Maintenance Organization Solvency Surveillance Committee;
- Public Insurance Adjusters Examination Advisory Committee;
- Technical Advisory Committee on Claims Processing;
- Technical Advisory Committee on Electronic Data Exchange;
- Texas Health Coverage Awareness and Education Program Task Force;
- Texas Residential Property Insurance Market Assistance Program Executive Committee; and
- Windstorm Building Code Advisory Committee.

The two remaining committees, the Bleeding Disorders Advisory Council and the Health Network Adequacy Advisory Committee, have statutory expiration dates, and will be eliminated based on these provisions in 2009. This change would eliminate several unnecessary advisory committees and allow the Commissioner to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department.

6.2 Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

The Commissioner should adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, structure, and use of the Department's advisory committees, including:

- the purpose, role, responsibility, and goals of the committees;
- size and quorum requirements of the committees;
- qualifications of the members, such as experience or geographic location;
- appointment procedures for the committees;
- terms of service;
- training requirements;

- a process to regularly evaluate the need for each committee;
- the duration of the committee; and
- a requirement that the committees comply with the Open Meetings Act.

This recommendation would require TDI to routinely evaluate advisory committees to ensure that they continue to serve a purpose. TDI would be allowed to retain or develop committees to meet its changing needs. All committees would be structured and used to advise the Commissioner, the State Fire Marshal, or staff, but not responsible for rulemaking or policymaking. Committee meetings would also be open to the public.

Management Action

6.3 Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.

Chapter 2110 of the Texas Government Code permits state agencies to establish advisory committees to advise agencies. TDI also routinely creates informal working groups to obtain stakeholder input on a variety of topics. TDI should clearly distinguish between the two types of groups. Working groups would not be required to adhere to the requirements of Chapter 2110. This recommendation would allow the Department to make use of either type of group, but would direct TDI to distinguish between the two and define the purpose for working groups as well as advisory bodies.

Fiscal Implication

These recommendations would not result in a fiscal impact to the State.

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1 Texas Government Code, sec. 2110.008.

2 Texas Senate Bill 1566, 80th Legislature (2007) and Texas Insurance Code, sec. 1456.0065(f).

3 Texas Department of Insurance, *Report on the Activities of the Technical Advisory Committee on Claims Processing* (Austin, TX, 2006).

4 Texas Senate Bill 611, 80th Legislature (2007).

Responses to TDI Issue 6

Recommendation 6.1

Eliminate all but two TDI advisory committees from statute.

Agency Response to 6.1

The Department agrees with this recommendation.

Agency Modification

1. Eliminate the Utilization Review Advisory Committee from statute.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 6.1

Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Jennifer Ahrens, Executive Director – Texas Association of Life and Health Insurers, Austin

Against 6.1

Senator Rodney Ellis, Member – Texas Senate

Recommendation 6.2

Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

Agency Response to 6.2

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 6.2

Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Jennifer Ahrens, Executive Director – Texas Association of Life and Health Insurers, Austin

Against 6.2

None received.

Recommendation 6.3

Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.

Agency Response to 6.3

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 6.3

Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Jennifer Ahrens, Executive Director – Texas Association of Life and Health Insurers, Austin

Against 6.3

None received.

Commission Decision

Adopted Recommendations 6.1 through 6.3.

Legislative Action

The statutory recommendations were not adopted, as S.B. 1007 failed to pass.

Issue 7

To Reduce the Risk of Fire Hazard, the State Fire Marshal's Office Needs Direction to Target Its Inspections of Buildings.

Summary

Key Recommendations

- Require the SFMO to periodically inspect state-leased buildings.
- Require the SFMO to create a risk-based approach to conducting routine inspections of state buildings.
- Authorize the SFMO to charge a fee for inspections of privately owned buildings.
- Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.

Key Findings

- While the SFMO has a clear role in inspecting state-owned buildings, the law does not speak to the SFMO's inspection of state-leased buildings.
- The SFMO has not targeted its routine inspections of state buildings based on potential fire safety risks.
- Not charging a fee, and the lack of local resources, contribute to the SFMO's inappropriate involvement in private building inspections, most of which should be handled locally.

Conclusion

The State Fire Marshal's Office (SFMO) is charged with preventing the loss of life and property due to fire by inspecting the safety of buildings. Sunset staff looked at the focus of these inspections, which is largely on state-owned buildings, and concluded that state-leased buildings that house thousands of state employees would also benefit from periodic fire safety inspections. In addition, the SFMO does not have a risk-based approach to its routine inspections of state buildings and must divert more than a quarter of its time and resources to inspecting privately owned buildings. Sunset staff concluded that the SFMO would benefit from taking a more strategic approach to inspecting state buildings, including state-leased buildings. The Office would also benefit from taking steps to shift the inspection of privately owned buildings, to the extent possible, to local resources that could meet this need more quickly and at less cost.

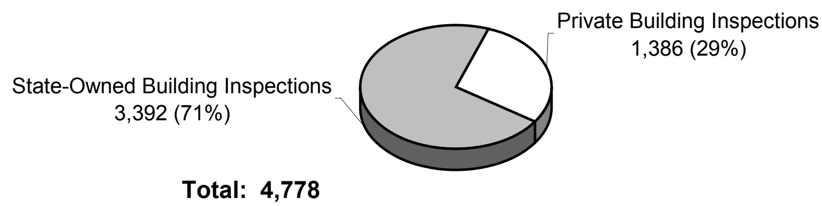
Support

The SFMO works to prevent the loss of life and property due to fire by inspecting the safety of buildings, particularly state-owned buildings.

Inspections help to identify and correct fire hazards.

- The State Fire Marshal's Office (SFMO) inspects all state-owned buildings, including everything from state office buildings to universities and prisons. The Office also inspects, upon request or complaint, other privately owned buildings. Fourteen staff conducts fire inspections, 10 of whom are based outside of Austin to provide inspections statewide. In fiscal year 2007, the SFMO performed a total of 4,778 inspections, as shown in the chart, *SFMO Inspections*.

SFMO Inspections
FY 2007



- Fire safety inspections help to ensure that buildings are safe for occupants, firefighters, and other adjacent buildings and structures. Inspectors check fires alarms, fire extinguishers, sprinkler systems, and escape routes, looking for potential fire hazards. Staff may also evaluate fire policies and communication plans to ensure employees know how to respond effectively to a fire in their workplace. Inspections help to identify and correct fire hazards and ensure better overall awareness of the importance of fire safety.

While the SFMO has a clear role in inspecting state-owned buildings, the law does not speak to the SFMO's inspection of state-leased buildings.

The State leases more than 10 million square feet of space, housing thousands of state employees.

- State law requires the SFMO to periodically inspect state-owned buildings, and to take any action necessary to protect a public building and its occupants against an existing or threatened fire hazard.[1] State law also requires the SFMO, the Texas Facilities Commission, and the State Office of Risk Management to adopt a memorandum of understanding to coordinate information regarding the inspections of state-owned buildings, and findings of fire hazards. These requirements affect state-owned buildings and garages with approximately 5.4 million square feet of space. However, the statute does not address state-leased buildings.

- The State currently leases 1,023 facilities across the state, with more than 10 million square feet of space, housing thousands of state employees. In contracts for this space, the Texas Facilities Commission requires that landlords comply with local and state ordinances, including fire codes.

However, Texas has no statewide fire code and many areas of the state do not have local fire codes. In addition, these provisions do not ensure any periodic inspection of leased space for ongoing compliance with fire safety codes or standards.

- The State has a clear interest in protecting the safety of all state employees, whether housed in a state-owned or state-leased building. In March of 2007, two state employees perished when a state-leased property in Houston caught fire, allegedly due to arson. The SFMO was called in after the fire to examine the building and found numerous problems, including the lack of an adequate fire alarm and smoke detection system. While the specific circumstances of this fire may not have been preventable, the devastating impact might have been reduced by better compliance with standard fire safety standards.

In March 2007, two state employees perished when a state-leased property caught fire.

The SFMO has not targeted its routine inspections of state buildings based on potential fire safety risks.

- The SFMO attempts to conduct a routine inspection of all state-owned buildings at least once a year. As noted above, this involved almost 3,400 inspections in fiscal year 2007. The statute requires that these inspections be done periodically, but does not set a specific timeframe.

  While the Office prioritizes inspections that must be done quickly, primarily ones based on complaints, it has no formal policy in place to direct its inspectors on how to prioritize or target routine inspections. Without a process to target its routine inspections, the SFMO may not be focusing on the most hazardous buildings for fire safety violations; these are the same buildings that require the most attention to prevent loss of life and property due to fire.

Targeting routine inspections allows for better use of limited resources.

- Many other Texas state agencies that conduct inspections have moved to a risk-based approach, often based on changes authorized as part of their Sunset legislation. The general intent is to target limited resources on inspections of entities posing the greatest risk to public safety, rather than focusing on inspecting all entities once every year or two, especially when many consistently show no evidence of problems.

  Examples of agencies successfully using this approach include the Texas Funeral Service Commission, which adopted a risk-based approach to its inspection of funeral establishments in 2003. The agency reported that it significantly enhanced consumer protection by allowing the agency to focus inspectors' efforts on facilities that posed the greatest risks, rather than driving to all 1,300 locations all over the state every year.

  To ensure against potential harm, certain safeguards have often been built into these new risk-based systems. For example, the Commission on Jail Standards was authorized to determine the frequency of inspections of jails over time to assure that facilities in good standing did not develop compliance problems because of regulatory neglect.

Not charging a fee, and the lack of local resources, contribute to the SFMO's inappropriate involvement in private building inspections, most of which should be handled locally.

- State law authorizes, but does not require, the SFMO to conduct fire safety inspections for non-state buildings, upon request. Requests for inspections commonly come from private businesses, including facilities that are required to have a fire safety inspection for licensure. In fiscal year 2007, the SFMO conducted almost 1,400 inspections of privately owned buildings, representing 29 percent of its inspection workload.

- With only 14 inspection staff to perform both required state building and optional private building inspections, the SFMO has limited resources to efficiently perform these private building inspections. At times, it may take months for the SFMO to conduct a private inspection, particularly if it involves a more remote part of the state. These inspections may also affect the Office's ability to conduct its statutorily required inspections for state buildings.

While others charge fees for inspections of private buildings, the SFMO cannot.

- The SFMO cannot assess a fee for these private inspections. While state law specifically authorizes county and city fire marshals to charge a fee for conducting building inspections, it does not include the State Fire Marshal or SFMO inspectors. Other inspectors, usually off-duty certified fire personnel, performing these types of building inspections charge a fee.

  Thus, the SFMO, though not the best option as far as proximity or timeliness, may be the inspector of choice simply because its inspections are free of charge. This results in the SFMO performing private building inspections on a statewide basis without the ability to recoup any of its costs, unlike others who are charging for performing the same types of private inspections.

- Many counties in Texas, particularly in rural areas, may not have the local capacity to perform these inspections, and call on the SFMO for assistance. However, larger communities usually have a local county or city fire marshal to perform these inspections, and many of the more than 500 local fire departments also do inspections. These local resources, when available, provide a much more cost-effective option than having to go to the state level for a local fire safety inspection.

Recommendations

Change in Statute

7.1 Require the SFMO to periodically inspect state-leased buildings.

This change would help to ensure that employees in state-leased buildings have the same fire safety protections as employees in state-owned buildings. As state law already requires of state-owned buildings, this recommendation would require the SFMO to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The recommendation would also require the SFMO to share and coordinate state-leased building inspection information with the affected agency, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings.

7.2 Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.

This recommendation would ensure that the Office takes a more strategic approach to conducting its routine inspections of state-owned and state-leased buildings. As part of this change, the SFMO would need to develop guidelines for assigning potential fire safety risks to state buildings. As the SFMO is a part of TDI, the Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. To ensure that even all low-risk buildings are inspected at some point, the rules should address a planned timeframe for continuing to inspect all buildings under the SFMO's purview. This change would not affect the SFMO's response to complaints and requests for inspections, as these cannot be assigned a risk and must be dealt with on an as-needed basis. The SFMO should also periodically report its findings on state-owned and state-leased building inspections to the relevant committees of the Legislature.

A risk-based approach would allow the SFMO to use its limited staff resources most effectively by focusing greater attention on buildings with higher risk of fire hazards, a history of complaints, or poor compliance with recommended changes to reduce fire hazards. In contrast, less attention would be needed for newer buildings built to higher standards or buildings with consistent compliance or an active fire safety program.

7.3 Authorize the SFMO to charge a fee for inspections of privately owned buildings.

This recommendation would statutorily authorize the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO should consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses. Instituting a fee should help to ensure that privately owned businesses only call the SFMO as a last resort, and not just because the inspections are free.

Management Action

7.4 Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.

In addition to fire prevention educational materials, the SFMO should focus on developing, and placing on its website, a step-by-step guide instructing local communities on how to increase fire prevention capacity at the local level, including the benefits of establishing a local city or county fire marshal. Helping local communities increase their fire prevention and inspection abilities should help to reduce the need for SFMO inspections at the local level, allowing the Office to focus on its broader state-level fire prevention strategies.

Fiscal Implication

These recommendations would not result in a fiscal impact to the State. Authorizing the SFMO to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.

The addition of state-leased buildings to the SFMO's workload should not result in any new costs. These new inspections would be phased in over time, along with the new risk-based system, allowing the Office to integrate these inspections without the need for additional staff.

…………………………………….

1 Texas Government Code, sec. 417.0081 and 417.0082.

Responses to TDI Issue 7

Recommendation 7.1

Require the SFMO to periodically inspect state-leased buildings.

Agency Response to 7.1

The Department agrees with this recommendation.

Agency Modification

1. Require the SFMO to inspect all buildings under consideration for leasing and require all state entities to inform the SFMO of possible building lease arrangements under consideration.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 7.1

None received.

Against 7.1

None received.

Recommendation 7.2

Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.

Agency Response to 7.2

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 7.2

None received.

Against 7.2

None received.

Recommendation 7.3

Authorize the SFMO to charge a fee for inspections of privately owned buildings.

Agency Response to 7.3

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 7.3

Russell Sander, Fire Chief – Missouri City Fire and Rescue Services, Missouri City

Against 7.3

None received.

Recommendation 7.4

Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.

Agency Response to 7.4

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 7.4

None received.

Against 7.4

None received.

Commission Decision

Adopted Recommendations 7.1 through 7.4.

Legislative Action

The statutory recommendations were not adopted, as S.B. 1007 failed to pass.

Issue 8

The State Fire Marshal's Office Lacks the Ability to Issue Fines to Ensure Licensee Compliance.

Summary

Key Recommendation

- Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.

Key Finding

- TDI's broader approach to enforcement does not allow the SFMO to effectively ensure compliance with its licensing standards.

Conclusion

The State Fire Marshal's Office (SFMO) has a responsibility for protecting the public by ensuring that those who provide fire prevention and suppression equipment services, sell fireworks, and conduct firework displays are qualified and competent. Sunset staff found that the SFMO lacks the necessary authority to adequately enforce penalties against its licensees, which allows many violators to go unsanctioned. Because SFMO licensees are directly involved in protecting the public's welfare and preventing harm caused by fires, adequately enforcing fines against licensees to encourage compliance is critical to SFMO's mission to protect Texans. Requiring the Commissioner of Insurance (Commissioner) to establish a penalty matrix for violations by SFMO licensees, and authorizing the Commissioner to delegate administration of these penalties to the SFMO, would result in more consistent enforcement and better consumer protection.

Support

The State Fire Marshal's Office licenses individuals and firms involved in fire prevention and suppression equipment services, firework sales, and firework displays.

- The State Fire Marshal's Office (SFMO) licenses individuals and entities to protect the public by ensuring that licensees properly carry out their duties, are qualified and competent, and adhere to professional standards. To help ensure that critical fire prevention and suppression equipment is working properly, the SFMO licenses and registers all persons and firms engaged in the business of planning, installing, and servicing fire sprinkler systems, fire extinguishers, and fire alarm systems.

  The SFMO also licenses individuals and firms selling and handling fireworks. Regulation of fireworks helps to prevent hazards by ensuring the fireworks are properly distributed and correctly used. The chart, *SFMO Licensing Statistics*, shows the total number of licensees, permit holders, firm registrations, and firm licenses for each of the industries overseen.

SFMO Licensing Statistics

Type of Licenses	Individual Licenses and Permit Holders	Firm Registrations and Firm Licenses
Fire Extinguishers	2,264	639
Fire Alarms	4,942	1,248
Fire Sprinklers	637	447
Fireworks	6,010	50
Totals	**13,853**	**2,384**

- The SFMO conducts investigations of individuals and firms for compliance upon receipt of written complaints from local fire departments, SFMO employees, or members of the public. Complaints address violations such as working without a license or registration, installing the wrong type of equipment, or not attaching a service tag on a fire protection system. Sanctions for licensees found to be in violation of statute or rules can range from administrative fines to revocation of licenses and criminal prosecution. In fiscal year 2007, the SFMO performed a total of 1,107 investigations, of which 763 complaints were valid.

The SFMO investigated 1,107 complaints against its licensees in 2007, and found 763 to be valid.

- The SFMO is a division within TDI, which provides the SFMO with administrative support, including enforcement support. Although the SFMO performs its licensing and complaint investigating functions independently from TDI's other divisions, it still refers valid complaints to TDI's enforcement division for sanctions.

TDI's broader approach to enforcement does not allow the SFMO to effectively ensure compliance with its licensing standards.

- Statute gives the Commissioner of Insurance (Commissioner) the authority to issue administrative penalties against all licensees that are licensed at the Texas Department of Insurance, including SFMO licensees. However, under TDI's current agency process, the SFMO does not, specifically, have the authority to issue fines for violations against licensees without going through the Department's broader enforcement process.

Lack of enforcement against SFMO licensees could affect Texans' safety.

- Since the SFMO cannot issue fines against its licensees without going through TDI's larger enforcement process, many of its licensees who are found to be in violation are not being sanctioned. Because licensees deal with critical fire prevention and suppression equipment, the lack of enforcement could affect Texans' safety.

- The SFMO cannot take enforcement action against its licensees due to its inability to issue fines independently from TDI's enforcement division. Because this division handles all enforcement cases at TDI, it must balance the Department's broader goals and enforcement priorities. To prioritize its efforts, the division does not open enforcement cases for violations that, if valid, would result in sanctions of less than $500. As such, most SFMO violations do not rise to the level that warrants enforcement action. In these cases, the SFMO will not refer the cases to the enforcement division at all, but will instead try to get voluntary compliance.

  In fiscal year 2007, the SFMO had 763 valid complaints against its licensees. However, because most of the violations did not meet the Department's broader enforcement threshold, the SFMO only referred 77 complaints, or 10 percent of the valid complaints, to TDI's enforcement division, which resulted in 43 sanctions.

Of the 763 valid licensee complaints, only 43 resulted in sanctions.

- The Department has recognized that some, more straight-forward, licensee violations may be better handled at the division level, instead of as part of the agency's broader enforcement division. For example, TDI's licensing division, which licenses insurance agents, adjusters, and agencies, has the authority to issue fines against its licensees for certain violations, such as not complying with continuing education requirements.

  To do this, once the licensing division discovers that a licensee has not completed his or her required continuing education requirements, the division sends the licensee a letter, signed by its deputy commissioner, stating the exact violation and the fine owed. While TDI is given the authority to delegate the issuance of fines to the licensing division in statute, the amount of the fines, for specific violations, are set out in rule. The licensee is given due process by having the ability to pay the fine, or not pay the fine, and request a hearing be held on the case. If the licensee does not pay the fine, he or she is referred to the enforcement division for noncompliance.

Having the licensing division handle minor violations, without having to refer all of them to the enforcement division, allows the enforcement division to better allocate its time and limited resources, and concentrate on larger legal issues concerning TDI. The process also allows TDI to ensure that licensees are appropriately sanctioned, encouraging compliance.

Recommendation

Change in Statute

8.1 Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.

Under this recommendation, the Commissioner would create, by rule, a penalty matrix for SFMO licensee violations to ensure fair and consistent application of fines. Further, the Commissioner would delegate the administration of these penalties to the SFMO, which would give the SFMO the ability to issue fines to violators without referring the violations to TDI's broader enforcement function.

In developing the matrix, the Commissioner should take into account factors, including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The penalty amounts should reflect the severity of the violation and serve as a deterrent to violations. The Commissioner should also adopt rules defining which types of enforcement actions will be delegated to the SFMO, and outlining the process with which the SFMO will assign penalties. The recommendation would also provide for due process by authorizing a licensee to dispute the fine, and request a contested case hearing. If a licensee does not pay the fine, the SFMO would refer the case to TDI's enforcement division.

This recommendation would give the SFMO the clear authority to expedite the processing of violations by issuing fines for certain minor violations, and would provide a tool for the SFMO to use to ensure compliance of fire prevention and suppression equipment services and firework licensees. Allowing the SFMO to write enforcement letters and issue fines for minor violations would create a more streamlined approach in enforcing against licensees who are found to be in violation of statute or rule. This recommendation would also be beneficial to the Department as a whole because it would allow its enforcement resources to be focused on other, more substantial enforcement issues.

Fiscal Implication

These recommendation could result in a gain to the General Revenue Fund; however this gain cannot be estimated. Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

Responses to TDI Issue 8

Recommendation 8.1

Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.

Agency Response to 8.1

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 8.1

None received.

Against 8.1

None received.

Commission Decision

Adopted Recommendation 8.1.

Legislative Action

The statutory recommendation was not adopted, as S.B. 1007 failed to pass.

Issue 9

The State Has a Continuing Need for the Texas Department of Insurance.

Summary

Key Recommendations

- Continue the Texas Department of Insurance for 12 years.
- Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

Key Findings

- Texas has a clear and continuing interest in regulating the insurance industry.
- TDI is the most appropriate agency to regulate insurance in Texas.
- The Department's focus on protecting consumers and fostering a competitive market is not clearly reflected in statute.

Conclusion

The Texas Department of Insurance's (TDI) overall duty – to regulate insurance in Texas – ensures that competitive and fair insurance products are available to Texans. Sunset staff evaluated TDI's functions and structure and found that the agency fulfills an important role in the state and should be continued for 12 years. Sunset staff also found that the Department would benefit from having its statutory duties updated to more clearly reflect its key role in ensuring consumer protection and fair competition within the insurance industry.

Support

The Texas Department of Insurance regulates the insurance industry in Texas.

The Legislature created TDI's predecessor in 1876.

- The Legislature created the Texas Department of Insurance's (TDI) original predecessor, the Department of Insurance, Statistics and History, in 1876. Today, TDI regulates the Texas insurance industry to ensure that Texans have access to fair and competitive insurance products. To accomplish this, the Department: regulates insurance companies' solvency, rates, forms, and market conduct; licenses individuals and entities involved in providing insurance products; provides consumer education and resolves complaints; enforces against those who violate law or rule and investigates those who engage in insurance fraud; and provides statewide fire prevention services through the State Fire Marshal's Office.

  TDI also regulates workers' compensation insurance in Texas; however, the Legislature postponed the Sunset review of the Division of Workers' Compensation until 2011. Because of this, the staff report does not address the continuing need or appropriate structure for the administration of workers' compensation insurance.

- In 2007, TDI spent more than $100 million, with almost $64 million expended on the Department's regulation of insurance and $59 million on workers' compensation regulation. In addition, the Legislature appropriated another $29 million to fund insurance-related functions at other state agencies. TDI's main sources of funding are maintenance taxes assessed on insurers doing business in Texas and user fees, such as filing, licensing, and examination fees. Of the agency's 1,544 staff, 828 were dedicated to insurance-related functions in fiscal year 2007. The Commissioner of Insurance, who is appointed by the Governor and confirmed by the Senate for a two-year term, directs the agency's operations.

Texas has a clear and continuing interest in regulating the insurance industry.

Insurers collect $90 billion in insurance premiums from Texans each year.

- The federal government delegated insurance regulation to the states through the 1945 McCarran-Ferguson Act. As such, federal regulation is minimal, making it critical for the State to continue to regulate insurance to make certain that consumers are protected, and that the Texas insurance market is fair and competitive.

- Regulation in Texas is especially critical given the size of the market in the state. Insurers collect about $90 billion in insurance premiums from Texas consumers every year. In return, insurance companies assume risk and cover policyholders' expenses for unforeseen events. Many different insurance products are available, some of which law or practice requires consumers to have. For example, state law requires Texas drivers to maintain a minimum level of automobile insurance. By practice, to purchase a home, consumers are required to purchase homeowners and title insurance. Also, although not required, most Texans strive to obtain health insurance, either through their employer or on their own. Finally, many other lines of insurance exist, such as accident, life, and annuity, that protect the policyholder from financial hardship.

All of these types of insurance require that an insurance company be able to make good on the promise of payment of claims, and that consumers receive a fair product for their payment. As such, the State has a vested interest in protecting consumers from harm resulting from unfair insurance products or companies that cannot pay claims. To ensure that insurance is available and affordable to Texans, the State also has an interest in keeping Texas' insurance market competitive. To help meet these goals, Texas continues to need TDI's major functions.

The State has an interest in protecting consumers from insurers that cannot pay claims.

- The Department makes certain that companies selling insurance in Texas meet and maintain solvency requirements to ensure that insurance companies are financially healthy and can pay claims. To this end, in fiscal year 2007, TDI regulated almost 2,400 companies, completed 1,900 reviews of companies' financial statements, conducted 129 company-specific financial examinations, and participated in 11 administrative or court-ordered rehabilitations of companies.

  The Department maintains an early warning system to detect potential solvency problems within companies, so that the agency can take prompt action if an insurer's financial health begins to deteriorate. The agency also monitors insurers' market conduct, conducting 17 exams targeting unfair or unlawful market practices in fiscal year 2007.

  TDI regulates the rates charged and policy forms issued by insurers to make certain that they are fair, nondiscriminatory, and not excessive, again protecting against economic harm to the consumer. In fiscal year 2007, TDI reviewed almost 39,000 rates and forms.

In 2007, TDI helped consumers resolve 27,000 complaints against insurance companies.

- Through its licensing programs, TDI protects consumers by ensuring that persons and companies involved in the insurance industry are qualified and obey insurance law. TDI licenses, registers, or certifies insurance agents, agencies, adjusters, health maintenance organizations, and other individuals and entities selling or servicing insurance products. In fiscal year 2007, the agency regulated more than 380,000 licenses associated with the insurance industry in Texas.

- The Department also helps consumers navigate Texas' complicated insurance market by educating consumers and resolving complaints. In fiscal year 2007, TDI assisted consumers by distributing more than three million educational publications and participating in about 700 information presentations around the state.

  The agency also helped consumers resolve 27,000 complaints against insurance companies, the majority of which dealt with disputes in coverage or claims. Because of these efforts, Texas consumers received more than $33 million in additional claims payments and refunds in fiscal year 2007.

- To make regulation meaningful, and to protect both insurance companies and the public, TDI investigates and takes enforcement action against those who violate regulatory requirements, or engage in unauthorized or fraudulent practices. The Department took more than 1,300 administrative enforcement actions in fiscal year 2007, assessing $7 million in penalties and obtaining $99 million in restitution for consumers.

TDI assessed $7 million in penalties and obtained $99 million in restitution in 2007.

The Department also performs an essential law enforcement function, protecting the public and insurers from economic harm by investigating criminal insurance fraud. In fiscal year 2007, the agency investigated 400 cases of fraud, including both insurer and claimant fraud, and referred 188 cases to local district attorneys for prosecution. Cases TDI worked on included the sale of unauthorized automobile insurance, federal mail fraud, falsified claims, and agent fraud; and penalties for fraud included restitution, probation, and jail time.

- Through the State Fire Marshal's Office, TDI serves a valuable public safety function by inspecting the fire safety of buildings, investigating arson, and promoting fire prevention through education. In fiscal year 2007, the Office inspected 4,778 buildings for fire safety hazards and performed 519 arson investigations, of which 77 resulted in enforcement or legal action. In the same year, to ensure that critical fire prevention and suppression equipment works properly, the Office licensed more than 10,000 individuals and companies involved in installing and servicing fire sprinkler, alarm, and extinguisher systems, as well as those involved in selling fireworks.

TDI is the most appropriate agency to regulate insurance in Texas.

- No other state agency regulates insurance. Texas benefits from having all insurance regulation, including solvency and market monitoring, rate and form regulation, licensure, consumer complaint and education services, and enforcement functions housed in one agency. Notably, it gives the Department a full picture of an insurer's actions in many different arenas, making it easier to identify problems within the market or a specific company, and to take corrective action if required. To this end, key staff in each agency division meet regularly to discuss general trends or specific issues, ensuring communication and collaboration needed to take prompt action in a market that affects Texans' economic welfare and safety.

Texas benefits from having all insurance regulation housed at one agency.

- Although the Texas Department of Licensing and Regulation regulates a number of occupations, and could potentially handle some of TDI's occupational licensing, no significant benefit or savings would occur by transferring these functions. Licensing these individuals and companies through TDI makes sense because they relate to the agency's broader goals of insurance regulation.

- As part of the TDI review, Sunset staff also evaluated the appropriateness of housing the State Fire Marshal's Office at the Department. Staff found that the Office's fire prevention and investigation duties fit with TDI's efforts to prevent or reduce insurance losses tied to fires. The Office also benefits from TDI's administrative support, such as for legal services, information technology, and budgeting, allowing the Office to focus on fire prevention.

  Another state agency with fire-related functions is the Texas Commission on Fire Protection (TCFP). The Commission focuses on fire suppression by certifying paid firefighters, inspecting fire stations, and setting standards for fire protective gear. During the last 20 years, the State Fire Marshal's Office's functions were moved from TDI to TCFP, and then back to TDI. Sunset staff revisited the potential for consolidating these functions, and while the functions could clearly work within either agency, no significant problems were found to warrant moving these functions once again.

No significant problems were found to warrant transferring the State Fire Marshal's Office.

The Department's focus on protecting consumers and fostering a competitive market is not clearly reflected in statute.

- State law assigns TDI three main duties: to regulate the business of insurance in Texas, to administer the State's workers' compensation system, and to ensure that insurance laws are executed.[1] These broad duties do not take into account the underlying purpose behind TDI's more specific statutory responsibilities of regulation to protect consumers and ensure a competitive market.

  Today, Texas' regulation of insurance focuses on ensuring not only that companies are solvent, but that consumers are protected and receive fair, nondiscrimatory, and reasonably priced insurance products, and that the insurance market in Texas is competitive. Having a balanced, competitive insurance market not only helps consumers in the form of more product choice and more price competition, it can also ultimately increase the availability of insurance in Texas. While state law does direct TDI to regulate specific aspects of the insurance industry that relate to these overall goals, statute does not clearly reflect these critical responsibilities of the agency.

Today, Texas' regulation of insurance focuses on ensuring consumers are protected and that the State's insurance market is competitive.

Organizational structures vary, but all 50 states regulate insurance.

- All states regulate insurance in some way, although the level of regulation and organizational structure varies. With minimal federal insurance regulation, each state recognizes that regulating and monitoring insurance activity is an essential state function. Sunset staff compared Texas' organizational structure with other states and found TDI to be well structured to oversee the industry in Texas.

Recommendations

Change in Statute

9.1 Continue the Texas Department of Insurance for 12 years.

This recommendation would continue TDI as an independent agency for 12 years.

9.2 Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

This recommendation would better define the agency's overall duties in statute by updating existing language to charge the agency with:

- protecting and ensuring the fair treatment of consumers; and
- ensuring fair competition in the insurance industry, thus fostering a competitive market.

Fiscal Implication

If the Legislature continues TDI, its annual appropriation of about $100 million would need to be continued. However, since the agency is self-funding through maintenance taxes assessed on insurers and user fees, this recommendation would not affect General Revenue.

....

[1] Texas Insurance Code, sec. 31.002.

Responses to TDI Issue 9

Recommendation 9.1

Continue the Texas Department of Insurance for 12 years.

Agency Response to 9.1

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 9.1

Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

Jay Thompson, Counsel – Association of Fire & Casualty Companies of Texas and the Insurance Council of Texas, Austin

John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin

Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin

Against 9.1

None received.

Modification

1. Continue the Texas Department of Insurance for four years. (Representative Abel Herrero, Member – Texas House; Representative Solomon Ortiz, Member – Texas House; Representative Juan Garcia, Member – Texas House)

Recommendation 9.2

Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

Agency Response to 9.2

The Department agrees with this recommendation. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 9.2

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

Jay Thompson, Counsel – Association of Fire & Casualty Companies of Texas and the Insurance Council of Texas, Austin

Against 9.2

None received.

Modifications

2. Clarify TDI's mission to task the agency with ensuring the availability of quality, affordable insurance products; and providing vigilant oversight of the industry, direct consumer assistance in resolving disputes with insurers, and assistance in navigating the market. (Senator Rodney Ellis, Member – Texas Senate)

3. Update TDI's mission and duties by charging TDI with protecting consumers and helping consumers access quality, affordable insurance. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Bruce Bower – Texas Legal Services Center, Austin)

4. Update TDI's mission and duties by charging TDI with protecting consumers and fostering a competitive marketplace that provides consumers with access to high-quality insurance products at prices that are reasonable. (Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

5. Amend TDI's mission by charging TDI with maintaining healthy insurance markets in Texas by protecting and assisting consumers, providing fair but vigilant regulation, and promoting a stable and competitive environment for insurers. Task TDI with ensuring fair and affordable rates; vigilant oversight of the industry; direct consumer assistance in resolving disputes with insurers; assistance in navigating the market; and guaranteeing a competitive marketplace for insurers. (Bee Moorhead, Executive Director – Texas Impact, Austin)

6. Amend TDI's mission by charging TDI with providing consumers with resources and protections to ensure a vibrant, healthy insurance market; and addressing the needs of policyholders through vigorous oversight of the industry, direct consumer assistance in resolving disputes with insurers, and assistance in navigating the marketplace, while guaranteeing reasonable and fair profits for insurers. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin; Group A – See page 179)

7. Give TDI a clear mission statement, including charging the agency with providing consumer protection through vigilant regulation, enforcement, and education while promoting a stable and competitive environment for insurers. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

Modifications (continued)

8. Amend TDI's mission statement by charging TDI with providing consumer protection through education and fair but vigilant regulation while promoting a stable and competitive environment for insurers. (Lanetta Cooper, Attorney – Texas Legal Services Center, Austin)

9. Amend TDI's mission and duties by charging TDI with providing consumers the resources and protections to ensure a healthy insurance market and tasking TDI with approving the prices and contents of the insurance policies; undertaking market conduct examinations and enforcement actions; handling consumer complaints; issuing licenses to producers and companies; and engaging in consumer education and information activities. (Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)

Commission Decision

Adopted Recommendations 9.1 and 9.2.

Legislative Action

Senate Bill 2, 1st Called Session, 81st Legislature, continues the Department until 2011 and requires the Sunset Commission to focus its next review of the Department on the appropriateness of its previous recommendations to the 81st Legislature.

Texas Department of Insurance
Across-The-Board Recommendations

ATBs

Texas Department of Insurance

Recommendations	Across-the-Board Provisions
Not Applicable	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Not Applicable	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Apply	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Commission Decision

Adopted staff recommendations.

Legislative Action

The recommendations were not adopted, as S.B. 1007 failed to pass.

Texas Department of Insurance

Agency Information

(May 2008)

Agency Information

Agency at a Glance

The Texas Department of Insurance (TDI) regulates the business of insurance in Texas to ensure that Texas consumers have access to competitive and fair insurance products. TDI's major functions include:

- regulating insurance companies' solvency, rates, forms, and market conduct;
- licensing individuals and entities involved in selling insurance policies;
- providing consumer education on insurance and helping consumers resolve complaints;
- investigating and taking enforcement action against those who violate insurance laws or rules; and
- providing fire prevention services across the state.

TDI regulates the business of insurance to ensure Texans have access to competitive and fair insurance products.

The Department also regulates workers' compensation insurance; however, the Legislature postponed the Sunset review of the Division of Workers' Compensation until 2011. As such, this report focuses on the Department's regulation of insurance and does not address TDI's administration of workers' compensation regulation.

Key Facts

- **Funding**. In 2007, TDI collected a total of about $162 million, primarily from maintenance taxes on Texas insurers and user fees. The Department expended almost $64 million on regulation of insurance and $59 million on workers' compensation regulation. The Legislature also appropriated $29 million to fund insurance-related functions at other state agencies.
- **Staffing**. The Commissioner of Insurance, appointed by the Governor and confirmed by the Senate, administers the agency's functions, assisted by 1,544 staff. Of those staff, 828 are dedicated to insurance-related activities. Most staff are based in Austin, but the agency also maintains several field offices across the state.
- **Financial Solvency and Market Monitoring**. TDI monitors insurers' solvency to ensure that carriers are able to fulfill obligations and pay future claims. In fiscal year 2007, TDI regulated more than 2,400 insurance companies, conducted 129 financial examinations, audited 255 title agents, and participated in two court-ordered financial rehabilitations or liquidations. The Department also monitors market trends and insurers' market behavior, conducting 17 market conduct examinations, 6,123 advertising reviews, and 201 loss control audits.

- **Rate and Form Regulation**. In fiscal year 2007, TDI reviewed 4,969 property and casualty rate filings and 8,865 property and casualty forms. TDI also reviewed a total of 24,929 life, accident, and health rate and form filings.

In 2007, TDI's resolution of complaints resulted in $31.3 million in additional claims paid.

- **Licensing**. TDI licenses insurance agents, agencies, adjusters, and other personnel and entities involved in providing insurance services and products. In fiscal year 2007, TDI issued more than 384,000 licenses.

- **Consumer Protection**. TDI resolves consumer complaints against insurance companies and agents. In fiscal year 2007, TDI resolved more than 27,000 complaints, resulting in $31.3 million in additional claims paid to consumers and $2.2 million in refunds made to consumers. In the same year, TDI responded to almost 873,000 consumer inquiries, and distributed more than three million consumer publications.

- **Enforcement**. The Department investigates violations of insurance law or rule, and, in fiscal year 2007, closed 819 enforcement actions, assessed $7.1 million in penalties, and ordered $99 million in restitution. That same year, TDI's investigation of insurance fraud cases resulted in 110 indictments and 80 convictions with restitution, fines, and penalties ordered in excess of $13.4 million.

Major Events in Agency History

1876 The Legislature created the Department of Insurance, Statistics, and History and a Commissioner to oversee the Department's duties.

1910 After several name and duty changes, the Legislature created the State Insurance Board and gave it the authority to promulgate fire insurance rates. The Board was also charged with selecting a board member to serve as the State Fire Marshal.

In 1954, the Legislature strengthened financial solvency requirements for insurers.

1927 The Legislature created the Board of Insurance Commissioners, comprised of a Life Insurance Commissioner, Fire Insurance Commissioner, and Casualty Insurance Commissioner. The Board of Insurance Commissioners was given the authority to approve or disapprove automobile insurance rates and to promulgate forms.

1945 In response to concerns stemming from a Supreme Court decision the previous year that states no longer had the authority to regulate insurance at the state-level, the United States Congress enacted the McCarran-Ferguson Act, permitting states to regulate insurance. The Act exempted insurance from some federal antitrust regulations to the extent that insurance was regulated by states.

1954 As a result of solvency scandals in the Texas insurance industry, the Legislature passed bills to strengthen financial examinations and increase minimum capital and surplus requirements.

1957 The Legislature established the State Board of Insurance to replace the Board of Insurance Commissioners. The Board was comprised of three members responsible for hiring a Commissioner of Insurance.

1987 The Legislature created the Office of Consumer Protection within the State Board of Insurance to represent consumer interests in insurance regulation.

1991 The Legislature comprehensively overhauled insurance law in Texas. The State Board of Insurance was re-named as the Texas Department of Insurance. The Office of Consumer Protection was made independent of TDI and re-named the Office of Public Insurance Counsel. The Legislature also required TDI to implement a consumer complaint process and provide consumer education.

In 1993, the Legislature shifted to an appointed Commissioner structure.

1993 The Legislature shifted most of the Board's responsibilities to a governor-appointed Commissioner.

2003 In response to rising homeowners insurance premiums, the Legislature gave TDI new authority to regulate all property and casualty insurance rates in Texas, eliminating the exemption for Lloyd's and County Mutual companies. The Legislature also shifted the method of automobile and property insurance regulation from a benchmark system to a file-and-use system.

2005 The Legislature abolished the Texas Workers' Compensation Commission and transferred its duties to TDI.

Organization

Commissioner of Insurance

The Commissioner of Insurance (Commissioner) is the agency's chief executive and administrative officer and directs the policy and operations of the Department. The Governor appoints the Commissioner for a two-year term, with the advice and consent of the Senate. The Commissioner acts as both the policy head of the agency, implementing and enforcing law, and adopting rules; and as the administrative head of the agency, directing staff operations. The Division of Workers' Compensation is directed by a governor-appointed Commissioner of Workers' Compensation. The chart, *TDI Commissioners*, gives more information on both the commissioners.

TDI Commissioners

Name	Title	Term Expires
Mike Geeslin	Commissioner of Insurance	February 1, 2009
Albert Betts	Commissioner of Workers' Compensation	February 1, 2009

The Commissioner is assisted by many statutorily created advisory committees, with members appointed by the Commissioner, as shown in the textbox, *TDI Advisory Committees*.

TDI Advisory Committees

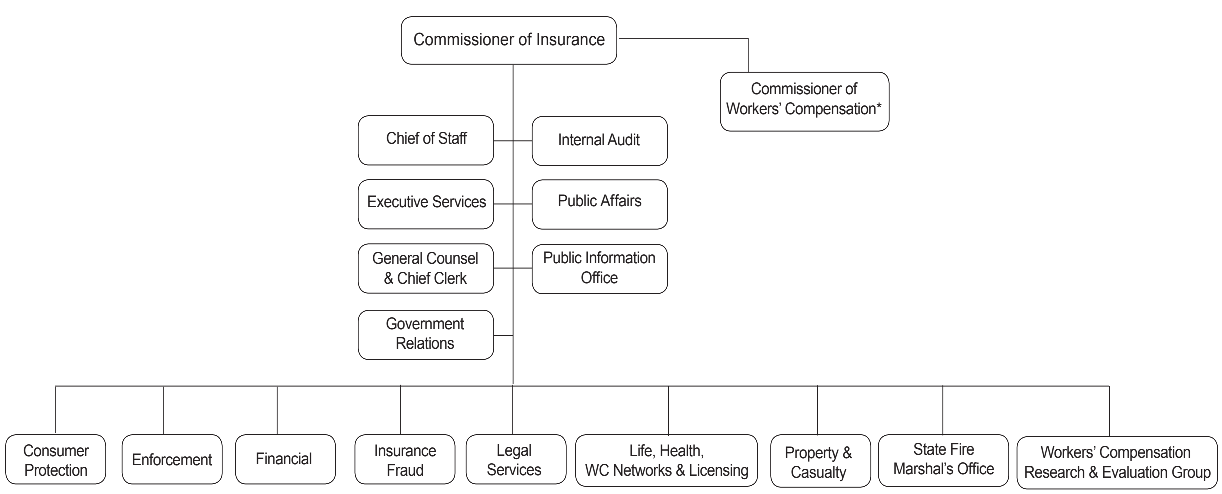
- Bleeding Disorders Advisory Council
- Fire Alarm Advisory Committee
- Fire Extinguisher Advisory Council
- Fire Sprinkler Advisory Council
- Fireworks Advisory Council
- Health Network Adequacy Advisory Committee
- Health Maintenance Organization Solvency Surveillance Committee
- Technical Advisory Committee on Claims Processing
- Technical Advisory Committee on Electronic Data Exchange
- Texas Health Coverage Awareness and Education Program Task Force
- Windstorm Building Code Advisory Committee

The chart, *TDI-Related Entities*, describes the other entities that TDI interacts with, including guaranty associations and residual market boards. The Commissioner appoints many of the members of the boards of these entities.

Staff

At the end of fiscal year 2007, TDI employed 1,544 staff, although the agency had a full-time employee equivalent allocation of 1,785. Of employed staff, 828 were dedicated to insurance-related activities and 716 were for the Division of Workers' Compensation (DWC). TDI's staff structure is depicted in the chart, *Texas Department of Insurance Organizational Chart*.

Texas Department of Insurance Organizational Chart



*DWC is not described in detail as it is not part of this review.

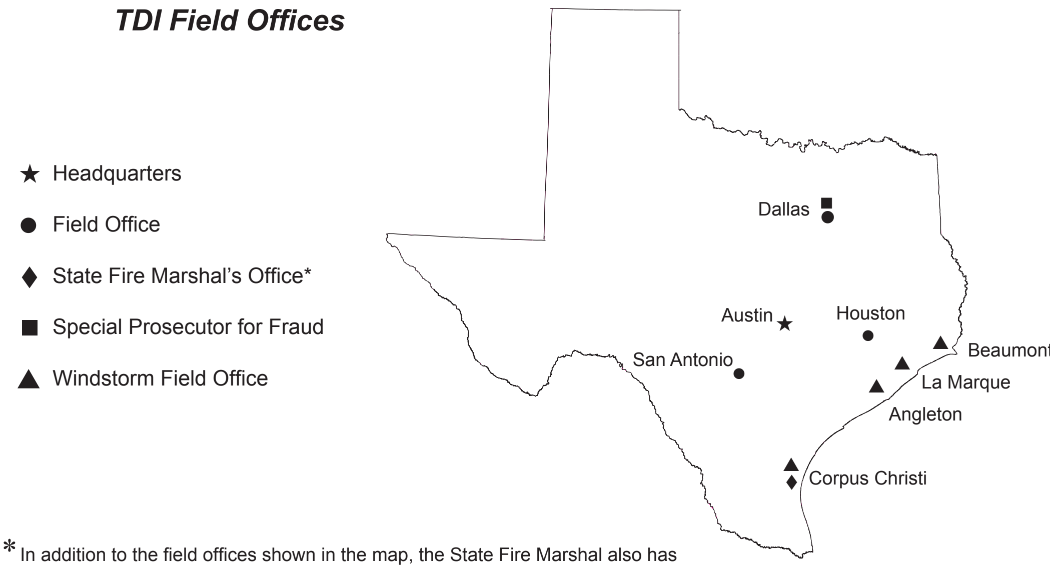
TDI-Related Entities

Entity	Purpose
Guaranty Associations	
Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association	Pays benefits and continues coverage for life, accident, health, annuity, and hospital service insurance companies declared insolvent. Assesses the costs of paying out claims on member insurers.
Texas Property and Casualty Insurance Guaranty Association	Pays claims for property and casualty insurance companies declared insolvent. Assesses the cost of paying out the claims on member insurers.
Texas Self-Insurance Group Guaranty Fund	Provides for the payment of workers' compensation insurance benefits for injured employees covered by a group declared insolvent.
Texas Title Insurance Guaranty Association	Pays claims for title companies declared insolvent and for deficiencies in guaranty fund accounts. Assesses the cost of paying out the claims on member insurers.
Residual Markets	
Texas Automobile Insurance Plan Association	Acts as the State's assigned risk plan for basic automobile liability coverage. Eligible applicants who cannot obtain insurance in the voluntary market are assigned to member insurers.
Texas Fair Access to Insurance Requirements Plan Association	Acts as an insurer of last resort for Texas homeowners. Provides limited property and liability coverage.
Texas Health Insurance Risk Pool	Provides health insurance to Texans who, due to medical conditions, cannot obtain new insurance coverage.
Texas Medical Liability Insurance Underwriting Association	Provides medical liability insurance to Texas-licensed healthcare providers who cannot obtain coverage in the voluntary market.
Texas Mutual Insurance Company	Acts as the residual market for workers' compensation insurance.
Texas Windstorm Insurance Association	Provides insurance to consumers who are having difficulty obtaining coastal wind and hail coverage from licensed insurance companies. Unlike the other residual markets, TWIA's market is geographically restricted to a portion of the state, specifically the 14 first tier coastal counties and designated communities in Harris County.
Other Entities	
Texas Health Reinsurance System	Serves as mechanism for small-employer insurers to reinsure risks covered under small-employer health benefit plans. Acts as the reinsurer, and spreads its aggregate loss among its member insurers.
Texas Surplus Lines Stamping Office	Reviews surplus lines eligibility and makes recommendations to TDI.

Although most staff is based in the agency's headquarters in Austin, the agency also maintains field offices around the state, as depicted in the map on the following page, *TDI Field Offices*. Most of TDI's field staff is dedicated to performing on-site financial examinations to ensure insurance company solvency.

Appendix B compares the agency's workforce composition to the minority civilian workforce for fiscal years 2005 to 2007. Generally, the agency met or exceeded percentages in all categories.

TDI Field Offices



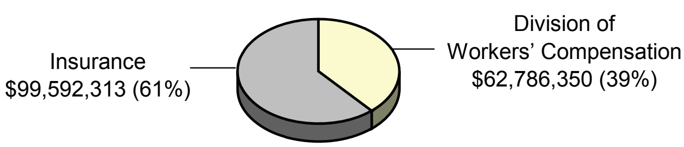
* In addition to the field offices shown in the map, the State Fire Marshal also has inspectors and investigators in 27 other local communities around the state.

Funding

Revenues

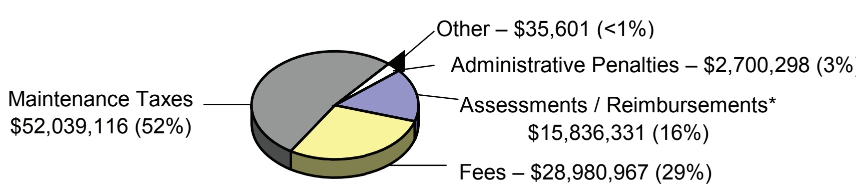
In 2007, TDI raised revenues of about $162 million with 61 percent tied to the regulation of insurance, as shown in the pie chart, *TDI Revenues by Division*. Most of the agency's revenue came from a dedicated General Revenue account, TDI Operating Account Number 36. Account 36 receives revenue from two primary sources: the collection of assessed maintenance taxes on insurers doing business in Texas, and the collection of user fees, such as filing, licensing, and examination fees. Any excess maintenance tax funds at the end of the fiscal year carry over to the next year, and are taken into consideration when setting the following year's maintenance tax rates. The pie chart, *Insurance-Related Revenue*, gives further detail about the agency's sources of revenue related to insurance regulation at TDI.

TDI Revenues by Division
Appropriation Year 2007



Total: $162.378.663

Insurance-Related Revenue
Appropriation Year 2007



Total: $99,592,313

* Includes examination reimbursements, as well as other assessments and allocations, and a small amount ($148,660) of federal funds.

In addition to the maintenance taxes collected to fund TDI, insurance companies also pay premium taxes on the amount of business they do in Texas to fund General Revenue. In fiscal year 2007, the Comptroller of Public Accounts collected $1.2 billion in premium taxes.

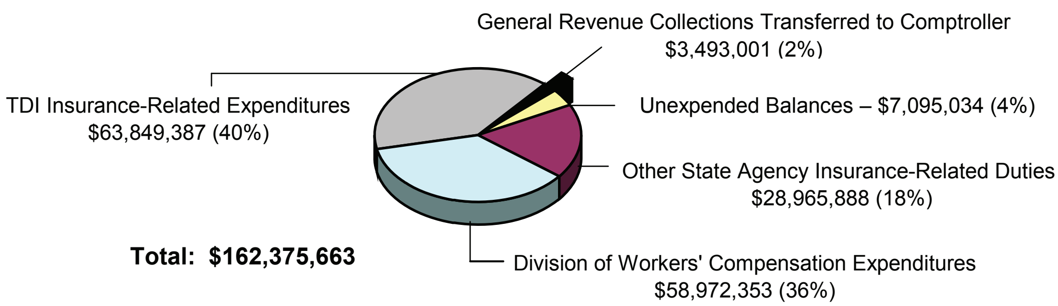
Expenditures

In 2007, the State disbursed a total of about $162 million from Account 36 to fund TDI, as well as insurance-related functions at other state agencies. The pie chart, *Total Disbursements*, gives a broad picture of where TDI's revenues are directed. Of that, TDI expended 40 percent, or $64 million, to regulate insurance. The chart, *Other State Agency Insurance-Related Funding*, shows the $29 million in funds expended by other state agencies to support insurance regulation.

Other State Agency Insurance-Related Funding
Appropriation Year 2007

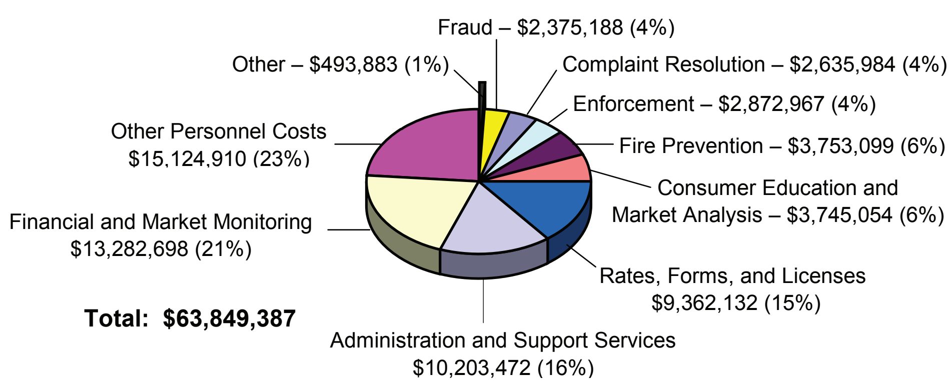
State Agency	Disbursement
Department of State Health Services	$6,580,181
Texas Facilities Commission	$4,573,712
Office of the Attorney General	$3,901,712
Texas Commission on Fire Protection	$3,702,370
Texas Cancer Council	$3,567,184
Texas Forest Service	$3,349,202
Comptroller of Public Accounts	$2,749,017
Department of Public Safety	$542,510
Total	**$28,965,888**

Total Disbursements – Appropriation Year 2007



To regulate insurance, TDI spent almost $64 million in 2007. The pie chart, *TDI Insurance-Related Expenditures by Function*, breaks down the agency's expenditures, severing workers' compensation. Besides administrative costs, the agency expended most of the funds for financial and market monitoring and the regulation of rates, forms, and licenses.

TDI Insurance-Related Expenditures by Function
Appropriation Year 2007



Appendix C describes TDI's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. During the last four years, the agency has exceeded many goals but fell short of others.

Agency Operations

Insurance is a form of risk management used to hedge against the risk of future loss.

To give a better understanding of how TDI regulates insurance, the following material gives a summary of various types of insurance and how the major markets are structured in Texas. This is followed by an overview of TDI's key functions, including financial solvency monitoring; rate and form regulation; licensure of individuals and entities involved in selling insurance; market monitoring; consumer protection; administrative enforcement; fraud investigation; and fire prevention services.

Insurance Markets in Texas

Insurance is a form of risk management used to hedge against the risk of a future loss, in exchange for payment. Consumers pay insurers premiums to assume insurable risks, such as the risk of accident or the risk of not being able to pay a future debt. Any risk that can be quantified may be insured.

TDI regulates all major insurance lines sold to individuals or commercial entities in Texas, including property and casualty, and life, accident, and health insurance. The textbox, *Major Regulated Lines*, provides descriptions of the types of insurance regulated by TDI.

Major Regulated Lines

Property and Casualty Lines

Property – Personal or commercial protection against risks to valuable possessions like homes, vehicles, land, and buildings, from occurrences like fire, theft, or weather damage.

Automobile – Coverage for personal or commercial bodily injury and property damage due to accidents.

Professional Liability – Coverage for legal claims against the insured including, for example, medical malpractice or error and omissions coverage.

Title – Coverage that indemnifies an owner of real estate in the event property ownership is challenged.

Workers' Compensation – Coverage that pays for medical care and helps to replace lost wages for injured employees.

Life, Accident, and Health Lines

Life – Insurance that provides a monetary benefit to a decedent's designated beneficiary, and may specifically provide for income to an insured person's family.

Accident – Coverage for accidental injury or death and related expenses.

Health – Coverage for medical, dental, and vision expenses.

Annuity – Coverage that pays periodic income benefits over annuitant's lifetime.

Credit – Insurance for a borrower if the borrower dies or is injured prior to repayment of a loan.

Disability – Insurance against inability to work due to injury or sickness.

Long-Term Care – Insurance that pays for services to assist in daily living activities.

Property insurance provides protection against risks to property, such as fire, theft, or weather damage, and is most commonly thought of as homeowners or commercial building insurance. Casualty insurance, including automobile insurance and similar types of coverage, is written to cover losses that are the direct result of an unforeseen accident. In Texas, drivers are required to maintain a minimum level of financial responsibility, which is typically met through an automobile insurance policy. Property and casualty insurance is available in both the personal, or individual consumer market, and the commercial market. Insurers typically sell short-term property and casualty policies, with coverage lasting for periods of six months to a year.

Texas drivers are required to maintain a minimum level of financial responsibility, usually through insurance.

Life insurance protects the insured, or the insured's family, from financial hardship. Annuity, accident or disability, and credit insurance operate similarly. Typically these policies provide specified income replacement benefits for a period of time following a major life event, such as retirement, disability, or death. Accident or disability insurance, in particular, provides income replacement benefits if the insured in unable to work due to temporary illness or injury. Disability and credit policies tend to be shorter-term policies. Both life and annuity policies are long-term policies, often lasting several decades.

Health insurance comes in many forms, but typically provides some amount of coverage for the insured's medical expenses and healthcare needs. In Texas, the health insurance market is composed of three distinct segments: self-insured and large employer plans, group and individual plans, and federal coverage. The chart, *Texas Health Insurance Market*, further defines these market segments. Self-insured plans are exempt from state regulation under the Employee Retirement Income Security Act (ERISA). Appendix D gives more information about TDI's involvement in increasing the availability of health insurance in Texas.

Texas Health Insurance Market

Self-Insured – Some companies or employers, generally large-employers like the State, may cover their employees by retaining the risk of loss. Self-insured groups typically contract with Third-Party Administrators to process claims, establish a network of providers, and administer the delivery of health benefits.

Group Coverage or Individual Coverage – Employers, associations, and trusts may contract with insurers who retain the risk and provide benefits administration. Individuals may obtain coverage directly from insurers.

Federal Coverage – Federal programs, such as Medicare and Medicaid, provide insurance for defined populations.

Health insurance plans can be broadly categorized into two types: indemnity and managed care. Indemnity plans reimburse the policyholder for a specific amount of services, regardless of who provides the services. In contrast, managed care plans, like Health Maintenance Organization and Preferred Provider Organization plans, provide services from a limited network of providers, and policyholders have a co-payment they must pay when they use the network.

Financial Solvency

TDI monitors the financial health of insurance companies operating in Texas to ensure that carriers are able to fulfill obligations and pay future claims. TDI accomplishes this by initially licensing and registering companies, and conducting on-going financial analysis and routine financial examinations of these companies. In rare cases, TDI may also oversee rehabilitation or liquidation of troubled companies.

Company Licensing and Registration

TDI monitors solvency to ensure companies can pay future claims.

The Department licenses companies to ensure that only financially healthy and trustworthy insurers enter the Texas insurance marketplace. TDI licenses several key types of companies, including: life and health; property and casualty; and health maintenance organizations. When a company seeks admission to the Texas insurance market, TDI conducts a thorough examination, which includes a review of the company's corporate structure, management competence, business plan, and financial projections and reserves, as well as a background check of all key company officers.

Once approved, the Department issues a certificate of authority, which licenses companies to sell insurance in Texas. Texas-based companies also obtain a charter of incorporation from TDI. At the end of fiscal year 2007, 501 Texas-based companies and 1,469 non-Texas based companies were licensed to operate in Texas. Appendix E provides additional detail on the type of entities licensed in Texas.

Following licensure, TDI reviews all mergers, acquisitions, and other large transactions within holding companies to ensure terms are fair and equitable, and that companies maintain the necessary financial and managerial capacity to guarantee future payment of claims. In fiscal year 2007, TDI staff reviewed 843 holding company transactions.

Non-traditional insurers, such as surplus lines carriers or reinsurers, must be registered or certified with the State but do not need a license to operate. The textbox, *Registered or Certified Entities*, provides further descriptions of these companies. For these companies, TDI maintains basic information on the company and verifies capital and other requirements, as dictated by statute.

Registered or Certified Entities

Accredited and Trusteed Reinsurers – Companies based in other states and countries that sell insurance to other insurance companies.

Purchasing Groups – Groups that procure liability coverage from an insurance company for group members. Members must have a related business.

Risk Retention Groups – Pools that provide liability coverage to members.

Surplus Lines – Companies based in other states and countries that write insurance for large risks that licensed companies will not cover.

Many companies in the non-licensed market provide specialized insurance companies, often to consumers who have trouble obtaining insurance in the traditional market. The textbox, *Surplus Lines Insurance*, gives some examples of these types of markets.

Surplus Lines Insurance

Texas has the fourth largest surplus lines market in the United States, with premiums totaling more than $3.7 billion in 2007. Surplus lines provide property and liability coverage for large risks such as high value homes and farms; commercial automobile and public transportation; and oil and gas operations. Surplus lines can also cover unique risks such as antique automobiles, amusement parks, and professional sports teams. The law requires an agent to determine that a risk will not be accepted by a licensed company before placing it with a surplus lines insurer.

Financial Analysis

The Department conducts regular monitoring of the financial health of licensed companies, attempting to recognize emerging financial problems by analyzing insurers' quarterly and annual financial statements, communicating regularly with insurers, and monitoring outside information sources, such as trade journals, newspapers, or complaints against companies. TDI completed 1,900 financial analysis reviews in fiscal year 2007. If the agency identifies problems with a carrier, it can increase monitoring of a company or require the company to develop a plan to address those solvency concerns.

TDI conducts financial examinations of Texas insurers at least every five years.

Routine Examinations

By law, TDI must conduct financial examinations of all Texas-licensed risk-bearing carriers at least every five years. Texas currently has 472 Texas-based insurers subject to examination. Financial exams can take anywhere from several weeks to a year, depending on the complexity and responsiveness of the carrier. TDI examiners review financial and management procedures and determine the adequacy of the company's reserves. TDI issues a report following each exam and will follow-up with a company regarding concerns or requests for corrective action. In fiscal year 2007, TDI conducted 129 financial examinations.

TDI staff also audit title insurance agents approximately once every three years. Title insurance is a unique product among other property and casualty products. Title insurance underwriters bear the risk for claims, but work with title agents who sell and service policies and escrow accounts. When examiners discover non-compliance with applicable rules and law they will require corrective action or refer companies for enforcement action ranging from fines to license revocation. TDI completed 255 audits of title agents in fiscal year 2007.

Rehabilitation and Liquidation

If the Department identifies serious solvency problems, it may begin rehabilitation or liquidation oversight. Oversight may include executing administrative rehabilitation actions or overseeing court-ordered rehabilitations or liquidations.

TDI relies on a number of administrative tools to work with a distressed company, depending on the severity of the financial conditions of the company. The textbox, *Administrative Remedies*, lists the kinds of actions the Department can take with respect to a troubled company. At the end of fiscal year 2007, TDI was involved in four administrative consent orders and two administrative supervisions.

Administrative Remedies

Management Conference – TDI may meet with a company and request corrective action through a conference.

Administrative Oversight – The Commissioner may place an insurer under administrative oversight if there are potentially hazardous conditions that may be corrected without formal supervision.

Consent Order – TDI may address specific issues and require corrective action via a consent order.

Supervision – The Commissioner may order direct supervision if a company has shown that hazardous financial conditions exist. TDI examiners oversee company management, review books and records, initiate corrective action, and help the company establish an implementation plan for the future. Supervision can last up to 180 days.

Conservatorship – Statute authorizes TDI to place a company into conservatorship, under which the Commissioner takes charge of operating the insurer's business. Conservatorship lasts 90 days with the option for several one-month extensions. TDI rarely uses administrative conservatorship, but instead uses court-ordered rehabilitation or liquidation, if a company's financial health warrants it.

TDI was involved in four rehabilitations and one liquidation in fiscal year 2007.

If administrative remedies are insufficient, TDI can seek a court-ordered receivership for rehabilitation or a court-ordered receivership for liquidation. Rehabilitative receivership is similar to an administratively ordered conservatorship, except with no time limit. A TDI staff examiner remains on-site with the carrier, until the Department appoints a Special Deputy Receiver, to ensure the carrier continues to pay claims, transfers active policies to other companies as appropriate, and takes other required corrective action. TDI was involved in four receiverships for rehabilitation at the end of fiscal year 2007.

If a company cannot pay claims, TDI seeks a court-ordered liquidation. Following the judge's order to liquidate, the Department may select a Special Deputy Receiver to oversee the remaining payment of claims and liquidation of company assets. An assigned guaranty association acts as a short-term source of funds until the estate can be liquidated. Guaranty funds usually pay claims and are later reimbursed from assets recovered or sold. The textbox, *Special Deputy Receivers*, gives further detail about how TDI oversees these contracts. TDI was involved in one receivership for liquidation in fiscal year 2007.

Special Deputy Receivers

The Department may appoint a Special Deputy Receiver (SDR) to oversee the court-ordered receiverships for rehabilitation or liquidation of a company. Through a competitive bidding process, TDI selects and contracts with an SDR, paid for with company assets. The contract contains specific performance standards, and TDI oversees contract compliance. Before an SDR makes any major business decisions, the SDR must submit cost-benefit analyses to TDI for review. Both TDI and the SDR have quarterly status conferences with a court-appointed Special Master.

Rate and Form Regulation

The Department regulates rates and forms for many lines of insurance in Texas. Rates are the price per unit of insurable risk, and are used by companies to determine a policyholder's premium payment. Company actuaries calculate company rates based on expected loss, company expenses, and profit. Insurance forms include all documents, such as policies, endorsements, and exclusions, which describe or materially affect the contract between the insurer and insured.

Rates are the price per unit of risk, used to determine a policyholder's premium.

In Texas, rates or forms may be subject to various kinds of regulation. The textbox, *Types of Rate and Form Regulation*, describes the major types of rate and form regulation in Texas. TDI regulates and reviews rates and forms to ensure they do not violate insurance laws or rules. Specifically, rates must not be excessive, inadequate, or unfairly discriminatory. Forms cannot be unjust, misrepresentative, deceptive, or violate public policy. Rate and form regulation for property and casualty; life, health, and accident; and residual lines differ significantly, as summarized below. For a complete list of the type of rate and form regulation for all lines, see Appendices F and G.

Type of Rate and Form Regulation

Promulgated – The Commissioner prescribes the rate or form.

Prior Approval – Insurers develop rates and forms, and must submit them to TDI for approval prior to their use. The Commissioner may request changes in the filing or disapprove the rates and/or forms within a specified timeframe.

Benchmark or Flex-Rating – The Commissioner sets an acceptable range for the rate. Rate revisions within a designated flex band may be used without prior approval. Rates outside the band must be approved prior to their use.

File-and-Use – Insurers develop and must file rates and forms, but may use the rates or forms immediately. The Commissioner may administratively disapprove rates and/or forms prior to their use, assuming they are not used immediately.

Exempt – Select rates and forms, typically for large or unusual risks, may be exempt from filing.

Informational – Companies must file a small number of rates, forms, guidelines, and models, but the materials are not subject to approval or disapproval. If the Department notes that the filing does not comply with law, it notifies the insurer.

Property and Casualty Insurance

Property and casualty rates are generally subject to some kind of departmental oversight, with most rates subject to file-and-use regulation. Previously, the Commissioner promulgated benchmark rates, but now companies develop rates, which are then subject to review or approval by the Commissioner. In fiscal year 2007, TDI reviewed 4,969 property and casualty rate filings.

Property and casualty forms are developed by companies but approved by TDI before their use.

While the Commissioner promulgates title and workers' compensation insurance forms, most other property and casualty forms are developed by companies but approved by the Department prior to their use. A limited number of property and casualty forms are exempt from reviews, including forms that pertain to large risks. In addition, selected other filings, such as credit scoring models and underwriting guidelines, must be filed with the Department for informational and compliance purposes. TDI reviewed 8,865 property and casualty forms in fiscal year 2007.

Life, Accident, and Health Insurance

In contrast to property and casualty, the majority of life, accident, and health rates are not even filed with the Department. Specifically, TDI does not review or regulate the rates of group and individual life; group accident and health, including all employer-sponsored plans; and annuity insurance. Only a few rates, those for Medicare Supplement and select credit insurance, are subject to prior approval. Small-employer accident and health insurance changes in rating methodology are also subject to prior approval. Several other lines must be filed for informational purposes only.

Residual markets provide coverage to those who have difficulty obtaining insurance.

The forms for life, accident or health, annuity, and viatical/life settlement insurance are subject to departmental review, either through prior approval or file-and-use. The type of review is generally at the insurer's discretion. In fiscal year 2007, TDI reviewed a total of 24,929 life, accident, and health form and rate filings.

Residual Markets

Residual markets are state-sponsored insurance plans that provide coverage for those who have difficulty obtaining insurance through the voluntary market. The textbox, *Residual Markets*, gives more information on these plans. Residual market rates are generally subject to more scrutiny than their voluntary-market counterparts. Forms tend to be subject to similar scrutiny in either market.

Residual Markets

Texas has several statutorily created residual markets to provide a safety net for consumers who cannot obtain coverage. These entities help stabilize the markets, ultimately permitting more consumers to get coverage in the voluntary market. Most residual markets operate as independent companies, like their voluntary-market counterparts. However, all residual markets are membership groups; most insurers who write the same type of coverage as a residual market are members of the market. Member companies may be required to pay fees or assessments to support market operations.

Residual Markets (continued)

Texas Windstorm Insurance Association (TWIA). TWIA provides insurance to consumers who are having difficulty obtaining coastal wind and hail coverage from licensed insurance companies. Unlike the other residual markets, TWIA's market is geographically restricted to a portion of the state, specifically the 14 first tier coastal counties and designated communities in Harris County. Fiscal year-end 2007 policies in effect: 199,085.

Texas FAIR Plan Association (FAIR Plan). The FAIR Plan is an insurer of last resort for Texas homeowners. The FAIR Plan provides limited property and liability coverage. Fiscal year-end 2007 policies in effect: 92,091.

Texas Health Insurance Risk Pool (THIRP). THIRP provides health insurance to Texans who lose employer coverage and, due to medical conditions, cannot obtain new insurance coverage. Fiscal year-end 2007 policies in effect: 28,134.

Texas Automobile Insurance Plan Association (TAIPA). TAIPA is the State's assigned risk plan for basic automobile liability coverage. Eligible applicants who cannot obtain voluntary insurance are assigned to member insurers. Fiscal year 2007 total assignments: 18,317.

Texas Medical Liability Insurance Underwriting Association (JUA). JUA provides medical liability insurance to Texas-licensed healthcare providers who cannot obtain coverage elsewhere. Fiscal year-end 2007 policies in effect: 483.

Texas Mutual Insurance Company (TMIC). TMIC is the residual market for workers' compensation insurance; however, since the Division of Workers' Compensation is not included in this report, TMIC will also not be discussed in the report.

Insurance-Related Licensing, Registration, and Certification

In addition to the financial regulation of insurance companies, TDI also regulates certain individuals and entities that are involved in providing insurance but do not assume financial risk. The purpose of this regulation is to ensure that consumers are treated fairly and protected when buying and accessing insurance products. TDI licenses, registers, or certifies more than 40 different types of individuals and entities. Additionally, the Department certifies and monitors certain healthcare networks, to ensure consumers have access to appropriate care.

Agent, Agency, and Adjuster Licensing

TDI licenses insurance agents and other personnel, insurance agencies and other entities, and adjusters involved in providing insurance services and products. The chart on the following page, *TDI Licensure of Agents, Agencies, and Adjusters*, summarizes the broad categories of licensees. For a full list of license categories and the number of licensees per category, see Appendix H.

The process for obtaining a license from TDI is similar across all license categories. TDI requires potential licensees to fill out an application, pay a fee, pass both a state and federal criminal background check, and take an examination to demonstrate a basic knowledge of the line of insurance to be sold. The Department waives the examination and background check for individuals licensed in other states who wish to practice in Texas. Most license fees are $50. Licenses are typically renewed every two years, with

TDI Licensure of Agents, Agencies, and Adjusters

License Type	Description	Number of Licensees FY 2007
Insurance Agents and Other Personnel	TDI licenses many different types of individuals, including general lines and limited lines agents, risk managers, life insurance counselors, insurance service representatives, and reinsurance intermediaries. The Department also licenses title agents, escrow officers, and viatical/life settlement brokers and providers.	294,430
Insurance Agencies and Other Entities	Agents wishing to incorporate must be licensed as an agency. TDI's largest categories of licensed agencies are ones that sell life, accident, health, and HMO insurance; property and casualty insurance; and credit insurance.	18,024
Insurance Adjusters	In an insurance claim, adjusters evaluate the damage caused to property, or bodily injury in workers' compensation claims, and how much of the loss should be paid to the claimant. TDI licenses three major categories of adjusters, including ones working on general lines, property and casualty, and workers' compensation insurance.	72,012

the exception of temporary permits that last for 90 days. About 50 percent of licensees renew their licenses on TexasOnline. State law requires most licensees to complete continuing education to get their license renewed, as described in the textbox, *Licensee Continuing Education*.

Licensee Continuing Education

TDI reviews continuing education courses for insurance professionals and registers providers. Depending on the licensing category, TDI requires between 10 – 30 hours of continuing education. TDI currently audits about 1 percent of licensees to ensure continuing education completion, but is implementing a system that will verify all continuing education credits. In fiscal year 2007, 408 continuing education audits turned up 253 violations. TDI requires licensees who do not fulfill continuing education requirements to pay a fine.

Much of health insurance is self-insured, and not subject to state regulation.

Health Maintenance Organization Oversight

Texas does not regulate health insurance as heavily as it does other insurance lines, since self-insured companies, a large percentage of the market, are exempt from state regulation through the federal Employee Retirement Income Security Act. However, TDI does regulate aspects of healthcare plans that affect the amount and quality of health care a consumer receives. Specifically, TDI regulates aspects of Health Maintenance Organization (HMO) plans, Utilization Review Agents (URAs), and Independent Review Organizations (IROs). The chart, *Licensure of HMOs, URAs, and IROs*, provides more detail on these license categories.

Licensure of HMOs, URAs, and IROs

Type	Description	Number*
Health Maintenance Organization (HMO) Plans	HMO plans provide for healthcare services, at a prepaid rate that takes the form of a co-payment for the consumer, through a network of providers. To certify plans, TDI reviews a number of factors that may include the number and type of service providers in the network, proposed network size and geographic location, utilization review procedures and timelines, complaint and appeal processes, and the credentials of individuals making medical decisions. Where applicable, staff coordinate the certification process with the financial licensure process.	119
Utilization Review Agents (URA)	URAs review the medical necessity and appropriateness of treatments either proposed for or provided to patients covered under healthcare plans. URAs can either be in-house or independent agents who contract with the plan.	26 In-House 187 Independent
Independent Review Organizations (IRO)	IROs are organizations outside of healthcare plans that review appeals of URA decisions on the medical necessity of a procedure.	33

* This represents the number of regulated entities as of April 2008.

Following certification, TDI conducts statutorily required quality-of-care examinations for HMOs. Staff may also conduct targeted exams if there is evidence of a significant problem in a network. During these examinations, staff review various aspects of the HMO, including processes for monitoring quality of care and network adequacy, type of providers in-network, complaints and complaint resolution, access plans, and credentialing of contracted provider staff. If staff have significant concerns, they will refer the case to enforcement staff for further action. In fiscal year 2007, TDI staff conducted 18 examinations of HMOs and affiliated URAs. The Department also investigates complaints against HMOs, URAs, IROs, and workers' compensation networks.

TDI monitors market trends and insurers' behavior to prevent deceptive or fraudulent practices.

Market Monitoring

TDI monitors insurance markets to make certain that insurance is available and affordable, that companies comply with the law, and that consumers receive the full value of the insurance products they purchase. To do this, TDI reviews the conduct of insurers, including sales and advertising practices; and works with insurers to take actions to reduce future losses and claims.

Market Conduct and Advertising Reviews

The Department monitors market trends and insurers' behavior to ensure that carriers and companies are not engaging in deceptive or fraudulent practices. TDI's market conduct exams typically focus on a specific practice or issue the Department has identified within a company. Examiners may review company complaints, underwriting and rating practices, marketing, sales, and advertising, or policy forms and filings to determine patterns of illegal or deceptive behavior. TDI tends to focus exams on pressing issues and areas where the agency sees an increase in illegal, fraudulent, or harmful practices. The textbox, *Recent Market Conduct Issues*, details some problematic market practices identified and addressed through market conduct cases. TDI will work with an insurer to resolve concerns, but can refer significant violations for enforcement action. In fiscal year 2007, TDI staff conducted 17 market conduct examinations.

Recent Market Conduct Issues

- Illegal race-based pricing policies
- Deceptive long-term care policy sales practices
- Deceptive sales practices targeting military personnel

TDI conducted 6,123 reviews of insurance advertising in 2007.

TDI staff also reviews insurance advertising, including television, print, and internet advertisements, to ensure that companies do not engage in deceptive or misleading marketing. The Department focuses on advertisements that target vulnerable populations, such as elderly consumers, and requires that advertisements for Medicare Supplement, long-term care, Medicare costs, and HMO coverages be filed for review before their use. TDI also monitors advertising already in the market for all lines, as needed. TDI conducted 6,123 advertising reviews in fiscal year 2007.

Loss Mitigation Services

Loss mitigation refers to any activity of the insurer or the insured designed to reduce future losses and claims. TDI is required to undertake several kinds of inspections to ensure that consumers receive fair rates based on their own efforts to reduce future losses, and that companies provide loss mitigation services.

Loss Control Audits

Texas law requires certain commercial insurers to provide loss control services to policyholders in an effort to ultimately reduce claims. These include insurers that provide general liability, professional liability, medical professional liability for hospitals, and commercial automobile insurance. Loss control services can include ensuring that policyholders have educational programs or policies in place to prevent accidents, such as requiring drivers to wear seat belts, in the case of commercial automobile insurance. TDI staff routinely conduct audits, and in fiscal year 2007, TDI conducted 201 loss control audits, finding all companies to be in compliance.

TDI loss control staff also monitor compliance with the Amusement Ride Safety Inspection Act. Staff review ride inspection reports and insurance policies to ensure rides operate safely and carry the appropriate levels of insurance. In fiscal year 2007, TDI reviewed 309 amusement ride policies and approved 1,711 inspection certificates.

Commercial Property Inspections

TDI conducts inspections of commercial properties to make certain that structures receive proper fire classifications. All commercial structures receive classifications based on the fire risks they present, which determine the premiums the entity will pay for insurance. Commercial structures are initially classified through inspections by a private company. In fiscal year 2007, TDI performed about 1,200 inspections to verify that structures received correct ratings.

Voluntary Inspection Program

To increase access to residential property insurance by ensuring that structures are in good condition, TDI administers the Voluntary Inspection Program. Homeowners or insurers can request an independent inspection of a property by TDI-certified inspectors. A TDI-certified inspection attests to the condition of the property, and makes it more difficult for insurers to refuse to write or renew coverage on the property. TDI currently has approximately 450 certified inspectors.

TDI completed 11,369 windstorm inspections in 2007.

Windstorm Program

To reduce the potential for windstorm losses, state law requires that TWIA-insured structures be built to windstorm code or, in select cases, obtain a waiver. TDI staff assist in the development of windstorm building codes, the evaluation of new windstorm building products, and the education of engineers and consumers in the coastal area. To ensure that buildings are code-compliant and less susceptible to damage in the event of a catastrophe, TDI staff inspect TWIA-insured structures for eligibility for wind and hail coverage through TWIA. TDI has 16 windstorm inspectors who completed 11,369 windstorm inspections in the designated catastrophe areas in fiscal year 2007.

TDI also appoints licensed engineers to help meet the demand for windstorm inspections. At the end of fiscal year 2007, TDI had appointed 624 licensed engineers to perform inspections. TDI staff oversee appointed engineers by reviewing a select number of structures certified by these engineers. In fiscal year 2007, TDI reviewed 371 structures, and found 66 percent that resulted in a disapproval or may still be pending resolution. TDI staff work with these engineers to correct any inspection problems.

TDI receives an average of 2,000 consumer complaints a month.

Consumer Protection

The Department helps consumers navigate the insurance industry by resolving complaints and providing consumer information and assistance.

Complaint Resolution

TDI accepts and reviews consumer disputes with insurance companies and agents, and tries to negotiate complaint resolution. Complaints usually take the form of disputes with insurance claims or policyholder service. TDI resolves consumer complaints involving automobile, homeowner, life, annuities, title, and health insurance, and receives an average of over 2,000 complaints a month.

To resolve a jurisdictional complaint, TDI will ask the insurance company to justify its coverage or claims decision. If a complaint reveals a possible violation of law or rule, or exhibits a noncompliant pattern of practice for a particular insurance company, staff refers the case for investigation and possible enforcement action. The chart, *TDI Consumer Complaint Activity*, gives more detail on the complaints the agency handled in fiscal year 2007.

TDI Consumer Complaint Activity – FY 2007

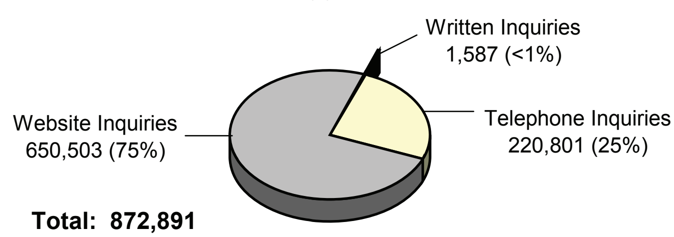
Complaints Received	27,256
Complaints Resolved	27,001
Average Time to Resolve Complaint	33 days
Additional Claim Payments Made to Consumers	$31.3 million
Refunds Made to Consumers	$2.2 million

Consumer Assistance and Information

TDI's toll-free consumer hotline is 1-800-252-3439.

TDI also provides consumers with assistance and information to help understand and choose insurance. The agency operates a toll-free hotline, 1-800-252-3439, to answer consumer questions and concerns. TDI's website, www.tdi.state.tx.us, has additional information to answer consumer questions online. In fiscal year 2007, the Department received almost 873,000 inquiries, with 75 percent coming in through its website, as illustrated by the pie chart, *Source of Consumer Inquiries*. TDI also provides field services to consumers in the event of a catastrophe.

Source of Consumer Inquiries
FY 2007



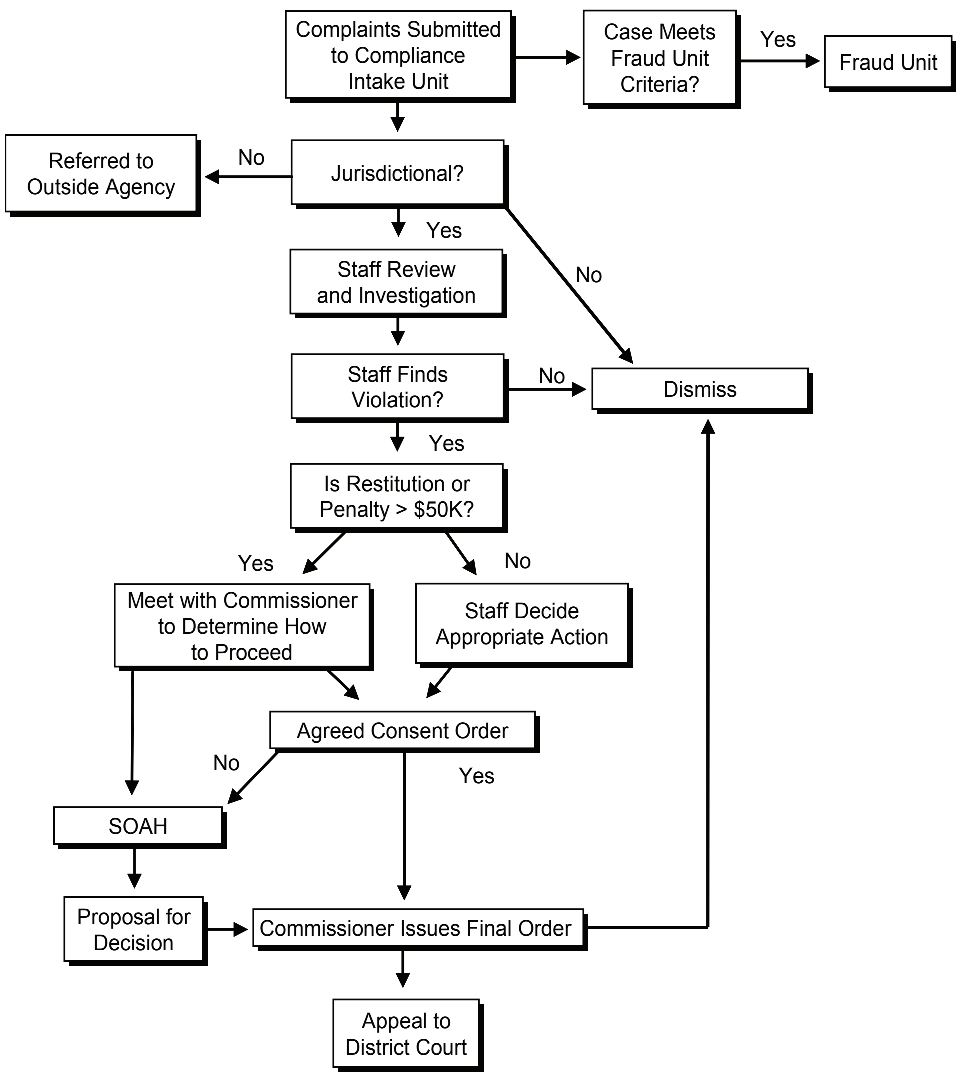
The Department provides more than 45 different publications explaining insurance to consumers, including rate guides and price comparisons for automobile, homeowners, Medicare Supplement, long-term care, workers' compensation, and small-employer health plans. TDI provides these, and other consumer publications, on its website and in hard copy upon request. In fiscal year 2007, the agency distributed more than three million publications, including 833,898 rate guides.

TDI conducts public outreach to help consumers learn more about insurance, and targets specific topics and audiences as needed. For example, in recent years, TDI has developed educational information for senior audiences on the Medicare Prescription Drug Program and long-term care insurance. In fiscal year 2007, TDI participated in 704 consumer information presentations.

Administrative Enforcement

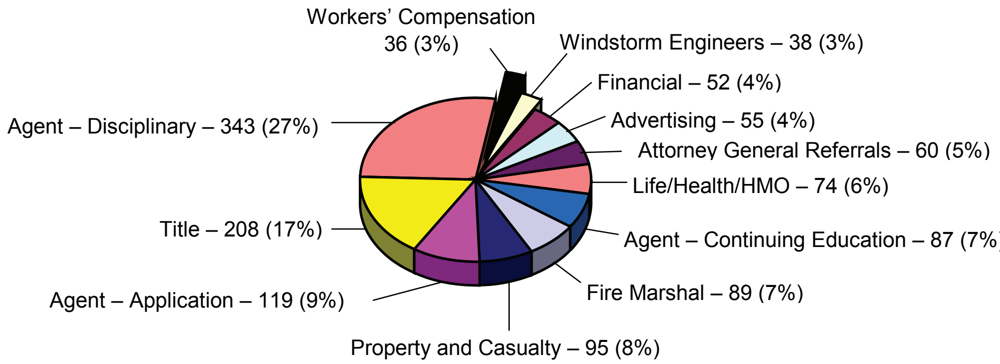
The Department regulates the insurance industry in Texas by investigating allegations against agents, companies, HMOs, other licensed entities, and unlicensed entities. If necessary, TDI takes action against those who violate insurance law or Department rules. The chart, *Administrative Enforcement Process*, shows how the Department processes its enforcement cases administratively.

Administrative Enforcement Process



TDI receives complaints from the public and other outside sources, but most enforcement investigations originate from within the agency, including potential violations uncovered through TDI's consumer protection, licensing, inspections, and examinations functions. The pie chart on the following page, *Enforcement Cases Opened*, provides information on the types of cases handled by TDI.

Enforcement Cases Opened
(as of August 2007)



Total: 1,256

Investigations

Upon receiving a referral, the Department determines if the complaint is jurisdictional, and, if so, opens a case. TDI only pursues administrative remedies for violations of insurance laws, and will refer cases for possible criminal violations to the Fraud Program for investigation. TDI may refer complaints not within the Department's jurisdiction, such as those against individuals licensed by other agencies, to the appropriate regulatory body. In fiscal year 2007, TDI conducted 821 investigations.

If staff conclude a violation occurred they determine appropriate sanctions. Any case that triggers penalties or restitution of more than $50,000 must be approved by the Commissioner. Once the Department determines sanctions, staff notify the regulated person or entity of the Department's intent to pursue sanctions.

Consent Orders and Formal Hearings

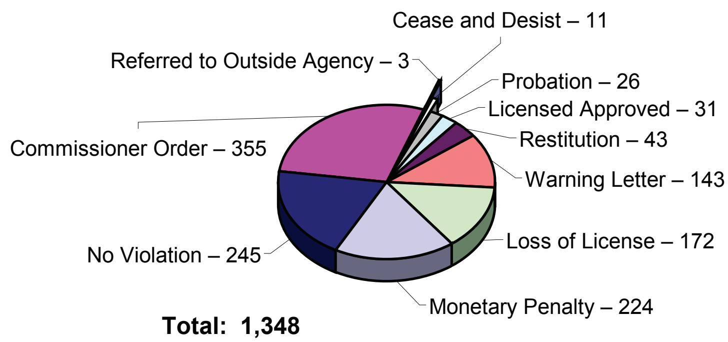
Once the regulated entity receives notification of the violation, the Department will attempt to resolve the case first through voluntary agreements or consent orders. Under a voluntary agreement, the party agrees to comply with TDI's sanctions. Parties may also negotiate consent orders with Department staff; all consent orders are finalized and signed by the Commissioner or the State Fire Marshal.

If either party rejects the consent order, the Commissioner deems the violation serious enough, or in select insurance rate cases, the Department refers the case to the State Office of Administrative Hearings (SOAH) for a formal hearing. With respect to rate cases, the Commissioner may initiate a contested case proceeding to contest a change in regulated rates or to challenge an excessive, inadequate, or unfairly discriminatory rate that is already in use. A SOAH administrative law judge presides over the contested case and issues a proposal for decision, and the Commissioner issues a final decision. In fiscal year 2007, the Department concluded 316 enforcement cases through Commissioner's and State Fire Marshal's orders.

Sanctions

The Department can apply a variety of sanctions to companies and individuals through its enforcement process including: reprimands and written warnings; probation, license suspension, denial, or revocation; rate changes; administrative penalties; and restitution. The most commonly applied sanctions are monetary penalties, restitution, and license revocation. In fiscal year 2007, the Department assessed $7.1 million in penalties, ordered $99 million in restitution, and revoked 172 licenses. The pie chart, *Disposition of Enforcement Cases*, details the disposition of all cases resolved by the Department in fiscal year 2007. For that year, the Department resolved cases in an average of 429 days; however, this average include several cases that are currently either at SOAH or at district court.

Disposition of Enforcement Cases FY 2007



Fraud Investigations

TDI protects Texas consumers and insurers from economic harm by investigating allegations of criminal insurance fraud. Insurance fraud is the second-most common white-collar crime after tax evasion. Insurance fraud can affect an insurer's solvency, putting policyholders at risk, and the operation of a fraudulent insurance entity poses a financial risk to those who may unknowingly do business with an unlicensed entity. The textbox, *Insurance Fraud Prosecuted in Texas*, gives examples of the results of fraud cases pursued by TDI in fiscal year 2007.

Insurance Fraud Prosecuted in Texas

- A licensed insurance agent was sentenced to two years in the Texas Department of Criminal Justice for scamming 14 clients out of $201,000.
- A former medical doctor was convicted in federal court on 44 counts of mail fraud and sentenced to serve 135 months in prison for defrauding health insurers of more than $10 million.
- An insurance policyholder was sentenced to four years in the Texas Department of Criminal Justice and fined $2,000 for submitting more than $30,000 in fraudulent homeowner claims.
- A former insurance agent was sentenced to seven years in the Texas Department of Criminal Justice and ordered to pay more than $78,000 in restitution for defrauding several hundred people by selling unauthorized automobile insurance.
- An automobile insurance policyholder was sentenced to 18 months in jail and ordered to pay $11,000 in restitution for submitting a falsified stolen vehicle claim.
- A San Antonio man was sentenced to 15 months in federal prison and ordered to pay more than $500,000 in restitution for scheming to fraudulently purchase life insurance on several homeless persons, naming himself beneficiary, and then receiving the policy proceeds after the insured's death.

State law requires insurers to report fraud to TDI.

TDI employs civilian investigators and commissioned peace officers to review reports of fraud from the public and insurers. By statute, insurers are required to report suspected fraud to TDI. TDI can initiate inquiries and conduct investigations when suspicion of insurance fraud exists. The Department maintains a toll-free insurance fraud hotline, 1-800-327-8818, and an on-line insurance fraud reporting system. When fraud is discovered, TDI seeks criminal indictments, makes arrests, and assists local district attorneys in prosecuting insurance fraud cases. In addition, a TDI Special Prosecutor prosecutes referred insurance fraud cases through a cooperative agreement with the Dallas County District Attorney's Office.

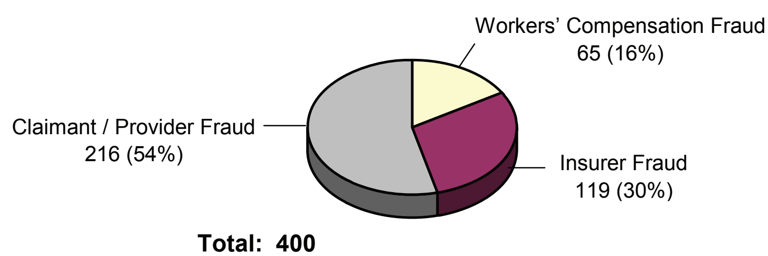
TDI investigates two major types of fraud: insurer fraud and claimant fraud. The textbox, *Mortgage Fraud*, gives more detail about recent efforts to curb mortgage fraud.

Mortgage Fraud

To reduce fraud in the mortgage loan process, the Legislature created the Texas Residential Mortgage Fraud Task Force, comprised of representatives from the regulatory agencies of real estate, banking, and insurance, and the Office of the Attorney General, in 2007. As a result of its work on the task force, TDI has increased its mortgage fraud investigations of licensed title insurance companies and agents, and escrow officers. This effort, in cooperation with the Dallas County District Attorney's Office, resulted in the 2008 indictments of five individuals on felony charges for a mortgage fraud scam involving 10 residential properties with a total value in excess of $2 million.

In fiscal year 2007, the Department received and reviewed 9,922 suspected insurance fraud reports, opened 400 cases for investigation, and referred 188 cases for prosecution. The pie chart, *Types of Insurance Fraud Investigated by TDI*, depicts the cases opened by type. Insurance fraud cases resulted in 110 indictments and 80 convictions with restitution, fines, and penalties ordered in excess of $13.4 million.

Types of Insurance Fraud Investigated by TDI
FY 2007



State Fire Marshal's Office

First established by the Legislature in 1910, the State Fire Marshal's Office (SFMO) works to reduce loss of life and property due to fire and related hazards in Texas. To accomplish this mission, the SFMO inspects the fire safety of buildings, investigates arson, and works to prevent fires through education and outreach. The SFMO also licenses people and firms that work in the fire alarm, extinguisher, sprinkler, and fireworks industries. The textbox, *Texas Fire Statistics*, highlights the significant impact fires have in Texas.[1]

Texas Fire Statistics
FY 2006

Total fires: 95,971

One fire every five minutes

Fire deaths: 180

Fire injuries: 1,373

Property loss: $470 million

Incendiary/suspicious fires: 8,178

State law requires the SFMO to inspect all state-owned buildings, including facilities such as universities and prisons, to mitigate fire hazards. The SFMO also inspects, upon request or complaint, facilities such as day-care centers, private hospitals, and hotels. In fiscal year 2007, the SFMO inspected a total of 4,778 buildings for fire safety hazards.

As the chief investigator of arson and suspected arson in Texas, the SFMO assists local officials in the collection and analysis of evidence that may lead to the prosecution of an alleged arsonist. The SFMO's Forensic Arson Laboratory, located in Austin, provides analysis of fire scene debris to help determine the cause of a fire. To aid with evidence collection, the SFMO makes use of four, specially trained canines. The SFMO performed 519 investigations in fiscal year 2007, of which, 138 were referred for prosecution, and 77 resulted in enforcement or legal action.

To help ensure that critical fire protection equipment is working properly, the SFMO licenses and registers more than 10,000 persons and firms engaged in the business of planning, installing, and servicing fire sprinkler systems, fire extinguishers, and fire alarm systems. The SFMO also licenses individuals and firms selling and handling fireworks. Appendix I gives a list of SFMO license categories, and the number licensed in fiscal year 2007.

1 These statistics are the most recent available, but may not be complete, as local fire departments are encouraged, but not required, to report this information to the SFMO.

Office of Public Insurance Counsel Issue

Issue 1

Texas Needs Consumer Representation in Insurance Regulation, But No Longer Needs a Separate State Agency to Advocate on Behalf of Consumers.

Summary

Key Recommendations

- Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance.
- Transfer the Public Counsel's statutory board positions and nomination duties to the Consumer Representative at TDI.
- Transfer the responsibility for OPIC's consumer publications to TDI.
- Transfer the authority to assess insurers to pay for consumer representation from OPIC to TDI.

Key Findings

- OPIC's activities mirror the broader regulatory functions of the Department of Insurance, but are approached solely from a consumer perspective.
- While Texas clearly needs a consumer perspective in regulating insurance, housing this function outside of TDI limits its effectiveness.
- Having two state agencies providing consumer education on insurance is inefficient and confusing to the public.
- OPIC's advocacy role in a small number of industry-wide rate hearings does not provide a compelling justification for the continuation of a separate agency.

Conclusion

The Office of Public Insurance Counsel (OPIC) represents consumers as a class in insurance regulation. Sunset staff evaluated the continuing need for a stand-alone agency to advocate on behalf of consumers and found that many of OPIC's key rate and form review activities are the same as the Texas Department of Insurance's (TDI), but are targeted on evaluating the impact on consumers. Staff found that while a consumer perspective in regulating insurance is important, performing these functions across two state agencies is unnecessary. Staff found no compelling justification for continuing OPIC as a separate state agency and concluded that integrating a focused consumer perspective within TDI would enhance the State's overall regulation of insurance.

Support

OPIC represents the interests of consumers as a class in insurance matters.

- To represent insurance consumers in Texas, the Office of Public Insurance Counsel (OPIC) assesses the impact of insurance rates, policy forms, and rules on consumers and, as statute allows, intervenes when problems arise. OPIC does not represent individual consumers, and refers any consumer complaints to the consumer protection staff of the Texas Department of Insurance (TDI). The Office reviews insurance company rate and form filings submitted to TDI, primarily focusing on personal property and casualty insurance. The Office also performs a limited consumer education function, which consists of producing 10 publications, and reviewing all TDI publications from a consumer perspective. The Office spends about 80 percent of its time and resources on rate, form, and rule review and intervention.

OPIC reviews rates and forms from a consumer perspective and works with TDI and the insurer to negotiate changes.

- In 2003, the Legislature significantly changed the way TDI regulates property and casualty rate filings, shifting from a promulgated benchmark system to a file-and-use system in which the Commissioner of Insurance (Commissioner) reviews individual company rate filings and may administratively disapprove a rate before its use, or call for a contested case hearing to disapprove a rate-in-use.[1] In addition, TDI now approves form filings instead of promulgating forms through a hearing.

  As such, OPIC performs most of its work through reviewing rate and form filings from a consumer perspective and working with TDI and insurers to negotiate desired changes or filing objections if agreement cannot be reached. TDI may consider OPIC's objection when deciding to disapprove a rate filing or schedule a hearing. If TDI initiates a contested case hearing against a particular rate filing, OPIC participates as a party advocating for consumers, and continues to do so in any judicial appeals. OPIC also represents consumers as a party in the few hearings in which the Commissioner promulgates or approves rates industry-wide. The chart, *OPIC Workload*, depicts the agency's workload for fiscal year 2007.

OPIC Workload – FY 2007

Action	Total
Rate Filings Negotiated	32
Form Filings Negotiated	24
Rule Filings Negotiated	16
Industry-Wide Rate Hearings	4
Contested Rate Cases	1
Rate Appeals	1

- In fiscal year 2007, OPIC operated on a $1,058,464 budget, with about $1 million from the General Revenue Fund and $48,000 from an interagency contract with TDI for consumer publication review. Statutory assessments of insurers more than offset the agency's operating costs, collecting $2.2 million in fiscal year 2007. The Comptroller of Public Accounts collects the assessments and deposits them into the General Revenue Fund, and OPIC requests legislative appropriations to fund its activities. OPIC has 16.5 full-time employee positions, and is led by a Public Counsel, who is appointed by the Governor and confirmed by the Senate.

- The Public Counsel also serves on four statutory boards and advisory committees, including the Boards of Directors of the Texas Certified Self-Insurer Guaranty Association and the Texas Self-Insurance Group Guaranty Fund, the Technical Advisory Committee on Electronic Data Exchange, and the Texas Health Coverage Awareness and Education Program Task Force. The Public Counsel also nominates, for appointment by the Commissioner, five public representatives to serve on the Governing Committee of the Texas Automobile Insurance Plan Association and two public representatives to serve on the Texas Windstorm Insurance Association Board of Directors. The Public Counsel also serves on various working groups and advisory committees upon request.

The Public Counsel provides a consumer point of view on several boards and committees.

OPIC's activities mirror the broader regulatory functions of the Department of Insurance, but are approached solely from a consumer perspective.

- The Sunset Act requires the Commission and its staff to assess the need for an agency and its functions, including the extent to which its activities are needed and whether they duplicate those of other agencies. The chart, *Comparison of TDI and OPIC Functions*, depicts OPIC's functions in comparison with the regulatory functions of TDI. Sunset staff found that OPIC's key functions, such as rate and form review, mirror those performed by TDI, the State's regulator of insurance, although OPIC approaches these tasks solely from a consumer perspective.

Comparison of TDI and OPIC Functions

Function	TDI's Regulatory Role	OPIC's Role
Rate Review	TDI reviews rate filings to ensure rates are not excessive, inadequate, or unfairly discriminatory, and requests supplemental information from insurers as necessary to make those determinations. The Commissioner has authority to administratively disapprove a rate filing, before its use, or call for a hearing, to disapprove a rate-in-use.	OPIC reviews and analyzes rate filings, may request supplemental information from insurers, and attempts to negotiate changes to filings favorable to consumers. If necessary, OPIC files a formal objection with TDI and petitions the Commissioner to disapprove the filing or call for a hearing.
Form Review	TDI reviews forms for compliance with statute, which includes ensuring that forms are not unjust or deceptive to consumers, and approves forms for use by insurers.	OPIC reviews form filings and analyzes form filings from a consumer perspective. If OPIC has concerns about a form, staff usually ask TDI to delay approval while the Office works with TDI and the company to negotiate changes.

Comparison of TDI and OPIC Functions (continued)

Function	TDI's Regulatory Role	OPIC's Role
Rulemaking	As the State's insurance regulator, TDI considers consumer harm when developing administrative rules and seeks public comment before promulgating them.	OPIC reviews rule proposals from a consumer perspective and informally submits comments to TDI. Once TDI publishes a rule for public comment, OPIC may submit formal comments and/or participate in a rulemaking hearing.
Contested Cases to Disapprove Individual Rates	In a file-and-use regulatory environment for property and casualty rates, rate hearings are not the regular method of rate-making. Contested rate cases occur at the State Office of Administrative Hearings (SOAH) when the Commissioner takes action to disapprove a rate-in-effect. TDI has legal party status and presents evidence in support of its position. TDI frequently contracts with an expert actuarial witness.	Once TDI decides to have a contested case hearing on a rate filing, OPIC has legal party status in the contested rate case at SOAH. OPIC presents evidence in support of its position on behalf of consumers. OPIC typically contracts with an expert actuarial witness.
Judicial Appeals	In appeals of rate orders, the Office of Attorney General represents the Commissioner.	OPIC represents its position and consumers' and may coordinate with the Office of Attorney General. OPIC may testify in an appeal of a rate order or may submit a brief instead of appearing in court.

- Sunset staff recognized the benefit of bringing a consumer perspective to the review of rates, forms, rules, and educational publications. For example, OPIC reviews policy forms not only for compliance with statute but also for inappropriate exclusions and missing coverage that could harm consumers. The Office also reviews rules for unintended consequences to consumers. An example of the benefit of having a consumer perspective in TDI's rulemaking is shown in the textbox, *Protecting Health Insurance Consumers*.

Protecting Health Insurance Consumers

In 2003, TDI proposed a rule regarding the response time allowed to health plans regarding requests for verification of health coverage. OPIC submitted written comments after the publication of the rule proposal, and appeared in a rulemaking hearing. The Office negotiated a shorter time period for response from the initially proposed 15 days to five days, helping consumers avoid time delays in receiving health care.

OPIC is not well positioned to promote the consumer's perspective.

While Texas clearly needs a consumer perspective in regulating insurance, housing this function outside of TDI limits its effectiveness.

- OPIC's structure as an outside advocate limits its ability to secure changes on behalf of consumers. For example, changes to rate filings typically come from TDI's and OPIC's informal negotiations with a company.

OPIC analyzes rate filings and may request supplemental information, but has no regulatory authority. TDI has the ability to review and disapprove rates, so it is better positioned than OPIC to bring about changes advantageous to consumers.

Half of OPIC's rate objections were left pending in 2007.

In this system of rate review, OPIC may file an objection to a specific rate, but TDI does not have to take action on OPIC's objections. In fiscal year 2007, OPIC filed 22 objections with the Commissioner, and 11 were left pending. Because OPIC is outside the regulatory agency, it may not be regularly included in conversations and negotiations between TDI as the regulator and the insurer as a regulated entity.

- OPIC faces similar challenges with respect to its form review. While form review can identify language that could harm consumers, OPIC has no direct authority to get insurers to change the filing. In contrast, TDI has to approve the forms prior to their use, so it is better positioned to actualize change beneficial to consumers. TDI can also take advantage of regular contact with consumers to incorporate complaint trends into form review.

- OPIC reviews rules, but having outside legal status does not give it any clear advantages in representing consumer interests in rulemaking. Again, as the regulator, TDI develops and promulgates rules. The rulemaking process offers an opportunity for public comment, and currently OPIC either works informally with TDI or appears in rulemaking hearings in the same capacity as any other stakeholder or member of the public.

OPIC has no direct regulatory authority to get insurers to change a filing.

- As the agency with primary regulatory responsibility, TDI has the authority to effectively integrate a consumer perspective into its regulation of insurance. Consumer protection is also an inherent duty of a regulator, and TDI must protect consumer interests while regulating insurance. In addition to the rate, form, and rule functions OPIC is involved with, the Department helps protect consumers by regulating insurers' solvency and market conduct, resolving consumer complaints, investigating fraud, and taking enforcement action against violators.

Having two state agencies providing consumer education on insurance is inefficient and confusing to the public.

- TDI and OPIC both publish consumer information. While the agencies collaborate on joint education efforts, and the Office helps review TDI publications from a consumer perspective, this overlap can waste resources.

In addition to greater name recognition, the Department has more extensive resources for providing information to consumers, as depicted in the chart, *TDI and OPIC Public Education Resources*. TDI also has regular contact with consumers and monitors market trends and

TDI and OPIC Public Education Resources

	TDI	OPIC
Budget	$554,956	$118,717
Number of Staff	9	2.5
Publications Distributed	3,278,384	934,177

issues affecting insurance policyholders. These activities better position the Department to design education that addresses the most pressing needs.

OPIC's advocacy role in rate hearings has decreased significantly.

- Having multiple state agencies involved in the same type of consumer outreach may also cause confusion for consumers seeking insurance information. For example, the Legislature recognized the potential confusion of having both TDI and OPIC maintain two separate websites providing information about shopping for insurance. To address this concern, the Legislature enacted law to require TDI, in conjunction with OPIC, to develop a single website for residential property and personal automobile insurance information.[2]

OPIC's advocacy role in a small number of industry-wide rate hearings does not provide a compelling justification for the continuation of a separate agency.

- On the whole, the Legislature has shifted TDI's regulatory oversight to a system in which companies develop their own property and casualty rates and the Department reviews, and in some cases, may administratively disapprove them before their use. However, TDI is still involved in promulgating rates for two lines of insurance, and OPIC continues to represent consumers in those ratemaking hearings, as shown in the chart, *OPIC Participation in Industry-Wide Hearings*.

OPIC Participation in Industry-Wide Hearings

Insurance Line	Ratemaking Method	OPIC Role	OPIC Intervention
Title Insurance	Contested case before the Commissioner or SOAH in which the Commissioner hears evidence from parties and promulgates an industry-wide rate.	Represents consumers by presenting evidence in support of its recommended rate as a party to the contested case.	OPIC participated in one hearing in fiscal year 2007, which was the most recent hearing.
Credit Life and Credit Accident Insurance	Rulemaking hearing in front of the Commissioner to adopt a presumptive rate.	Represents consumers by presenting data and/or arguments in support of its recommended rate. Has the same status as any other public member.	OPIC last participated in fiscal year 2005, which was the most recent hearing.

While OPIC still plays a role in these hearings, rate hearings for the title and credit lines happen infrequently, providing no compelling need that would justify the continuation of an independent consumer advocate. The title and credit lines make up a small part of the overall $90 billion Texas insurance market, totaling $1.66 billion and $283 million in premium volume, respectively. The small share of the Texas insurance market title and credit insurance comprise does not appear to meet a reasonable threshold for continuing a separate state agency.

- OPIC also participates in hearings in which the Commissioner approves rates for the residual markets relating to automobile and windstorm insurance. In the hearings, the Office presents proposed changes to the rates and may cross-examine witnesses. OPIC participated in three residual market rate hearings in fiscal year 2007.

  As State-established markets of last resort for the uninsured, the rate development processes for these residual markets have protections that reduce the need for consumer representation in the hearings. The rates are developed in open Board meetings that afford opportunity for public comment. Further, public members sit on the Boards of both residual markets.

Recommendations

Change in Statute

1.1 Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance.

This recommendation would abolish OPIC as an independent agency and establish a Consumer Representative and staff within the Department of Insurance, responsible for ensuring that TDI considers the consumer perspective in its regulation of insurance. The Consumer Representative's main responsibilities would include:

- analyzing rate and policy form filings from a consumer perspective, including company-specific and industry-wide filings, and working with Department staff to address potential consumer harm;
- assessing administrative rule proposals for their impact on consumers and working with TDI to address concerns;
- reviewing Department publications and websites from a consumer perspective and advising TDI staff on potential changes to make publications most useful and accessible to consumers; and
- coordinating with TDI's consumer protection and market conduct and analysis staff to apply a consumer vantage point to those activities and to use knowledge gained from those areas, including consumer complaints and market trends, to inform its review of rates, forms, rules, and educational publications.

The Commissioner of Insurance would be required to appoint the Consumer Representative, who would be directly responsible to the Commissioner. Qualifications would include having demonstrated commitment to and involvement in efforts to safeguard the rights of consumers and possessing substantial knowledge of and experience with insurance. The Representative would have access to and use of all files, records, and data of the Department, including insurer rate and form filings. Confidentiality requirements applicable to the Department and Commissioner would also apply to the Consumer Representative. The Representative would have the authority to review and comment to the Commissioner and TDI staff on all forms and rates, TDI rule proposals, publications and websites, and to request market conduct examinations.

Abolishing the Office of Public Insurance Counsel would eliminate OPIC's role as a legal party in representing consumers as a class in contested cases, judicial appeals, industry-wide rate hearings for title and credit insurance, and residual market rate hearings. However, contested cases and subsequent appeals result from TDI taking action on rates, and TDI acts as a party in these proceedings, with Office of Attorney General representing the Commissioner in judicial appeals. The industry-wide and residual market rate processes have other consumer protections in place, and the Consumer Representative would assist the Commissioner in rate promulgation and approval duties from within the Department.

This recommendation is not intended to replace the Department's current review of rates, forms, and rules, or its development of consumer education materials. Rather, establishing a Consumer Representative within TDI would enhance the consumer perspective in the Department's overall regulation of insurance by bringing consumer representation inside the Department's review processes and consumer protection activities. The recommendation would preserve the benefits of OPIC's review, but incorporate it into the Department's overall functions.

1.2 Transfer the Public Counsel's statutory board positions and nomination duties to the Consumer Representative at TDI.

Under this recommendation, the Consumer Representative at TDI would be required to serve on the following governing bodies and organizations:

- the Board of Directors of the Texas Certified Self-Insurer Guaranty Association;
- the Board of Directors of the Texas Self-Insurance Group Guaranty Fund;
- the Technical Advisory Committee on Electronic Data Exchange; and
- the Texas Health Coverage Awareness and Education Program Task Force.

This recommendation would also require the Consumer Representative to nominate public representatives to the Board of Directors of the Texas Windstorm Insurance Association and public representatives to the Governing Committee of the Texas Automobile Insurance Plan Association. The Commissioner would continue to make final appointments. The Commissioner could also ask the Consumer Representative to serve on other advisory committees or working groups, as needed.

1.3 Transfer the responsibility for OPIC's consumer publications to TDI.

This recommendation would require TDI to produce all of OPIC's educational publications, including the consumer bills of rights, Health Maintenance Organization (HMO) Report Card, and HMO Quality Report required by statute; and the policy comparisons not in statute. Statute authorizes both TDI and OPIC to summarize underwriting guidelines; TDI would be required to produce all of them. Statute requires TDI, in conjunction with OPIC, to maintain a website that provides consumer information on personal automobile and residential property insurance; the Department would take on the full responsibility for the website. At TDI, the publications would be produced by the Consumer Protection Division, which already performs a public education function. As required in Recommendation 1.1, the newly created Consumer Representative would review consumer publications.

1.4 Transfer the authority to assess insurers to pay for consumer representation from OPIC to TDI.

This recommendation would transfer OPIC's authority to assess insurers 5.7 cents per policy in the property and casualty; title; and life, health, and accident lines to TDI. The Comptroller of Public

Accounts would collect the assessments and deposit them into the General Revenue Fund. TDI would request legislative appropriations to fund the Consumer Representative and its staff.

Fiscal Implication

These recommendations would not have an overall net fiscal impact to the State. These recommendations would transfer OPIC's annual budget of $1 million and its authorized 16.5 full-time employee positions to TDI to fund the new Consumer Representative position and supporting staff, and the transfer of OPIC's consumer publications.

Transferring these functions to TDI may result in some savings from efficiencies, as TDI would be able to provide administrative support, such as budgeting, human resources, and technology services. However, these resources should be redirected to the hiring of additional staff with expertise helpful to the Consumer Representative.

TDI would fund these functions through General Revenue appropriated from funds collected through the assessment authority transferred from OPIC to TDI in Recommendation 1.4.

1 Texas Senate Bill 14, 78th Legislature (2003).

2 Texas Senate Bill 611, 80th Legislature (2007).

Responses to OPIC Issue 1

Recommendation 1.1

Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance.

Agency Response to 1.1

The agency disagrees with this recommendation. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

Affected Agency Response to 1.1

The Texas Department of Insurance strongly urges the Sunset Advisory Commission to maintain OPIC as a separate agency. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.1

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Karen Love, Executive Director – Harris County Healthcare Alliance, Houston

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Against 1.1

Senator Mike Jackson, Member – Texas Senate

Senator Royce West, Member – Texas Senate

Senator Kirk Watson, Member – Texas Senate

Senator Eddie Lucio, Jr., Member – Texas Senate

Senator Rodney Ellis, Member – Texas Senate

Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society

Bruce Bower – Texas Legal Services Center, Austin

Bee Moorhead, Executive Director – Texas Impact, Austin

Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin

Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Against 1.1 (continued)

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

Christopher Whitaker, Organizer – Texas Public Interest Research Group

Lanetta Cooper, Attorney – Texas Legal Services Center, Austin

Miryam Bujanda, Manager, Public Policy and Advocacy – Methodist Healthcare Ministries, San Antonio

Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin

Travis Miller, Chair of University Affairs, Student Government Association – Sam Houston State University, Dripping Springs

Henry Freudenburg, Vice President – Galveston Windstorm Action Committee, Inc., Galveston

Marc Edelman

Group A – See page 179

Group C – See page 187

Modifications

1. Maintain OPIC as an independent state agency and continue OPIC for 12 years. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)
2. Eliminate the Office of Public Insurance Counsel and its functions so that consumer protection efforts are dealt with through complaints and enforcement functions. (Bill Peacock, Vice President of Administration & Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

Recommendation 1.2

Transfer the Public Counsel's statutory board positions and nomination duties to the Consumer Representative at TDI.

Agency Response to 1.2

The agency disagrees with this recommendation. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

Affected Agency Response to 1.2

The Texas Department of Insurance strongly urges the Sunset Advisory Commission to maintain OPIC as a separate agency. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.2

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Karen Love, Executive Director – Harris County Healthcare Alliance, Houston

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Against 1.2

Senator Mike Jackson, Member – Texas Senate

Senator Royce West, Member – Texas Senate

Senator Kirk Watson, Member –Texas Senate

Senator Eddie Lucio, Jr., Member – Texas Senate

Senator Rodney Ellis, Member – Texas Senate

Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society

Bruce Bower – Texas Legal Services Center, Austin

Bee Moorhead, Executive Director – Texas Impact, Austin

Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin

Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

Christopher Whitaker, Organizer – Texas Public Interest Research Group

Lanetta Cooper, Attorney – Texas Legal Services Center, Austin

Miryam Bujanda, Manager, Public Policy and Advocacy – Methodist Healthcare Ministries, San Antonio

Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin

Travis Miller, Chair of University Affairs, Student Government Association – Sam Houston State University, Dripping Springs

Marc Edelman

Group A – See page 179

Group C – See page 187

Recommendation 1.3

Transfer the responsibility for OPIC's consumer publications to TDI.

Agency Response to 1.3

The agency disagrees with this recommendation. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

Affected Agency Response to 1.3

The Texas Department of Insurance strongly urges the Sunset Advisory Commission to maintain OPIC as a separate agency.

Texas Department of Insurance Modification

3. If OPIC's consumer publications are transferred, specifically require that OPIC's public education resources transfer to TDI's Consumer Protection program.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.3

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Karen Love, Executive Director – Harris County Healthcare Alliance, Houston

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Bill Peacock, Vice President of Administration & Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin

Against 1.3

Senator Mike Jackson, Member – Texas Senate

Senator Royce West, Member – Texas Senate

Senator Kirk Watson, Member – Texas Senate

Senator Eddie Lucio, Jr., Member – Texas Senate

Senator Rodney Ellis, Member – Texas Senate

Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society

Bruce Bower – Texas Legal Services Center, Austin

Bee Moorhead, Executive Director – Texas Impact, Austin

Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin

Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin

Against 1.3 (continued)

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

Christopher Whitaker, Organizer – Texas Public Interest Research Group

Lanetta Cooper, Attorney – Texas Legal Services Center, Austin

Miryam Bujanda, Manager, Public Policy and Advocacy – Methodist Healthcare Ministries, San Antonio

Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin

Travis Miller, Chair of University Affairs, Student Government Association – Sam Houston State University, Dripping Springs

Marc Edelman

Group A – See page 179

Group C – See page 187

Recommendation 1.4

Transfer the authority to assess insurers to pay for consumer representation from OPIC to TDI.

Agency Response to 1.4

The agency disagrees with this recommendation. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

Affected Agency Response to 1.4

The Texas Department of Insurance strongly urges the Sunset Advisory Commission to maintain OPIC as a separate agency. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

For 1.4

Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin

Karen Love, Executive Director – Harris County Healthcare Alliance, Houston

Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin

Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin

Against 1.4

Senator Mike Jackson, Member – Texas Senate

Senator Royce West, Member – Texas Senate

Senator Kirk Watson, Member – Texas Senate

Senator Eddie Lucio, Jr., Member – Texas Senate

Senator Rodney Ellis, Member – Texas Senate

Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society

Bruce Bower – Texas Legal Services Center, Austin

Bee Moorhead, Executive Director – Texas Impact, Austin

Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin

Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin

Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston

Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin

Christopher Whitaker, Organizer – Texas Public Interest Research Group

Lanetta Cooper, Attorney – Texas Legal Services Center, Austin

Miryam Bujanda, Manager, Public Policy and Advocacy – Methodist Healthcare Ministries, San Antonio

Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin

Travis Miller, Chair of University Affairs, Student Government Association – Sam Houston State University, Dripping Springs

Marc Edelman

Bill Peacock, Vice President of Administration & Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin

Group A – See page 179

Group C – See page 187

Commission Decision

In lieu of Recommendations 1.1 through 1.4, the Commission adopted Modification 1. In addition, the Commission authorized Sunset staff to apply the Across-the-Board Recommendations as appropriate, subject to the approval of the Chair and Vice Chair.

Legislative Action

Senate Bill 2, 1st Called Session, 81st Legislature, continues the Office until 2011 and requires the Sunset Commission to focus its next review of the Office on the appropriateness of its previous recommendations to the 81st Legislature.

Office of Public Insurance Counsel

Agency Information

(May 2008)

Agency Information

Agency at a Glance

The Office of Public Insurance Counsel (OPIC) represents the interests of consumers as a class in insurance matters. The Legislature created OPIC in 1991 as an independent agency to advocate for consumers in rate, form, and rule proceedings primarily at the Texas Department of Insurance (TDI). To accomplish its mission, the Office of Public Insurance Counsel:

- reviews rate and policy form filings, and works with TDI and insurance companies to negotiate changes advantageous to consumers;
- participates in contested rate cases and industry-wide rate hearings before the State Office of Administrative Hearings (SOAH) and the Commissioner of Insurance (Commissioner);
- appears in judicial appeals at district court and the court of appeals;
- advocates on behalf of consumers in rulemaking procedures at TDI; and
- provides information to consumers regarding insurance coverage and markets.

OPIC advocates for consumers in insurance rate, form, and rule proceedings.

Key Facts

- **Funding**. In fiscal year 2007, OPIC operated on about a $1 million budget, most of which came from the General Revenue Fund. Statutory assessments of insurers offset the agency's operating costs. Assessments collected in fiscal year 2007 totaled almost $2.2 million.
- **Staffing**. The Office of Public Insurance Counsel has 16.5 full-time equivalent positions. All OPIC employees work in Austin.
- **Rate and Form Review**. OPIC reviews and attempts to negotiate changes to rates and forms beneficial to consumers. In fiscal year 2007, OPIC reviewed 761 rate filings and took action on 32. In the same year, OPIC reviewed 321 form filings and took action on 24.
- **Contested Rate Cases and Industry-Wide Rate Hearings.** OPIC represented consumers in one contested rate case and four industry-wide hearings in fiscal year 2007.
- **Judicial Appeals**. OPIC participated in one judicial appeal of a rate case in fiscal year 2007.
- **Rulemakings**. In fiscal year 2007, OPIC reviewed 89 rule proposals and participated in a total of 16 rulemakings, through both informal and formal intervention.

◆ **Insurance Information for Consumers**. OPIC publishes several consumer publications, including a Health Maintenance Organization (HMO) report card, consumer bills of rights, underwriting guidelines, and a homeowners policy comparison tool.

The Legislature created OPIC as an independent agency in 1991.

Major Events in Agency History

1987 The Legislature established the Office of Consumer Protection as a division of the State Board of Insurance to represent consumers as a class in rate, form, and rulemaking matters for property and casualty insurance.

1991 The Legislature created the Office of Public Insurance Counsel as an independent state agency to represent Texas consumers as a class in insurance matters, and transferred the Office of Consumer Protection's functions to the new agency. OPIC's new purview also included the authority to intervene in matters involving rates, forms, and rules for additional lines of insurance.

2003 The Legislature passed a property and casualty insurance reform bill that replaced benchmark rating with a file-and-use system for personal lines, and allowed insurance companies to file policy forms for approval rather than having to use forms promulgated by TDI. The change from benchmark rate hearings and promulgated forms decreased the number of regular hearings OPIC participates in and increased the number of individual company rate and form filings OPIC reviews.

Organization

Public Counsel

The Public Counsel directs the activities of the agency, which does not have a policymaking body. The Governor appoints the Public Counsel, and the Senate confirms the two-year appointment. The Public Counsel must be licensed to practice law in Texas, must have shown dedication to protecting the rights of the public, and must be able to practice effectively in insurance proceedings. The Public Counsel also sets agency policy, hires staff, prepares the agency's budget, and approves its expenditures.

The Governor appoints the Public Counsel, who is confirmed by the Senate.

Statute requires the Public Counsel to serve on several committees and governing boards, as well as to nominate public representatives to sit on two boards. The textbox, *Public Counsel Board Representation and Nominations*, depicts these duties.

Public Counsel Board Representation and Nominations

The Public Counsel serves as a member of the following organizations:

- the Board of Directors of the Texas Certified Self-Insurer Guaranty Association;
- the Board of Directors of Texas Self-Insurance Group Guaranty Fund;
- the Technical Advisory Committee on Electronic Data Exchange; and
- the Texas Health Coverage Awareness and Education Program Task Force.

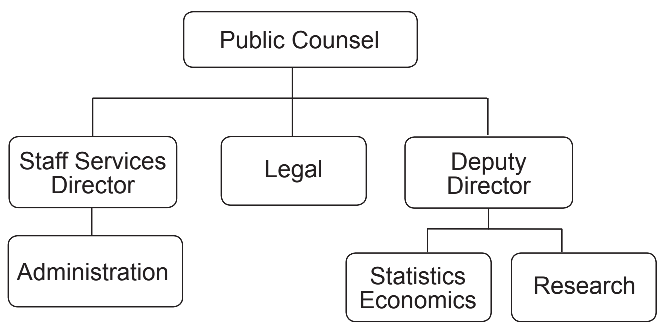
The Public Counsel nominates public representatives, who are appointed by Commissioner, to serve on the governing bodies of the following associations:

- the Texas Automobile Insurance Plan Association, the residual market for automobile insurance; and
- the Texas Windstorm Insurance Association, the residual market for windstorm insurance.

Staff

OPIC has 16.5 full-time equivalent positions. OPIC's employees include an economist, a statistician, attorneys, researchers, and administrative staff, shown in the *Office of Public Insurance Counsel Organizational Chart*. The economist reviews and analyzes rate filings, prepares factual challenges to filed rates, and provides actuarial expertise in rate hearings. OPIC also hires expert witnesses to testify in many contested rate cases. The statistician assists with rate review and analysis, and makes recommendations with regard to statistical and technical issues in proposed rules, forms, legislation, and OPIC publications.

Office of Public Insurance Counsel Organizational Chart



OPIC attorneys prepare and litigate rate cases at SOAH and before the Commissioner of Insurance (Commissioner), handle appeals to district court and the court of appeals, and review and analyze potential rule and statutory changes. Researchers review and analyze rule proposals, policy form filings, underwriting guidelines, and proposed legislation.

Appendix J compares the agency's workforce composition to the minority civilian workforce from fiscal years 2005 to 2007. While the agency has exceeded some percentages, it has experienced trouble meeting others. However, the agency has few positions in some job categories, making it difficult to meet the percentages.

Funding

Revenues

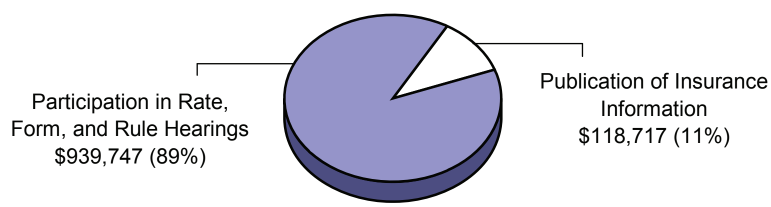
Annual assessments on insurers defray the costs of operating OPIC.

In fiscal year 2007, OPIC collected about $2.2 million, primarily from its assessment on insurers. Statute authorizes OPIC to assess insurers to defray the costs of operating the agency. Annual assessments are 5.7 cents for each insurance policy in the property and casualty; title; and life, health, and accident lines. The Comptroller of Public Accounts collects the assessments and deposits them in the General Revenue Fund. The Legislature then funds OPIC from General Revenue. In fiscal year 2007, the Legislature appropriated about $1 million for its operations. OPIC's assessment authority exceeds the funds appropriated to the agency, and the excess funds remain in the General Revenue Fund to be spent for other state purposes. OPIC also has a $48,000 interagency contract with the Texas Department of Insurance to review the Department's consumer publications.

Expenditures

In fiscal year 2007, OPIC expended $1,058,464, primarily for staff salaries. The pie chart, *OPIC Expenditures by Strategy*, depicts OPIC's expenditures for consumer advocacy and consumer education. Participation in rate, form, and rule review and intervention accounted for almost ninety percent of OPIC's expenditures in fiscal year 2007. Of these expenditures, OPIC spent $67,069 on contracted expert witnesses for rate hearings.

OPIC Expenditures by Strategy
FY 2007

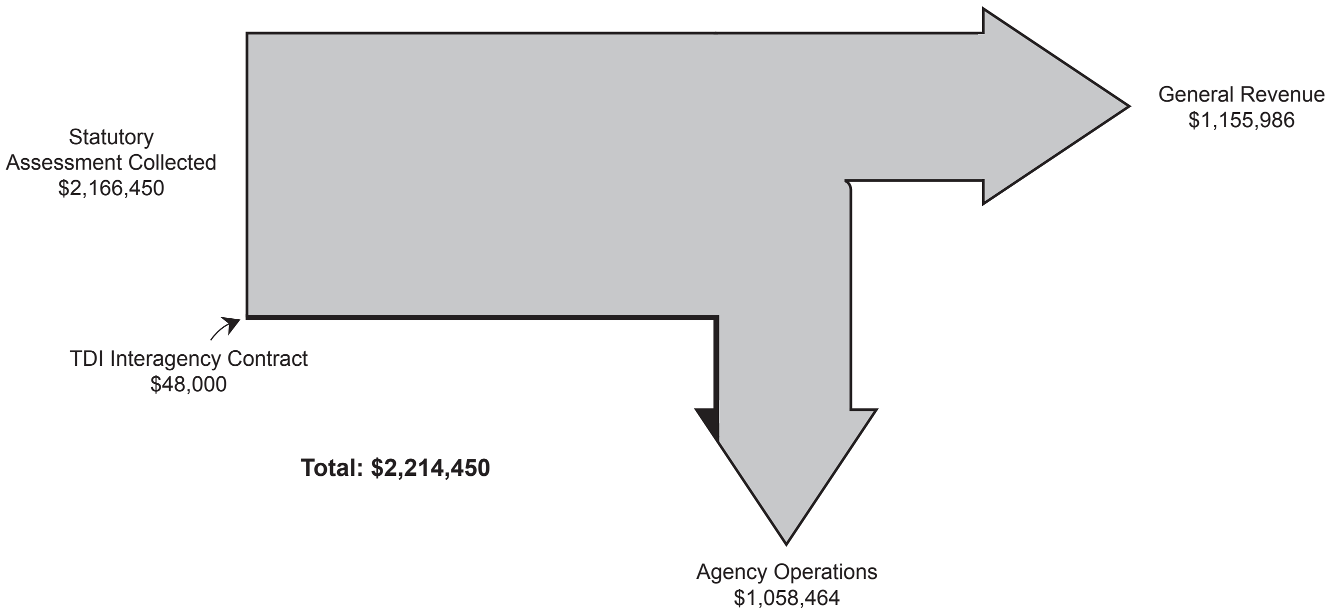


Total: $1,058,464

The chart, *Flow of OPIC Revenue and Expenditures*, depicts OPIC's revenues and expenditures for fiscal year 2007. OPIC collected more than $1 million in revenues in excess of what it costs to run the agency.

Appendix K describes OPIC's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. Generally, the agency met or exceeded statewide goals for the professional services, other services, and commodities categories.

Flow of OPIC Revenue and Expenditures
FY 2007



Agency Operations

Statute authorizes OPIC to assess the impact of insurance rates, forms, and rules on consumers and directs OPIC to advocate positions that are advantageous to a substantial number of consumers. The agency also performs a more limited consumer education function, as state law requires OPIC to develop specific reports for public education purposes.

Consumer Advocacy and Representation

To protect consumer interests, OPIC analyzes and intervenes in insurance company rate and form filings and in TDI rulemaking procedures. OPIC has the authority to review all lines of insurance, such as personal and commercial property and casualty; title; and life, health, and accident. Most recently, the agency has concentrated its efforts on homeowners and title insurance.

OPIC cannot approve or disapprove rates or policy forms. Instead, OPIC negotiates with companies and TDI to make changes to filings to ensure consumer advocacy in TDI's rate and form regulation, and may contest individual filings and participate in hearings. OPIC also represents consumer interests in TDI's rulemaking process.

Rate Review

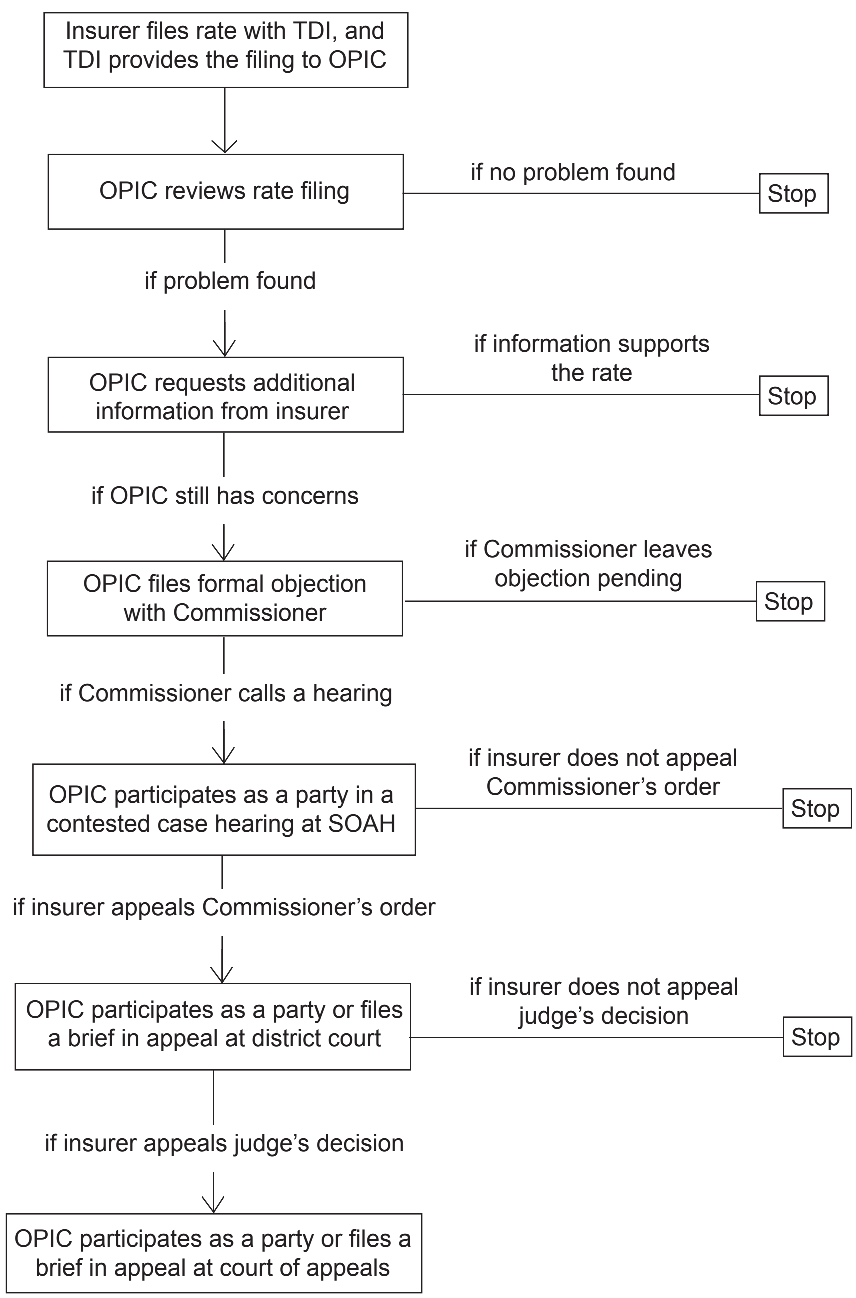
Under the file-and-use regulation for property and casualty insurance rates, representing the bulk of the cases OPIC gets involved in, individual companies file rate changes with TDI. The Commissioner of Insurance either lets a rate change go into effect, administratively disapproves it, or initiates a contested

OPIC Rate Filing Workload – FY 2007

Rate Filing Action	Number
Received and Analyzed	761
Additional Information Requested	10
Objection Filed with Commissioner	22
Objection Lodged, but No Commissioner Action Taken	11
Contested Case Hearing	1
Appeals Court Hearing	1

case hearing to disapprove the rate. As depicted in the chart, *Flow of OPIC's Rate Review and Intervention*, OPIC reviews rate filings, and requests additional information from the insurer if necessary, to determine if the information provided supports the rate. If not, the Public Counsel typically files an objection and petitions the Commissioner to disapprove the rate or call for a hearing. The chart, *OPIC Rate Filing Workload*, depicts OPIC's work on rate review for fiscal year 2007.

Flow of OPIC's Rate Review and Intervention



If the Commissioner does not disapprove the rate or call for a hearing, OPIC's objection may be left pending. In fiscal year 2007, 11 objections were left pending. If the Commissioner calls a contested case hearing, OPIC may, as a matter of right, intervene as a party before the State Office of Administrative Hearings (SOAH). In fiscal year 2007, one rate filing went to contested case hearing. Should an insurer appeal a Commissioner's rate order in district court or eventually appellate court, OPIC may act as a party or file a brief. OPIC represented consumers in one appeal in fiscal year 2007.

OPIC also represents consumers in industry-wide hearings for title insurance, and certain types of credit insurance, in which the Commissioner promulgates a rate or a presumptive rate. Similarly, OPIC participates in rate hearings for the residual markets for automobile and windstorm insurance, in which the Commissioner approves rates. In fiscal year 2007, OPIC appeared in a total of four industry-wide rate hearings.

Form Review

OPIC reviews insurance policy form and endorsement filings for inadequate coverage, inappropriate exclusions, and misleading language. As in rate review, OPIC works with TDI and the insurance company to negotiate changes in the interest of consumers. If the insurer does not modify the form to OPIC's satisfaction, OPIC may lodge an objection with the Commissioner. However, since most forms require prior approval from TDI, OPIC is usually able to coordinate with the Department to address its concerns before TDI-approval. OPIC reviewed 321 form filings and took action on 24 in fiscal year 2007. Of this number, the agency negotiated on 22 filings and formally objected to two.

OPIC has an interagency contract to review TDI publications from a consumer perspective.

Rule Review

OPIC also reviews rule proposals and works with TDI to make modifications before publication for public comment. If OPIC has concerns after TDI publishes a rule, it can file written comments or testify at a hearing on the rule. In rulemaking hearings, OPIC has the same legal status as any stakeholder group. In fiscal year 2007, OPIC reviewed 89 rule proposals and took further action on 16. Of these, OPIC worked informally on four rules, filed formal written comments on an additional four, and testified at eight rulemaking hearings at TDI.

Consumer Education

OPIC provides information to consumers about insurance coverage by publishing underwriting guidelines, consumer bills of rights, several HMO reports, and a homeowners policy comparison tool, as shown in the textbox, *OPIC Publications*. All OPIC publications are online and available in print by request. OPIC also has an interagency contract to review TDI publications from a consumer perspective.

OPIC Publications

- Comparing Texas HMOs
- Guide to Texas HMO Quality
- Consumer Bills of Rights for automobile, credit, health, and homeowners insurance
- Underwriting Guidelines for automobile, health, and homeowners insurance
- Homeowners Policy Comparison Tool

Appendices

Appendix A

Texas Windstorm Insurance Association

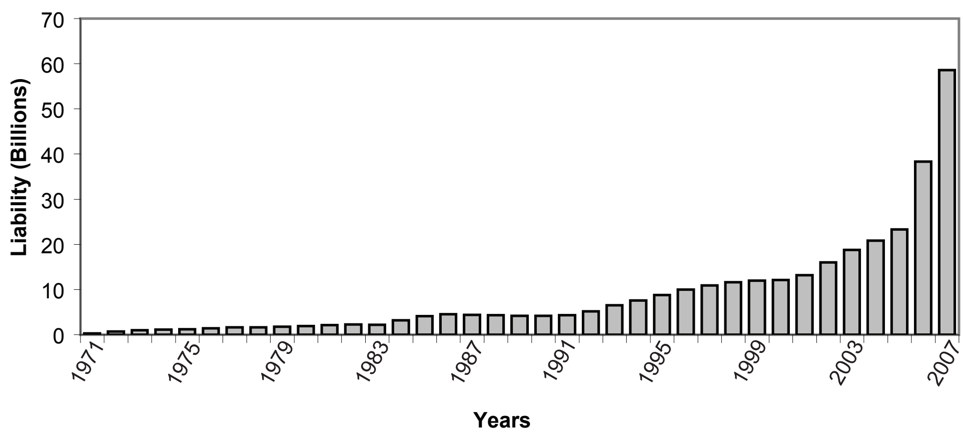
This appendix provides background information on the Texas Windstorm Insurance Association (TWIA), including information on its structure and funding, as well as a summary of previous legislative proposals to change the windstorm residual markets in Texas and other states. Since several state legislatures are currently studying windstorm insurance, Sunset staff collected and summarized legislative proposals from Texas as well as other affected states.

Structure

- TWIA is the state's windstorm and hail insurer of last resort. TWIA provides insurance coverage to residential and commercial properties that cannot obtain coverage through the voluntary market. TWIA provides coverage in the designated catastrophe area, which consists of Texas' 14 coastal counties and portions of Harris County. To become insured through the Association, property must meet windstorm building code requirements that reduce a structure's susceptibility to weather damage. As of April 2008, TWIA had approximately 220,000 policies in effect, which insured more than $65 billion dollars worth of property.

- The number of buildings insured by TWIA, and the Association's exposure, has grown rapidly in recent years. Following Hurricanes Katrina and Rita in 2005, many conventional insurers, including some of the State's largest, stopped writing windstorm coverage on the Texas Coast. Many customers face rising windstorm and hail premiums and an inability to get coverage in the voluntary market. TWIA has stepped in to fill this need, resulting in a growth in exposure well in excess of 300 percent in the last seven years. TWIA's growth has made it one of the biggest insurers on the Texas Coast, shifting the Association's role from "residual" market to the only market in some areas. The chart, *TWIA's Liability*, depicts the Association's growth.

TWIA's Liability
(1971 – 2007)



Appendix A

Funding

- Unlike traditional property and casualty insurance, which tends to have fairly predictable claims and payouts, catastrophe insurance is highly unpredictable, making it difficult to price. Storms happen at irregular intervals and the resulting damage varies greatly, depending on a storm's strength and where it makes impact. As a result, insurers cannot easily price policies to reflect the costs of future claims.

  While private market insurers are subject to certain solvency standards, TWIA does not have to meet such requirements or maintain enough reserves to cover all losses. If TWIA charged premiums that reflected the worst storm scenarios, many homeowners would be unable to afford insurance. Without this insurance, many Texans would be unable to purchase loan-backed homes.

- In the event TWIA has insufficient funds to cover losses from very large storms, the Association is shored up by several other funding mechanisms. To cover significant losses, TWIA relies on a combination of premiums, assessments on association members, a Catastrophe Reserve Trust Fund, and reinsurance. Association members include all licensed insurers who write property insurance in Texas. TWIA assesses members based on a formula that reflects the insurer's statewide sales versus sales in the catastrophe area. If TWIA had sustained excess losses following a hurricane in 2007, TWIA would have funded losses, in order, from the following sources:

  1. premiums charged for TWIA policies for the calendar year;
  2. $100 million assessment on insurance industry;
  3. Catastrophe Reserve Trust Fund (about $400 million);
  4. reinsurance ($1 billion);
  5. $200 million assessment on insurance industry; and
  6. unlimited assessment on insurance industry, which is recoverable through state tax credits.

- To date, TWIA has only assessed insurers twice, and both times at the lowest levels of assessment, as indicated in the textbox, *Past Insurer Assessments*. If a significantly more serious storm hit, TWIA could require insurers to pay the highest level assessment, which is an unlimited amount. State law authorizes insurers to deduct the value of an unlimited assessment from future state tax payments. All Texas-licensed insurers pay a business tax to the State based on the insurer's total premium volume. Companies that pay a portion of the unlimited assessment can reduce future premium tax

Past Insurer Assessments

Since its inception, TWIA has only assessed insurers twice to cover excess losses related to large storms. Both assessments were at relatively low levels.

Hurricane Alicia (1983) – TWIA assessed insurers $157 million to cover losses predominantly on Galveston Island.

Hurricane Rita (2005) – TWIA assessed insurers $100 million to cover losses in Jefferson, Chambers, and Galveston counties.

payments to the State by up to 20 percent of their unlimited assessment per year, until they recoup the full value of the unlimited assessment. However, tax credits reduce the amount of funding that goes into the State's General Revenue Fund, thus making the State the ultimate insurer for the most severe coastal windstorm losses.

- While assessments provide a funding mechanism for TWIA, large assessments could further destabilize coastal insurance markets. In the event of multiple assessments, some insurers could face financial difficulties or insolvency. Some insurers have also indicated that very large unlimited assessments could exceed what an insurer could recover through tax credits alone, further increasing the risk of insolvency. Insurer insolvencies could place existing customers at risk for payment of claims, further restricting coastal insurance markets, and potentially impacting the provision of insurance throughout the state.

Potential Liabilities

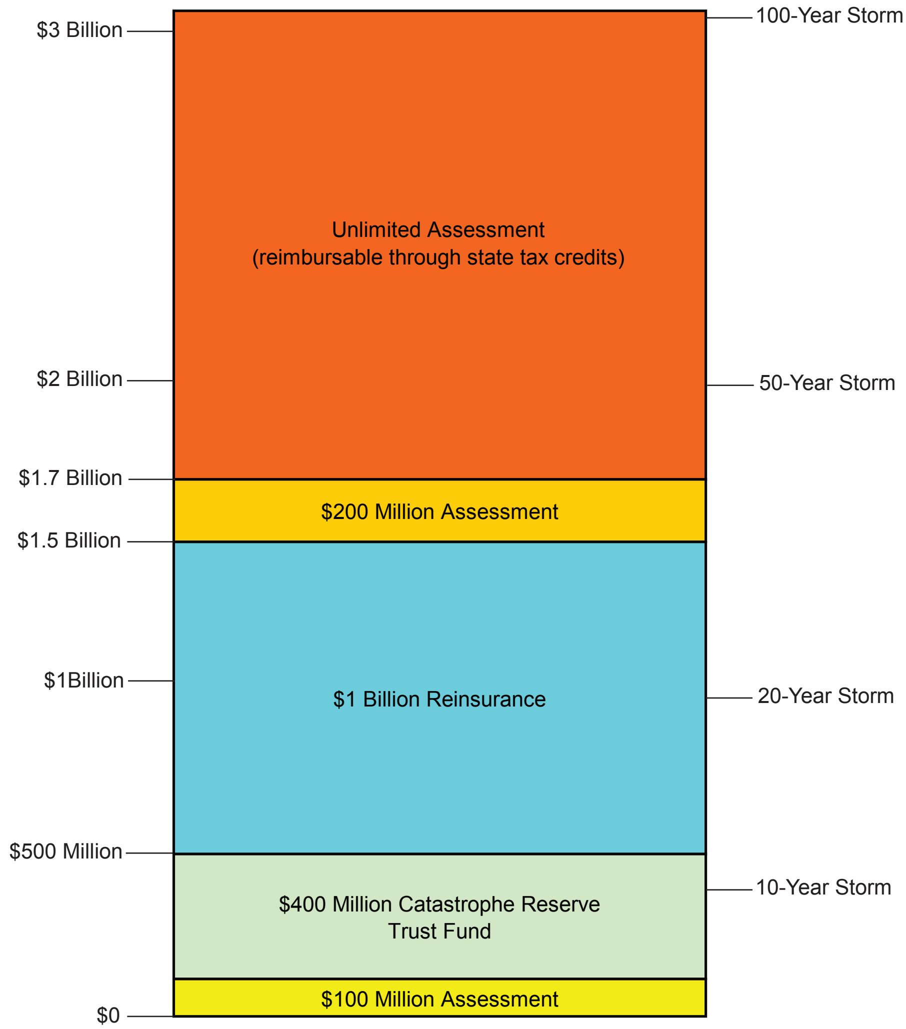
- TWIA routinely estimates the financial impacts of various size storm events, as a way to calculate possible losses in a given year. TWIA categorizes storm strength by the storm frequency. For example, a 10-year storm would be likely to a occur once every ten years, and would be less severe than a 50-year storm. The chart on the following page, *Potential Losses to TWIA of Various Size Storms*, provides estimates of TWIA's potential losses for different storm strengths, given TWIA's current exposure and funding structure.

- TWIA estimates that one 10-year storm could cause close to $500 million in losses.[1] Under the current funding structure, such a storm would exhaust premiums, the first insurer assessment, and most of the trust fund. In contrast, a 100-year storm could cause an estimated $3.2 billion in losses, exhausting all basic assessments and triggering an unlimited assessment of about $1.5 billion on members. Accordingly, insurers' future tax payments and the State's General Revenue would be reduced by a total of $1.5 billion over several years.

- If Texas had suffered a major storm in the 2007 hurricane season, TWIA assessments resulting from losses in excess of about $1.7 billion could have been credited against premium taxes, and future tax payments to General Revenue would have been reduced by the same amount. In 2006, all property and casualty insurers, including many insurers that would not be subject to an assessment from TWIA, paid a total of $490 million in premium taxes. Given the total premium tax payment, it would take assessed insurers many years to recover unlimited assessments of any significant amount.

Appendix A

Potential Losses to TWIA of Various Size Storms*
(January 2008)



* Information provided by TWIA.

Summary of Legislative Proposals to Change Windstorm Associations

Interested parties have expressed concern about TWIA's overall structure and funding mechanisms, given the tremendous growth of the Association. In Texas in 2005 and 2007, several pieces of legislation proposed significant structural changes to the Association; however, all bills failed to pass. Over the last few years other states have also routinely proposed changes to their respective state-sponsored windstorm insurers. The list below provides a summary of recent proposals to alter the structure and funding of windstorm residual markets, both in Texas and in other states.[2]

Appendix A

Funding Mechanisms

- Remove unlimited assessments on insurers and authorize the Association to issue pre- and post-event bonds.
- Permit TWIA to surcharge its policyholders and to direct all additional income into the Catastrophe Reserve Trust Fund.
- Permit insurers to surcharge policyholders to recoup unlimited assessments following a large storm. Insurers could surcharge homeowners or all policyholders and receive repayment on assessments more rapidly than if companies relied only on premium tax credits, allowing for less disruption in services and less strain on state resources.
- Permit insurers to develop windstorm reserve accounts, funded through policyholder surcharges, to defray losses resulting from windstorm writings on the Coast.
- Permit the Association to charge higher rates, enabling TWIA to pay for a greater share of claims. Unexpended premium income would be deposited into the trust fund, increasing reserves. Some states have coupled this requirement with a mandate that associations maintain reserves sufficient to cover a 50-, 100-, or 200-year storm.
- Allow the Association to divide the Coast into tiers for rating purposes, permitting the Association to charge different rates to reflect different levels of risk.
- Create a state-sponsored catastrophe reinsurance fund. The fund would either assist smaller companies in obtaining reinsurance, or act as the sole reinsurer for companies writing windstorm coverage.

Depopulate the Pool

- Develop incentive programs, such as limiting possible assessments, to increase the number of new or established companies writing windstorm insurance on the Coast and the volume of coverage the companies write.
- Offer tax credits to insurers who write in coastal areas.

Restrict Entry/Limit Benefits

- Restrict new entrants through higher building code standards.
- Require applicants to provide proof of cancellations or declinations by private market insurers.
- Require a waiting period for coverage on all applications.
- Limit coverage on all properties or certain kinds of properties.

Loss Mitigation

- Reduce possible losses by strengthening building codes and code enforcement on the Coast. This proposal could include strengthening the existing windstorm code and code enforcement, or requiring counties, and not just TWIA-insured properties, to adhere to codes.

- Change land-use policies to limit development in the most vulnerable areas.
- Require insurers to provide discounts for residents who install wind resistant features on their homes.
- Authorize the State or private entities to provide inspections to eligible homeowners to identify ways to strengthen their homes against hurricane damage.
- Offer grants or other incentives to assist homeowners who retrofit homes.
- Create a natural disaster relief fund to assist state agencies, local governments, institutions, and non-profits with disaster preparedness.

....

[1] TWIA regularly updates its estimates of losses based on its most recent exposure distribution. This appendix reflects the most recent data available as of January 2008. Specifically, storm frequencies are based on an average of AIR and Risk Management Solutions models using TWIA exposures as of March 31, 2007. The chart shows the levels of reinsurance in effect June 1, 2007 through May 31, 2008.

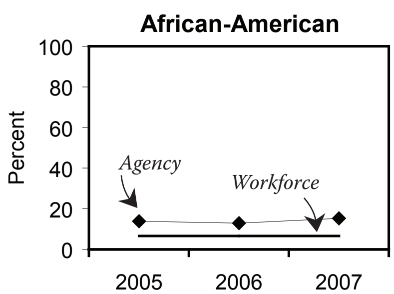
[2] The list included in this appendix is not exhaustive, but is intended to provide guidance on the wide variety of proposals aimed at changing windstorm insurance in Texas and other affected states.

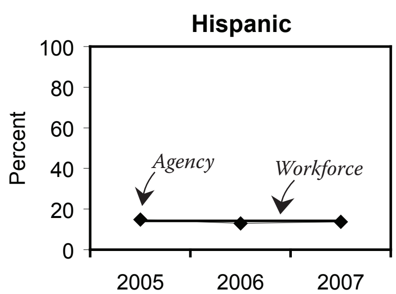
Appendix B

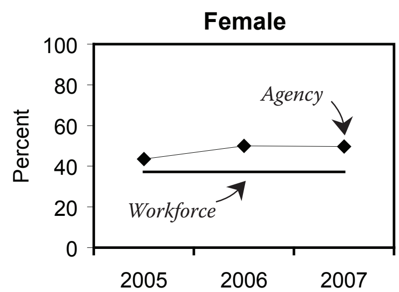
Texas Department of Insurance
Equal Employment Opportunity Statistics
2005 to 2007

In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Department of Insurance's employment of minorities and females in all applicable categories.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2005 to 2007. The agency generally exceeded the civilian workforce percentages for all categories for African-Americans, Hispanics, and females.

Administration



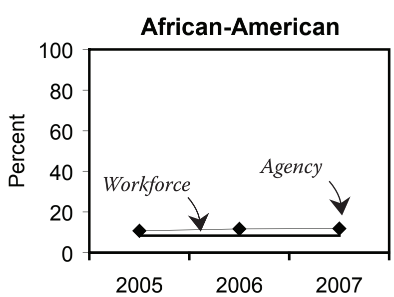


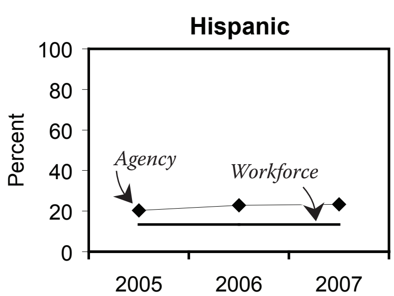


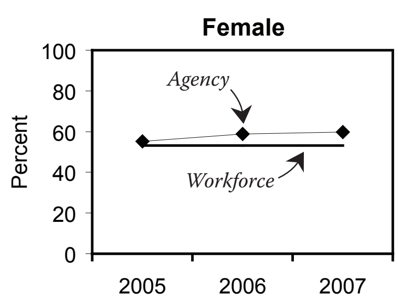
Positions: 101 138 131 | 101 138 131 | 101 138 131

The agency met or exceeded the civilian workforce percentages for African-Americans, Hispanics, and females in all three years.

Professional





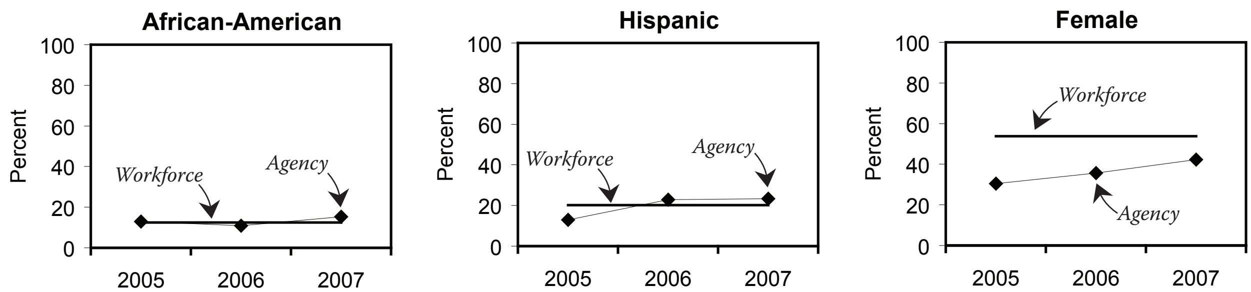


Positions: 591 959 935 | 591 959 935 | 591 959 935

The agency exceeded the civilian workforce percentages for all categories in all three years.

Appendix B

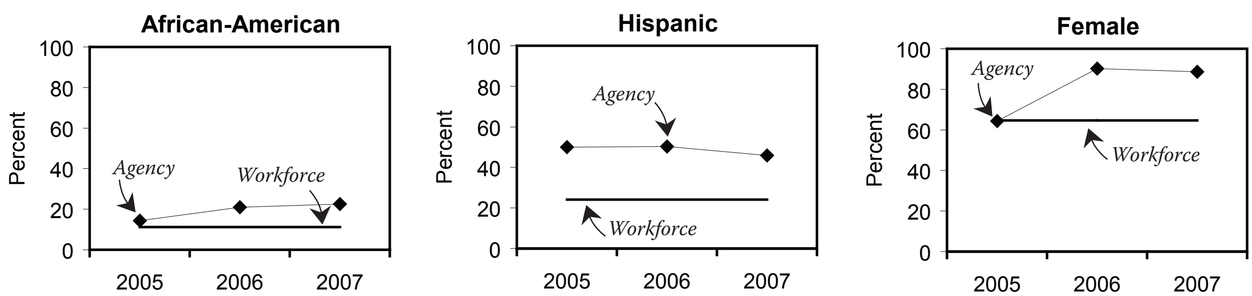
Technical



Positions: 46 101 85 | 46 101 85 | 46 101 85

The agency met the civilian workforce percentages for African-Americans in all three years and for Hispanics in the last two. The Department did not meet the civilian workforce percentages for females in recent years.

Administrative Support

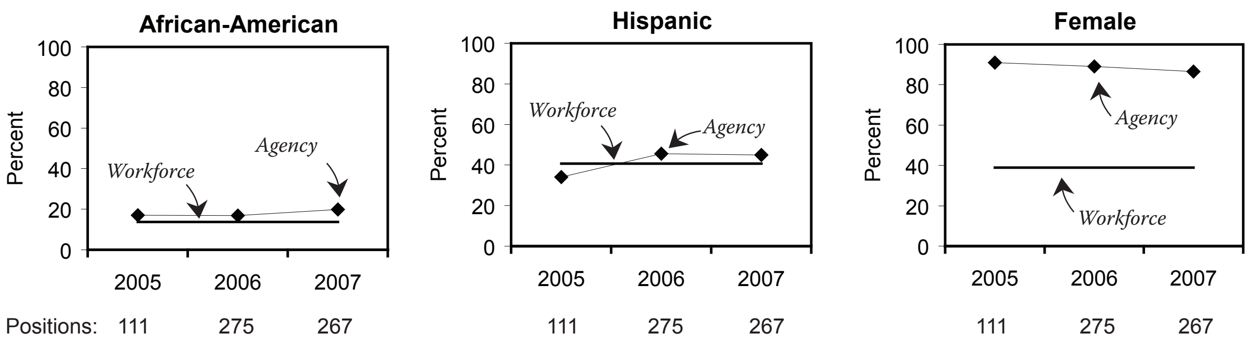


Positions: 14 163 133 | 14 163 133 | 14 163 133

The agency exceeded the civilian workforce percentages for all three categories in the last three years.

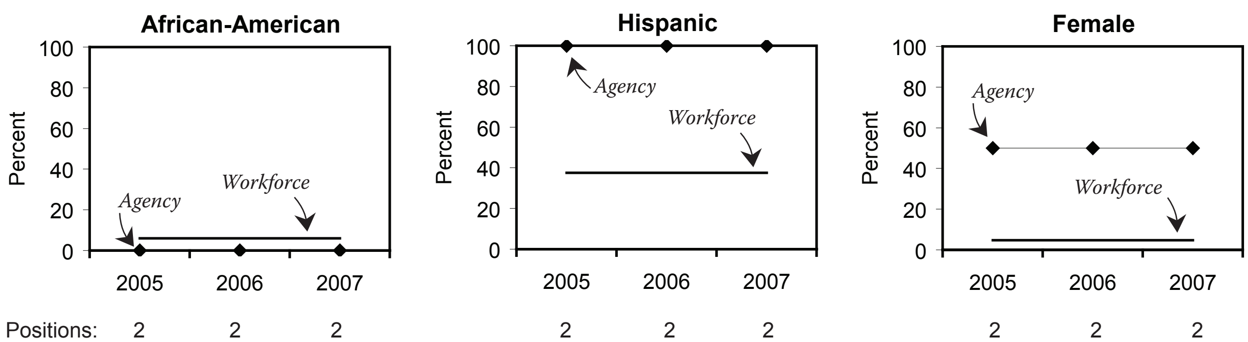
Appendix B

Service/Maintenance[3]



The agency exceeded the civilian workforce percentages for all categories in the last three fiscal years, with the exception of 2005, in which the agency did not meet the percentage for Hispanics.

Skilled Craft



The Department exceeded the civilian workforce percentages for Hispanics and females in all three years. The agency did not meet the percentage for African-Americans; however, the agency had few positions in this category, and those positions met other workforce percentages.

....

1 Texas Government Code, sec. 325.011(9)(A).

2 Texas Labor Code, sec. 21.501.

3 The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

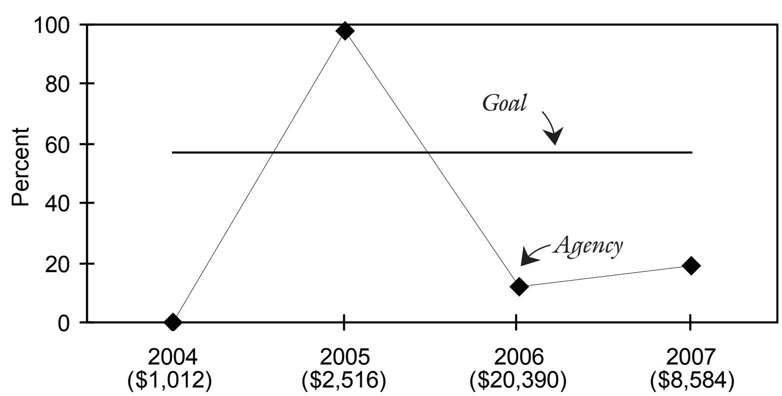
Appendix C

Texas Department of Insurance
Historically Underutilized Businesses Statistics
2004 to 2007

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

The following material shows trend information for the Texas Department of Insurance's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.[2] In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency met or exceeded the State's goals for spending for the other services and commodities categories all four years, but had difficulty meeting other goals. For the categories in which TDI had difficulty meeting spending goals, the agency had limited spending in the category or few HUBs were available for the contracts. The Department also met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program.

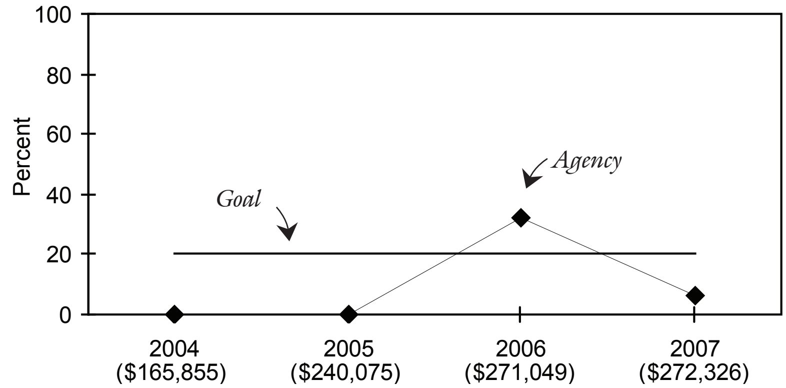
Special Trade



The agency exceeded the State's goal for spending in the special trade category in 2005, but fell short of the goal in other years.

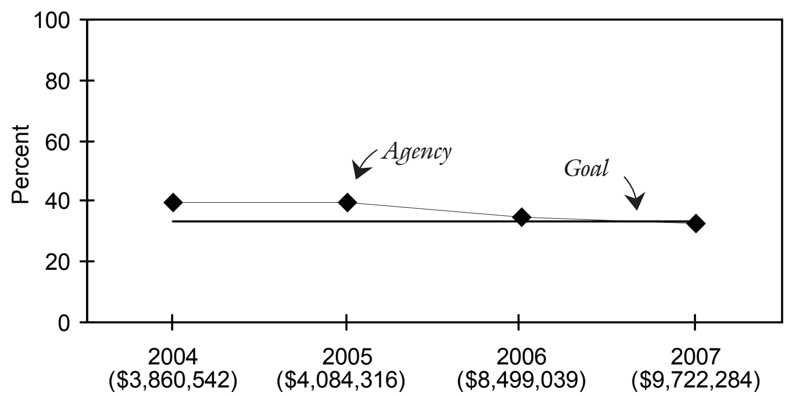
Appendix C

Professional Services



In fiscal year 2006, the agency exceeded the State's goal for spending in the professional services category, but fell below the goal in other years.

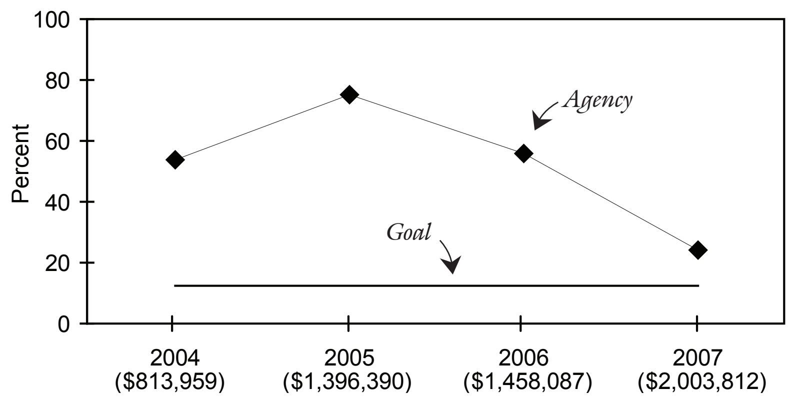
Other Services



The Department met or exceeded the State's goal for spending in the other services category all four years.

Appendix C

Commodities



The agency exceeded statewide goals for spending for commodities each fiscal year.

....

1 Texas Government Code, sec. 325.011(9)(B).

2 Texas Government Code, ch. 2161.

Appendix D

TDI Programs to Increase Availability of Health Insurance

In Texas, almost 25 percent of the population, or about 5.5 million people, do not have health insurance. Texas has the highest rate of uninsured people in the country and has held this ranking for most of the past 10 years. The Legislature has charged TDI with a number of programs that relate to increasing the availability, and in some cases, the affordability, of health insurance in Texas.

This appendix describes some of TDI's initiatives to increase availability of health insurance to the Texans who need it. Many of the programs aim to encourage insurance companies to write insurance for those who do not have health insurance. As many of Texas' uninsured are employed, but unable to get affordable health insurance through their small-employer, several of the programs are aimed at helping small-employers obtain affordable coverage for their employees.

TDI Health Insurance Availability Programs

Program	Description
Purchasing Cooperatives and Coalitions	Allows small-employers to realize savings as a larger group by allowing employers to join together to purchase more affordable health insurance.[1] Several different types of purchasing cooperatives and coalitions exist with variations in membership requirements. Cooperatives and coalitions with no more than 50 covered employees are treated as small-employers for regulatory purposes, subject to guaranteed issue and renewal provisions. Cooperatives and coalitions can also offer plans that are not subject to state-mandated benefits and may claim tax abatements for covering previously uninsured persons.
State Planning Grant Houston Pilot Project	Under a federal State Planning Grant, TDI designed a prototype benefit plan for small-employers in Harris County. The Department worked with community stakeholders and contracted with an actuarial firm to design an affordable benefit plan with key features including simplified enrollment and an average cost of $150 per employee per month. Subsequent research indicated that 88 percent of employers participating in a focus group would purchase the plan if available. While the Harris County Healthcare Alliance issued a request for proposal in February of 2007, no contract has been awarded.
Texas Health Reinsurance System	Encourages insurance companies to write policies for small-employers by addressing concerns that the company could suffer financial problems if it insured a small-employer that had a disproportionate share of policyholders with health problems.[2] The system serves as a mechanism for small-employer insurers to reinsure risks covered under small-employer health benefit plans, acting as the reinsurer and spreading its aggregate loss among its member insurers. As of April 2008, seven insurance companies participate in the system; these companies have reinsured 30 lives through the system.

Appendix D

TDI Health Insurance Availability Programs (continued)

Program	Description
Consumer Choice Plans	Gives individuals and groups more affordable health coverage options, by allowing insurers and health maintenance organizations to offer health plans that do not include certain state-mandated benefits and that may have higher deductibles and enrollee co-payments.[3] In 2006, insurers issued about 42,000 consumer choice policies. However, their impact on the uninsured population may be limited, as data compiled by TDI indicates that approximately 90 percent of enrollees had other coverage before switching to a Consumer Choice Plan.
Children's Health Benefit Plans	Allows insurers to offer health plans for children that are not subject to state mandates and that offer tax abatements.[4] To date, no insurer has offered a children's benefit plan in Texas.
Texas Health Insurance Risk Pool	Serves as a market of last resort for Texans, who due to medical conditions, cannot obtain insurance coverage.[5] Premiums paid by enrollees and assessments on health insurance companies fund the Pool. Premiums are higher than those in the commercial market because enrollees' medical expenses are higher, but statute caps the Pool's premium rate at 200 percent of the standard market rate for individual health insurance. The average monthly premium is about $500, and the Pool covers approximately 28,000 individuals.
www.TexasHealthOptions.com	Promotes and publicizes health coverage options available to Texans by providing information to help individuals and employers locate health coverage.[6] The website includes listings of companies that offer Consumer Choice Plans and listings of registered cooperatives and coalitions, and shopping information tailored to small businesses, seniors, students, and unemployed persons.

....

1 Texas Insurance Code, ch. 1501, subchapter B.

2 Texas Insurance Code, ch. 1501, subchapter G.

3 Texas Insurance Code, ch. 1507.

4 Texas Insurance Code, ch. 1502.

5 Texas Insurance Code, ch. 1506.

6 Texas Insurance Code, sec. 524.003.

Appendix E

Number and Type of Insurance Entities in Texas (as of August 31, 2007)

Type of Insurer	Texas-Based	Non-Texas Based	Total
Stock Life Insurance Companies	112	467	579
Mutual Life Insurance Companies	3	36	39
Stipulated Premium Life Insurance Companies	32	0	32
Non-Profit Life Insurance Companies	0	1	1
Stock Fire Insurance Companies	2	4	6
Mutual Fire & Casualty Insurance Companies	4	57	61
Stock Casualty Insurance Companies	9	151	160
Mexican Casualty Insurance Companies	0	12	12
Lloyd's	59	0	59
Reciprocal Exchanges	8	15	23
Fraternal Benefit Societies	8	24	32
Title Insurance Companies	5	28	33
Non-Profit Legal Service Corporations	3	0	3
Health Maintenance Organizations	50	4	54
Risk Retention Groups	2	0	2
Multiple Employer Welfare Arrangements	5	1	6
Joint Underwriting Associations	3	3	6
Workers' Compensation Self Insurance Groups	8	0	8
Continuing Care Retirement Communities	21	4	25
Local Mutual Aid Associations	3	0	3
Local Mutual Burial Associations	2	0	2
Exempt Associations	8	0	8
Non-Profit Hospital Service Corporations	2	0	2
County Mutual Fire Insurance Companies	24	0	24
Farm Mutual Fire Insurance Companies	17	0	17
Total	**501**	**1,469**	**1,970**

Appendix F

Insurance Rate Regulation

Type of Insurance	Promulgated	Prior Approval	File-and-Use	Exempted Not Filed	Informational
Property & Casualty					
Aircraft				X	
Automobile – Commercial			X		
Automobile – Personal			X		
Boiler and Machinery			X		
Commercial Casualty			X		
Credit			X		
Credit/Involuntary Unemployment			X		
Crime			X		
Excess Liability			X		
Excess Umbrella			X		
Farm Liability			X		
Farm & Ranch and Farm & Ranch Owners			X	X[1]	
Fidelity, Surety and Financial Guaranty Bonds or Insurance (Other than Criminal Court Appearance Bonds)			X		
GAP – Dual Interest (Personal)			X		
GAP – Single Interest (Commercial)			X		
General Liability			X		
Glass			X		
Home Warranty				X	
Identity Theft			X		
Inland Marine (Commercial and Personal), Rain, and Crop Hail			X	X[1]	
Involuntary Unemployment			X		
Marine				X	
Mortgage Guaranty			X		
Mortgage Guaranty Pool			X		
Multi-Peril			X		
Personal Casualty			X		
Professional Liability (Medical)			X		
Professional Liability (Other than Medical)			X	X[1]	
Property – Commercial			X	X[1]	
Property – Residential (Homeowners/Dwelling)			X	X[1]	

Appendix F

Insurance Rate Regulation

Type of Insurance	Promulgated	Prior Approval	File-and-Use	Exempted Not Filed	Informational
	Type of Rate Regulation				
Property & Casualty (continued)					
Title (Real Property)	X[2]				
Title (Personal Property)	X[2]				
Umbrella – Commercial			X		
Umbrella – Personal			X		
Workers' Compensation			X		
Property & Casualty Residual Market					
Texas Automobile Insurance Plan Association		X[3]			
Texas Medical Liability Underwriting Association			X		
Texas FAIR Plan Association		X			
Texas Windstorm Insurance Association		X[3]			
Life & Health					
Credit	X	X[4]			
Medicare Supplement		X			
Long-Term Care Insurance					X
Individual Accident & Health					X
Accident Health Small Employer – Change in rating methodology		X			
Non-profit Prepaid Legal Service Contracts					X
HMO					X
Individual Life – Stipulated Premium Companies reserved on 1956 Chamberlain Reserve Table		X			
Life & Health Residual Market					
Texas Health Insurance Risk Pool		X			

[1] Certain kinds of insurance in this line, or certain kinds of insurers providing this coverage, are exempt from rate filings.

[2] Before promulgating title rates the Commissioner must hold a public hearing. The hearing may be held in front of the Commissioner or at the State Office of Administrative Hearings.

[3] Rates are subject to approval, disapproval, or modification via a hearing in front of the Commissioner.

[4] The Department promulgates presumptive rates for most kinds of credit insurance. Select rates are subject to prior approval.

Appendix G

Insurance Form Regulation

Type of Insurance	Promulgated	Prior Approval	File-and-Use	Use-and-File	Exempted	Informational
	Type of Form Regulation					
Property & Casualty						
Aircraft					X	
Automobile – Commercial		X			X[1]	
Automobile – Personal		X			X[1]	
Boiler and Machinery		X			X[1]	
Commercial Casualty		X			X[1]	
Credit		X			X[1]	
Credit/Involuntary Unemployment		X			X[1]	
Crime		X			X[1]	
Excess Liability		X			X[1]	
Excess Umbrella		X			X[1]	
Farm Liability		X			X[1]	
Farm & Ranch and Farm & Ranch Owners		X			X[1]	
Fidelity, Surety and Financial Guaranty Bonds or Insurance (Other than Criminal Court Appearance Bonds)		X			X[1]	
GAP – Dual Interest (Personal)		X			X[1]	
GAP – Single Interest (Commercial)		X			X[1]	
General Liability		X			X[1]	
Glass		X			X[1]	
Home Warranty					X	
Identity Theft		X			X[1]	
Inland Marine (Commercial and Personal), Rain, and Crop Hail		X			X[1]	
Involuntary		X			X[1]	
Marine					X[1]	
Mortgage Guaranty			X			
Mortgage Guaranty Pool				X		
Multi-Peril		X			X[1]	
Personal Casualty		X			X[1]	
Professional Liability (Medical)		X			X[1]	
Professional Liability (Other than Medical)		X			X[1]	
Property – Commercial		X			X[1]	
Property – Residential (Homeowners/Dwelling)		X			X[1]	

Appendix G

Insurance Form Regulation

Type of Insurance	Promulgated	Prior Approval	File-and-Use	Use-and-File	Exempted	Informational
Property & Casualty (continued)						
Title – Real Property Standard (Policy/Endorsements)	X[2]					
Title – Personal Property Policies and Endorsements	X[2]					
Umbrella – Commercial		X			X[1]	
Umbrella – Personal		X			X[1]	
Workers' Compensation – Standard Policy/Endorsements	X					
Workers' Compensation – Non-Standard Endorsements		X				
Property & Casualty Residual Market						
Texas Automobile Insurance Plan Association		X				
Texas Medical Liability Underwriting Association		X				
Residential Texas FAIR Plan Association		X				
Texas Windstorm Insurance Association		X[3]				
Property & Casualty Miscellaneous						
Credit Scoring Models						X
Underwriting Guidelines – Personal Auto and Residential Property				X		
Underwriting Guidelines – Workers' Compensation				X		
Underwriting Guidelines – Other lines upon request				X		
Policy Manual Rules (Other than Rating Manual Rules)			X			

Appendix G

Insurance Form Regulation

Type of Insurance	Promulgated	Prior Approval	File-and-Use	Use-and-File	Exempted	Informational
				Type of Form Regulation		
Life & Health						
Accident or Health – Policy, Certificate, Application, Rider, Endorsement		X[4]	X[4]		X[4]	
Accident or Health Outline of Coverage		X[4]	X[4]		X[4]	
Life Insurance – Policy, Certificate, Application, Rider, Endorsement		X[4]	X[4]		X[4]	
Annuity – Contract, Certificate, Application, Rider, Endorsement					X	
Credit Insurance – Policy, Certificate, Application, Rider, Endorsement		X				
Viatical/Life Settlement Contracts and related forms		X				
Non-profit Prepaid Legal Service Contracts		X				
HMO Evidence of Coverage		X				
HMO description & map of service area		X				
HMO material change to emergency care procedures		X				
HMO contracts with physicians, delegated entities & delegated networks						X
HMO enrollee handbooks						X
HMO description of quality assurance program		X				X
HMO material change in network configuration					X	
IRO modifications to application		X				
URA modifications to application		X				
WC Network material modification of network configuration		X				
WC Network modifications to service area		X				
WC Network other amendments to application						X
Life & Health Residual Market						
Texas Health Insurance Risk Pool		X				

1 Certain kinds of insurance in this line, or certain kinds of insurers providing this coverage, are exempt from form filings.

2 Before promulgating title forms the Commissioner must hold a public hearing. The hearing may be held in front of the Commissioner or at the State Office of Administrative Hearings.

3 Forms are subject to approval, disapproval, or modification via a hearing in front of the Commissioner.

4 Insurers may choose file-and-use or prior-approval review. Some forms, while filed, are exempted from review but are subject to audit.

Appendix H

Number and Type of TDI Occupational Licensees – FY 2007

License Description	Total Licensees FY 07
Agents and Other Personnel	
County Mutual Agent	3,293
General Lines Agent – Life, Accident, Health and HMO	161,051
General Lines Agent – Property and Casualty	96,466
Home Office Salaried Employees	1,256
Insurance Service Representative	1,654
Life Agent*	2,659
Life and Health Insurance Counselor	352
Life Insurance Agent (not to Exceed $15,000)	939
Limited Lines Agent	5,355
Managing General Agent	1,136
Funeral Prearrangement Agent	2,316
Personal Lines Property and Casualty Agent*	1,632
Public Insurance Adjuster	195
Public Insurance Adjuster Trainee	3
Reinsurance Broker	1,264
Reinsurance Managers	136
Risk Manager	1,109
Surplus Lines Agent	3,401
Specialty Agent – Credit	161
Specialty Agent – Rental Car Company	3
Specialty Agent – Self Service Storage Facility	5
Specialty Agent – Travel	344
Temporary General Lines Agent – Life, Accident, and Health	791
Temporary General Lines Agent – Property and Casualty	15
Temporary General Lines Agent – Emergency Property and Casualty	1
Temporary Agent – Life*	2

Appendix H

Number and Type of TDI Occupational Licensees – FY 2007

License Description	Total Licensees FY 07
Agents and Other Personnel (continued)	
Temporary Agent – Limited Lines	1
Temporary Agent – Funeral Prearrangement	6
Temporary Agent – Personal Lines Property and Casualty*	2
Title Insurance Agent	628
Title Insurance Direct Operations Agent	17
Escrow Officer	7,058
Viatical/Life Settlement Provider	69
Viatical/Life Settlement Broker	332
Viatical/Life Settlement Provider Representative	4
Adjusters	
Adjuster – All Lines	24,448
Adjuster – Property and Casualty	42,732
Adjuster – Workers' Compensation	3,760
Adjuster – Trainee	1,064
Adjuster – Emergency	8
Agencies and Other Entities	
County Mutual Agency	27
General Lines Agency – Life, Accident, Health and HMO	5,659
General Lines Agency – Property and Casualty	6,277
Life Agency*	4
Life and Health Insurance Counselor	20
Life Insurance Agency (not to Exceed $15,000)	5
Limited Lines Agency	85
Managing General Agency	489
Funeral Prearrangement Agency	9
Personal Lines Property and Casualty Agency*	1
Public Insurance Adjuster Agency	7

Appendix H

Number and Type of TDI Occupational Licensees – FY 2007

License Description	Total Licensees FY 07
Agents and Other Entities (continued)	
Reinsurance Broker Agency	59
Reinsurance Manager Agency	14
Risk Manager Agency	14
Surplus Lines Agency	837
Specialty Agency – Credit	2,832
Specialty Agency – Rental Car Company	61
Specialty Agency – Self-Service Storage Facility	78
Specialty Agency – Telecommunications	12
Specialty Agency – Travel	468
Premium Finance Company	325
Third-Party Administrator	730
Advisory Organization	11
Total	383,772

* Senate Bill 1263, 80th Legislature, created these new license categories. As such, TDI did not have any licensees in these categories at the end of fiscal year 2007. The number in the chart reflects the number of licensees as of April 2008.

Appendix I

Number and Type of State Fire Marshal's Office Licensees – FY 2007

License Description	Total Licensees FY 07
Fire Extinguishers	
Registrations	
Extinguisher Firm	470
Extinguisher Branch	83
Extinguisher Firm – DOT	86
Licenses	
Extinguisher Type B (Portable)	907
Extinguisher Type A (Systems)	901
Extinguisher Type K (Kitchen)	151
Extinguisher Type R (Residential)	0
Extinguisher Planner's License	96
Permits	
Extinguisher Apprentice	209
Fire Alarms	
Registrations	
Alarm Firm	1,066
Alarm Branch	157
Alarm Firm – Single Station	25
Licenses	
Fire Alarm Technician	3,241
Alarm Planning Superintendent	731
Alarm Monitoring Station Technician	37
Residential Alarm Superintendent – Single Station	23
Residential Alarm Superintendent	910
Residential Alarm Technician	0

Appendix I

Number and Type of State Fire Marshal's Office Licensees – FY 2007

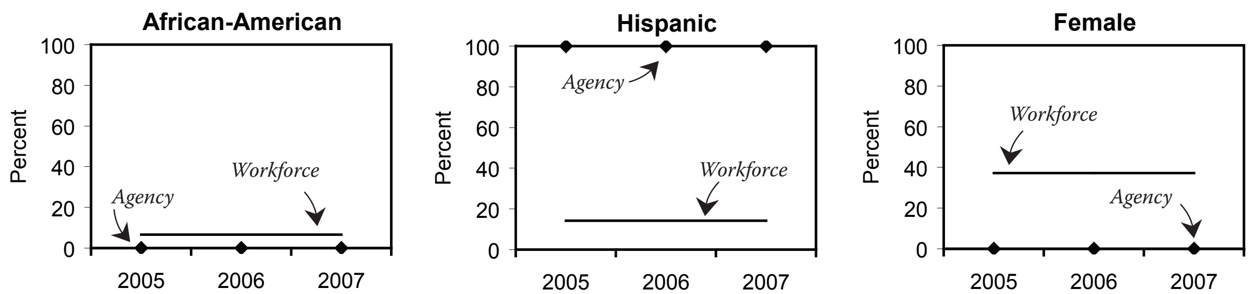
License Description	Total Licensees FY 07
Fire Sprinklers	
Registrations	
Sprinkler Firm Registration – General	265
Sprinkler Firm Registration – Underground	181
Sprinkler Firm Registration – Dwelling	1
Licenses	
Reasonable Managing Employee – General	358
Reasonable Managing Employee – General and Dwelling	34
Reasonable Managing Employee – Dwelling	0
Reasonable Managing Employee – Underground	216
Reasonable Managing Employee – General Inspector	29
Fireworks	
Firm Licenses	
Fireworks Manufacturer	2
Fireworks Distributor	45
Fireworks Jobber	3
Individual Licenses	
Pyrotechnic Operator License	465
Pyrotechnic Special Effects Operators	224
Flame Effects License	93
Permits	
Fireworks Retail Sales	4,601
Singular Public Display	610
Multiple Public Display	17
Agriculture/Industrial/Wildlife	0
Total	**16,237**

Appendix J

Office of Public Insurance Counsel
Equal Employment Opportunity Statistics
2005 to 2007

In accordance with the requirements of the Sunset Act, the following material shows trend information for the Office of Public Insurance Counsel's (OPIC) employment of minorities and females in all applicable categories.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2005 to 2007. The agency has few positions in some job categories, making it difficult to meet the percentages. Generally, the agency fell short of the percentages for African-Americans. The agency surpassed the percentages for Hispanic administration, professional, and administrative support, as well as for female administrative support and female service/maintenance.

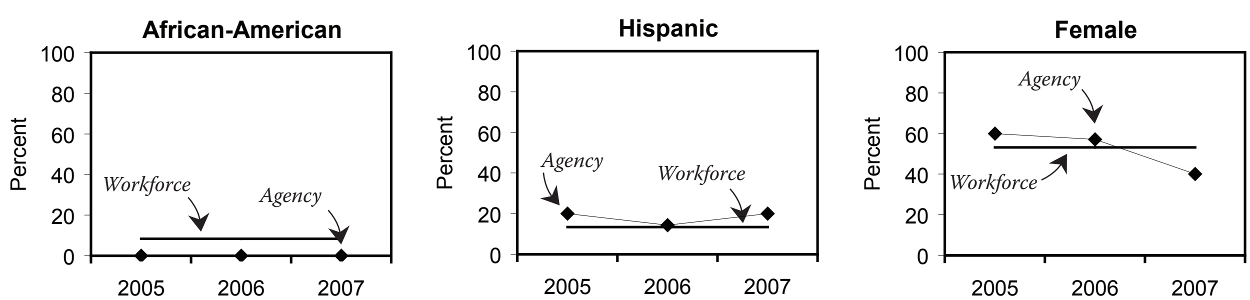
Administration



Positions: 1 1 1 | 1 1 1 | 1 1 1

The agency exceeded the percentage for Hispanics for all three years.

Professional

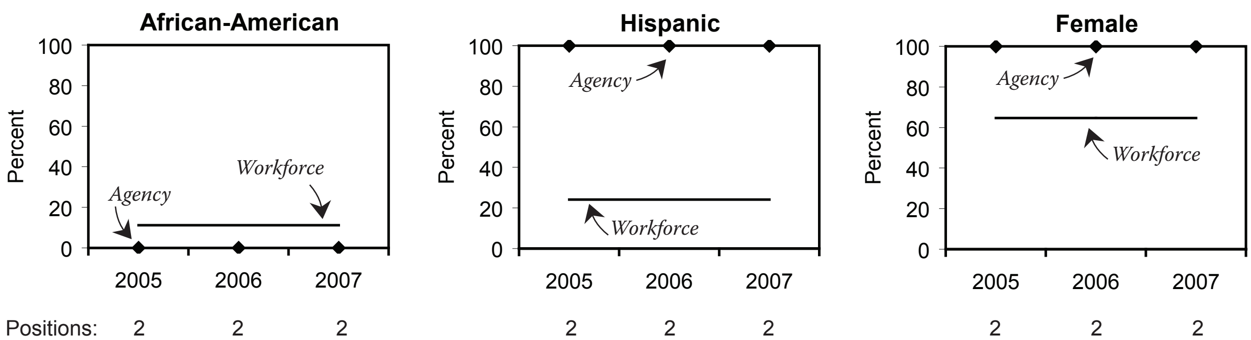


Positions: 5 7 5 | 5 7 5 | 5 7 5

The agency fell short of the percentage for African-Americans, stayed relatively close to the percentage for Hispanics, and exceeded the percentage for females in 2005 and 2006.

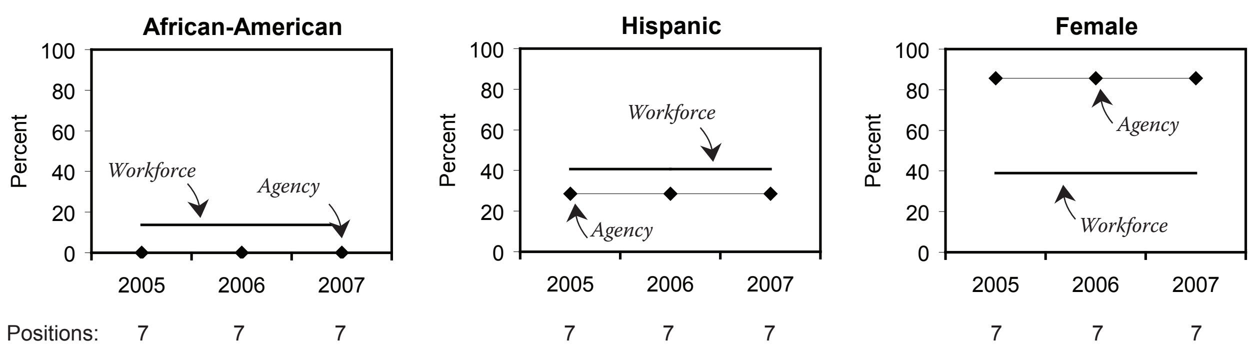
Appendix J

Administrative Support



In all three years, the agency exceeded the percentages for Hispanics and females but fell short of the percentage for African-Americans.

Service/Maintenance[3]



The agency fell short of the percentages for African-Americans and Hispanics but exceeded the percentage for females.

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[1] Texas Government Code, sec. 325.011(9)(A).

[2] Texas Labor Code, sec. 21.501.

[3] The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

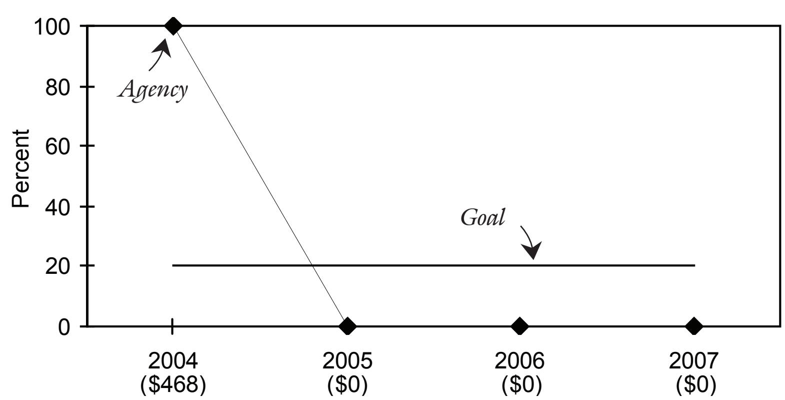
Appendix K

Office of Public Insurance Counsel
Historically Underutilized Businesses Statistics
2004 to 2007

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

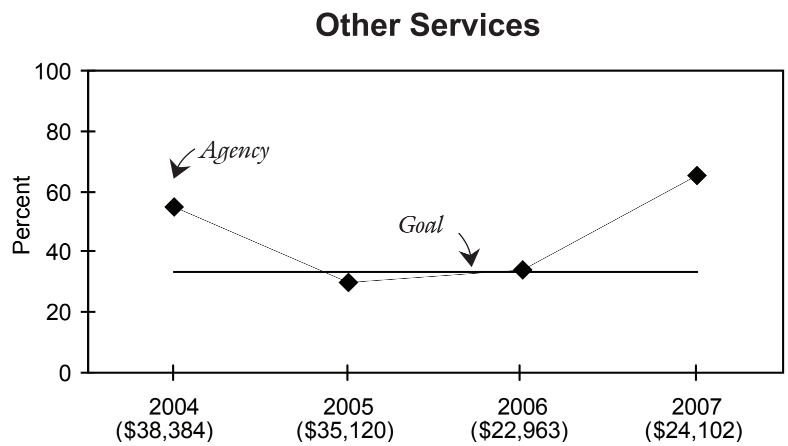
The following material shows trend information for the Office of Public Insurance Counsel's (OPIC) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.[2] In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. For the last four years, OPIC has almost met or exceeded the State's HUB purchasing goals in the commodities and other services categories. The agency also exceeded the goal for the professional services category in 2004, the last year in which OPIC had professional services expenses.

Professional Services

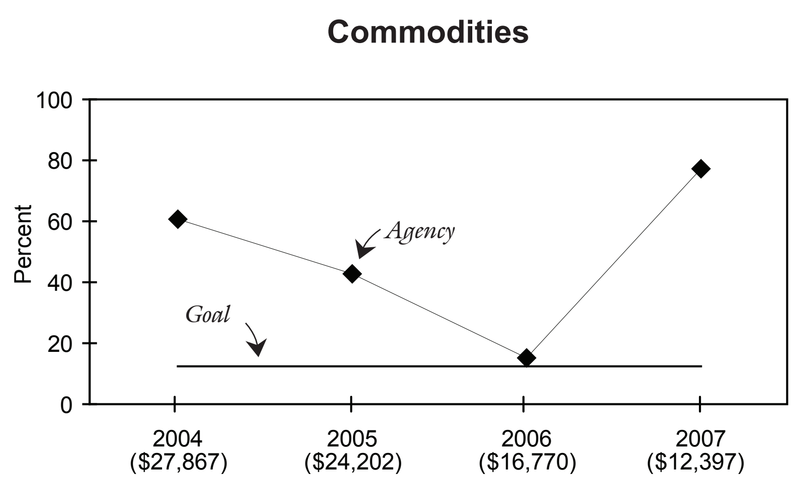


In 2004, the last year in which OPIC had professional services expenses, it exceeded the State's goal.

Appendix K



The agency almost met or exceeded the goals for this category in all four years.



The agency exceeded the goals for the commodities category in every year.

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1 Texas Government Code, sec. 325.011(9)(B).

2 Texas Government Code, ch. 2161.

Appendix L

Staff Review Activities

During the reviews of the Texas Department of Insurance and the Office of Public Insurance Counsel, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to these agencies.

- Attended several TDI focus group and advisory committee meetings, and interviewed members of the following committees: Fire Alarm Advisory Committee, Fire Extinguisher Advisory Council, Fire Sprinkler Advisory Council, Health Maintenance Organization Solvency Surveillance Committee, and Windstorm Building Code Advisory Committee.

- Interviewed staff from the Legislative Budget Board, State Auditor's Office, State Office of Risk Management, Texas Commission on Fire Protection, Texas Comptroller of Public Accounts, Texas Facilities Commission, Texas Legislative Council, Texas Windstorm Insurance Association, and the National Association of Insurance Commissioners.

- Attended meetings of the Surplus Lines Stamping Office Board, Texas Automobile Insurance Plan Association, Texas Fair Access to Insurance Requirements Plan Association, Texas Property and Casualty Insurance Guaranty Association, Texas Reinsurance System Board of Directors, and Texas Windstorm Insurance Association.

- Attended rule and open hearings at the Texas Department of Insurance, and attended administrative and rate-setting hearings at the State Office of Administrative Hearings.

- Toured the State Fire Marshal's Office's Fire Safety House, Forensic Arson Laboratory, and canine unit.

New Issues

New TDI Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

Commissioner Structure

10. Make the Commissioner of Insurance an elected position. (Senator Juan Hinojosa, Member – Sunset Advisory Commission)

11. Create a Commission of Insurance, with members appointed by the Governor, comprised of one Commissioner from each insurance division, including automobile, home, health, and workers' compensation, and three from the general population, with the power to approve plans and rates; and require the Commission to hold meetings at least quarterly. (Victor Pauly, Victoria)

General

12. Require TDI to adopt guidelines for receiving input during the rulemaking process from individuals and groups that have an interest in matters under TDI's jurisdiction, including ensuring that TDI receives input before it provides notice of the proposed rule. (Senator Rodney Ellis, Member – Texas Senate)

13. Require TDI, if the agency is unable to solicit a significant amount of input from the public or affected people early in the rulemaking process, to state in writing why it was unable to do so. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

14. For homeowners, automobile, life, medical, and workers' compensation insurance, require insurance companies to provide several policy structures with rates within a certain range. (Victor Pauly, Victoria)

Property and Casualty Insurance

Rate Regulation – P&C

15. Clarify that restitution applies forward from the time the Commissioner provides notice that the rates are excessive and does not constitute retrospective ratemaking. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

16. Eliminate hearings at the State Office of Administrative Hearings when insurance companies appeal rate disapprovals, and instead, require the hearings to be held by the Commissioner with the Public Counsel and the insurance company presenting evidence. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

17. Investigate returning to some form of prior-approval system for homeowners insurance that will bring rates down. (Senator Leticia Van de Putte, Member – Texas Senate)

18. Implement a prior-approval system with a 30- to 60-day deemer date for homeowners rates. (Senator Eddie Lucio, Jr., Member – Texas Senate)

19. Implement a prior-approval system for automobile and homeowner rates. (Senator Rodney Ellis, Member – Texas Senate; Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin)

20. Prohibit insurance companies from raising rates until such rate increases are approved by TDI. (John S. Gronsky, Houston)

21. Shift the focus of homeowners insurance rate regulation to rates that are inadequate or discriminatory by striking "excessive" from Section 2251.001(1), Texas Insurance Code. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

22. Change the reduced rate filing requirements for insurers writing more than 50 percent of their coverage for properties, which are valued at less than $100,000 and located in areas designated as underserved for residential property insurance, by increasing the insurers allowed percentage of total statewide collected premium for residential insurance policies from 2 percent to 4 percent. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)

23. Ban the use of credit scoring and other forms of data mining in determining insurance policyholder's rates. (Senator Rodney Ellis, Member – Texas Senate)

24. Ban the use of credit scoring in determining insurance rates. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin)

25. Prohibit homeowners insurers from considering a Texan's ZIP code when determining how much that person's premium will be. (Senator Juan Hinojosa, Member – Sunset Advisory Commission)

26. Limit the use of rating territories to a maximum 15-percent rating variance per county. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin)

27. Limit the use of rating categories in automobile insurance to give the most weight to driving record, miles driven, and years of driving experience. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin)

Forms and Form Regulation – P&C

28. Require at least one or two standardized homeowners' policies, and require each insurer to offer a basic policy form and allow the consumer to add additional coverage. (Senator Eddie Lucio, Jr., Member – Texas Senate)

29. Require TDI to standardize policies and create a requirement that aberrations to that standard policy must be conspicuous so that consumers are better able to understand what their policies cover. Create an internet-based comparison tool, with easy to read charts showing which policies contain various types of coverage. (Senator Rodney Ellis, Member – Texas Senate)

30. Require insurance companies to offer standard forms that offer uniform coverage. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin)

31. Require standard forms for automobile policies. (Lynn Patton, Longview)

32. Implement a true file-and-use system for regulating policy forms by striking "and approved" in Section 2301.006(a), Texas Insurance Code; repealing Subsections 2301.006(b), (c), (d), and (e), Texas Insurance Code; striking "disapprove a form filed under Section 2301.006 or" in Section 2301.007(a), Texas Insurance Code; striking "disapproves the form or" in Section 2301.007(e); and repealing Section 2301.008, Texas Insurance Code. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

    Staff Comment: This recommendation would remove the requirement that the Commissioner approve forms, and would eliminate all references to form approval or disapproval processes. This recommendation would also eliminate the Commissioner's authority to adopt standard forms.

33. Focus policy form regulation on the wording and clarity of an insurance form and not on the content of a form by deleting Subsection 2301.007(a)(2), Texas Insurance Code, and by adding a new Section 2301.007(f) that reads, "Notwithstanding any other provision of this code, the commissioner may not withdraw approval of a form under 2301.006 because of the coverages offered under the form, except for those coverages for personal automobile insurance listed in Subchapters C and D, Chapter 1952. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

34. Require insurance contracts to be written in language that the ordinary consumer can understand. (Mike Ramsey, Attorney – Texas Trial Lawyers Association, Austin)

35. Require TDI to establish minimum standards for insurance contracts. (Mike Ramsey, Attorney – Texas Trial Lawyers Association, Austin)

36. Address the numerous ways that insurance companies stall or effectively deny coverage that is contained in insurance contracts. (Mike Ramsey, Attorney – Texas Trial Lawyers Association, Austin)

37. Require insurance companies offering automobile insurance to provide for handicap modified rental cars as necessary when paying out claims. (Kennith King – Texas Watch, Austin)

38. Require insurance companies offering automobile insurance to offer the option to add full family coverage to a policy. (Lee Beall – Texas Watch, Austin)

Miscellaneous – P&C

39. Require TDI to penalize insurance companies that pull out of the state with a five-year ban on re-entry. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin)

40. Abolish state law that allows only county mutual companies to surcharge for moving violations. (Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin)

Against New Issue 40

Gary Dobbie, President – Consumers County Mutual Insurance Company, Dallas

Jack Fulton, Vice President – Republic Program Management, Dallas

41. Repeal state law that prohibits former "benchmark" regulated insurers from using information from a person's driving record to calculate the premium for an automobile insurance policy. (Donald L. Hanson, Jr., Counsel – Geico, Washington, D.C.)

    Staff comment: New Issues 40 and 41 are very similar in intent, and only differ in the wording of the issue.

42. Abolish the requirement for the Texas Liability Closed Claims Report, or, alternatively, direct TDI to discontinue the reconciliation of closed claim report data to NAIC financial reports. (Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin)

43. Eliminate the Texas Liability Closed Claims Report. (Jay Thompson, Counsel – Association of Fire and Casualty Companies of Texas and the Insurance Council of Texas, Austin)

44. Reduce the size and budget of TDI's Property and Casualty – Personal and Commercial Lines Division by 50 percent. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

45. Reduce the size and budget of TDI's Property and Casualty – Actuarial Division by 25 percent. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

46. Adopt the American Society of Home Inspectors Home Insurance Survey in lieu of the current TDI Voluntary Inspection Program – 2 inspection protocol. (Brion Grant, President – American Society of Home Inspectors, Des Plaines)

Texas Windstorm Insurance Association

47. Expand funding sources available to TWIA to include pre-event and post-event bonding authority, requiring the bonds to be funded by policyholder surcharges. (Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance)

48. Require the Sunset Commission members to investigate whether or not private insurance companies are red-lining coastal policies for wind and, in an effort to shield themselves from risk, deliberately refusing to write wind policies in the coastal counties. (Senator Mike Jackson, Member – Texas Senate)

49. Penalize insurers who stop writing on the coast by prohibiting their ability to write in other areas of Texas. (Senator Eddie Lucio, Jr., Member – Texas Senate)

50. Permit Texas insurers to receive full credit in the TWIA assessment formula for policies written in the catastrophe area, allowing insurers to voluntarily reduce exposure to TWIA assessments. (Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston)

51. Require Texas insurers to bear substantial assessment to pay TWIA claims responsibility to the extent of their decisions to discriminate unfairly, underwriting geographically in the catastrophe area. (Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston)

52. Prohibit insurers from classifying TWIA assessments as operating expenses, limiting insurers' ability to recover losses by increasing inland rates. (Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston)

53. Require TWIA to recover from coastal policyholders any funding for catastrophic losses derived from state tax credits, or public securities paid by inland policyholders. (Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston)

54. Require funding to pay catastrophic event TWIA claims to be timed and measured to be incurred only after the event, and only the amount necessary. (Lee Otis Zapp, Jr., President – Galveston Windstorm Action Committee, Inc., Galveston)

55. Amend Texas Insurance Code to reflect the language in the TDI Rule stating TWIA's purpose is to be the state's windstorm-insurance provider of last resort. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

56. Remove the statutory mandate that TWIA charge uniform rates for all risks in a class, and authorize TWIA to establish and use rating territories within their area of coverage, allowing TWIA to differentiate rates based upon actual risk. (Joe Woods, Assistant Vice President and Regional Manager – Property and Casualty Insurers of America, Austin; (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

57. Prohibit TDI from adopting Texas Revisions or any other revisions to the International Residential Code, or its appendices, as part of the windstorm building standard. (Ned Muñoz, Director of Regulatory Affairs and Ron Rohrbacher, Director of Construction – Texas Association of Builders, Austin)

Health Insurance

Rate, Premium, and Form Regulation – Health Insurance

58. Prevent small-employers from getting priced out of the market based on the age or health status of employees by limiting the overall health insurance premium variability in the small-employer market to no more than 2:1. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

59. Authorize TDI to ensure that health insurance rates charged to consumers are fair. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

60. Require health insurers to file information with TDI to justify rate increases, and authorize TDI to reject rates that are excessive, inadequate, or discriminatory. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

61. Broaden TDI's authority to determine whether health insurance premium rates quoted to employers are fair and accurate. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

62. Regulate health insurance the same way the TDI already regulates homeowners insurance and give TDI the ability to block excess rates. (Christopher Whitaker, Organizer – Texas Public Interest Research Group, Austin)

63. Aggressively regulate health insurance providers to bring down insurance rates, and mandate that insurance companies stop denying coverage or claims based on reasons consumers cannot understand. (Glenn W. Smith, Co-Director – Texas Progressive Council, Austin)

64. Authorize the Commissioner of Insurance to review and approve the prices and contents of health insurance products before they are implemented to ensure that rates and actuarially sound and not excessive, and that insurers and their products do not discriminate. (Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)

65. Authorize TDI to review and approve health insurance rates. (Bee Moorhead, Executive Director – Texas Impact, Austin)

66. Authorize TDI to regulate health care insurance rates. (Group C – See page 187)

67. Authorize TDI to block insurance companies from making excess rate increases. (Group B – See page 183)

68. Set minimum medical loss ratios to ensure the prudent use of health insurance premiums. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

69. Institute rules that protect consumers who have pre-existing conditions and prohibit insurance companies from denying coverage based on pre-existing conditions. (Christopher Whitaker, Organizer – Texas Public Interest Research Group, Austin)

70. Prohibit insurance companies from denying people insurance based on previous conditions. (Group B – See page 183)

71. Require health insurance companies to insure their customers for the appropriate health care services they require and not force healthcare providers to go the cheaper route. (Roberto Silva, Fort Worth)

72. Subject insurers to independent forensic audits designed to catch cooking the books, overstating loss history, and playing games with reserves. (Leo Wadley, Fort Worth)

73. Delete statute governing minimum plan benefits. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

74. Improve the review process of new products with electronic filings, quicker approval time, dedicated staff to resolve issues with filings, streamlined process, and electronic notice of deficiencies and approval. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

75. Prohibit the sale of health insurance policies governed by the laws of another state. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

Increasing Affordability and Availability

76. Give TDI authority to review and approve or deny rates in the small group and individual health insurance market. (Senator Rodney Ellis, Member – Texas Senate)

77. Include sole proprietors in the group defined as small businesses, allowing the access to group health insurance, instead of being restricted to individual markets. (Senator Rodney Ellis, Member – Texas Senate)

78. Maintain and expand tax deductions for small businesses that provide health insurance for the first time. (Senator Rodney Ellis, Member – Texas Senate)

79. Restructure the Texas Health Reinsurance System to promote pooling in the small group and individual health insurance markets. (Senator Rodney Ellis, Member – Texas Senate)

80. Give a discount on the premium tax paid for policies purchased through a health purchasing cooperative or the Texas Health Insurance Pool. (Senator Rodney Ellis, Member – Texas Senate)

81. Create a Health Insurance Innovations Program within the Texas Department of Insurance with the goal of expanding access to affordable health insurance. The program would:

    - research, develop, and evaluate options for increasing the number of Texans with health insurance;
    - collect and analyze data on the insured and uninsured populations in Texas as necessary to develop programs for expanding coverage;
    - research and evaluate other states' activities as appropriate to determine their potential for application in Texas; and
    - monitor and evaluate the status of the existing health insurance market to determine whether Texans have access to a variety of affordable products that provide adequate health care coverage. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

82. Authorize TDI to adopt rules as necessary to implement its new duties as laid out above. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

83. Require TDI to submit a report to the Texas Legislature no later than September 1 of every even number year. The report must include:

    - a summary of the research and analysis conducted, significant findings, and recommendations for strategies designed to expand access to affordable health insurance;

- a current overview of the group and individual health insurance market, significant activities and market changes since the prior report, and information on factors that the Department determines may affect the availability and affordability of coverage; and

- information on the availability and unavailability of data that is critical to the research process, with recommendations for additional data collection options for the Legislature to consider if appropriate. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

84. Create a division within TDI dedicated to expanding health insurance coverage by providing education and assistance to individual employers and Texans seeking to get or keep health insurance; developing strategies and policies to expand coverage; and including options for expanding health insurance coverage in its biennial report to the Legislature. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

85. Create a separate division at TDI devoted to health insurance. (Bruce Bower – Texas Legal Services Center, Austin)

86. Provide TDI with the strategic direction and authority to create mechanisms to help Texans have access to quality, affordable health insurance products that are profitable to insurers by establishing a new health insurance division within TDI, called the Market Innovations Center, to provide information to individuals and small businesses and work with the Legislature, insurers, and insurance stakeholders to develop programs to increase the number of Texans with health insurance. (Bee Moorhead, Executive Director – Texas Impact, Austin)

87. Create a division at TDI to provide assistance to individual consumers and small businesses in understanding the health insurance market and locating health insurance options for coverage. (Karen Love, Executive Director – Harris County Healthcare Alliance, Houston)

88. Create a division within TDI that assists small-business owners and individuals who are seeking health insurance, including helping small-businesses, either as first-time purchasers of health insurance or upon renewal of coverage, to ascertain whether the premium quoted or offered is fair in light of the coverage actually offered. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

89. Direct TDI to focus and address market imperfections that allow Texas to lead the country in the rate and number of uninsured residents, rates of employer-sponsored insurance, and coverage under public programs. (Karen Love, Executive Director – Harris County Healthcare Alliance, Houston)

90. Provide TDI strategic guidance and authority to create mechanisms for promoting and encouraging more Texans to purchase health insurance. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

91. Create a separate division of health insurance at TDI with clear directives. (Lanetta Cooper, Attorney – Texas Legal Services Center, Austin)

92. Expand the Health Coverage Awareness and Education Program to allow TDI to provide technical assistance and information to small employers and individuals who are attempting to gain health insurance coverage; and authorize TDI to produce and distribute printed materials and conduct health coverage fairs or other types of community events that would provide the public with information about health coverage options. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

93. Consider reforming the small-employer insurance market by creating subsidy programs for low-income employees; changing the design of benefit plans; requiring modified community rating for small-employer plans; modifying the reinsurance system; or publishing a small-employer rate guide. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

94. Charge TDI with overseeing the marketing and administrative practices of insurance companies and agents, and authorize TDI to take action against companies and agents that do not make a concerted effort to provide coverage to small employers and individuals. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

95. Guarantee health care to all Texans and create a statewide healthy living education initiative that helps all Texans live healthier lives. (Glenn W. Smith, Co-Director – Texas Progressive Council, Austin)

96. Direct TDI to implement health insurance programs and public-private partnerships based on best practices in expanding coverage. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

97. Task TDI with helping to provide uninsured coverage and exploring public-private and nonprofit partnerships to provide health care. (Miryam Bujanda, Manager, Public Policy and Advocacy – Methodist Healthcare Ministries, San Antonio)

98. Direct TDI to implement health insurance programs and public-private partnerships based on best practices in expanding coverage. (Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

Texas Health Insurance Risk Pool

99. Consider expanding access to the Health Insurance Risk Pool. (Senator Leticia Van de Putte, Member – Texas Senate)

100. Decrease monthly premium rates in the Texas Health Insurance Risk Pool. (Kristine P. Weaver, Regional Government Relations Director, East Texas – American Cancer Society)

101. Eliminate or reduce the 12-month pre-existing exclusion period for the Texas Health Insurance Risk Pool. (Kristine P. Weaver, Regional Government Relations Director, East Texas – American Cancer Society)

102. Increase the lifetime maximum benefit amount for the Texas Health Insurance Risk Pool. (Kristine P. Weaver, Regional Government Relations Director, East Texas – American Cancer Society)

103. Increase access through the Texas Health Insurance Risk Pool by removing barriers such as expensive premium costs and the lengthy preexisting condition exclusion. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

104. Modify caps on premiums and state subsidies for low-income individuals in the Texas Health Insurance Risk Pool. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

105. Reduce the cap on premiums in the Texas Health Insurance Risk Pool and subsidize pool premiums for low- and middle-income individuals. (Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)

Preferred Provider Organizations and Third-Party Administrators

106. Prohibit the sale of a contracted rate without a contract that conforms to state law. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

107. Require PPOs, repricers, resellers, brokers, and other entities to identify the payers who have access to a contracted rate. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

108. Permit physicians to terminate PPO contracts following the inclusion of additional payers. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

109. Prohibit PPOs from requiring physicians to take all products. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

110. Prohibit the disclosure and transfer of the contracted fee with more than one line of business. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

111. Limit the assignment of PPO contracted rates. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

112. Permit physicians to opt out of a particular PPO product. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

113. Require that a contract between a physician and a PPO contain the fees and claims processing policies for each line of business covered by the contract. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

114. Apply prompt payment timelines to PPO agreements. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

115. Permit the imposition of administrative penalties for violations of PPO contracting laws. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

116. Require insurers, PPOs, and TPAs to identify the specific payers who have access to a contractually discounted rate. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

117. Apply current prompt payment and penalty provisions to underpayments resulting from the inappropriate application of a discounted rate. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

118. Allow a private cause of action by consumers and health care providers against an insurer, PPO, or TPA for violations of the statutory prohibitions, and require that attorney fees be awarded if a consumer of health care provider prevails in the lawsuit. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

119. Amend state law related to third-party administrators to address timely payment of claims, improper discounting of claims, public reporting and disclosure of third-party administrator data, and issuance of identification cards by third-party administrators. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

Oversight of Health Insurers and Plans

120. Require that insurers file all reports electronically; increase coordination within the agency of data collection requests and due dates; eliminate data collection that is no longer needed; and expand response time to TDI inquiries in cases where there is no potential harm to the insured. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

121. Authorize health plans to provide all required documents to consumers electronically unless the insurer requests written information. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

122. Eliminate the requirement that health plans operating in Texas, with corporate offices outside the state, maintain books and records in Texas, providing they are readily and electronically accessible by TDI. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

123. Eliminate the state verification requirement for legal holidays and weekends. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

124. Amend state law to provide that health plans may require electronic communication between health plans and their contracted providers. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

125. Amend state law to allow health plans to notify providers of opportunities to participate in networks through insurer web sites rather than the current requirement of publishing an annual notice in newspapers. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

126. Limit penalty payments to providers to the state's usury ceiling for commercial transactions, currently subject to a maximum of 28% interest per annum, as specified by the Texas Finance Code, section 303.009(c). Require that any penalty amount in excess of the state commercial usury cap would be paid into a fund to assist low-income Texans in obtaining coverage through the Texas Health Insurance Risk Pool. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

127. Amend state law to allow direct reimbursement to patients who receive medical services from an out-of-network provider. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

128. Increase enforcement of healthcare fraud and abuse cases by the appropriate state agency; amend the State's Submission of Clean Claims Act to exempt from penalty health plans who have made a report to TDI for suspected fraud; and develop consumer protections similar to the State's Workers' Compensation System to require disclosure of financial interest between a physician and health care facility and prohibit the direct solicitation of patients. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

Oversight of Healthcare Providers

129. Authorize TDI to compel data from hospitals and physicians through the use of data calls. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

130. Authorize TDI to accept and track complaints related to physician and hospital billing practices. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

131. Direct TDI to post complaint information related to physician and hospital billing practices on its websites. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

132. Amend state law to provide TDI with the authority to accept and track complaints related to physician and hospital billing practices; direct TDI to post complaint information on the agency's web site; and provide TDI with the authority to compel data from hospitals and physicians through the use of data calls. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

133. Eliminate the waiver that allows providers to avoid state law requiring electronic submission of claims to insurers. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

Miscellaneous – Health Insurance

134. Make the provider ombudsman position a statutorily required appointment. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

135. Statutorily require the provider ombudsman position and ensure that it receives sufficient funding to fulfill its objectives. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

136. Strengthen TDI's enforcement authority to ensure that insurers do not use their standing in the market to coerce physicians into contracts or products that are not in the best interests

of the physicians or the patients they serve. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

137. Strengthen TDI's authority to review proposed health insurance company mergers and acquisitions, ensuring that concentration of market power among insurers does not harm consumers and physicians. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

138. Provide TDI additional authority to review data mining companies that supply information to insurers, along with the authority to regulate how health insurers utilize the services of data mining companies. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

139. Authorize TDI to regulate tiered networks, focusing on the accuracy of data used, how the data are applied to the tiered network composition, and the impact to consumer access and out-of-pocket cost; and authorize the imposition of administrative penalties on health plans for violations of the new provisions. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

140. Charge TDI with overseeing economic profiling to ensure that insurers and PPOs are using accurate data and analysis that is transparent to health care providers and consumers; create an appeals mechanism if a provider disagrees with the accuracy, appropriateness, or process used to establish economic profiling; and authorize TDI to take action against an insurer or PPO that has established an unreasonable economic profiling process to credential providers. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

141. Regulate quality assessment mechanisms by requiring preferred provider benefit plans and PPOs to base their quality assessments on accurate data, to ensure that their standards are consistent with standards adopted by the National Quality Forum or Hospital Quality Alliance, and to have a process for sharing quality data with participating providers; providing participating providers with an opportunity to review and provide comment on data before the data is used or shared; creating an appeals mechanism if the provider disagrees with the data used or quality assessment made; and authorizing TDI to review the reasonableness of insurers' or PPOs' quality assessment processes and to take enforcement action if necessary. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

142. Amend the "prompt payment" law to prohibit insurers or related entities from requiring enrollees to pay increased coinsurance amounts based on the claim and penalty amounts. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

143. Require additional information on health insurance cards, including sufficient detail to determine what type of plan and network the individual is enrolled in, and what entity will process claims made under the plan. (John M. Hawkins, Senior Vice President, Advocacy and Government Relations – Texas Hospital Association, Austin)

144. Prohibit insurance companies from limiting out-of-network benefits, including the practice of "de-listing" in-network physicians who make out-of-network referrals. (John Moragne, Physician – Patient Choice Coalition of Texas, Sugar Land)

Maintenance Taxes

145. Increase transparency of maintenance tax funding for other state agencies that are not directly related to costs associated with insurance regulation. (Fred C. Bosse, Vice President, Southwest Region – American Insurance Association, Austin)

146. Ensure that funds collected through the maintenance tax are spent for their designated purpose. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

147. Require that maintenance taxes paid by the industry be used only to regulate the industry and not appropriated elsewhere. (Bill Hammond, President – Texas Association of Business, Austin; Beaman Floyd, Executive Director – Texas Coalition for Affordable Insurance Solutions, Austin)

State Fire Marshal's Office

148. Adopt a statewide fire code for areas that do not have an adopted fire code. (Russell Sander, Fire Chief – Missouri City Fire and Rescue Services, Missouri City)

Motor Vehicle Repair

149. Create an advisory board between insurance companies, motor vehicle body shops, and citizens to address loopholes in the law that allow insurance companies to steer customers to certain shops. (Larry Cernosek – Cernosek Wrecker/Deer Park Paint & Body, Pasadena)

150. Base labor rates on surveys of body shops. (Larry Cernosek – Cernosek Wrecker/Deer Park Paint & Body, Pasadena)

151. Direct TDI to adopt rules related to the disposal of totaled vehicles under the Insurance Dumping law. (Larry Cernosek – Cernosek Wrecker/Deer Park Paint & Body, Pasadena)

Electronic Communications and Transactions

152. Improve the convenience and efficiency of transactions for both businesses and consumers in the State of Texas by clarifying the applicability of existing and future provisions in the Insurance Code to permit electronic commerce (E-commerce) transactions. Supplement existing laws in order to remove barriers to electronic commerce transactions. Provide businesses and consumers with standards for electronically delivering documents. These changes do not require parties to conduct transactions electronically, but facilitate transactions in which the parties agree to conduct business electronically. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)

153. Remove from the Texas Insurance Code all references to processes that prohibit electronic transactions, including electronic signatures and electronic delivery. (Robert Gilbert, Assistant Vice President, USAA Government and Industry Relations – USAA, San Antonio)

154. Delegate authority to state agencies to allow reasonable alternative means of transacting business to utilize the most current technologies available. (Robert Gilbert, Assistant Vice President, USAA Government and Industry Relations – USAA, San Antonio)

Advertising Regulation

155. Eliminate TDI's regulating, reviewing, and monitoring of advertising by insurers. (Jared Wolfe, Executive Director – Texas Association of Health Plans, Austin)

156. Eliminate TDI's Consumer Protection – Advertising Unit. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

Miscellaneous

157. Combine the loss control services units for both TDI and the Division of Workers' Compensation into one unit under TDI's oversight and direction. (Fred C. Bosse, Vice President, Southwest Region and John Marlow, Assistant Vice President – American Insurance Association, Austin)

158. Change Goal 1 in TDI's Budget Structure from "Encourage Fair Competition" to "Encourage Competition". (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

159. Allow Texans to purchase insurance policies offered by insurance companies not licensed in Texas yet licensed by other states' insurance regulators. (Bill Peacock, Vice President of Administration & Director and Drew Thornley, Policy Analyst, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

160. Review the temporary agents category for all products and consider eliminating the category. (Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)

161. Return to the old Workers' Compensation Commission. (Lynn Patton, Longview)

162. Authorize direct actions for damages against insurance companies. (Lynn Patton, Longview)

163. Charge TDI with providing additional education on insurance to university students. (Travis Miller, Chair of University Affairs, Student Government Association – Sam Houston State University, Dripping Springs)

Commission Decision

Adopted New Issues 22 and 152, as well as the following two new issues.

- The Sunset Commission recommends that the Legislature:
  - study the appropriation of funds from the collection of maintenance taxes for functions at other state agencies other than the Texas Department of Insurance and determine if those diversions are directly linked to the costs associated with the regulation of insurance in Texas; and
  - change the method of finance for the appropriations to other state agencies determined not to be directly related to the costs associated with the regulation of insurance to a source other than from the collection of maintenance taxes.
- The Sunset Commission recommends that the appropriate legislative committees consider creating a Health Insurance Innovations Program as laid out in New Issues 81 through 83.

Legislative Action

The statutory recommendations were not adopted, as S.B. 1007 failed to pass.

New OPIC Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

2. Grant the Office of Public Insurance Counsel the right to a hearing on a filing if OPIC files an objection to the filing. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel; Lanetta Cooper, Attorney – Texas Legal Services Center, Austin; Tim Morstad, Associate State Director and Amanda Fredriksen, Manager of Advocacy – AARP Texas, Austin)

3. Remove the 30-day deadline to hold a hearing upon OPIC's objection to a filing. (Rod Bordelon, Public Counsel – Office of Public Insurance Counsel)

4. Increase OPIC's consumer education role, continuing as an independent, stand-alone agency, and authorize OPIC to provide health insurance information to individuals and small employers. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

5. Authorize OPIC to become involved in and access market conduct analysis of individual insurance companies. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

6. Grant the Office of Public Insurance Counsel the right to a hearing if OPIC files an objection to a rate filing and remove the 30-day deadline to hold a hearing upon OPIC's objection to a filing. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

7. Authorize OPIC to intervene on behalf of individual consumers, in addition to consumers as a class. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)

8. Strengthen OPIC's ability to contest unfair rates. (Pamela J. Bolton, Director of Policy and Research – Texas Watch, Austin; Group A – See page 179; Group C – See page 187)

9. Grant OPIC the authority to appeal or complain on behalf of an employer and individual purchaser regarding insurance premium rate quotes that may be unfair or excessive. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

10. Update the statutory mission of OPIC to clearly include the interests of small- and large-group policyholders, especially as they relate to rates charged and quoted by insurers. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

11. Make OPIC more a more powerful, higher-profile office. (Glenn W. Smith, Co-Director – Texas Progressive Council, Austin)

12. Provide OPIC with adequate time and resources, both legal and financial, to review individual insurer rate filings. (Lanetta Cooper, Attorney – Texas Legal Services Center, Austin)

13. Provide OPIC with adequate time and resources, both legal and financial, to address consumer issues involving health care. (Lanetta Cooper, Attorney – Texas Legal Services Center, Austin)

14. Grant OPIC the authority to challenge filed health insurance rates. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

15. Require OPIC to ensure that consumers are represented in matters relating to health insurance accessibility and affordability. (Kim Suiter, Vice President, Mission Advancement – National Multiple Sclerosis Society; Stacey Pogue, Policy Analyst – Center for Public Policy Priorities, Austin)

16. Direct OPIC to conduct periodic reviews of health care insurance rates to ensure that rates are affordable and fair. (Christopher Whitaker, Organizer – Texas Public Interest Research Group)

17. Authorize OPIC to conduct periodic reviews of health insurance rates to ensure that rates are affordable for Texans and that insurance companies are not making excess profits. (Group B – See page 183)

18. Grant OPIC the authority to issue Civil Investigative Demands similar to the authority granted under the Texas Business and Commerce Code, §15.10, to the attorney general. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

19. Transfer all consumer education publication functions currently undertaken by TDI to OPIC. (Josie R. Williams, MD, President and Albert Gros, MD – Texas Medical Association, Austin)

Commission Decision

The Commission did not adopt any of the new issues.

Legislative Action

No action needed.

Groups A, B, and C

Group A

Erasmo Andrade, El Paso
David Aranda, El Paso
Donna Barber, Crockett
Bob Baker, Rockwall
Louie Bauldwin, Texarkana
Robert Beard, Austin
James Bellow, Port Arthur
C. Paul Bernard, Jr., Harlingen
Ellis Bert, Dallas
Tiziano Bianchi, Dallas
Jerry Black, Missouri City
Russell Bokelman, Buda
Ada Bolton, Conroe
Robert Book, Dallas
Peter Borsellino, Fort Worth
James Boyd, Spring
John Branson, Dallas
Danial Bravard, Spring
Lynda Brender, Fort Worth
Robert Brenner, Dallas
Paul Brock, McQueeney
Frank Brooks, Amarillo
Debra Burns, Spring
Linda Carswell, Katy
Tom Caughran, Plano
Leslie Chapman, San Antonio
Connie Chrane, Blanket
Barry Clar, Bryan
Brad Clardy, Lubbock
Cynthia Clark, Houston
Jimmy Collard, Angleton
Beatrice Collins, Euless
Jesse Colunga, Austin
Donald Conley, Amarillo
Catherine Cookson, Livingston
Hector Corella, San Antonio
William Cornelison, Bandera
Jean Craig, Fort Worth
Gary Culpepper, Austin
K. Danowski, Dallas
Neesha Dave, Austin
Juanita Dawson, Duncanville
Kim Dees, Corpus Christi
Ed Devine, Mesquite
Patricia DiCoste, Bellaire
Lola Dillard, Arlington
Kari Pauley-Dominguez, Houston
Charles Dorsett II, Euless
Tim Duda, San Antonio
Sabrina Eckles, Lubbock
John Elsbury, Alpine
Greg English, Humble
Susan English, Humble
Randy Erb, New Caney
Joyce Felter, San Antonio
Nephi Ferguson, Houston
Betty Ferrero, Round Rock
Bill Fletcher, Houston
Michelle Forrest, Austin
Ranelle Foster, Terrell
Jesse Galvan, San Antonio
Arlene Garcia, Beaumont
Jack Garrard, Fort Worth
Desiderio de la Garza, San Antonio

Group A

Zona Gatewood, Muleshoe
Susan Gelber, Austin
Wanda Giraldi, Houston
Raymond Glass, Bellaire
Joseph Goldman, Alpine
Shirely Goldsmith, Cedar Hill
Anna Gonzalez, Irving
Morton Graham, Plano
Vincent Graves, Ennis
Iain Gray, Austin
Gary Greif, Austin
Randy Griffin, Henrietta
Timothy Hale, Forney
Jerry Hammers, Orange
Margie Hammet, Drippings Springs
Gary Harlow, Manor
Monica Harris, Spring
Rachel Harris, Fort Worth
Rosa Patlan Harris, Hockley
Bill Hayner, Jr., Dallas
Shirley Hendrickson, League City
Paul Holcomb, Double Oak
Kerrie Horn, Irving
Nicholi Hoskins, Coppell
Shannon Huggins, Austin
John Hunt, Bellaire
Murphy Hunt, Orange
Diane Jack, Port Arthur
Megan Jansen, Austin
Nicolaus Jantzen, Dallas
Cassandra Johnson, Houston
D.M. Johnson, Montgomery
Jesse Johnson, Hallsville
Ronnie Jones, Austin
Dianne Kennedy, Dallas
Ramon King, Austin
Shirley King, Fort Worth
J. Bowman-Kreitmeyer, Carrollton
Mark Laney, Plainview
Patty Langford, Tatum
Mark Larson, Dallas
Julia Lashley, Arlington
Samuel Lemelle, Austin
Pat Lorey, Celina
Marilyn Luckie, Fort Worth
Ron Luckie, Fort Worth
Luis Lugo, San Antonio
Mary Lynn, Katy
Cynthia Manley, Sherman
Melvin Marioneaux, Port Neches
James Mason, Austin
Jeannie Marsh, Forth Worth
Fred Marvin, Austin
CW May, Austin
Jeannine Mazo, Forth Worth
Donna McDonald, Red Oak
August Meduna, Smithville
Jack Mercer, Grand Prairie
Barbara Messemore, Rowlett
Greg Metoyer, Rowlett
Brian Miller, The Woodlands

Group A

WR Miller, Dallas
James Minton, Dallas
T. Randall Mock, M.D., Dallas
Gene Moody, Flint
Kelly Moore, Garland
Luther Morehouse, Fort Worth
Elizabeth Morgan, Plano
Micky Morris, Dallas
David Morrow, Austin
Edward M. Munoz, Corpus Christi
Josep Murphy, Waxahachie
George Nelson, Lubbock
Rael Nidess, M.D., Marshall
Carl Odle, Lubbock
Rodolfo Sr. Olazaba, San Antonio
Patricia Oliva, Houston
Nelida Ortiz, Corpus Christi
Rose Pachco, Austin
Robert Palmer, Cibolo
Phillip Paterson, San Antonio
A.K. Patterson, Dallas
Lynn Patton, Longview
Jacqueline Pauley, Missouri City
Victor Pauly, Victoria
Tamara R. Pearlman, Trophy Club
Tom Perkins, Smiley
Barbara Pickett, Vidor
Drake Pirkle, Lubbock
Jane Leatherman Van Praag, Bartlett
Richard Quezada, San Antonio
Mark Reback, Los Angeles, CA
Larry Reed, League City
Edward Reid, San Antonio
James Rice, Baytown
Diane Robertson, Wharton
Elaine Robertson, Corinth
Kevin Rolfes, Austin
Edward Rydman, College Station
Jay Rydman, Dallas
Juan Sanchez, San Antonio
Paul Schmidt, Dallas
Kimberly Schuenke, Houston
Danny Scott, Dallas
Greg Sells, Austin
Al Serrao, Plano
Richard Shirley, Katy
Jan Shrode, Texarkana
Brian Shugart, Alpine
William Sibley, Christine
Jesse Simmons, Brownsville
Robert Simmons, Port Neches
Sally Simpson, Garland
Alicia Smith, Cedar Hill
Anne Smith, North Richland Hills
Jimmie Smith, Garland
Gerald Smolinsky, Austin
Sally Snyder, Dallas
Angella Soileau, Beaumont
Daniel F. South, Amarillo
Pamella StClair, Dallas

Group A

Jody Steiner, Waco
Robert Stephens, Mansfield
Dixie Stoller, Fort Worth
Katherine Sturtz, Garden City
Martha Svetlik, Beaumont
Greg Swift, Fort Worth
Tamara Teague, Rockwall
Mary E. Terry, Orange
Kathy Thomas, Amarillo
Keith Thornton, Fort Worth
Alejandro de la Torre, Houston
Cynthia Tranquilli, Alvarado
Donna Turman, Dallas
David Tuthill, Dallas
John Tweedell, Hideaway
Roslyn Waldron, Houston
Gordon Wallace, Wichita Falls
Yvonne Wallin, Tow
Peggy Walton, Conroe
Joyce Warnstaff, Carrollton
Lynn Watkins, Cypress
John Weathers, Dallas
Andrea Weaver, Carrollton
Jan Weaver, Corpus Christi
Betty Weber, Beaumont
Cornelius Weber, Georgetown
Patricia Williams, Tyler
Peggy Williams, El Paso
S.E. Williams, Stafford
Sharon Williams, Brookshire
Terry Williams, Houston
Ann Marie Wilson, Garland
Lauri Wiss, Campbell
Edward Wong, Houston
Jo Ann Wood, Hurst
Jonna Woodburn, Midlothian
Megan Woodburn, Austin
Scott Worley, Watauga
George Marshall-Worthington, Houston
Gary Wright, Carrollton
Edward Wyman, Fort Worth
Tonya Young, Dallas
Al Zeiner, Plano

Group B

Frank Aaron, Frisco
James Adcock, Austin
Nancy Aldrich, The Woodlands
Elizabeth Anderson, Woodway
Sherry Andresen, Katy
Paula Arsenault, Kingwood
Bo Baggs, Port Arthur
Kristina Balabuch, Denton
John Barnes, Fort Worth
Raye Bextermueller, Magnolia
S. Blakemore, Friendswood
Robert Blau, Austin
Paula Brennecke, Bonham
Julia Burwell, San Diego
Barbara Campbell, Vidor
Paul Cardwell, Bonham
Mary Carel, Carrollton
Erica Castro, San Antonio
Jennie Chao, Austin
Jose E. Chavez
Nancy Cise, Austin
Katheryn Clark, Austin
Kitty Coley, Austin
Connie Colina, Austin
Waller Collie, DeSoto
Stefanie Collins, Austin
David Conlon, Pearland
Loyd Cortez, San Antonio
Carol Coulston, Houston
Paula Cox, Arlington
Jerry Cumbie, Terrell
KC Curry, San Angelo
DM Degenhart, Kerrville
Tim Duda, San Antonio
Charles Egge, Austin
Kelly Epstein, Spring
Blake Farrar, Austin
Clarence Fisher, Richardson
David Fowler, Austin
Beth Francell, Fort Davis
Jose Gallegos, El Paso
Gloria Gannaway, Austin
Dean Garrett, Austin
Robert Gartner, Houston
Marge Gianelli, El Paso
Sharon Goddard, Carrollton
Joseph Goldman, Alpine
Nanette Gordon, Mesquite
Morton Graham, Plano
Rachelle Greene, Houston
Melissa Harris, Belton
Resa Harrison, Aubrey
William Hatfield, Corpus Christi
Kenneth Hayes, Austin
Ella Heister, Irving
David Hood, Austin
Rodney Hoover, M.S. Ed., Arlington
Rick Hustedt, Houston
Terry Irwin, Austin
Jack Jeansonne, Austin
Deborah Johnson, Corpus Christi
James D. Johnson, Austin
Amanda Jones, Austin
Johnny Jones, Blanket

Group B

Halina Just, San Antonio

Alan Kaltz, Carrollton

Kristin Kavanagh, Austin

Bailey Kermath

Holly Kincannon, Austin

Jerell Lambert, Austin

Patricia Lambert, Coppell

David Lawhon, Dallas

Jerry Lobdill, Fort Worth

Virginia Loshelder, Dallas

Martha Lueg, McAllen

Denise Lytle, Fords, NJ

L. Irene Martinez, Round Rock

C.E. Matthews, Austin

Mindy Mayers, The Woodlands

Mary McClelland, Mesquite

Patricia McElhenny, Houston

Kathryn Melton, Deer Park

George Mercier, Houston

Melissa Migliore, Del Valle

Karen Miller, Corpus Christi

Sharlene Miragliotta, Frisco

Gloria Morrison, Pecos

Joyce Murchie, Hewitt

Kathy B. Newman, San Antonio

Lynne Nichols, Houston

Emily Ong, Austin

Rita Orndorff, San Marcos

Lisa Orr, Austin

Susanna Orr, Austin

Nick Paredes, Dallas

Frances Patch, Austin

A.K. Patterson, Dallas

Wendy Paul, Dallas

Pilar Pedersen, Alpine

David Pollard, Hurst

Alisa Porter, Houston

Mary Robbins, Richardson

Kevin Rolfes, Austin

Dan Rosenberg, San Antonio

Kris Sands, Wylie

Dick Schoech, Arlington

Mary E. Schultz, Houston

Maria Selva, Houston

Patrick De Le Garza Und Senkel, Duncanville

Lisa Silguero, Dallas

Roberto Silva, Fort Worth

Stephen Simons, Austin

Shirley Smith, Longview

Sharron Stewart, Lake Jackson

Scott Swanson, Austin

Rob Sullivan, Houston

Ann Sutherland, Fort Worth

Patricia Swenson, Allen

Collin Tam, Austin

Diana Vandel, Austin

Sophia Vassilakidis, Houston

Leo Wadley, Fort Worth

Carrie Watson, Driftwood

Group B

Lois Way, Fort Worth

William Weideman, Arlington

David Weller, Abilene

Stuart Werbner, Austin

Rhonda West, Copperas Cove

Bettye Whipp, Bridge City

Judy Wiggins, Willis

Caleen Wilkinson, Addison

Gary M. Williams, The Woodlands

Terrie Williams, Vidor

Stephen Wood, Haslet

Jane Yendell, Georgetown

Owen Yost, Denton

Betty Young, Converse

Ginger Young, Spring

Group C

Robert Barber, Dallas
David Berkshire, Houston
Michele Bondy, Austin
Aletha Brown, Midland
Bryan Bullinger, Allen
Kathy Camacho, Amarillo
Nan Cameron, Austin
Kathryn Cates, Dallas
Barbara Chiarello, Arlington
Gene Chorostecki, Georgetown
Becky Cotton, San Antonio
Victoria Cuellar, Waco
Alan Darby, Richmond
Franklin Eventoff, Bow, WA
Alan Frumkin, Houston
Steve Gerson
Joanne Groshardt, Richardson
Linda Hanratty, Fort Worth
James Henderson, Sugar Land
Sarah Hornberger, Cedar Hill
Kristen Hotopp, Austin
Wesley Hutchins, Arlington
Vera Janes, Leander
Genae Leal, Pearland
Dr. Teresa Lenoir, Georgetown
Kathleen Magor, Austin
Mary McClelland, Mesquite
Elizabeth Meador, Austin
Rosemary Miranda, McAllen
Ivonne Moreno, El Paso
Lynne Nichols, Houston
Patricia Nichols, Houston
Mariana Ornelas, San Antonio
Sandra Overstreet, Humble
Jan Payne, RN, Austin
Diana Pearce, Cleburne
Paula Pedersen, Universal City
Michael Ronsonette
Michael Roth, Dallas
Christiaan Siano, Austin
Karen Skloss, Austin
Jason Spangler, Austin
Ralph Underwood, Austin
Peggy Walton, Conroe
Dave Waugh, San Marcos
Jan Weaver, Corpus Christi
Mike Webb, Austin
Sharon Willmann, San Antonio
Thomas Wilmore, Austin
Daniel Wood, Bedford
Susan Young, Austin
Jane Zion, Austin

Provisions Added by Legislature

Provisions Added by Legislature

Senate Bill 1007 failed to pass.

Sunset Staff Review of the Texas Department of Insurance Office of Public Insurance Counsel

Report Prepared By:

Chloe Lieberknecht, Project Manager

Leah Campbell

Michelle Downie

Kandice Sanaie

Dawn Roberson

Ginny McKay, Project Supervisor

Joey Longley
Director

Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

512-463-1300 Fax 512-463-0705

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