

TEXAS DEPARTMENT OF INSURANCE
OFFICE OF PUBLIC INSURANCE COUNSEL

October 1992

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SUMMARY

SUMMARY

The Texas Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC) are subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 73rd Legislature in 1993. As required by statute, the review of the two agencies included a determination of whether each of the agencies meets a real and continuing need; whether there are benefits to be gained by reorganizing the agencies; and whether current statutory policies should be changed to improve the efficiency and effectiveness of the agencies.

Need for the Agencies

The review concluded that the TDI and OPIC should be continued for a 12-year period and be reviewed again in 2005. The primary functions performed by the department in regulating the insurance industry continue to be needed to protect the public from insurance company failures, to assure proper conduct by insurers and other participants in the insurance market, and to ensure that insurance rates are just and reasonable for the protection provided. In addition, the general function of OPIC in representing consumers in proceedings at the TDI continues to be needed.

Reorganization Alternatives

As a part of the review, various reorganization options were considered to determine if all or part of the TDI's or OPIC's functions should be transferred to other agencies. The review showed that benefits could result from the transfer of the department's tax collection and auditing activities to the comptroller of public accounts. Because the primary focus of the state comptroller's office is collecting state taxes, the office is better equipped to collect, administer, and enforce insurance taxes than is the TDI, which is primarily responsible for regulating the state's insurance industry.

The review also showed that benefits could be achieved by transferring the department's hearings function to the State Office of Administrative Hearings. The legislature has clearly expressed its intent to consolidate the hearings functions of administrative agencies if such a transfer would improve the independence, quality, and cost effectiveness of hearings. Transferring the department's hearings function to the central hearings office would remove functions that may be better performed by other agencies and allow the department to focus more clearly on its primary mission of insurance regulation.

Policymaking Body

As part of the review, various policymaking structures were examined to determine if changes should be made to the existing full-time board and commissioner structure. The review showed benefits and drawbacks associated with three basic organizational alternatives that are outlined for consideration. The first option would eliminate the current three-member, full-time board and provide for a single commissioner, appointed by the governor, to oversee the

regulation of insurance. The second option would replace the current board with a six-member, part-time board, appointed by the governor, that would appoint a commissioner to oversee the regulation of insurance. The third option would maintain the current three-member, full-time board with changes in the board's and commissioner's responsibilities.

The review also showed that changes should be made to assure consumer representation on the governing body of the Texas Automobile Insurance Plan (TAIP). The TAIP was established by the insurance industry under state law to assure that persons who could not obtain insurance through ordinary means could still obtain insurance and thus comply with the state's requirement that drivers be financially responsible if they are involved in automobile accident.

Overall Administration

- The administrative functions of the TDI should be changed by:
 - providing clear statutory guidelines for the department to assess administrative penalties; and
 - directing the Texas Legislative Council to revise the insurance code for adoption by the 75th Legislature in 1997.

Evaluation of Programs

- The operation of the TDI's programs should be improved by:
 - establishing a task force to study the effects of recent legislative changes in rate and form regulation and to determine whether further action should be taken to shift state regulation away from rate and form regulation toward monitoring of solvency and market conduct in the insurance industry.

Fiscal Impact

Preliminary estimates indicate that the fiscal impact of recommendations affecting the Texas Department of Insurance will depend on which of the three policymaking alternatives is selected. Most of the recommendations will not have a net fiscal impact. The recommendations to change the policymaking structure will have the largest fiscal impact. The first option would eliminate the existing three-member board in lieu of a single commissioner. The second option would replace the existing board with a six-member, part-time board that would appoint the commissioner. The third option would maintain the existing structure of a three-member board and a commissioner, with changes in their responsibilities. In addition, the recommendation establishing a task force to study the effects of changes in rate and form regulation will have a fiscal impact associated with travel and per diem for task force members. The fiscal impact of the recommendations affecting the TDI, including the three policymaking alternatives, is summarized in the following table.

Texas Department of Insurance			
Fiscal Year	Net Savings/(Cost) to Insurance Operating Fund		
	Net Savings All Recommendations (Eliminate Three-member Board)	Net Savings All Recommendations (Establish Six-member Part-time Board)	Net Cost All Recommendations (Maintain Three-member Board)
1994	\$992,000	\$947,000	(\$99,000)
1995	\$992,000	\$947,000	(\$99,000)
1996	\$992,000	\$947,000	(\$99,000)
1997	\$992,000	\$947,000	(\$99,000)
1998	\$992,000	\$947,000	(\$99,000)

The recommendations affecting the Office of Public Insurance Counsel will not cause an additional fiscal impact to the state.

BACKGROUND

TEXAS DEPARTMENT OF INSURANCE

CREATION AND POWERS

Insurance regulation in Texas dates back to 1876 when the legislature created the Department of Insurance, Statistics and History. The department's initial responsibilities were to regulate the insurance industry and to record information and statistics on the state's population, wealth, and general resources. Since that time the name, composition, and responsibilities of the department have changed several times.

The nation's insurance industry operates under a unique regulatory system. Insurance is the only major interstate financial industry that is regulated primarily by the states. The states' jurisdiction over insurance regulation was challenged in 1944, when the U.S. Supreme Court held that the insurance industry was involved in interstate commerce and should be subject to federal anti-trust scrutiny. In response to this ruling, Congress passed the McCarran-Ferguson Act of 1945, which exempted from federal antitrust laws "business of insurance" activities that are regulated by the states, except for activities that involve boycott, coercion, or intimidation by insurers. Regulators and industry responded to the act by placing a primary emphasis on insurance rate-making and by forming an all-industry nationwide committee, which drafted model rating and trade practice laws that were subsequently adopted in almost every state. However, the U.S. Supreme Court has recently ruled that insurance companies are not necessarily immune from federal antitrust laws under the defense of state regulation when engaging in joint rate-setting activities that are allowed under state law but not actively supervised by state government.

The current oversight structure of the Texas agency regulating insurance was established in 1957 when the 55th Legislature abolished the Board of Insurance Commissioners, which was comprised of separate commissioners for life, fire, and casualty insurance. In its place, the legislature created the State Board of Insurance (SBI) as a full-time, three-member board appointed by the governor with the consent of the senate. The board was given the authority to hire a commissioner of insurance to serve as the agency's chief administrative officer. In addition, the 55th Legislature created the Office of the State Fire Marshal within the SBI to assist the board in fire investigations and arson prosecutions and to coordinate, train, and provide technical support to municipal and rural fire departments. In 1987, the legislature established the Office of Consumer Protection (OCP) within the agency to represent consumers on insurance matters before the board.

The most recent reorganization occurred in 1991 when the 72nd Legislature passed comprehensive insurance reform legislation in the regular and second called sessions. The board of insurance remained a full-time, three-member board responsible for establishing policies and rates relating to insurance. The agency was renamed the Texas Department of Insurance (TDI) and continued to be headed by a commissioner of insurance, who is responsible for the day-to-day activities of the department. The OCP was abolished and an independent Office of Public Insurance Counsel (OPIC) was created and given broader authority. The State Fire Marshal's Office was removed from the TDI and became part of the newly-created Texas Commission on

Fire Protection. In addition, legislation passed in 1991 privatized the liquidation of insolvent insurers by transferring the functions of the state insurance liquidator to the commissioner of insurance and to private guaranty associations. Guaranty associations are non-profit entities composed of insurers that contribute money to cover the obligations of failed insurers in exchange for premium tax credits. Guaranty associations have been established for title, property and casualty, and life, accident, and health insurance. Other legislation modified the rate-setting powers of the board and established trial periods during which motor vehicle and personal property insurance rates would be established through a flexible rating system.

Currently, the TDI regulates about 180,000 licensed insurance agents and 2,558 insurance companies, representing a total premium volume in Texas of more than \$35 billion. Of these 2,558 companies, 804 are Texas companies, known as "domestic" companies, and 1,754 are "foreign" companies headquartered in other states. While numerous changes have been made to the department, the regulation of the insurance industry in Texas has generally included five basic functions that continue today: setting and reviewing rates and regulating forms, monitoring the solvency and business affairs of licensed companies, enforcing the state's insurance laws and the board's rules and regulations, licensing insurance companies and agents, and providing consumer services.

POLICYMAKING BODY

The TDI's board consists of three full-time members appointed by the governor with the advice and consent of the senate. The members serve staggered six-year terms and one member is designated by the governor to serve as the chair once every two years after the appointment of a new member.

To be eligible for appointment as a board member, a person must be a Texas citizen with at least 10 years of experience in business, professional, or governmental activities. A person is not eligible for appointment as a member of the board if the person is a stockholder, director, officer, attorney, or employee of any insurance company. In addition, insurance agents, brokers, and adjusters are also ineligible for appointment to the board.

One of the board's duties is to hire the commissioner of insurance, who heads the department and administers and enforces the state's insurance laws and the board's rules and regulations. The commissioner must be a Texas resident for at least one year prior to appointment, have at least 10 years of administrative or professional experience, and have training in the field of insurance or insurance regulation. The commissioner is authorized by statute to meet with the board in an advisory capacity and does not have a vote in board proceedings.

In addition to hiring the commissioner of insurance, the board determines agency policy, adopts rules for regulating the state's insurance industry, sets rates for certain lines of insurance, reviews and approves rates or a range of rates for others, and hears appeals of the commissioner's enforcement orders. Each board member employs two personal staff, including one executive assistant and one secretary.

The work of the board members is also supported by a chief clerk, a general counsel, two special counsels, a public information office, an internal auditor, and a governmental relations office. The chief clerk administers the board's rulemaking process and maintains all records and proceedings of the board. The two special counsels assist the board in developing rules and policies and assist in the supervision of litigation arising from board rules. The general counsel serves as chief legal adviser to the board and assists the board in rate proceedings. The public information office prepares press releases and other public information materials for board members and responds to inquiries made to the board. The internal auditor conducts independent reviews of agency activities and makes recommendations to the board designed to improve these activities. The TDI complies with the state's Internal Audit Act, which requires that certain agencies have an internal audit function to improve their operations and internal controls. The governmental relations section serves as the agency's liaison to the legislature and other state agencies.

FUNDING AND ORGANIZATION

In fiscal year 1992, the agency expended about \$48.6 million out of appropriations totaling \$50.7 million. Exhibit A shows these expenditures by the TDI's programs.

Exhibit A
EXPENDITURES by PROGRAM
Texas Department of Insurance
FY 1992

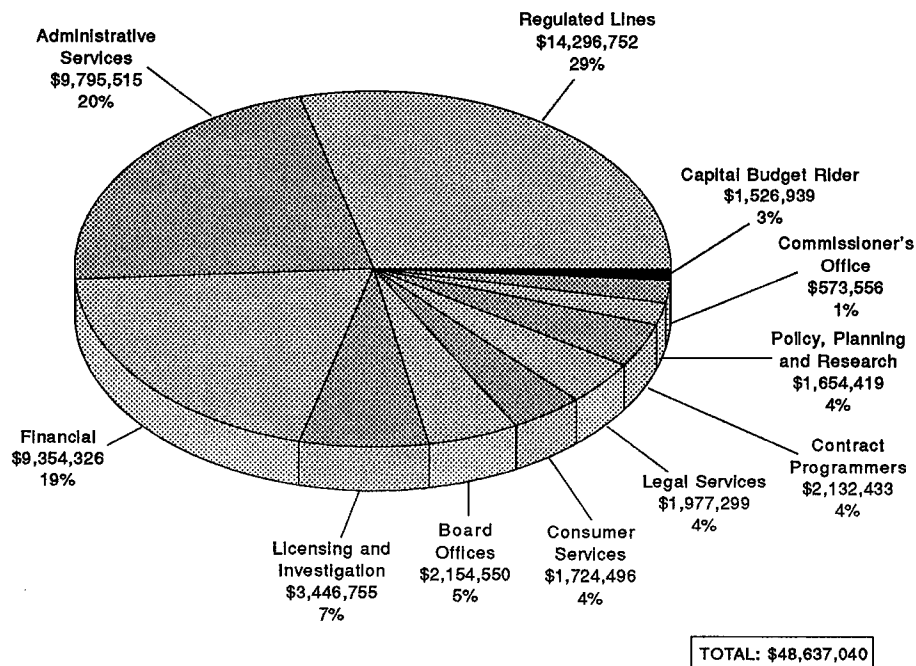
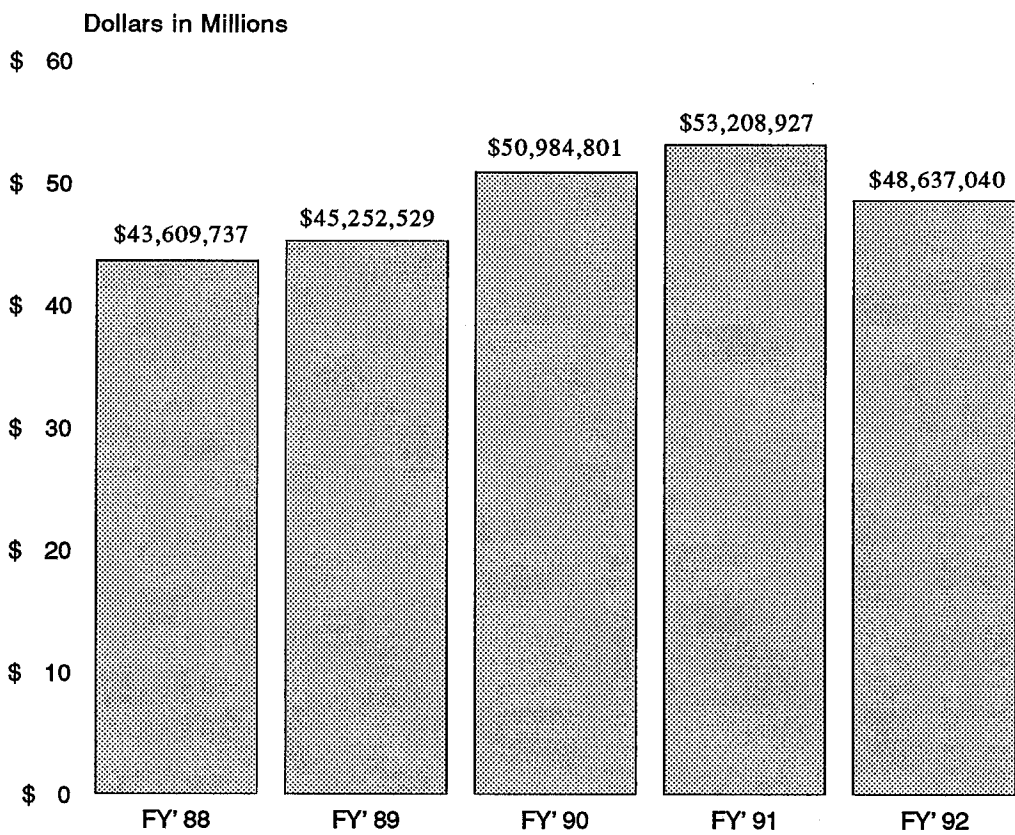


Exhibit B shows how the TDI's expenditures have changed over a five-year period. Expenditures are tied to, and cannot exceed, agency appropriations. However, in fiscal years 1988 and 1989, expenditures did exceed revenues when the agency began the year with a large fund balance.

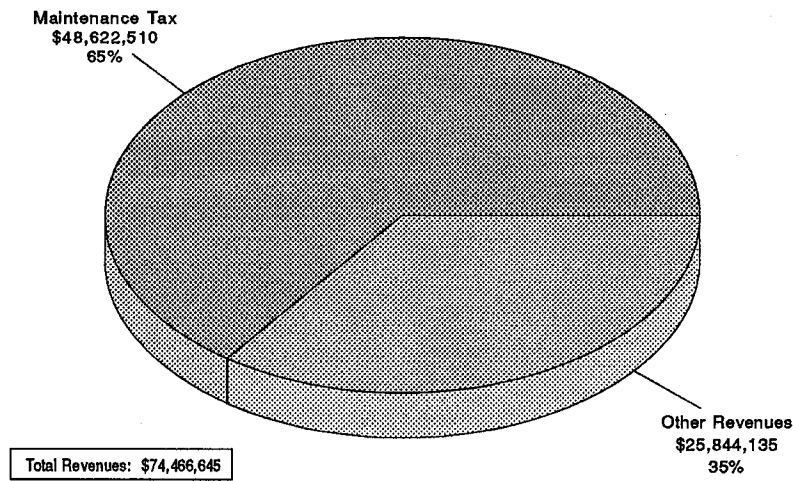
Exhibit B
HISTORY OF EXPENDITURES
 Texas Department of Insurance
 FY 1988-1992



In fiscal year 1992, the department received revenues of approximately \$74.5 million. These revenues come from two sources, maintenance taxes and 21 separate fee categories, which are deposited into the Insurance Operating Fund No. 36 and appropriated by the legislature to support the activities of the department. The department receives no money from the state's general revenue fund. Maintenance taxes are assessed as a percentage of the companies' gross premiums, with tax rates established by the board on all lines of insurance to defray the cost of regulation. Maintenance taxes generated about \$48.6 million in fiscal year 1992. Other sources of revenue included examination fees based on the cost of conducting financial examinations of companies,

license fees, sale of publications, and other authorized charges. These sources of revenues generated nearly \$26 million in fiscal year 1992. Exhibit C shows the sources of funding in fiscal year 1992.

Exhibit C
SOURCE OF REVENUES
 Texas Department of Insurance
 FY 1992



In addition to collecting fees and maintenance taxes to support the department, the TDI collects, administers, and enforces five other types of insurance taxes, surcharges, and assessments that flow directly to the state's general revenue fund or to a separate account. These taxes generated about \$600 million in fiscal year 1991 and include the premium tax, the retaliatory tax, the Office of Public Insurance Counsel assessment, the annual workers' compensation surcharge, and the motor vehicle assessment. Premium and retaliatory taxes are occupation taxes and are the only state taxes levied against insurance companies in Texas. Premium taxes are assessed against all insurance companies in the state and generated more than \$500 million in fiscal year 1991. Premium tax rates are set by statute and differ based on type or line of insurance. The retaliatory tax is charged to foreign companies doing business in Texas to offset the taxes being charged to Texas companies doing business in other states and generated about \$4.6 million in fiscal year 1991. The Office of Public Insurance Counsel assessment is charged to property and casualty, life, accident and health, and title insurers to defray the costs of OPIC's operations and generated about \$1 million in fiscal year 1991. The annual workers' compensation surcharge is assessed on all insurers writing workers' compensation insurance to help defray the cost of establishing the Workers' Compensation Insurance Fund created by the

legislature in 1991. The surcharge generated \$76.5 million in fiscal year 1992, the first year it was assessed. The motor vehicle assessment supports the Automobile Theft Prevention Authority established to provide funding for programs that combat automobile theft. This assessment generated \$6.5 million in fiscal year 1992.

The agency had a total of 1,090.25 budgeted full-time equivalent employees (FTEs) in fiscal year 1992. Of these, 917.25 were located in Austin and 173 were assigned to 33 field offices throughout the state to perform property ratings, windstorm examinations, and financial examinations. The TDI also employed 191 FTEs who work in the liquidation division and are paid from the assets of estates being liquidated. Exhibit D gives a current breakdown of the department by division. Exhibit E show the location of the department's field offices.

Exhibit D
ORGANIZATIONAL CHART
Texas Department of Insurance

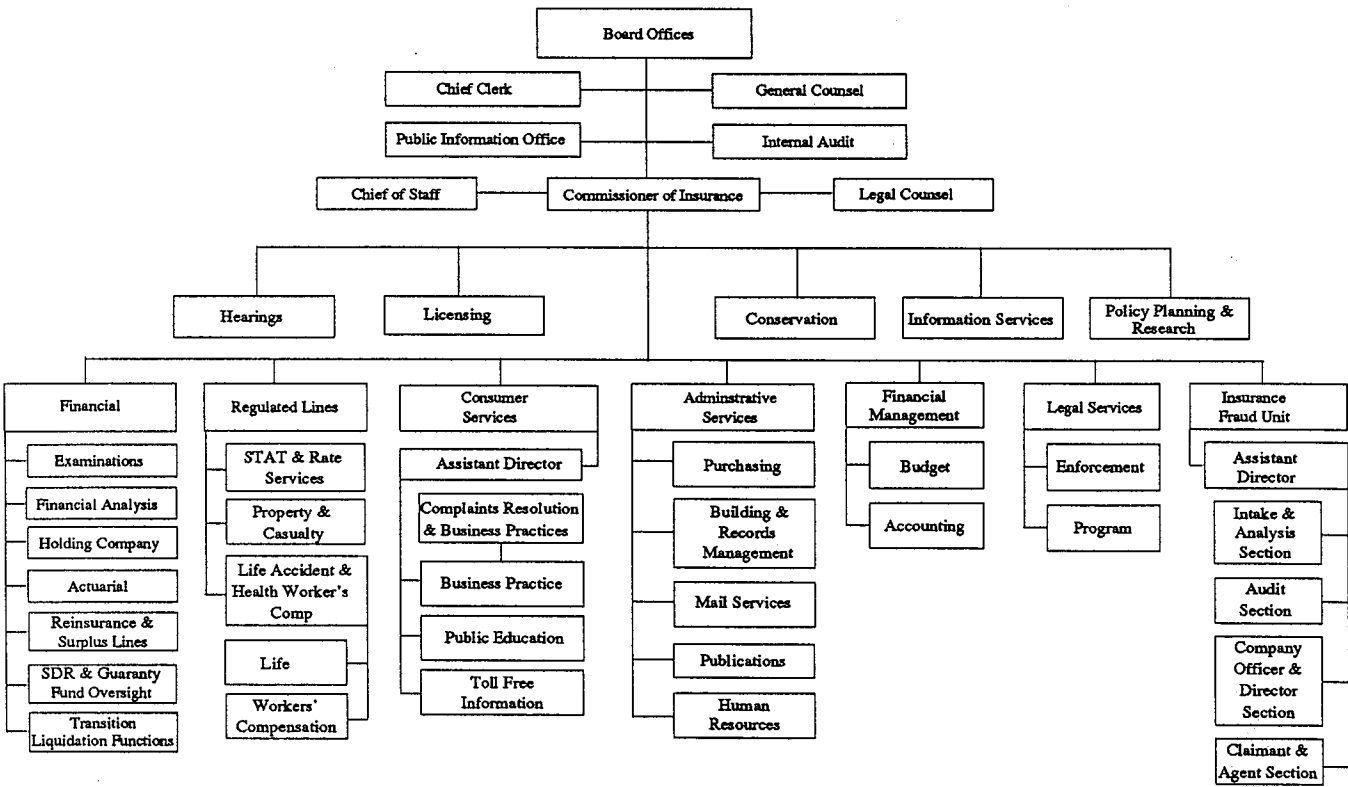
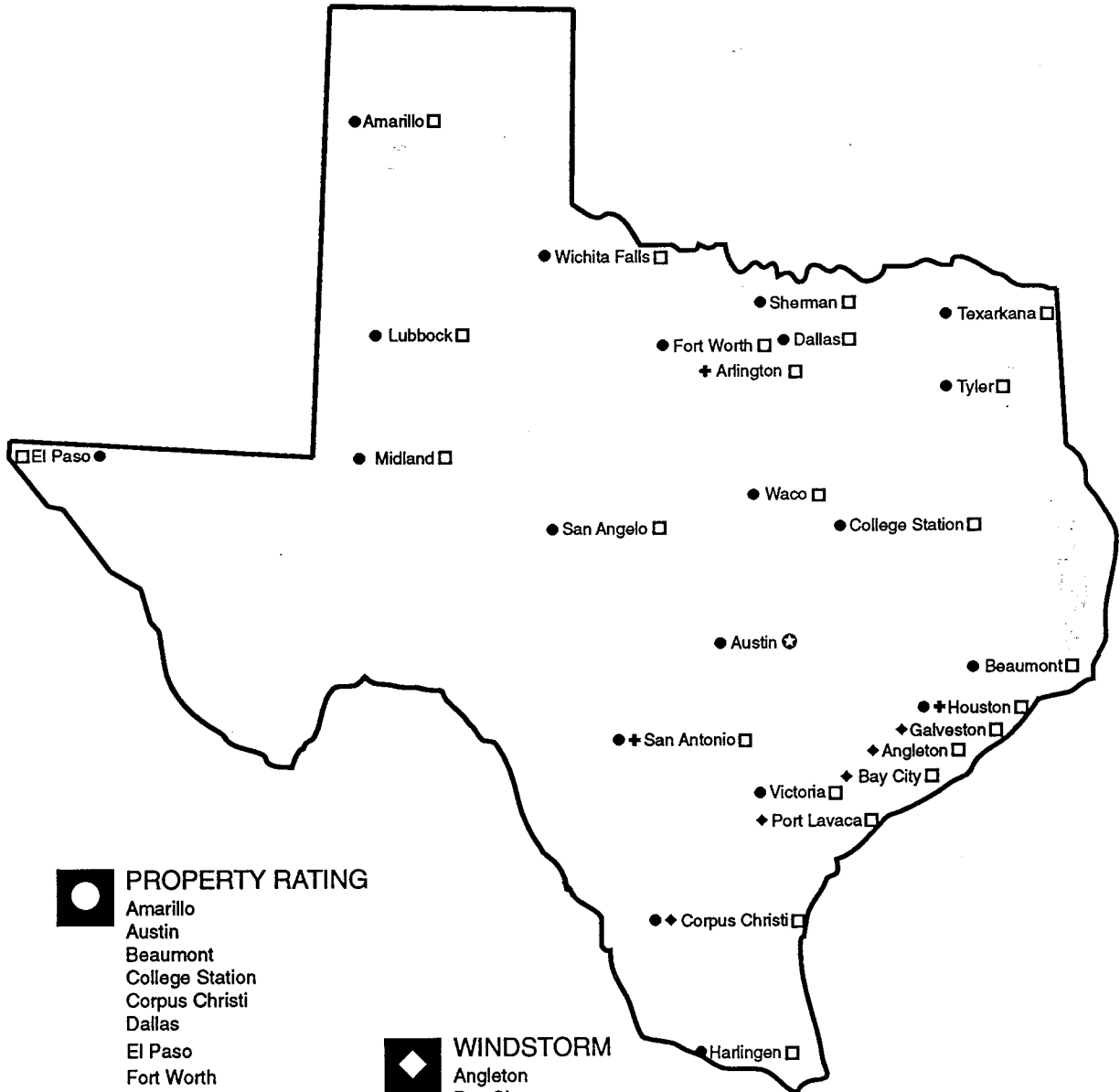


Exhibit E
LOCATION OF FIELD OFFICES
 Texas Department of Insurance



- PROPERTY RATING**
- Amarillo
 - Austin
 - Beaumont
 - College Station
 - Corpus Christi
 - Dallas
 - El Paso
 - Fort Worth
 - Harlingen
 - Houston
 - Lubbock
 - Midland
 - San Angelo
 - San Antonio
 - Sherman
 - Texarkana
 - Tyler
 - Victoria
 - Waco
 - Wichita Falls

- WINDSTORM**
- ◆ Angleton
 - ◆ Bay City
 - ◆ Corpus Christi
 - ◆ Galveston
 - ◆ Port Lavaca

- EXAMINATIONS**
- ✚ Arlington
 - ✚ Houston
 - ✚ San Antonio

Exhibit F depicts how the agency's work force has changed over a five-year period in different categories of employment and how it compares with minority work force goals in the General Appropriations Act.

Exhibit F
PERCENTAGE OF MINORITIES IN AGENCY'S WORK FORCE
Texas Department of Insurance

Job Category	1987 Total Work Force		1992 Total Work Force		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions 1,001	% Minority	Total Positions 1,331	% Minority	
Administrators	48	4%	82	18.0%	14%
Professionals	566	19%	715	21.7%	18%
Technicians	25	28%	42	21.4%	23%
Protective Service	--	--	--	--	48%
Para-Professional	105	37%	252	38.0%	25%
Administrative Support	245	48%	235	45.0%	25%
Skilled Craft	12	25	5	40.0%	29%
Service/Maintenance	--	--	--	--	52%

PROGRAMS AND FUNCTIONS

The Texas Department of Insurance was created to regulate the business of insurance in Texas. The department does this through the board's and commissioner's offices and nine divisions: regulated lines, financial, liquidation, licensing, fraud, legal services, consumer services, policy planning and research, and administrative services. The regulated lines division is generally responsible for receiving and acting on form and rate filings for the major lines of insurance, including property and casualty, life, accident and health, workers' compensation, and title insurance. The financial division monitors the solvency and business affairs of insurance companies operating in Texas. The liquidation division oversees the liquidation of companies put into receivership by the court. This division is set to be phased out January 1, 1993, and privatized, with its functions taken over by private guaranty associations in Texas and special deputy receivers who are selected by the commissioner. The licensing division issues certificates of authority for insurance companies to do business in Texas and issues licenses to agents and adjusters. The legal services division enforces compliance with the insurance code and the board's rules and regulations, and advises the staff on legal issues affecting the department. The

fraud division processes complaints and develops cases for prosecution, including allegations of fraud committed by insurers and by policyholders against insurers. The consumer services division handles consumer complaints and inquiries and provides information to consumers regarding consumer matters. The policy planning and research division is responsible for the department's planning and data processing functions. This division is also responsible for the department's early warning system, which is designed to detect potentially troubled insurance companies. The administrative services division provides technical support for the department and also includes tax administration.

These divisions work together to perform the basic functions of the department, which include setting and reviewing rates and regulating forms, monitoring the solvency and business affairs of licensed companies, enforcing the state's insurance laws and the board's rules and regulations, licensing insurance companies and agents, and providing consumer services. These functions are summarized in the following material.

Rate and Form Regulation

Before the legislature enacted insurance reforms in 1991, the board of insurance established a specific, or "manual," rate for some lines of insurance in annual rate hearings. Individual companies would then seek deviations from the board for rates above or below the manual rate. The deviated rate was the rate then charged to policyholders. In 1991, the legislature modified the rate-setting powers of the board to provide greater flexibility for some insurers to establish their own rates, established trial periods during which other insurers could experiment with a flexible rating system, and left some insurers' rates subject to prior approval by the board. The trial period for the flexible rating system will expire on December 31, 1995, unless the legislature takes further action. The board's authority to promulgate and disapprove insurance policy forms was largely unchanged by the legislature in 1991.

The legislature also modified the way in which the board hears rate cases. Before the 1991 reforms, the board would generally hear testimony, evidence, and rate recommendations from three parties: the industry as a group, the agency staff, and the Office of Consumer Protection in rate cases for property and casualty insurance. After hearing the evidence the board set a manual rate to be in effect for the next year and allowed companies to file for deviations above or below that rate. However, the 1991 reforms removed the agency's staff as a party to rate cases, abolished the Office of Consumer Protection, and created an independent Office of Public Insurance Counsel (OPIC) with the authority to represent consumers in all rate cases before the board. Today, the board hears testimony from OPIC and individual insurance companies when adopting benchmark rates and flex bands. Individual company filings outside the flex bands involve streamlined hearings with the filing company and OPIC appearing.

Rate Regulation

In an effort to increase competition in the industry, the 72nd Legislature established a flexible rating system for establishing rates for personal and commercial automobile insurance and homeowners insurance in 1991. Under this flexible rating system, the board conducts annual

hearings to establish a benchmark rate and a flex band. The benchmark is a reference point to be used by the insurance companies in determining what their rates should be within the flex band set by the board. The flex band is a percentage range within which companies may charge more or less than the benchmark rate without prior approval of the board. The statute limits this flex band to 30 percent above or below the benchmark rate. A company's rates may go outside the flex band established by the board only with the board's prior approval.

Each company must file its rates with the TDI, along with statistics to show that the rates are just and reasonable and that they do not include certain expenses disallowed by law. The rates must be shown as percentages above or below the board's benchmark. Companies must refile their rates each year following the board's annual review and adjustment of the benchmark and flex band. Companies may adjust their rates as often as twice a year by submitting new filings to the department.

In January 1992, the board held its first hearing to set the benchmark rate for private passenger and commercial automobile insurance. The board set the benchmark rate for private passenger auto insurance at the same level as had existed under the manual rate system before the flex-band system went into effect. The board increased the rate for commercial automobile insurance by five percent above the previous manual rate. The board established flex bands allowing insurers to charge rates 25 percent above and 30 percent below the benchmark. In March 1992, the board set the benchmark rate for homeowners insurance at five percent below the previous manual rate and allowed insurers to charge rates 25 percent above and 30 percent below the benchmark rate. Insurance companies needed only to file their rates within the flex band to begin using the rates.

In addition to the flexible rating system, the legislature established a file and use rate system for insurers writing commercial property, general liability, and workers' compensation insurance. These insurers, in addition to the Texas Workers' Compensation Fund and the Texas Workers' Compensation Insurance Facility, are allowed to set their own rates and put them into use, but are required to file those rates for review by the board. The board has the authority to disapprove any rates considered excessive, inadequate, or discriminatory. Rate filings made under this system must be based on projected future losses, operation expenses, investment income, profit and contingencies, and other relative factors. Each filing must also contain supplementary rating information concerning rules, rating manuals, classification systems and other information used to determine the proper premium for a policyholder and must be supported by sound actuarial information regarding the development of the rates.

The legislature maintained the prior approval rate system for certain types of casualty insurance, such as personal liability and professional liability, other than medical professional liability insurance. Insurers are required to file and justify their rates before the board prior to their rates going into effect. Insurers writing these lines file their proposed rates and supporting documentation with the regulated lines division. The division reviews the filing to ensure that the rates are fair and reasonable and do not otherwise violate state insurance laws. Staff then makes a recommendation to the board for approval or disapproval. By statute the board must act within 60 days or the rates will automatically go into effect.

The legislature did not alter the board's role in setting rates for title insurance, credit life insurance, and insurance obtained through the Texas Automobile Insurance Plan (TAIP). In addition, the legislature continued to exempt life, accident and health insurance from rate regulation by the board. The legislature also continued the unregulated status of surplus lines insurers, county mutuals, and lloyds. Surplus lines, county mutuals, and lloyds are property and casualty insurance companies whose rates, by law, are not regulated and who generally insure high risk policyholders. Although their rates are not regulated, the department monitors the rates charged by lloyds, sets the policy form to be used by county mutuals writing automobile insurance and works with the Surplus Lines Stamping Office to ensure all surplus lines policies written in Texas comply with state law. Exhibit F shows the board's rate setting authority by line of insurance.

Exhibit F
RATE AUTHORITY
Texas Department of Insurance

Rate Approval Authority	Type of Insurance
Flexible Rate Band	Personal Property Lines Automobile (commercial and personal)
File and Use	Workers' Compensation Commercial Property Commercial Multi-peril General Liability
Prior Approval	Inland Marine (some classes) Crop and Home Warranty * Miscellaneous and Personal Liability Professional Liability (other than medical professional liability) Glass Crime Fidelity and Surety Medicare Supplement (increases only)
Board Sets Rate	Title Credit Life Credit Disability
None	Ocean Marine Aviation Liability Long Term Care Insurance Individual Accident and Health Group Life and Group Accident and Health Health Maintenance Organizations

* Board has chosen not to rate regulate.

Form Regulation

The board prescribes standard policy forms and sets minimum coverage requirements for title, personal property, and commercial and personal automobile insurance. Other property and casualty forms are subject to prior approval by the board before an insurer can begin using the forms. The board does not prescribe standard forms for life or accident and health insurance. However, no policy form, rider, endorsement, or application can be used unless it has been filed and approved for use by the board. The agency currently reviews and analyzes all new and revised policy forms for life, annuity, credit, health maintenance organization, continuing care retirement community, prepaid legal, and accident and health insurance to determine whether the forms comply with state law and the board's rules and regulations. In most cases, the insurance code requires the board to approve or disapprove policy forms within 60 days or the form automatically goes into effect. The review and analysis of forms used in the marketplace is intended to assure consumers of equitable treatment and reasonable benefits appropriate to the rates being charged. Exhibit G shows the board's form regulation authority by line of insurance.

Exhibit G
FORM AND FILING REVIEW
 Texas Department of Insurance

Approval Authority	Type of Form or Filing
Prior Approval-technical review and analysis of policy forms and recommendation for approval or disapproval is required within 60 days in most cases.	Individual and Group Life Insurance Annuities Accident and Health Insurance Prepaid Legal Utilization Review Commercial Property Commercial Multi-peril General Liability Miscellaneous and Personal Liability Professional Liability (other than medical professional liability) Glass Crime Fidelity and Surety Health Maintenance Organizations Credit Life Credit Disability Inland Marine (some classes), Crop*, and Home Warranty*
Board Prescribes Form	Personal Property Lines Automobile (commercial and personal) Title
None	Ocean Marine Aviation Liability

* Board has chosen not to require filings.

Monitoring

The department monitors and in some cases maintains the financial solvency of Texas licensed companies and other insurance-related entities. In support of this function the agency performs a company-by-company analysis of mandatory financial statement filings, conducts on-site examinations of operations and financial condition, performs actuarial analysis of reserves established for future policyholder obligations, and reviews and approves inter-company transactions and risk sharing accounts. These reviews provide essential information about a company's solvency. Additionally, the agency examines licensed third party administrators (TPAs). Health insurance companies contract with the TPAs to process claims, collect premiums, and issue billings for insurance companies. Examinations of the TPAs focus on the operations and written agreements as well as processing and adjudication of claims in search for any deficiencies that might indicate a problem with the insurer.

When an insurance company is determined to be in a hazardous condition, the strongest administrative measures available to the commissioner, short of receivership, are supervision and conservation. Both are provided as rehabilitative measures intended to correct or remedy the financial condition of the company, therefore avoiding receivership if possible. When a company is placed under supervision, a supervisor is appointed to approve certain financial transactions. In conservatorship, the conservator is appointed by the department to manage the company's operations. Companies that cannot be rehabilitated are placed into receivership by the Travis County district court for liquidation of assets and payment of outstanding claims.

Critical to the agency's monitoring efforts is the agency's early warning system. The early warning system has three main purposes: to detect potentially troubled insurance companies early enough so that specific corrective action can be recommended and implemented before supervision, conservation, or liquidation is required; to improve the level of communication and availability of information agency-wide; and to identify needed changes in procedures for all regulatory divisions in order to identify companies in need of monitoring in a timely manner.

Enforcement

As part of its regulatory duties the department is responsible for enforcing state insurance laws and the board's rules and regulations. The department does this through four divisions: fraud, legal services, hearings, and consumer services.

As part of the reforms of 1991, the legislature mandated the creation of an insurance fraud division and broadened the scope of insurance-related activities subject to criminal prosecution. The fraud unit includes auditors, experts in white collar crime, and professionals knowledgeable in medical claims, financial, and insurance business practices. Fraud staff processes complaints and develops cases, including cases of fraud committed by policyholders and others against insurers. Other major categories of cases include unlicensed insurance activity and fraud committed by licensed agents and companies. The fraud unit works closely with the legal services division, the state attorney general, the Travis County district attorney, and other law

enforcement agencies to take action against insurance fraud through civil, administrative, and criminal processes.

The legal services division takes action against violators of the state's insurance laws and agency rules and regulations. Enforcement attorneys work with agency investigators to stop illegal and abusive activities involving companies and agents. The department can suspend or revoke a company's or agent's license, assess administrative penalties, or seek other civil or criminal penalties in its effort to enforce the state's insurance laws and regulations.

The hearings division conducts administrative hearings, principally on agent or company disciplinary matters. In these cases, hearings examiners conduct the hearing and write a report including recommendations for administrative actions to be taken by the commissioner, who then can accept, modify, or reject the recommendation and issue an order. Parties who disagree with a commissioner's order can appeal the order to the board. The board can accept new evidence and hear oral arguments before it issues its order. Parties may appeal board orders to district court.

The advertising section of consumer services reviews insurance-related print and electronic advertising for compliance with state laws and board rules and responds to reports of misleading insurance-related advertising. These efforts focus on health and retirement insurance products like medicare supplement, variable life, and annuity products marketed with an individual retirement annuity plan.

Licensing

The department's licensing activities include issuing licenses for insurance agents and certificates of authority for insurance companies. The agent licensing section issues 18 types of licenses to the state's 180,000 insurance agents, life insurance counselors, risk managers, reinsurance intermediaries, health care utilization review agents, title escrow officers, and adjusters. The qualifications and requirements for the licenses generally include sponsorship by a company, good character, and references. Most licenses also require passing an examination. Currently, the department contracts with a private company to administer license examinations and report the results to the TDI. Some types of licenses also require completion of additional educational requirements and evidence of financial responsibility or experience. The agent licensing section approves and audits the continuing education courses offered by private providers to most insurance agents. Currently, the statute requires most agents to complete at least 15 hours of continuing education each year. This section has recently streamlined the licensing process for agents and has added new technology to electronically process license applications and renewals.

The company licensing section issues certificates of authority to do business in the state to domestic and foreign insurance companies, third party administrators, and joint underwriting associations. Joint underwriting associations are groups of insurers who band together to share the risk of writing high risk business. The section also licenses premium finance companies, which finance the cost of insurance premiums for consumers. In addition, this section collects

and maintains biographical information on the principal individuals of all domestic and foreign insurance companies and third party administrators operating in the state. The section also processes insurance company incorporations and mergers and serves as custodian of companies' security deposits held in the state treasury.

Consumer Services

The consumer services division provides a toll-free consumer number to help consumers with insurance questions and problems. Consumers can learn whether a company or agent is licensed, file a complaint against an insurer or an agent, obtain information on a company's complaint record and financial rating, and obtain general information on how to shop for insurance. The program also mediates claims disputes between consumers and insurance companies or agents, provides public and professional seminars and speakers on insurance topics, and distributes informational brochures and flyers to consumers.

Planning and Other Technical Support

The policy planning and research division was created in 1991 to handle most of the department's planning, research, and statutory implementation duties, and to develop and maintain the department's computer and software needs. The program also collects and interprets the loss experiences of all insurance companies writing workers' compensation in Texas.

The administrative services division includes all the agency's administrative and support activities, including accounting, budget, human resources and personnel, staff services, and tax administration. The tax administration section collects premium, retaliatory, and maintenance taxes, fees for annual statement filings and the evaluation of life reserves, and other taxes. Tax administration also operates a field audit program that examines books and records in the insurers' home offices.

The department must also develop a six-year strategic plan. During the 72nd regular session, the legislature adopted legislation that requires most state agencies to develop a six-year strategic plan. The strategic plans are the first step in building a long-term statewide budgeting and planning process. The agency has submitted its plan to the governor, lieutenant governor, speaker of the house of representatives and several legislative oversight agencies, including the Sunset Advisory Commission. The strategic plan is presently being used to develop budget recommendations for the department.

OFFICE OF PUBLIC INSURANCE COUNSEL

CREATION AND POWERS

The Office of Public Insurance Counsel (OPIC) was created in 1991 as part of the 72nd Legislature's insurance reforms. The office was established as an independent agency to represent consumers as a class in insurance matters before the insurance board as well as courts and other forums. OPIC evolved from the Office of Consumer Protection (OCP), which had operated as an independent division within the insurance board.

The OCP was established in 1987 to intervene on behalf of consumers in hearings before the board involving rates, rules, and forms affecting property and casualty insurance. The head of the OCP was appointed by the governor, and the office's budget and staff were separate from the rest of the agency. In appearing before the board, the OCP presented expert testimony, actuarial analyses, and other supporting evidence to advocate a position representing the interests of consumers. The OCP also maintained consumer outreach and education programs. Concerns were raised, however, that the OCP was unable to adequately represent consumers because it was within the insurance agency, it did not have the statutory authority to appeal board decisions, and it was limited to representing consumers in property and casualty insurance proceedings, rather than consumers in all lines of insurance.

In response to these concerns, the 72nd Legislature abolished the OCP and created OPIC as an independent state agency. The legislature also eliminated the role of the Texas Department of Insurance (TDI) as a party in insurance rate proceedings. The legislature authorized the public counsel to represent consumers in all regulated lines of insurance before the board in matters of rates, rules, and forms. The board does not set rates or prescribe forms for life, accident and health insurance. In addition, OPIC was granted the authority to appeal board decisions to district court. Because the insurance reforms generally prohibit the TDI staff from participating in rate hearings, OPIC is the only state entity authorized to participate in rate filings before the board. OPIC also maintains public education programs for consumers.

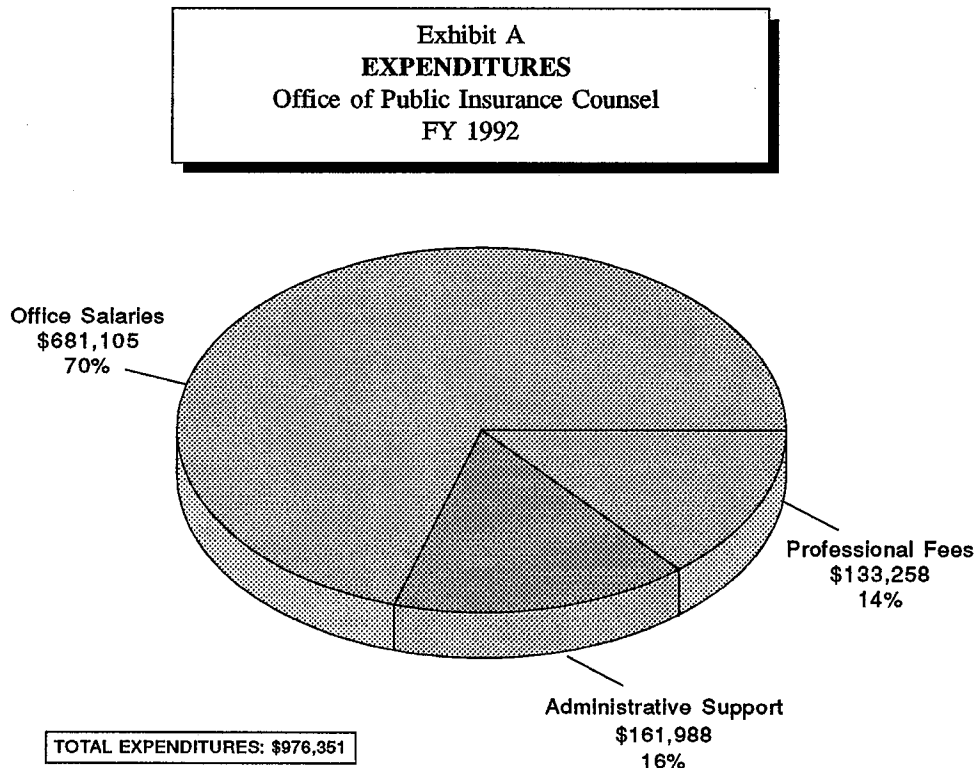
POLICYMAKING BODY

Unlike most other state agencies, OPIC does not have a policymaking board or commission. Instead, the office is overseen by the public insurance counsel, who is appointed by the governor with the advice and consent of the senate to a two-year term. To qualify for appointment as public counsel, a candidate must be a Texas resident and hold a license to practice law in Texas. The candidate must also show "a strong commitment and involvement in the efforts to safeguard the rights of the public" and must possess "the knowledge and experience necessary to practice efficiently in insurance proceedings." The office has had one public counsel since its creation in 1991.

The public counsel is the chief executive officer and hires staff, directs the office's activities, approves the budget, and sets office policy. The statute requires the office to appear or intervene on behalf of ratepayers in matters involving rates, rules, and forms affecting all regulated lines of insurance.

FUNDING AND ORGANIZATION

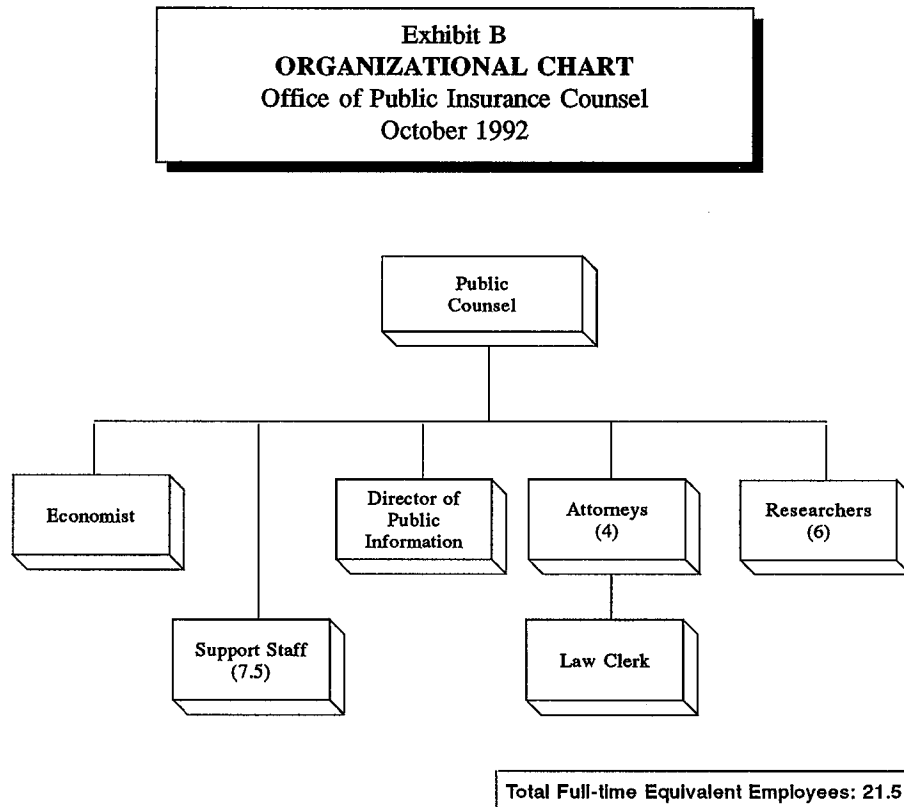
In fiscal year 1992, the office expended \$976,351 out of appropriations totaling about \$1 million. Exhibit A shows a breakdown of these expenditures. The office's fiscal year 1992 revenues to support these expenditures came entirely from one source, the general revenue fund.



Although OPIC's funding comes entirely from general revenue, a statutory assessment is applied to insurance companies to defray appropriations. Currently, property and casualty insurers pay an assessment of 5.7 cents for property and casualty insurance policies in force at the end of the calendar year; title insurance companies pay 5.7 cents for each owner's policy and mortgage policy written during the year for which a full premium is charged; and individual health, group health, accident, and life insurers pay three cents for each policy written during the calendar year.

This assessment is collected by the TDI's tax administration division and deposited to the general revenue fund. In fiscal year 1992, about \$1 million was collected through this assessment.

As of October 1992, the office had 21.5 full-time equivalent employees (FTEs): the public counsel, four attorneys, an economist, a public information director, six researchers, and 7.5 technical and support staff. All employees work in the Austin office. In fiscal year 1992, the office's minority work force comprised 20 percent of the office's total work force. Exhibit B shows the office's organizational chart for fiscal year 1993.



PROGRAMS AND FUNCTIONS

OPIC's primary function is to represent consumers as a class in hearings on matters of insurance rates, rules, forms, and other matters before the insurance board as well as courts and other forums. The office also performs administrative functions and provides information to the public regarding insurance matters. A description of the office's functions follows.

Hearings

The insurance board holds annual hearings to set rates for motor vehicle homeowners and title insurance. The board also sets benchmark rates and flex bands for motor vehicle and homeowners insurance. The flex band is a percentage range within which insurance companies may charge more or less than the benchmark rate without prior approval by the board. The board also holds hearings to set rates for credit insurance.

In addition, the board holds weekly hearings to consider rule changes, certain company rate filings, and the appropriateness of forms to be used in the marketplace. The public counsel and the office's economist, attorneys, and researchers review and comment on these matters before the board. By statute, the public counsel may appear or intervene on behalf of consumers in most matters involving rules, rates, and forms that come before the board.

Rate Hearings

In the annual hearings for motor vehicle and homeowners insurance, the board sets an industry-wide benchmark rate and flex bands above and below that rate. These rates are based on industry-wide data, which serve as the basis for the cases presented by both the industry and OPIC. Since the purpose of the annual hearings is to set an industry-wide rate and flex bands, insurers choose whether to participate. Typically, many insurers participate by presenting testimony in support of their own proposal for a new industry-wide rate.

OPIC participates in these annual hearings on behalf of insurance consumers. In preparation for the rate hearings, OPIC analyzes industry-wide information, then prepares a rate proposal of its own that will be recommended to the board for adoption. As part of this process, the office's chief economist works with a consulting actuary to analyze profit provisions, investment income calculations, loss ratios and trend development factors for the purpose of forecasting losses for the year rates will be in effect.

Once the board has set a benchmark rate for motor vehicle and homeowners insurance, insurers may file and use rates within the flex bands without prior approval of the board. If insurers want to charge rates outside the flex bands, they are required to obtain prior approval from the board. OPIC is authorized to review rates proposed outside the flex band. In the annual rate hearing for title insurance and credit insurance the board sets standard rates that all insurers must charge.

If OPIC needs additional information from companies about proposed rate changes, the office obtains it through the discovery process and depositions. As a party to the proceedings, OPIC must also answer discovery requests from other parties. OPIC attorneys file motions and prepare testimony for the hearing, often with the assistance of outside experts.

A hearing before the board in a major insurance rate case can last up to a week or longer. After the hearing, the public counsel prepares post-hearing briefs and prepares and files motions

for rehearing to preserve OPIC's right to appeal any board decision. OPIC may also file an appeal in district court if necessary.

Rules and Forms Review

OPIC staff also proposes rule changes that would benefit policyholders and reviews and comments on proposed rule changes in all regulated lines of insurance. In addition, OPIC advocates for forms written in plain language that clearly explain the coverage contained in consumers' insurance policies. The office examines applications to alter forms to determine whether the change would expand or limit coverage to the consumer, and whether the change would otherwise negatively affect consumers.

Administrative Support

OPIC has 7.5 support staff to carry out general administrative functions, such as preparing the annual budget, keeping the office's accounting records, tracking personnel matters, processing payroll, processing purchasing orders, handling incoming and outgoing mail, and filing office records. Administrative support also includes OPIC's docket clerk, who keeps track of regulatory proceedings at the TDI and elsewhere.

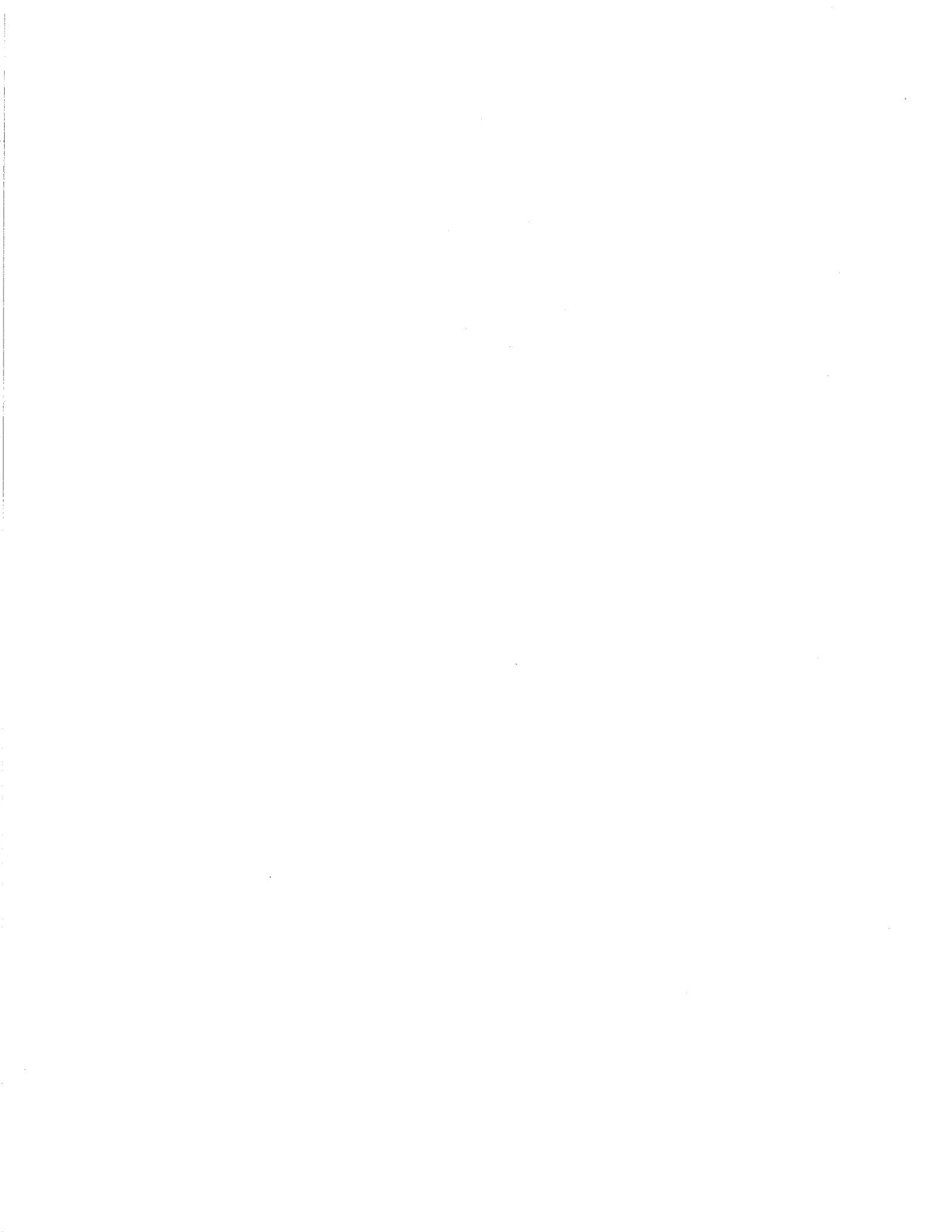
Administrative support staff members, with the aid of the public information director and the office's researchers, produce a bimonthly newsletter and informational pamphlets that keep legislators, consumer groups, and individuals informed about insurance matters. In addition, OPIC has sought input on insurance matters through a small number of town meetings with consumers, health care providers, businesses, and other interest groups. OPIC is also required to develop an insurance consumer's bill of rights for each personal line of insurance including automobile, homeowners, tenants, life, accident and health, and credit. Each bill of rights is submitted to the board of insurance for adoption through the rulemaking process and is to be included in with every insurance policy issued to consumers.

OPIC receives information requests and consumer complaints. However, because the office represents consumers as a class, complaints from individuals are referred to the TDI. OPIC monitors complaints received by the TDI to determine whether certain patterns of unfair trade practices are occurring in the marketplace. Unfair trade practices that are discovered by OPIC are brought to the attention of the board and the industry in an attempt to resolve the situation informally. If no resolution is found, OPIC may choose to propose a rule that would prohibit such practices.

The administrative support staff must also develop a six-year strategic plan. During the 72nd regular session, the legislature adopted legislation that requires most state agencies to develop a six-year strategic plan. The strategic plans are the first step in building a long-term statewide budgeting and planning process. The agency has submitted its plan to the governor, lieutenant governor, speaker of the house of representatives and several legislative oversight agencies, including the Sunset Advisory Commission. The strategic plan is presently being used to develop budget recommendations for the agency.

***FINDINGS AND
RECOMMENDATIONS***

OVERALL APPROACH TO REVIEW



OVERALL APPROACH TO THE REVIEWS

The Sunset Act requires an assessment of several factors as part of an agency's review. These factors include determining if the agency's functions continue to be needed, if those functions could be better performed by another agency, if functions performed by another agency could be better performed by the agency under review, and if changes are needed to the agency's statute.

The State Board of Insurance, now known as the Texas Department of Insurance (TDI), was previously reviewed under the Sunset Act in 1983. The legislature continued the agency and made several significant changes in the regulatory process. The legislature adopted a provision to require insurers to pay premium taxes quarterly instead of annually depending on the level of their gross premium tax liability. The legislature also provided for the agency to perform field audits of insurers' gross premium tax statements. Other changes included a requirement for the agency to report to the legislature regarding needed changes in the statutes governing insurance and clarification of provisions in the guaranty fund statute.

In accordance with the Sunset Act, the current review of the TDI and the Office of Public Insurance Counsel (OPIC) included an assessment of the need to continue the agencies; a review of the benefits that would be gained by changing the organizational structure of the agencies; and finally, if the functions performed and the current organizational structure are maintained, an analysis of changes needed to improve the efficiency and effectiveness of the two agencies.

The need to continue the TDI focused on whether continued state involvement in the regulation of the insurance industry is necessary. The need to continue OPIC focused on whether representation of consumers by an independent agency in department proceedings is necessary. The review also included an examination of whether benefits would result from merging the agencies or particular functions of the agencies with other state agencies. The review then focused on changes needed if the two agencies were maintained in their current form.

To make determinations in each of these areas the review team was involved in a number of activities during the review period. These included:

- coordination and discussions with the staff of the Senate Subcommittee on Insurance regarding issues affecting the agency, particularly issues relating to the reform efforts enacted by the 72nd Legislature;
- coordination with the State Auditor's Office regarding the study of financial and solvency regulation at the department;
- review of agency documents and reports, state statutes, legislative reports, other states' reports and statutes, previous evaluations of agency activities, and literature containing background material;

- interviews with the board members, the commissioner, the public counsel, and key agency staff;
- meetings and discussions with staff from the state comptroller of public accounts, the State Office of Administrative Hearings, and the Texas Legislative Council;
- discussions with the staff of the Legislative Budget Board and the governor's office;
- attendance at public meetings and hearings of the Texas Department of Insurance;
- telephone interviews with individuals at the National Association of Insurance Commissioners and other individuals in insurance regulatory agencies in other states;
- a survey of the employees of the TDI and OPIC requesting the identification of problems at the agencies as well as potential solutions; and
- interviews and meetings with groups affected by or interested in the activities and policies of the department and the public counsel, including groups representing the various lines of insurance, large and small insurance companies, insurance agents, consumers, and others.

Out of these activities the overall focus of the review took shape. The regulatory structure for the insurance industry was developed in the 1950s, though significant changes to the agency were enacted just last session. One of those changes was the creation of the Office of Public Insurance Counsel as an independent agency to represent consumers in matters before the agency. The review focused on the following questions: First, does the overall organizational structure of the TDI require adjustment to enable the agency to focus clearly on its mission of regulating the insurance industry? Second, do the changes that were recently enacted by the legislature require additional modifications to assure that insurance regulation adequately addresses the needs of the industry and consumers?

The recommendations included in the report represent only a small percentage of the total number of issues that were raised during the review. Many of the issues raised were management issues and could not be resolved through a change in the statute. This type of issue was left to other legislative oversight agencies to address. The recommendations finally selected were based on their relative importance and represent a good faith effort to balance the competing interests inherent in the issues surrounding the regulation of the insurance industry.

NEED FOR THE AGENCY



POLICYMAKING BODY



ISSUE 1: The Texas Department of Insurance should be continued for a 12-year period.

BACKGROUND

The first agency created to regulate insurance in Texas was established in 1876 as the Department of Insurance, Statistics and History. The agency's name and responsibilities have changed several times since its creation. Currently, the major activities of the Texas Department of Insurance are to license insurance companies and agents, to monitor the conduct of persons and entities in the insurance industry, to monitor the financial health of insurance companies and other regulated entities, and generally to assure that insurance rates are just and reasonable and are not excessive for the risks they cover. The agency also seeks to promote consumer education regarding insurance products and matters. The TDI currently regulates about 180,000 licensed insurance agents and 2,558 insurance and related companies with a premium volume of more than \$35 billion in Texas in 1991.

To accomplish its objectives, the agency has three full-time board members who set regulatory policy, adopt agency rules, and serve in a quasi-judicial capacity at insurance rate proceedings. The day-to-day operations of the agency are overseen by a commissioner of insurance who is appointed by the board. The commissioner is generally responsible for administering and enforcing the state's insurance laws and the board's rules and regulations. In fiscal year 1992, the agency had a staff of 1,281 full-time equivalent employees. The staff was organized in 11 divisions to carry out its duties: regulated lines, financial, liquidation, licensing, consumer services, insurance fraud unit, legal services, policy planning and research, administrative services, financial management, and information services.

To justify the continuation of an agency and its functions, certain conditions should exist. First, a continuing need should exist for the state to provide the functions or services of the agency. Second, the functions should not duplicate those currently provided by any other agency. Third, no significant organizational benefits or cost savings should be achieved from consolidating the functions or services of the agency with another state agency. An evaluation of the need to continue the department resulted in the following findings.

FINDINGS

- ▶ **The primary functions of the department in regulating the insurance industry continues to be needed to protect the public's interests.**
 - Generally, consumers do not have knowledge of the financial environment in which insurance companies operate. In most business transactions, the long-term financial viability of the seller is of no concern to the consumer. In insurance transactions, however, the assurance of the future solvency of the company is essential to the consumer's ability to collect on claims and to enjoy the protection from risk for which the insurance was purchased. Without the financial

regulation of the department, consumers would have no assurance of the financial integrity of companies in the insurance market. The department's financial regulation also works with financially troubled companies to improve their condition without having to place the company in receivership, which may destroy or diminish the value of the insurance in force. In addition, the department's early warning efforts allow the staff to identify companies before they experience financial difficulties and to work with them to improve their financial condition before more intrusive actions are required.

- Consumers may not always have adequate information to help them make decisions and resolve problems regarding insurance matters. Because of the complexity of some insurance transactions, the department provides consumer information to help consumers make more informed decisions regarding their insurance needs and the relative cost and value of their insurance coverage. The department also licenses insurance companies and agents and monitors their marketing activities to help assure both insurers and consumers that the industry is operating in a fair and legal manner. The department resolves consumer complaints against insurers and has established a fraud unit to investigate and take action on allegations of fraud by insurers and policyholders.
 - Although consumers have a choice as to which insurance company to use, their ability to compare prices and services is limited. Because price and services depend on the policy and amount of coverage purchased, variations in the writing of these policies and the levels of coverage would impair consumers' ability to make informed choices. In addition, each company has separate underwriting guidelines that it uses to evaluate a person's insurability that may also affect rates. The board's responsibility for regulating insurance rates is designed to assure that rates are just and reasonable and not excessive for the risks covered. Through form regulation, the board establishes minimum coverage requirements for many lines of insurance and provides the opportunity to compare policies on an equivalent basis.
 - Despite the legislative shift last session toward flexible rate regulation for certain lines of insurance, there continues to be a need for protection of the public through enforcement activities and market conduct scrutiny. The board is still required to establish rates and prescribe forms for lines such as title and credit life insurance because of their non-competitive nature. The need to regulate these lines would continue to exist even if further rate flexibility were contemplated for other lines.
- ▶ **The TDI is the most appropriate agency to regulate the insurance industry.**
- As mentioned above, the department already has the responsibility for regulating the financial condition and monitoring the market conduct of insurance companies. In addition, the board of insurance also has the responsibility for

regulating rates and forms for many lines of insurance. No other agency was identified that could perform these regulatory functions at a lower cost.

- Even if the regulation of rates and forms were further relaxed, the department's functions regarding the financial condition and market conduct of insurance companies would still be needed. Even in a fully competitive market, consumers would need to be assured of the solvency of insurers and the fairness and legality of insurers' business practices. Consumers would also need to have adequate information to enable them to make informed decisions in such a market.
- ▶ **The department should concentrate its efforts on activities that relate directly to its responsibility for regulating the insurance industry. Activities that do not relate to insurance regulation should be transferred to another agency.**
 - The department's efforts to license insurance companies and agents could be performed by another agency such as the Texas Department of Licensing and Regulation (TDLR), which licenses several types of businesses. This licensing activity, however, is appropriately placed at the TDI because of the expertise required in insurance matters and the importance of using information from the licensing activity in the department's early warning system and other regulatory activities. In addition, the department has recently taken action to improve the licensing activity by automating the license application and renewal process. Little or no cost savings would likely result from transferring this function to the TDLR because a comparable staff would still be needed to perform the current activities.
 - The TDI's tax collection and auditing activities could be effectively performed by the state's primary tax collector. The state has developed a policy where one agency, the comptroller of public accounts, is responsible for the majority of the state's tax collection and tax auditing activities. An analysis of the two agencies' tax administration functions, which appears later in this report, showed that the activities are quite similar and could be accomplished more efficiently at the comptroller's office.
 - The department's hearing function could also be performed elsewhere. In 1991, the legislature created the State Office of Administrative Hearings and expressed its intent to centralize the hearings activities of state agencies to improve the independence, quality, and cost effectiveness of hearings. An evaluation of the transfer of the TDI's hearings function to the central hearings office is also contained in a later section of this report.

- ▶ **All other states regulate the insurance industry, even though the organizational structure and level of regulation varies from state to state.**
 - Insurance is the only major interstate financial industry that is regulated primarily by the states. The primacy of the states was briefly disrupted by the U.S. Supreme Court in 1944, which ruled that the insurance industry should be subject to federal regulation. In response to this ruling, Congress passed the McCarran-Ferguson Act of 1945, which exempted from federal antitrust laws "business of insurance" activities that are regulated by the states, except for activities that involve "boycott, coercion, or intimidation" by insurers. One effect of this law is that almost every state is involved in regulating insurance rates, at least minimally.
 - Even the few states that do not regulate insurance rates, such as Illinois, continue to regulate the industry through analysis of market conduct and financial regulation.

CONCLUSION

The primary functions of the TDI in regulating the insurance industry continue to be needed to protect the public from insurance company failures, to assure proper conduct by insurers and other participants in the insurance market, and to ensure that insurance rates are just and reasonable for the protection provided. No local or other state agencies were identified that could assume the TDI's primary functions with increased benefits or reduced costs to the state. The primary functions of the agency appear to be appropriately placed in the agency. However, benefits could be achieved from restructuring the organization and transferring certain functions of the TDI to other state agencies.

RECOMMENDATION

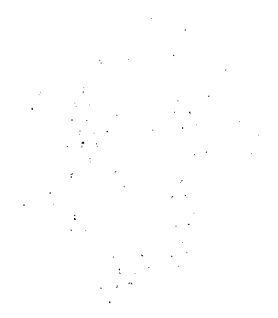
- **The statute should be changed to continue the Texas Department of Insurance for a 12-year period.**

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This change would continue the agency for 12 years. Continuing the TDI would assure the public of continued state oversight of the insurance industry. This oversight protects the public from financial risk associated with insurance insolvencies. The department also helps ensure that participants in the insurance market conduct themselves in a fair and legal manner and provides information to consumers to help them make decisions on insurance matters. Through rate regulation, the department also helps assure that insurance rates are just and reasonable.

FISCAL IMPACT

If regulation is continued under the existing structure, the department's annual appropriation would need to be continued. The department was appropriated \$50.7 million in fiscal year 1992 and is funded entirely through the Insurance Operating Fund, with most of the revenue coming from maintenance taxes and fees assessed against insurance companies and agents. The department receives no funding from the general revenue fund.



ISSUE 2: The Office of Public Insurance Counsel should be continued for 12 more years.

BACKGROUND

The Office of Consumer Protection (OCP), the forerunner to the Office of Public Insurance Counsel (OPIC), was created by the legislature in 1987 to act as a consumer advocate and intervene on behalf of consumers in regulatory proceedings at the State Board of Insurance regarding property and casualty insurance. The OCP was not authorized to file judicial appeals of the board's decisions but upon request could act as legal counsel for any party who filed an appeal with the court. The OCP also could assess the impact of property and casualty insurance rates, rules, and forms on insurance consumers in Texas. In addition to these statutory responsibilities, the OCP provided insurance information to consumers through newsletters, pamphlets, seminars, and news releases.

In 1991, the legislature abolished the OCP and created OPIC to ensure the public counsel's independence from the Texas Department of Insurance (TDI), formerly the State Board of Insurance. The OCP essentially had been independent from the regulatory agency because the public counsel was appointed by the governor, was not under the board's supervision, and requested appropriations separately from the agency. However, concerns about the OCP's independence had been raised because the public counsel was housed with the insurance regulatory agency and shared some of the board's administrative resources, such as accounting, personnel, and payroll services.

The legislature expanded the public counsel's duties when creating OPIC by enabling the public counsel to intervene on behalf of consumers in regulatory proceedings regarding all lines of insurance, including property and casualty insurance; title insurance; credit life and credit accident and health insurance; and life, health and accident insurance. The legislature also granted OPIC the authority to initiate judicial appeals of decisions made by the board and broadened the public counsel's authority to assess the impact of rates, rules, and forms on consumers to include all regulated lines of insurance.

Under the current statute, the governor continues to appoint the public counsel to a two-year term, subject to confirmation by the senate. The public counsel is the chief executive of the office and directs the office's activities in regulatory proceedings at the TDI. The public counsel also prepares and submits the agency's budget to the legislature and may recommend legislation to promote the interests of insurance consumers. OPIC is also required to develop a consumer bill of rights for each regulated line of insurance and submit it to the board for final approval. Once approved, the bill of rights will be distributed to consumers when an insurance policy is issued.

Three factors must be present to justify continuing an agency and its functions. First, the public must have a continuing need for the services or functions being provided by the state.

Second, the agency's services or functions should not duplicate those of any other state agency. Third, no significant benefit should result from transferring the agency's functions or services to another state agency. An evaluation of the need to continue OPIC resulted in the findings set out below.

FINDINGS

- ▶ **OPIC's services and functions as an advocate are needed to guarantee that the interests of insurance consumers are adequately represented in regulatory proceedings at the TDI.**
 - OPIC represents insurance consumers as a class in administrative and court proceedings regarding all lines of insurance regulated by the board. The actual number of insurance consumers in Texas cannot be determined. However, in 1991 insurers wrote more than 2.5 million residential property insurance policies and nearly 300,000 commercial property insurance policies in Texas. During the same year, insurance companies wrote an estimated four million automobile insurance policies in Texas to insure more than seven million private passenger vehicles in the state.
 - In fiscal year 1992, the public counsel intervened on behalf of insurance consumers as a class in all six of the board's rate hearings. In addition, OPIC participated in five judicial appeals of the board's final orders. These appeals were initiated by the insurance industry.
 - OPIC also filed three amicus curiae, or "friend of the court," briefs in fiscal year 1992 in court cases that the public counsel determined could have an impact on insurance consumers in Texas. Amicus curiae briefs are filed by parties who are not directly involved in a court case but who wish to provide information on a point of law that may be unclear. Before OPIC was created, the OCP had previously filed at least one amicus curiae brief. In addition, the Office of Public Utility Counsel (OPUC) has written several amicus curiae briefs in court cases regarding utility regulation.
 - During the 1992 fiscal year, OPIC represented insurance policyholders in 92 other types of proceedings, including rulemaking and form approval hearings. OPIC also proposed a series of rules that were adopted by the board, either as proposed or with changes. These rules were proposed to enhance or protect the interests of insurance consumers. For example, rules proposed by OPIC and adopted by the board require automobile insurers, including the Texas Automobile Insurance Plan, to offer an installment plan payment option to policyholders.

- Without OPIC, most insurance consumers would not have the necessary resources to monitor the board's activities or routinely participate in regulatory proceedings at the TDI. For example, in fiscal year 1992 the board met on 86 separate days, an average of nearly twice a week throughout the year.
- Most insurance consumers lack the expertise needed to analyze and comment on proposed insurance rates during rate hearings. Most parties, including OPIC, hire an actuary to perform these activities when intervening in an insurance rate hearing. Actuaries are trained professionals who assemble and analyze statistics to calculate probabilities of death, sickness, injury, disability, unemployment, retirement, and property loss. Actuaries use this data to predict potential insurance claims and losses to the insurance industry or to a specific insurance company. This type of analysis is critical to determining what the appropriate insurance rates should be in Texas. Most actuaries have a strong background in mathematics and undergo a series of professional examinations over a number of years to progress within their field.
- ▶ **No other state agency represents consumers in regulatory rate proceedings at the TDI.**
 - The TDI's staff is prohibited from becoming a party, presenting evidence, or questioning witnesses in rate hearings before the board unless OPIC is not authorized to participate in that particular proceeding.
 - The TDI's staff may appear before the board to assist in the prehearings process, present evidence relating to the validity of data compiled by the department, provide other assistance to the board, and serve as a hearings officer. However, these activities are not related to the function of representing insurance consumers.
- ▶ **The office's unique role in insurance regulatory proceedings is different from the role assigned to the state's other statutorily-authorized consumer advocates.**
 - OPIC represents the interests of insurance consumers in regulatory proceedings before the board of insurance, including insurance rate cases and rulemaking proceedings. OPIC's staff is knowledgeable about the insurance industry and is specifically qualified to handle insurance-related regulatory matters.
 - The Office of Public Utility Counsel represents residential and small business consumers in utility proceedings at the Public Utility Commission. The office's attorneys, analysts, and legal support and administrative staff have highly specialized knowledge and skills directly related to utility regulation in Texas.

- The Texas Water Commission's in-house Office of Public Interest Counsel promotes the public's interests and responds to environmental and other citizen concerns. The TWC's public counsel is required by law to be a party to all regulatory proceedings before the commission, but is prohibited from appealing commission decisions.

CONCLUSION

The functions currently assigned to OPIC are needed and are appropriately assigned to the office. Minimal or no benefits would be achieved by transferring the office's functions to another existing state agency because of the office's narrow focus on insurance regulation and the specialized expertise and resources needed to represent consumers in insurance matters. Based on these factors, the office should be continued.

RECOMMENDATION

- **The statute should be changed to continue the Office of Public Insurance Counsel for a 12-year period.**

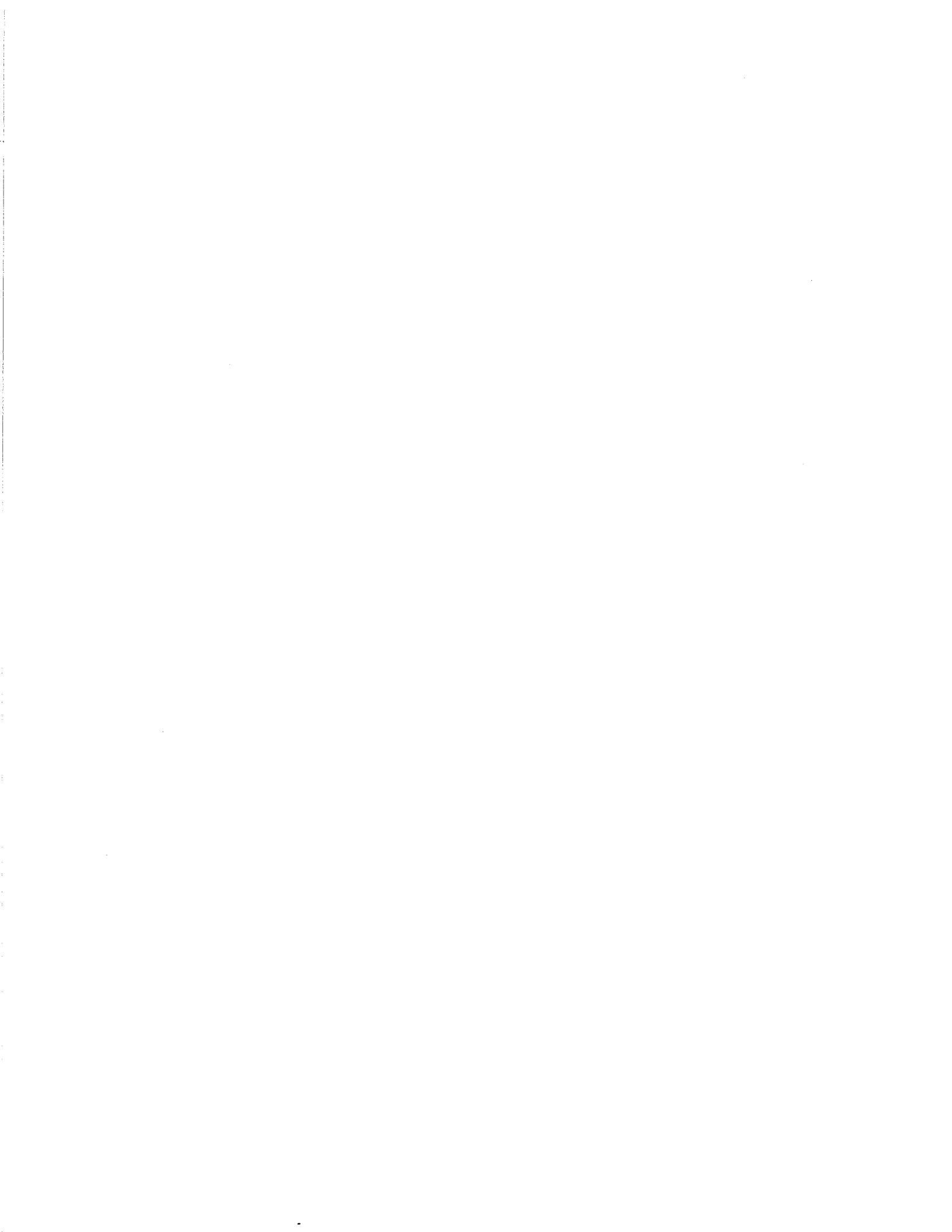
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This recommendation would continue the office for the standard 12-year sunset review period. Continuing OPIC would ensure that insurance consumers are represented in regulatory proceedings at the Texas Department of Insurance. Without OPIC, the insurance regulatory process in Texas would lack a key component that can be found in other Texas agencies.

FISCAL IMPACT

If OPIC's functions are continued under the existing structure, the office's annual appropriation would need to be continued. The office was appropriated \$1.1 million in fiscal year 1992 from the general revenue fund. To defray OPIC's operating costs, insurance companies pay a special assessment on each insurance policy written in Texas, with different fee structures for each line of insurance.

REORGANIZATION ALTERNATIVES



ISSUE 3: The statute should be changed to transfer all insurance tax administration functions from the Texas Department of Insurance to the state comptroller of public accounts.

BACKGROUND

The Texas Department of Insurance collects, administers, and enforces six types of insurance taxes, surcharges, and assessments, which brought in more than \$600 million in fiscal year 1991. These collections are the responsibility of the TDI's tax administration division, which currently has 23 full-time equivalent employees (FTEs) and in fiscal year 1992 had a budget of \$742,128. The insurance taxes, surcharges, and assessments collected by the division are described below.

Insurance premium taxes. Insurance premium taxes, also known as "insurance occupation taxes," are levied against insurance companies doing business in Texas. Premium tax rates are set in statute as a percentage of each company's gross premium receipts collected in Texas. The tax rates vary depending on the line of insurance, ranging from .75 percent for health maintenance organizations (HMOs) to 4.85 percent for surplus lines agents and unauthorized insurers.

About 2,550 insurance companies pay the insurance premium tax, which generated more than \$500 million in fiscal year 1991. Revenues from the tax are deposited in the state's general revenue fund. The TDI collects these taxes quarterly from most taxpayers with the exception of surplus lines agents, who file a semi-annual return. The TDI works with the Surplus Lines Stamping Office of Texas (SLSOT) to verify returns filed by surplus lines agents. The SLSOT is required to review all surplus lines policies written in Texas to ensure compliance with state law.

Maintenance taxes. Maintenance taxes are levied against insurance companies doing business in Texas and are used to support the TDI's operating costs. Like the premium tax, the tax rates are percentages of each insurance company's gross premium receipts collected in Texas. However, the tax rates for each line of insurance are set by the board annually and cannot exceed maximum limits set in law. The tax rates may vary from one year to the next depending on the TDI's budgeted expenditures, expected revenues from other sources, fund balances from the previous year, and projected premium volume.

The TDI collects nine types of maintenance taxes from the same taxpayers who pay the insurance premium tax. In fiscal year 1991, these taxes generated nearly \$54 million in revenues, which were deposited in a special dedicated fund. The TDI collects two additional maintenance taxes from workers' compensation insurers operating in Texas to support the Texas Workers' Compensation Commission and the Texas Workers'

Compensation Commission Research Center. The TDI collected more than \$42 million in workers' compensation maintenance taxes in fiscal year 1991.

Maintenance tax surcharge. The TDI also collects a maintenance tax surcharge that is used to pay off bond debts that were incurred to create the Workers' Compensation Insurance Fund. The fund provides coverage for companies that could not otherwise obtain workers' compensation insurance. The surcharge is collected from workers' compensation insurance companies that write policies in Texas and will be applied to workers' compensation self-insurers beginning in 1993. The surcharge generated \$76.5 million in fiscal year 1992, the first year it was assessed.

Retaliatory taxes. Retaliatory taxes are assessed against companies that are domiciled in other states but do business in Texas. These companies are known as foreign companies. The retaliatory tax rates are based on the insurance taxes assessed by the foreign company's home state or country against Texas-based insurance companies and are intended to create insurance tax parity among the states. The Texas retaliatory tax rates vary for each state because each state has different insurance taxes and rates that apply to Texas companies. Most states assess retaliatory taxes against foreign companies and the National Association of Insurance Commissioners publishes a retaliatory tax guide to help state regulators determine the appropriate tax rates. The retaliatory taxes are reported in the annual premium and maintenance tax return and are deposited in the general revenue fund. In fiscal year 1991, about 500 companies paid retaliatory taxes totaling \$4.6 million.

Office of Public Insurance Counsel assessment. The OPIC assessment is collected from insurance companies that are authorized to do business in Texas and is intended to help defray OPIC's operating costs. The assessment is a statutory fee on each insurance policy written in Texas, with different fee calculations for each line of insurance. The assessment, which generated about \$1 million in fiscal year 1991, is deposited in the general revenue fund.

Motor vehicle assessment. The motor vehicle assessment is collected from insurance companies that write automobile insurance in Texas. Revenue from the assessment funds the Automobile Theft Prevention Authority (ATPA), which is located in the criminal justice division of the governor's office. The ATPA was established to provide funding for programs that combat automobile theft. The TDI is under contract with the ATPA to collect the motor vehicle assessment, which is set at \$1 per insured vehicle per year. The assessment generated \$6.5 million in fiscal year 1992.

These taxes, assessments, and surcharges are collected either quarterly, semi-annually, or annually. The board adopts the tax forms in rules each year before they are distributed to taxpayers. Tax returns are processed by the tax administration division and the accompanying payments are deposited in the state treasury by the TDI's cashier's office. Tax payments from companies with an annual tax liability of \$500,000 or above are

electronically deposited in the state treasury. The tax administration division reviews each return to ensure accuracy and compliance by performing manual calculations and by entering the reported information into several databases that cross-check information reported by other divisions. In fiscal year 1991, the tax administration division processed about 17,000 quarterly, semi-annual, and annual returns and amendments to returns. The division also answers taxpayer inquiries.

The tax administration division enforces Texas' insurance tax requirements by conducting tax audits. About 1,750 foreign, or out-of-state, insurance companies and about 800 domestic, or in-state, companies are subject to being audited by the TDI. The division focuses its tax audits on foreign companies rather than domestic companies because the TDI's financial division conducts an in-depth financial audit of each domestic company at least once every three years. The tax examination section determines which companies will be audited based on the potential revenue that could be recovered by the audit and the likelihood of each company to inaccurately report the correct taxes owed. The division particularly focuses on companies that qualify for lower tax rates and have a high premium volume in the state.

The Texas Sunset Act requires agencies under sunset review to be evaluated for programs or activities that overlap or duplicate the efforts of other state agencies and, if so, whether they should be consolidated. The review included an analysis of the TDI's tax collection and audit functions and a comparison with tax administration functions performed by the state comptroller of public accounts and other states' insurance regulators. The results of the review follow.

FINDINGS

- ▶ **In Texas, the functions of collecting and administering state taxes and auditing state taxpayers have in most cases been assigned to the state comptroller of public accounts.**
 - The state comptroller of public accounts is charged with collecting, administering, and enforcing nearly all of the state's tax laws, including the collection, processing, and deposit of most state tax revenues. Tax administration activities are a primary function of the state comptroller's office, with about 80 percent of the office's total resources dedicated to these activities in 1991.
 - As the state's chief tax collector, the comptroller collects, administers, and enforces 26 taxes that account for about 89 percent of all state tax revenue and 51 percent of total state revenues. These taxes include state sales taxes, motor fuels taxes, motor vehicle sales and use taxes, utility gross receipts assessments, oil production taxes, and natural and casinghead gas taxes.

- Unlike insurance taxes, most state taxes imposed by other regulatory agencies' governing statutes are collected by the state comptroller's office. For example, the state comptroller collects the utility gross receipts assessment, which is imposed by the Public Utility Commission's governing statute, and the state tax on pari-mutuel pools from greyhound and horse races, which is assessed by the Texas Racing Commission's enabling statute.
- ▶ **The state comptroller's office is well-equipped to collect, administer, and enforce state taxes.**
 - The state comptroller's office is focused on collecting, administering, and enforcing state taxes and has a wide range of specialized activities to support those functions. Examples of these activities include developing tax policy; providing taxpayer services; publishing taxpayer information; automating, updating, and improving tax collection procedures; and providing data processing services to support auditing functions.
 - In fiscal year 1991, the state comptroller's office processed more than 2.9 million returns and collected more than \$15.2 billion in tax and fee revenue. During that time the office made more than 14 million taxpayer contacts.
 - The state comptroller's office audits taxpayer accounts to enforce tax requirements, identify tax deficiencies, and promote voluntary taxpayer compliance. The office has two procedures for selecting taxpayers to be audited. The first identifies taxpayers who are most likely to be deficient. The second selects taxpayers at random, which increases the likelihood of individual taxpayers being audited. Randomly selected audits are considered a vital part of an effective audit program because they help ensure voluntary compliance with tax laws and requirements.
 - In fiscal year 1991, the state comptroller's office employed 732 audit staff and expended nearly \$33 million to conduct 13,875 tax audits. These audits captured an additional \$360 million in taxes that otherwise would have been lost to the state. To improve the audit function's efficiency and effectiveness, the state comptroller's office has field audit offices in 16 Texas cities and in four other states: California, Illinois, New York, and Oklahoma.
- ▶ **The state comptroller's office has the resources to perform these functions for insurance taxes more efficiently than the TDI, which should remain focused on insurance regulation rather than insurance tax administration.**
 - The legislature refocused the TDI's regulatory duties during the last session by changing the way some insurance rates are established and encouraging the TDI to concentrate more on the financial condition of insurance companies to ensure

they remain solvent. This shift in regulation has increased the TDI's regulatory activities and has required the agency to place more resources in financial regulation activities. The state comptroller's office is already focused on tax administration functions.

- As currently structured, the TDI's tax administration function is time-consuming and inefficient because the collection, administration, and auditing processes have not been updated and fully automated. A preliminary study by the TDI indicated that the agency would need to spend a minimum of \$292,000, assign four to five full-time equivalent employees, and take 16 to 20 months to develop an automated tax system within the agency. The state comptroller's office is equipped to automate and improve this function more quickly and efficiently.
 - The TDI has seven insurance tax auditors who are headquartered in Austin but travel to other locations to conduct tax audits as needed. The majority of the TDI's tax audits are conducted in Illinois, New York, and Connecticut. In fiscal year 1991, the TDI conducted tax audits on 471 out-of-state companies, or about 27 percent of the total foreign companies doing business in Texas, and recovered about \$6 million in insurance taxes. The state comptroller's office could perform audits more efficiently and potentially at less cost through its audit field offices that are located in Texas and in other states.
 - The TDI does not have a procedure to randomly select audits of insurance companies. Instead, the tax administration division focuses tax audits on those companies that appear most likely to be in violation of the tax requirements. These companies are chosen by the potential revenue that could be recovered by the audit and the likelihood of each company to inaccurately claim a lower tax rate. The comptroller's office has a procedure to randomly select audits that could be applied to insurance companies, which would promote voluntary compliance from these taxpayers.
- **Other states have assigned the function of collecting state insurance taxes to the state's tax collection office.**
- A survey of other states' data shows that 21 states have assigned the insurance tax collections function to the state's tax collection office.
 - Excluding Texas, seven of the 10 states with the highest total premium volume in 1991 collect insurance taxes through the state's tax collection office. These states are Florida, Georgia, Michigan, New Jersey, New York, Ohio, and Pennsylvania.

- ▶ **Although the TDI and the comptroller's office have begun discussing the feasibility of transferring the insurance tax administration functions to the comptroller's office through interagency contract, statutory changes would still be needed to clearly and fully complete the transfer.**
 - The TDI and the comptroller's office have had several meetings to discuss the possibility of transferring the TDI's tax administration functions to the comptroller's office by interagency contract, legislative mandate, or both. Representatives from both agencies have initially agreed to further explore the potential for transfer and have indicated that the transfer could probably be accomplished without creating significant problems for either agency.
 - Even if the two agencies agree to transfer the tax administration functions to the comptroller's office through interagency contract, the statute would need to be changed to complete the transfer. The delegation of these tax collection and audit duties from the TDI to the state comptroller's office should have legislative approval to assure that the agency responsible for tax administration has the proper legal authority to perform the job.
 - Regardless of how the transfer is accomplished, the board should continue to set the insurance maintenance tax rates as specified by state law.

CONCLUSION

The state comptroller of public accounts has been charged with collecting, administering, and enforcing nearly all of the state's taxes. However, these functions have been assigned to the TDI for the state's insurance taxes. Because the primary focus of the state comptroller's office is collecting state taxes, the office is better equipped to collect, administer, and enforce insurance taxes than is the TDI, which is primarily responsible for regulating the state's insurance industry. The TDI has recognized that its tax administration functions could be better performed by the state comptroller's office and has begun exploring the potential to move this activity to that office. Even if the functions are transferred through interagency contract, the statute would still need to be changed to clearly and fully complete the transfer.

RECOMMENDATION

- **The statute should be changed to:**
 - **transfer the tax collection, administration, and audit functions from the Texas Department of Insurance to the comptroller's office on or before September 1, 1993; and**
 - **require the TDI and the comptroller's office to enter into a memorandum of understanding to ensure that information gathered through tax collection, administration, and audit activities and through insurance regulatory activities is shared between the two agencies.**

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Under this recommendation, the collection, administration, and auditing of insurance taxes would be transferred from the TDI to the comptroller's office. The board of insurance would continue to set the insurance maintenance tax rates annually. The TDI would continue to collect licensing fees and other regulatory fees, such as annual statement filing fees. Every two years, the TDI would provide the comptroller's office with a list of information needed from taxpayers to aid in regulating insurance companies, but the comptroller's office would design and adopt the actual tax return forms. The comptroller's office would handle taxpayer inquiries but would refer other insurance-related questions to the TDI. The state comptroller's office would also handle tax security requirements for insurance accounts, as it does now for sales tax and other tax accounts.

The effective date of this transfer is proposed for September 1, 1993. This date would provide an unusually early deadline for completing the transfer. However, the two agencies can meet this early effective date because they have already begun discussing the feasibility of transferring the function and could be prepared to complete the transfer by the proposed deadline. This deadline would still leave the agencies with several months to work out the details of the employee transfers, space allocation, information system adjustments, and other elements of the transfer process.

The proposed memorandum of understanding (MOU) between the TDI and the state comptroller's office would ensure that the two agencies share information needed to regulate the insurance industry and administer insurance taxes. The MOU should be adopted in rules and would outline the communications procedures for sharing needed information on a timely basis. These procedures are necessary to help ensure that the state's taxes are fully protected and that regulatory matters are rapidly addressed. The MOU should also be in place by September 1, 1993.

Transfer of the tax collecting, processing, and auditing functions would help the TDI focus more clearly on regulating the insurance industry. The agency would be able to perform its primary duty of protecting the interests of Texas insurance consumers.

FISCAL IMPACT

The fiscal impact of this recommendation cannot be estimated at this time. However, there would probably be some savings to the state from a reduction in positions and related expenses. In addition, the TDI's preliminary estimate of \$292,000 in expenditures to automate the TDI's tax administration function could be eliminated if this recommendation is adopted. However, the TDI and the state comptroller's office may incur additional expenses to transfer the insurance tax administration functions and establish a communication system, which could offset the savings from the TDI's estimated automation costs.

ISSUE 4: The hearings function at the Texas Department of Insurance should be transferred to the State Office of Administrative Hearings.

BACKGROUND

The hearings division acts as the judicial arm of the Texas Department of Insurance and conducts administrative hearings for licensing, enforcement, and regulatory activities under the authority of the insurance commissioner. The division also conducts hearings for the board for certain matters specifically delegated to it. The hearings division does not hear rate cases, which are instead heard by the board of insurance. Hearings are conducted under the provisions of the Administrative Procedure and Texas Register Act (APTRA), the insurance code, and the board's rules of practice and procedure. In fiscal year 1992, the division expended approximately \$493,000 and consisted of 13 employees, including four hearings officers and five court reporters. The chief hearings officer reports to the commissioner.

Cases heard by the division originate in several ways:

- the department may bring enforcement or disciplinary actions against alleged violators of insurance laws, rules, and regulations;
- the department may bring action to place a financially troubled insurance company under supervision or to order companies and agents to cease and desist from certain activities;
- insurers must go through hearings to receive approval of certain applications for certification or licensure and approval of acquisitions and mergers;
- insurers must have hearings to amend the charters governing their operations; and
- the board may delegate to the hearings division certain filings involving the Workers' Compensation Insurance Facility and the Texas Catastrophic Pool Insurance Association, referred to as the CATPOOL.

Once cases are filed with the division, they are scheduled for a hearing and notice of the hearing is prepared in accordance with APTRA. Each docketed case is assigned to a hearings officer who is responsible for controlling the processing of the case. In the pre-hearing phase, the hearings officer decides on matters such as discovery and motions to intervene and may conduct pre-hearing conferences to focus issues in dispute and lay out hearing procedures. The hearings officers conduct hearings generally following rules of evidence from non-jury civil trials. Once the hearing is closed, the hearings officer prepares a proposal for decision and sends it to the parties to the case seeking exceptions or replies to the proposal. The hearings officer then presents a proposed order with the

exceptions and replies to the commissioner or the board. At the direction of the commissioner or board, the hearings officer may change the order to reflect a decision that is different from what was recommended. Orders become final after all motions for rehearing have been exhausted. Persons affected by rulings or actions of the commissioner may have the decision reviewed by the board of insurance. Persons affected by the board's order may appeal in district court in Travis County for review under the substantial evidence rule in APTRA.

During fiscal year 1992, the hearings division conducted hearings on 368 cases. Most of these cases involved disciplinary matters or license applications involving insurance agents. Another major source of hearings was to determine whether to place financially troubled insurance companies in supervision. The division also conducted hearings on 26 cases for the board on matters involving the Workers' Compensation Insurance Facility and the CATPOOL.

In 1991, the legislature created the State Office of Administrative Hearings to conduct hearings in contested cases for agencies under APTRA. The new central hearings office automatically assumed the responsibility for conducting hearings for each agency that does not have a full-time hearings officer. The legislature must make a separate decision on whether hearings held by agencies with full-time hearings officers, like the TDI, should be conducted by the central office. A review of these agencies must consider the independence of the hearings officer as well as the quality and cost of hearings at the agency. The review of each of these agencies is required by statute to be completed by September 1, 1993.

As part of the sunset review of the TDI, an analysis was made of the hearings division and its processes. The analysis focused on the appropriateness of transferring the agency's hearings function to the new State Office of Administrative Hearings. As noted above, the statute that created the central hearings office specifies that the decision to transfer an agency's hearings function should be based on the independence, quality, and cost of hearings at the agency. To assess these criteria, several factors were examined, including the hiring, firing, and evaluation of the hearings staff, adherence to agency and court precedents, and experience of the hearings staff. In addition, information from other states with central hearings offices was also examined. The findings resulting from the analysis follow.

FINDINGS

- ▶ **In 1991, the legislature created an independent hearings agency and has expressed its intent to transfer hearings functions to that agency, where appropriate, to improve the independence, quality, and cost effectiveness of hearings.**
 - The legislature created the State Office of Administrative Hearings in 1991 to centralize hearings of contested cases under APTRA. Though the enabling legislation did not transfer each state agency's hearings functions to the new office, it clearly states the legislature's intent to do so if the transfer would improve the independence, quality, and cost effectiveness of hearings.
 - The legislature could have excluded the TDI from the provisions regarding the central hearings office, but it did not do so. The only agencies that were exempt from transfer consideration were those agencies exempt from the contested case provisions in APTRA. These agencies include the Texas Workers Compensation Commission, the Texas Department of Human Services on matters regarding financial or medical assistance or benefits, the Texas Employment Commission on matters regarding unemployment claims, the pardons and paroles division of the Department of Criminal Justice regarding the granting or revocation of parole, and the Department of Public Safety on matters regarding driver's licenses.
- ▶ **Providing for hearings to be performed by the State Office of Administrative Hearings could improve the independence, quality, and cost effectiveness of the department's hearings function.**
 - The central hearings office would assure greater independence of the hearings process by removing the hearings function from the supervisory control of the commissioner. This change would remove the staff responsible for making decisions on insurance cases from the control of the staff responsible for enforcing insurance laws and rules and regulations. Separating the hearings function would also remove the perception of unfairness by the public that the same agency acts as judge, jury, and prosecutor in many of these administrative actions.
 - The central office would improve the quality of hearings by providing a work environment that is more conducive to retaining experienced hearings officers. By enhancing the status of hearings officers, the central office could encourage the development and retention of highly skilled hearings officers. The central office would also provide greater opportunities for less experienced hearings officers to develop their skills

in less complicated administrative hearings as they develop expertise in insurance matters.

- Conducting hearings through the central office would lead to improved economies of scale for conducting hearings and developing resources to improve the hearings process. For example, the pool of resources available in the central hearings office could help in the development of quality assurance measures, such as a precedent manual to guide decisions on comparable cases. Such measures can be developed more cost effectively by using small amounts of time from a larger staff rather than tying up the minimal resources an agency such as the TDI can apply to such efforts.
- ▶ **Other states routinely include their insurance regulatory hearings process in a centralized hearings office.**
 - Fifteen states have some form of a central hearings office. In the majority of these states, hearings for the insurance regulatory agency are conducted in the central hearings office. These states include California, Colorado, Florida, Hawaii, Maryland, Minnesota, Missouri, New Jersey, North Carolina, and Tennessee.
- ▶ **The TDI has expressed an interest in streamlining its operations to remove functions that may be better performed by other agencies and to focus its efforts more clearly on the primary mission of insurance regulation.**
 - The department has explored the feasibility of transferring its hearings division to the State Office of Administrative Hearings by interagency contract. Although such an approach may be workable and has been taken by another agency, the Texas Alcoholic Beverage Commission, the statute would still need to be changed to establish the legal authority for such a transfer.

CONCLUSION

The legislature has clearly expressed its intent to consolidate the hearings functions of administrative agencies if such a transfer would improve the independence, quality and cost effectiveness of hearings. Having the hearings division report directly to the commissioner reduces independence of the hearings process because the commissioner directly hires and fires the chief hearings officer. This structure may also affect the quality of decisions because of the increased potential for the commissioner to influence orders proposed by hearings officers. The cost effectiveness of the current process might also be improved by placing the function in a larger centralized agency.

RECOMMENDATION

- **The department's hearings function should be transferred to the State Office of Administrative Hearings.**

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This recommendation would transfer the responsibility for conducting administrative hearings from the TDI to the State Office of Administrative Hearings. The responsibility for preparing and prosecuting cases for the agency would remain at the TDI. The resources of the hearings division would be appropriated to the central hearings office. This recommendation would not affect the ability of persons to appeal to the board of insurance any decision or action of the commissioner. The issue of appeals of commissioner actions to the board is addressed previously in the staff recommendation regarding the governing structure of the department.

In conducting hearings, the central office would consider the applicable substantive rules or policies of the TDI. In this way, the TDI would still determine how broad policy matters or recurring issues will be treated by hearings officers. Under the provisions of the central hearings statute, the agency would only be able to change a finding of fact or conclusion of law for policy reasons, and it must state in writing the reason and legal basis for the change. This provision would make it clear that the hearings officer who presides over the hearing would be responsible for determining the facts and drawing conclusions from those facts. It would also make it clear that the agency would have to specify its reasons for modifying the hearings officer's findings and conclusions. Although it must comply with the TDI's substantive rules, the central hearings office would conduct hearings under its own procedural rules, guiding such things as pre-hearing conferences, discovery, and cross examination. Finally, the hearings officers assigned to the TDI would be housed at the State Office of Administrative Hearings.

These provisions would ensure that the hearings officers would maintain a degree of independence from the TDI and would reduce the risk of improper contacts with agency employees acting as parties to contested cases. Transferring the hearings function to a central hearings office would also improve public confidence in the administrative process by increasing the structural objectivity of the effort. Consolidating the hearings function would also enhance the status of hearings officers, improving the chances of recruiting and retaining the services of highly skilled professionals. Finally, the central office would provide the opportunity for less experienced hearings officers to preside over less complicated administrative hearings as they develop expertise in insurance regulatory matters.

FISCAL IMPACT

Since the TDI's administrative hearings division is small, immediate cost savings due to elimination of personnel are not anticipated. Long-term cost savings are expected but are dependent on the ultimate structure and staffing of the State Office of Administrative Hearings.

The recommendation would involve a significant transfer of responsibility from the TDI to the new hearings office. In fiscal year 1992, the hearings division expended approximately \$360,000 and in fiscal year 1993 was budgeted approximately \$413,000. These amounts do not include funding for court reporters at the department who would probably not be transferred to the central hearings office. It is likely that a similar amount would need to be appropriated to the State Office of Administrative Hearings for each year of the 1994-1995 biennium.

ISSUE 5: Options for changing the governing structure of the Texas Department of Insurance.

CURRENT POLICYMAKING STRUCTURE

The current oversight structure of the agency responsible for regulating insurance in Texas was established in 1957 when the legislature abolished the Board of Insurance Commissioners, which was comprised of separate commissioners for life, fire, and casualty insurance. In its place, the legislature created the State Board of Insurance as a three-member board, appointed by the governor for six-year terms with the advice and consent of the senate. The board was responsible for hiring a commissioner of insurance to serve as the chief executive and administrative officer of the agency. The commissioner served at the pleasure of the board and could be discharged at any time.

In 1991, the legislature adopted major insurance reforms, changed the name of the agency to the Texas Department of Insurance, created the Office of Public Insurance Counsel, and transferred the Office of the State Fire Marshal to the newly-created Texas Commission on Fire Protection. The legislature retained the existing three-member, full-time board and the insurance commissioner appointed by the board. The board is responsible for establishing policy on insurance matters for the department, approving rates and forms for various lines of insurance, and hearing appeals of commissioner actions. The commissioner is responsible for overseeing the operations of the department and administering and enforcing the insurance laws of the state. The commissioner is authorized in statute to meet with the board in an advisory capacity and without a vote in board proceedings.

To be eligible for appointment as a board member, a person must be a Texas citizen with at least 10 years of experience in business, professional, or governmental activities. A person is not eligible for appointment to the board if the person is a stockholder, director, officer, attorney, or employee of any insurance company. In addition, insurance agents, brokers, and adjusters are also ineligible for appointment to the board. The commissioner must be a Texas citizen for at least one year before appointment and must be a competent and experienced administrator who is well informed and qualified in the field of insurance and insurance regulation. The commissioner must have at least 10 years of administrative or professional experience and must have had training and experience in the field of insurance or insurance regulation. No former or present member of the board may be appointed commissioner.

The work of the board members is supported by a personal staff of two aides for each member, two special counsels, a chief clerk, general counsel, public information office, internal auditor, and governmental relations office. In FY 1992, expenditures to support the activities of the board offices were just over \$2 million, or about five percent of the agency's expenditures. The commissioner's office consists of a staff of 14 and also includes a legal counsel. Fiscal year 1992 expenditures to support the activities of the commissioner's office were \$574,000, or about one percent of the total agency expenditures.

PROBLEMS RAISED WITH CURRENT STRUCTURE

As part of the sunset review, discussions about the governing structure of the TDI were conducted with a variety of groups representing the interests of insurers, consumers, and others. Several recurring problems were raised through these discussions and are summarized below:

- ***Confusion regarding the ultimate responsibility for agency actions.*** Because the board is responsible for establishing policy for insurance regulation and the commissioner is responsible for administering the agency, it is not clear who is ultimately responsible for the agency's actions. Concerns were raised regarding the board's ability to implement recently enacted legislative reforms when it does not directly control the staff that actually administers the provisions.
- ***Lack of direct accountability for the regulation of insurance.*** Because board members serve staggered, six-year terms, the governor is typically not able to appoint a majority of the members until at least two years into the governor's term. This delay in the governor's ability to appoint a majority of members to the board reduces the accountability between the agency and the governor regarding insurance regulation.
- ***Inefficiency and delay in getting things done.*** Concerns were raised that matters must go through two levels of review by the commissioner and the board before action is taken. This may result in duplication of effort and additional delays in implementing changes.
- ***Confusion regarding the day-to-day operations of the agency.*** A typical concern with full-time boards is that members get involved in the day-to-day operations of agencies they oversee, creating confusion with the staff regarding their responsibilities.
- ***Need to focus efforts on large policy issues regarding the regulation of insurance.*** Concerns were raised that the board spends too much of its time on routine duties that could easily be performed elsewhere instead of focusing its efforts on the larger policy issues involved in the regulation of insurance.
- ***Need for objective determination of facts in certain rate matters.*** The existing structure does not provide for the objective determination of facts in individual rate filings. The need for objectivity in these types of rate hearings was a major reason why the 72nd Legislature created the State Office of Administrative Hearings (SOAH).
- ***Difficulty of three-member boards in complying with the requirements of the Texas Open Meetings Act.*** Because of a recent Texas Supreme Court ruling, any two members of three-member boards must be careful that they do not discuss any matter pending before the board or they risk violating the state's open meetings law.
- ***Cost associated with maintaining two governing structures.*** Concerns were raised regarding the expense of maintaining a full-time board and an office of the commissioner. In FY 1992, expenditures to support the board totaled just over \$2 million, while operating the commissioner's office required another \$574,000.

ORGANIZATIONAL ALTERNATIVES

As part of the review, alternative organizational structures were developed to address concerns raised during the review.

OPTION 1: Eliminate the current three-member, full-time board and provide for a single commissioner, appointed by the governor to oversee the regulation of insurance.

This option would also:

- provide for the appointment of the commissioner by the governor with the advice and consent of the senate for a two-year term;
- eliminate the requirement in statute for a person to be a Texas resident to be eligible to serve as commissioner;
- specify that the commissioner would be responsible for all activities currently with the board, including rulemaking, making final decisions on ratemaking, and approving and prescribing forms;
- provide for the State Office of Administrative Hearings (SOAH) to conduct initial hearings on individual rate filings, such as filings outside the flex band and workers' compensation filings. The hearings officer at the SOAH would be responsible for making preliminary findings of fact and conclusions of law and proposing recommendations to the commissioner for final action. The commissioner would be responsible for conducting major rate proceedings, such as establishing benchmark rates and flex bands for personal property and automobile insurance.

BENEFITS

Option 1 would:

- ▶ eliminate confusion regarding responsibility for running the agency because only one person would be responsible for the agency's activities, and that person would have the authority to take action;
- ▶ provide for the objective hearing of individual rate filings by providing for the SOAH to conduct these hearings;

- ▶ **improve accountability to the governor for regulating insurance by providing for the direct appointment of the person responsible for establishing policy and administering the agency; and**
- ▶ **improve the agency's ability to respond quickly to accomplish its responsibilities because it would eliminate the duplication that currently occurs between the activities of the commissioner and the board.**

DRAWBACKS

Option 1 would:

- ▶ **provide less discussion and openness in making important policy-making decisions because deliberations would not be conducted in open meetings as is currently the case before the board;**
- ▶ **eliminate the diverse perspectives that the current three-member board brings to decision making;**
- ▶ **increase the potential for politicizing the agency and disrupting operations because of the two-year term required by the Texas Constitution. The constitution also provides for a six-year term, but this term would reduce the accountability between the appointee and the governor; and**
- ▶ **transfer some rate authority to the SOAH, which does not have the expertise or the broad perspective needed for deciding insurance rate matters.**

FISCAL IMPACT

Eliminating the three-member, full-time board would result in savings related to the elimination of the positions of the board members, their aides, and other positions that are currently duplicated between the commissioner's and the board's offices. For example, without a full-time board, there would be no need for both a general counsel who serves the board and a legal counsel who serves the commissioner. Other positions currently responsible to the board, including the public information office, internal auditor, and governmental affairs would not be eliminated. The estimated savings that would result from this option is approximately \$1,046,000.

OPTION 2: Eliminate the current three-member, full-time board and provide for a six-member, part-time board, appointed by the governor, that would appoint a commissioner to oversee the regulation of insurance.

This option would also:

- provide for the appointment of the board members by the governor with the advice and consent of the senate for staggered, six-year terms and provide for the same qualifications as currently exist for members of the board;
- specify that the board would be responsible for appointing the commissioner of insurance, adopting rules, and making final decisions on rates and would eliminate the existing statutory provision for the board to hear appeals of commissioner decisions;
- eliminate the requirement in statute for a person to be a Texas resident to be eligible to serve as commissioner;
- specify that the commissioner would be the administrative head of the agency and would assume responsibility for approving and prescribing forms;
- provide for the SOAH to conduct initial hearings on individual rate filings, such as filings outside the flex band and workers' compensation filings. The hearings officer at the SOAH would be responsible for making preliminary findings of fact and conclusions of law and proposing recommendations to the board for final action. The board would be responsible for conducting major rate proceedings, such as establishing benchmark rates and flex bands for personal property and automobile insurance.

BENEFITS

Option 2 would:

- ▶ reduce confusion regarding the management of the agency because a part-time board is less likely to become involved in the day-to-day operations of the department;

- ▶ **reduce political influence on insurance regulation by insulating the commissioner from the governor's appointment authority. This structure would also make the governing body of the department more like the governing bodies of most other state agencies;**
- ▶ **maintain openness and broadens the perspective of the decision-making body in establishing insurance regulatory policy and eliminates problems associated with open meetings under the current structure; and**
- ▶ **provide for the objective hearing of individual rate filings by providing for the SOAH to conduct these hearings.**

DRAWBACKS

Option 2 would:

- ▶ **place considerable responsibility on a part-time board for determining regulatory policy and having final authority to approve rates given the complexity of insurance regulation;**
- ▶ **increase the potential that persons serving on the part-time board would have to have a conflict of interest for them to have and maintain the level of expertise required to make decisions;**
- ▶ **not improve and would perhaps weakens the accountability between the agency and the governor for regulating insurance; and**
- ▶ **transfer some rate authority to the SOAH, which does not have the expertise or the broad perspective needed for deciding insurance rate matters.**

FISCAL IMPACT

Replacing the three-member, full-time board with a six-member, part-time board would result in savings related to the elimination of the positions of the full-time board members, their aides, and other positions that are currently duplicated between the commissioner's and the board's offices. For example, without a full-time board, there would be no need for both a general counsel to serve only the board and a legal counsel to serve the commissioner. Other positions currently responsible to the board, including the public information office, internal auditor, and governmental affairs would not be eliminated. The estimated savings that would result from eliminating the full-time board is approximately \$1,046,000.

The operation of the part-time board would require additional costs for travel and per diem for board members. Assuming that the part-time board would have 25 meeting days, the estimated cost associated with the part-time board would be approximately \$45,000.

The net fiscal impact of this option replacing the three-member, full-time board with a six-member, part-time board would be a savings of approximately \$1 million.

OPTION 3: Maintain the current three-member, full-time board but provide for the governor to appoint the commissioner of insurance and change the board's and commissioner's responsibilities.

This option would also:

- maintain the existing appointment scheme for board members but provide for the governor -- instead of the board -- to appoint the commissioner to a two-year term with the advice and consent of the senate;
- eliminate the requirement in statute for a person to be a Texas resident to be eligible to serve as commissioner;
- specify that the commissioner would assume responsibility currently with the board for approving and prescribing forms and eliminate the provision in statute for the board to hear appeals of commissioner decisions. Appeals of commissioner decisions would go straight to district court; and
- provide for the board to continue to hear all rate matters it currently hears, but authorize the board to delegate authority for hearing individual rate filings to the SOAH when the board determines such a transfer is appropriate and specify that the board would retain final ratemaking authority even for cases delegated to the SOAH. The board would continue to hear major rate proceedings, such as establishing benchmark rates and flex bands for personal property and automobile insurance. Cases that could be delegated to the central hearings office would be individual rate filings, such as filings outside the flex band and workers' compensation filings.

BENEFITS

Option 3 would:

- ▶ **improve the accountability between the governor and the administrative head of the agency who implements and enforces the state's insurance laws and rules;**
- ▶ **maintain the openness and diversity that currently exists for establishing policy in open meetings of the board;**
- ▶ **assure that the body responsible for making decisions would be able to develop and maintain expertise on complex insurance matters;**
- ▶ **facilitate some processes such as form approval and appeals of commissioner actions.**

DRAWBACKS

Option 3 would:

- ▶ **increase the potential for conflict between the board and the commissioner because they would both be independently appointed and would not necessarily work together in a coordinated fashion to regulate insurance. Conflict could result in instances where the commissioner is appointed by a governor who has not appointed a majority of members of the board. The commissioner would have responsibility for implementing a policy approved by another body that the commissioner does not answer to;**
- ▶ **not fully address the confusion in day-to-day operations of the agency that would continue to exist to some degree because of the nature of full-time boards;**
- ▶ **not solve the open meetings problem associated with three-member boards; and**
- ▶ **increase the potential for politicizing the agency and disrupting operations because of the direct appointment of the commissioner and the two-year term required by the Texas Constitution.**

FISCAL IMPACT

This option would have no additional fiscal impact. This option would maintain current levels of expenditures for board activities amounting to just more than \$2 million.

ISSUE 6: The statute should be changed to require public membership on the governing committee of the Texas Automobile Insurance Plan.

BACKGROUND

In 1951, the legislature enacted the Texas Motor Vehicle Safety-Responsibility Act requiring motorists to possess a minimum level of liability insurance to cover the cost of damage caused to other vehicles and to property in an automobile accident. Some drivers would have difficulty getting insurance because they have a poor driving history, they have not been previously insured, or they are first-time drivers. The legislature authorized insurance companies by statute to create an assigned risk plan for consumers who are unable to obtain insurance by ordinary means. Accordingly, the insurance industry formed the Texas Automobile Insurance Plan (TAIP) to provide coverage for such drivers. The structure and operations of the TAIP were approved by the state's insurance board and went into effect early in 1952, at which time participation in the TAIP became mandatory for all insurers authorized to write motor vehicle liability insurance. The amount and type of insurance coverage available through the TAIP is set by statute, and policy forms and rates to be used by all insurers writing insurance through the TAIP are set by the insurance board. These rates are generally higher than the rates charged in the voluntary market due to the higher risk associated with drivers insured by the TAIP.

In 1991, the 72nd Legislature strengthened the enforcement of the financial responsibility requirements as part of its insurance reform legislation. In doing so the legislature attempted to increase compliance among the estimated three million uninsured motorists in Texas by requiring all drivers to present proof of insurance when performing necessary tasks such as renewing a driver's license, having a car inspected, and purchasing a new license plate sticker. The legislature also increased the fine applied to motorists driving without the minimum liability coverage required by state law. In order to avoid such penalties, many uninsured drivers sought insurance and were referred to the TAIP because of their history of no prior insurance. Before these enforcement provisions went into effect in September 1991, the TAIP was processing an average of 21,000 applications for insurance each month. After September 1991, the average jumped to about 55,000 a month.

Automobile insurance is available through either the voluntary or the involuntary market. The voluntary market consists of consumers who are able to buy insurance from regulated or non-rate regulated companies. Regulated companies have their rates and forms set by the state's insurance board. Generally, regulated companies insure those drivers they believe they can insure at their current rate levels. The insurer expects that the future losses claimed by these drivers will equal its own predictions of losses and expenses. Non-rate regulated companies writing in the voluntary market, such as county mutuals, set their own rates without board oversight, but use the same form the board prescribes for regulated companies. In general, unregulated insurers are willing to accept a little higher risk than a regulated company, but generally charge higher rates in order to do so. The involuntary

market consists of those consumers who are unable to purchase automobile insurance through the voluntary market due to a variety of factors, such as their driving record or because they have not previously been insured. Due to these factors, insurers expect that the future losses claimed by these drivers will be higher than their own predictions of losses and expenses. In most states, the involuntary market business is shared among companies in two ways. One way involves equitably dividing applications in the involuntary market among insurance companies through an automobile insurance plan. Another way is to equitably share the profits and losses associated with insuring these customers through various pooling mechanisms.

Under the Texas plan, applications for liability insurance through the TAIP are divided equitably among all insurers in the state in proportion to the amount of business each insurer writes voluntarily in the state. Each insurer then services the policyholders the same way it services its other customers, and absorbs the profits and losses. The TAIP does not issue insurance policies, enter into insurance contracts with applicants, receive premiums, or investigate claims. The TAIP makes automobile insurance available and distributes and assigns applicants to insurance companies operating in the state.

The TAIP is administered by a governing committee consisting of 10 company members selected by industry associations and individual companies. The committee appoints and supervises a manager for the TAIP who manages the plan's daily operations. In addition, the governing committee approves the budget and levies assessments on insurance companies to fund the operations of the TAIP. In 1992, the TAIP's budget was \$3.2 million. The committee also approves all amendments to the rules governing the operation of the TAIP, subject to the final approval of the insurance board. The committee also hears appeals from applicants who have been denied insurance under the TAIP or who have been given notice of cancellation of insurance under the TAIP. Committee members receive no compensation and meet as often as necessary to fulfill their duties.

Currently, the governing committee of the TAIP includes no public membership. Only the industry is represented on the TAIP's governing committee. Although the public and consumers are not involved in the day-to-day operations of the TAIP, they may be greatly affected by the TAIP, especially if they are unable to obtain insurance through ordinary means in the voluntary market. The purpose of including public members on governing bodies is to provide public input into matters that affect the general population. In recent months concerns have been raised about the state's role in the operations of the TAIP and of the ability of consumers to have their issues addressed by the governing committee. One reason for the increased interest in the TAIP is the stronger financial responsibility requirements added to state law last session. These changes have had the effect of forcing many consumers to seek insurance from the TAIP for the first time. Even though the TAIP is not a state agency and receives no state funds, it is authorized by statute and has its rates and forms set by the state's insurance board. Therefore, the TAIP should follow the pattern of other state mandated board's and committees that include public membership. A review of the operations of the TAIP revealed the following findings.

FINDINGS

- ▶ **The TAIP exists for consumers who are required to have automobile insurance but who cannot obtain the insurance through ordinary means.**
 - The financial responsibility requirements for drivers that were added to law last session have forced many consumers to obtain insurance for the first time if they wish to drive an automobile. Many people who could not obtain insurance through ordinary means obtain needed insurance from the TAIP. For these people the TAIP is the only way that they can satisfy the financial responsibility requirements in order to legally drive an automobile.

- ▶ **The administration of the TAIP solely by insurers prevents the public from having effective input into the TAIP's operations.**
 - The TAIP is administered by a governing committee consisting of 10 company members selected by industry associations and individual companies. Currently, the TAIP rules do not provide for public or agent membership on the TAIP's governing committee.

 - The duties of the governing committee include appointing and supervising the TAIP's manager, approving the TAIP's budget, and hearing appeals from consumers who have been denied insurance under the TAIP or who have been given notice of cancellation of insurance under the plan. The governing committee also has the authority to approve or deny proposed amendments to the operations of the TAIP proposed by industry, consumers, or other parties. No rule is final until it is approved by the insurance board. However, according to the TAIP rules only amendments approved by the governing committee can be sent to the board.

- ▶ **The governing structure of the TAIP is among the issues that are currently the subject of litigation.**
 - The statute authorizes the state's insurance board to set the rates charged for liability insurance obtained through the TAIP, to establish the policy forms to be used, and grants the board final approval authority of all amendments to rules adopted by the TAIP's governing committee.

 - At issue in the current litigation is whether the insurance board can amend the rules of the TAIP without the rule changes first being approved by the TAIP governing board as described in the current TAIP rules. One of the key issues is whether the board can change the composition of the governing committee without the prior approval of the governing committee. The current composition of the governing committee is set in the TAIP's rules.

- In July 1992, the insurance board issued an order changing the governing structure of the TAIIP, which was not first approved by the TAIIP's governing committee. The board established a governing committee composed of seven public members appointed by the state's insurance board, five insurers, and two agents. Both the TAIIP and Office of Public Insurance Counsel (OPIC) had proposed alternative compositions to the composition adopted by the board. The TAIIP proposal would have expanded the governing committee to 16 members composed of 10 insurers, four public members, and two agents. The OPIC proposal would have established an 11-member governing committee composed of three public members appointed by the insurance board, three insurers appointed by the industry, three consumers members appointed by the public counsel, and two agents appointed by the agent associations. The TAIIP filed a lawsuit seeking to enjoin the department from making changes in the operations of the TAIIP.
- ▶ **The legislature has already modified the composition of other statutorily mandated insurance organizations to provide for better public representation as part of its reform of insurance regulation in 1991.**
 - In 1991, the legislature modified the governing structure of over 14 statutorily-mandated insurance organizations such as the Catastrophe Property Insurance Association (CATPOOL), the Property and Casualty Insurance Guaranty Association, the Title Insurance Guaranty Association. In general, the governing boards of these organizations were modified to create nine-member boards that include insurers, and representatives of the general public. Some were modified to include agents as well. The intent was to provide better representation for the public in matters affecting the regulation of insurance.
 - In addition, the legislature also modified the structure of all advisory boards appointed by the insurance board or the commissioner of insurance to provide for equal representation of consumers and insurers.
- ▶ **Three of the top five states in premium volume that have automobile plans or pooling mechanisms similar to Texas include public members on their governing committees.**
 - Massachusetts, New Jersey, New York, California, and South Carolina lead the nation in providing automobile insurance to consumers through a plan or pool mechanism when measured by the total premium volume of the plan or pool.
 - Three of these states - New Jersey, New York, and California - include public members and agents on their governing committees, in addition to insurers. New York includes seven public members on a 15-member board. California includes four public members, two agents, and a representative from the state's

department of insurance on its 15-member board. New Jersey's governing committee includes two public members, three agents, and a non-voting member representing the state's department of insurance on its 14-member governing committee.

CONCLUSION

Currently, neither the statute nor the TAIP's rules require public membership on the governing committee of the TAIP. The public and consumers are not involved in the operations of the TAIP, even though their interests are significantly affected, especially for certain drivers. The purpose of including public members on committees such as this is to improve public access to the decision-making process and to improve the quality of the decisions made.

RECOMMENDATION

- **The statute should be changed to require public membership on the governing committee of the Texas Automobile Insurance Plan. The governing committee would be composed of nine members as follows:**
 - **five representatives of the insurance industry;**
 - **two representatives of the general public; and**
 - **two agents licensed to write automobile liability insurance in Texas.**

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This recommendation would add public and agent membership to the governing committee of the TAIP, but would not change the current duties of the committee. The governing committee would be comprised of nine members including five insurers, two representatives of the general public, and two insurance agents. The five insurance industry representatives would be appointed by insurers participating in the TAIP as is the current practice. The two public members would be nominated by the Office of the Public Insurance Counsel and appointed by the board of insurance. The board would also appoint the two agent members. Members of the governing committee would serve one-year terms or until their successors have been named.

FISCAL IMPACT

This recommendation would have no fiscal impact to the state because the operations of the TAIP are paid for by the insurance companies that participate in the TAIP.

OVERALL ADMINISTRATION



ISSUE 7: The statute should be changed to provide the Texas Department of Insurance with clear statutory guidelines for assessing administrative penalties to ensure they are being applied fairly and consistently.

BACKGROUND

The Texas Department of Insurance (TDI) regulates the insurance industry in Texas, including licensed insurance companies and agents. The TDI has a number of statutory enforcement tools to ensure compliance with state insurance laws and agency rules and regulations. Some of these tools may be pursued through the courts, including criminal penalties ranging from a misdemeanor to a third degree felony; civil penalties ranging from a minimum of \$1 per violation to as much as \$10,000 per violation, depending on the type of violation; and injunctive relief from the courts.

The TDI also has a number of administrative sanctions, including cease and desist orders to immediately halt illegal insurance activities; restitution to parties who have been injured by an insurer's wrongful actions; revocation, cancellation, or suspension of a license or certificate; and administrative penalties of up to \$25,000 per violation for violations of the insurance code or board rules and regulations. Administrative penalties may also be assessed against insurers who consistently overcharge or undercharge consumers. The insurance commissioner assesses the administrative penalties by order, which may be appealed to the board and then to district court. All administrative penalties are collected by the TDI and deposited in the general revenue fund.

To ensure fairness and consistency, regulatory agencies should have guidelines to follow when assessing administrative penalties. Circumstances surrounding a violation may vary and should be weighed under the same criteria in every case where administrative penalties are assessed. An evaluation of the TDI's authority to assess administrative penalties compared to that of other state regulatory agencies resulted in the following findings.

FINDINGS

- ▶ **The TDI has very broad statutory authority to assess administrative penalties but lacks statutory guidelines to use when determining the appropriate penalty for each type of violation.**
 - The 72nd Legislature increased the maximum administrative penalty in the insurance code from \$10,000 per violation to \$25,000 per violation, which is among the highest maximum administrative penalties allowed in state law for any regulatory agency.
 - The maximum \$25,000 administrative penalty may be applied to a wide range of violations that vary in severity and potential harm. For example, the same

\$25,000 maximum penalty could be applied for each of the following violations: failing to identify the accountant who prepared an audit report, failing to respond to an inquiry from the TDI, making prohibited loans between subsidiary companies, demonstrating lack of trustworthiness, acting as an agent without being licensed, and engaging in unfair competition and forbidden deceptive trade practices.

- The seriousness and potential impact of the violations varies while the maximum administrative penalty that applies is the same. However, the statute does not direct the TDI to consider the specific circumstances surrounding each violation when determining the appropriate penalty. Specific circumstances could include the seriousness of the violation, whether the violator has committed previous violations, and the impact of the violation on others.
- ▶ **In the absence of statutory guidelines, the TDI has not adopted formal procedures or criteria to use when assessing penalties, which could lead to a wide variance of penalties for similar types of violations.**
 - The TDI does not have formal rules or criteria to consider when determining the appropriate administrative penalty for a particular violation. Instead, a staff attorney reviews the case and may negotiate with the violator to reach an agreement regarding the actual fine to be assessed. The staff attorney determines the appropriate penalty based on the attorney's past experience with administrative penalties, familiarity with the TDI's previous sanctions for similar types of violations, and the facts of the case. With the approval of the chief attorney, the staff attorney recommends a particular action to the commissioner. This system does not provide established guidelines to assure that administrative penalties will be uniformly assessed.
 - The commissioner's orders for administrative penalties routinely indicate that the enforcement tool used to sanction the violator is chosen by determining the most "fair, equitable, and reasonable" punishment. However, these terms are not defined for the staff and could be interpreted to mean a number of different things. Depending on the staff attorney assigned to the case, actual fine levels for the same type of violation could vary greatly without being tied to specific evaluative criteria.
- ▶ **Other state regulatory agencies with the authority to assess administrative penalties must follow statutory guidelines when determining the appropriate use of administrative penalties.**
 - Statutory guidelines for determining the appropriate administrative penalty have been applied to a number of state agencies, including the Texas Air Control Board, the Texas Department of Agriculture, the Texas Railroad Commission,

the Texas Water Commission, the Texas State Board of Public Accountancy, the Texas Funeral Services Commission, the Texas Structural Pest Control Board, and the Texas Board of Architectural Examiners.

- These statutory guidelines contain specific factors to be considered when determining the amount of a penalty. These factors can be tailored to fit individual agencies and may include the seriousness of the violation, the hazard or potential hazard to public health or safety, the economic damage to property, the history of previous violations, the amount necessary to deter future violations, efforts to correct the violation, and any other matter that justice may require.

CONCLUSION

Neither the insurance code nor the TDI's rules contain guidelines to ensure fair and consistent use of administrative penalties, which are assessed by the TDI for a broad range of violations. Lack of standard criteria for determining the seriousness of a violation and assessing the appropriate fine could result in a wide variance of assessments for similar violations. The legislature has routinely adopted statutory guidelines for other regulatory agencies to use when assessing administrative penalties that ensure fair and consistent use of this enforcement tool. Based on these factors, the TDI should be given clear statutory guidelines for assessing administrative penalties.

RECOMMENDATION

- **The statute should be changed to require the Texas Department of Insurance to develop clear guidelines for assessing administrative penalties to ensure they are being applied fairly and consistently.**

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Placing general directives in statute for the use of administrative penalties would give the TDI a structure for developing guidelines to determine appropriate and consistent administrative penalties. These guidelines would not expand the TDI's current administrative penalty powers nor would they restrict the department to mechanically assessing fines. Revenues from administrative penalties would continue to be deposited in the general revenue fund.

The process should be set in statute in a manner similar to the process established for a number of regulatory agencies during the previous four legislative sessions as part of sunset legislation. These provisions include specific factors to consider when determining the amount of a penalty, such as the seriousness of the violation, the hazard or potential hazard to public health or safety, the economic damage to property, the history of previous

violations, the amount necessary to deter future violations, efforts to correct the violation, and any other matter that justice may require. Although these factors are tailored for environmental administrative penalty provisions, other factors that are more suitable for insurance regulation could be placed in the insurance code as well, such as economic harm to the public and damage to the public's interests or confidence. Another factor that could be considered is whether the violation was intentional or unintentional.

FISCAL IMPACT

This recommendation would not have a fiscal impact because the agency is already authorized to assess administrative penalties.

ISSUE 8: The Texas Legislative Council should be directed to revise the insurance code for adoption by the 75th Legislature in 1997.

BACKGROUND

Since 1963, the legislature has sought to reorganize the Texas statutes for easier reference by rewriting the state's laws into codes, which will clarify and simplify the statutes and make them more understandable and useable. The Texas Legislative Council is responsible for planning and executing this statutory revision program. Under the program, the council is responsible for conducting an ongoing, comprehensive study of the statutes with the goal of formally revising them into different codes organized by subject. The council may not alter the meaning or effect of the statute during such a recodification. In addition, the program is ongoing so that the codes established may be easily updated without having to conduct major statutory revisions in the future.

Since the statutory revision program was established, the council has proposed and the legislature has enacted 17 code revisions. The council is about halfway through the revision program. Generally, the council requires two legislative interims, or about four years, to complete a major code revision. The council determines topics for code revisions based on a number of factors, including legislative interest in the subject matter, staff experience and availability, and the size of the project. The council's ability to work on code revisions also depends on the level of legislative activity during the interim.

Because the statutes establish state policy on matters such as insurance regulation, it is important that statutory language be accessible, understandable, and useable. The purpose of the statutory revision program has been to assure that state laws are easy to locate, read, and use. Clear statutory language makes it easy for the agency and the affected public to know what the state's policies and regulatory requirements are. Clear language also reduces the need for the courts to determine the meaning of vague or contradictory provisions. The review of the TDI included an examination of the insurance code and the council's statutory revision program. The findings are summarized below.

FINDINGS

- ▶ **The insurance code has not been comprehensively revised since 1951.**
 - The legislature established the insurance code within the civil statutes in 1951, before the Texas Legislative Council's statutory revision program began. As a result, the code was not prepared in a way that enables easy updating to reflect changes and new laws.
 - Because the insurance code has not had a comprehensive revision in over 40 years, it contains many outdated, vague, and even contradictory provisions.

- ▶ **Recent reform efforts have added to the length and complexity of the insurance code.**
 - In major reforms over the last two legislative sessions, the legislature has enacted hundreds of pages of legislation adding or changing provisions in the code. The magnitude of these changes and the existing structural problems within the code have resulted in additional statutory conflicts and ambiguity.
- ▶ **Revising the insurance code will make it easier to understand and implement, and will minimize the need for clarification in the courts.**

CONCLUSION

The insurance code has not been revised in over 40 years. Many provisions in the code are outdated, vague, or contradictory. In addition, the size and number of recent enactments amending the code have compounded these problems. By revising the code, unnecessary language can be removed and the remaining language clarified for easier understanding and reference.

RECOMMENDATION

- **The Texas Legislative Council should be directed to revise the insurance code for adoption by the 75th Legislature in 1997.**

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This recommendation would direct the Texas Legislative Council to revise the insurance code under its statutory revision program. The council would prepare and submit to the legislature in bill form the statutory revisions in time for the 1997 regular session. This recommendation should provide the council enough time to complete the revision over the two legislative interims that it generally requires for major code revisions.

FISCAL IMPACT

No fiscal impact is anticipated.

EVALUATION OF PROGRAMS

ISSUE 9: A special task force should be appointed to study the effects of shifting the focus of the Texas Department of Insurance from rate and form approval to monitoring solvency and market conduct and to make recommendations to the legislature in 1995.

BACKGROUND

The responsibility for regulating the insurance industry belongs to the individual states. In 1945, the U.S. Congress passed the McCarran-Ferguson Act, which exempted from federal antitrust laws "business of insurance" activities that are regulated by the states, except for activities that involve "boycott, coercion, or intimidation" by insurers. In Texas, the Texas Department of Insurance (TDI) has the primary responsibility for regulating the insurance industry's activities in the state. The TDI processes rate and form filings, monitors companies' financial condition and business affairs, enforces the state's insurance laws and rules adopted by the insurance board, licenses insurance companies and agents, and provides consumer assistance. The insurance board determines policy, adopts rules for the regulation of the industry, sets rates for certain lines of insurance, and approves a range of rates for others. Currently, the TDI regulates about 180,000 licensed insurance agents and 2,558 insurance and related companies representing a total premium volume in Texas of roughly \$35 billion in 1991. Of these 2,558 companies, 804 are Texas companies, known as "domestic" companies, and 1,754 are "foreign" companies headquartered in other states.

Historically, state regulators have allocated significant resources to setting rates for the various lines of insurance and approving policy forms to be used in the marketplace. In Texas, the insurance board established a specific, or "manual," rate for some lines of insurance in annual rate hearings until 1991, when the legislature passed comprehensive insurance reform legislation. Generally, individual insurance companies would seek deviations from the board for rates above or below the manual rate. The deviated rate, rather than the manual rate, was charged to policyholders. The reforms modified the board's rate-making authority, increased consumer protections, and added stricter enforcement and market conduct provisions. In modifying the board's rate authority, the rates charged by insurers writing general liability and commercial property insurance were deregulated. These insurers may now set their own rates but are required to file them for review by the board under a system known as "file and use." Under the file and use system, the board may disapprove any rates it considers excessive, inadequate, or discriminatory. In addition, the legislature established a flexible rating program, known as "flex-bands," for setting motor vehicle and personal property insurance rates, under which insurers may charge a rate without prior approval of the board if the rate falls within a range of rates set by the board. Both of these changes will expire December 31, 1995, at which time the board will again establish rates for these lines of insurance unless the legislature takes further action.

The move towards deregulating some lines of insurance and adding rate flexibility for others was accompanied by increased consumer involvement and services and stricter enforcement

and market conduct provisions. Consumer representation on all advisory boards appointed by the board or the commissioner was increased. Provisions for the prompt payment of claims by insurers and requirements for the TDI and insurance companies to provide toll-free information and complaint numbers were added to law. Solvency and market conduct provisions were also added that required insurance companies to increase their capital and surplus funds and established an insurance fraud unit within the TDI.

FINDINGS

- ▶ **Reforms enacted last session have set new regulatory goals and have initiated a shift away from rate and form regulation to monitoring solvency and market conduct.**
 - Concerns about insurance company insolvencies and questionable market practices, insurance company withdrawals from the Texas market, and the availability of certain types of insurance resulted in comprehensive insurance reform legislation in 1991. The legislature attempted to address these problems by providing greater rate flexibility for some insurers while continuing to provide protection for consumers, strengthening financial requirements for insurance companies, and granting the TDI more authority to pursue fraud. Taken as a whole these changes represent a basic shift in insurance regulation in Texas from an emphasis on rate-setting and form approval toward a greater emphasis on monitoring solvency and market conduct.
 - The legislature did not completely remove the board from rate-setting and form approval, however. Instead, the legislature decided that at this time there is a continuing need for the board to set rates for some lines of insurance and to approve other rate and form filings. Having rates set or at least reviewed by the board ensures that rates are not excessive, inadequate, or discriminatory. Through form approval, the board can establish minimum coverage requirements to ensure reasonable coverage in relation to the rates charged and to allow consumers to compare policies on an equivalent basis.
 - Monitoring solvency is necessary to determine the financial condition of insurance companies and ensure a company's ability to meet its obligations to policyholders now and in the future due to the long-term nature of insurance products. Generally, consumers are not aware of an insurer's financial viability and cannot be assured that they will be able to collect on their policy when they have a claim. Financial monitoring by state regulators helps to ensure a company's financial integrity.
 - Market conduct activities concentrate on assisting consumers with complaints and disputes with insurance companies, reviewing advertising and other related marketing materials, and monitoring the overall marketing activities of insurers,

agents and other persons in the business of insurance. In general, consumers do not possess the means to monitor the insurance industry in this manner, but may require additional information on insurance companies and their products before buying a policy. Market conduct examinations performed by state regulators help to protect consumers and provide needed information. The department also enforces state law and agency rules governing the conduct of insurers and takes action against violators to help assure proper market conduct.

- ▶ **Because flexible rate regulation has only been in place for a year or less, it is too soon to evaluate the effect of these changes.**
 - The intent of the original reform legislation passed by the 72nd Legislature in the regular session was to implement both the rate deregulation of general liability and commercial property insurance and the flexible rating program by September 1, 1992. Subsequent legislation in the second called session moved up the starting date of these programs, however. The beginning of the trial period for rate deregulation was advanced to October 1, 1991, and the beginning of the trial period for the flex band was advanced to March 1, 1992.
 - Because of the short timeframe the insurance board was unable to implement the file and use rate system for general liability and commercial property insurance on time. However, by March 1992 the board was able to begin implementing the flexible rating program for both motor vehicle and personal property insurance.
 - To date, there has only been one rate hearing for each line of insurance operating under the flexible band to determine a range of rates companies can charge policyholders. There has not been time to assess the effect of the range of rates set by the board on the market and consumers.
 - Both the file and use rate system and the flexible rating system were considered pilot projects or experiments by the legislature when they were passed. They are set to expire in December 1995. By then the legislature must take action or these reforms will expire.
- ▶ **The potential impact of further changes to insurance regulation could have a significant impact on all Texans.**
 - In the property and casualty lines alone, there are over 2.5 million residential property and almost 300,000 commercial property policyholders insured by regulated companies. In addition, over four million policyholders insure personal motor vehicles with regulated insurance companies in Texas.

- Industrywide there are 180,000 licensed insurance agents in Texas and 2,558 insurance companies in Texas representing a total premium volume of about \$35 billion, the fourth highest premium volume in the country.
- ▶ **Although some other states have moved toward deregulating insurance rates and forms, most states have been cautious about fully deregulating the insurance industry.**
 - Five of the top six states in total premium volume continue to regulate rates and forms in some manner.
 - One state, Illinois, has fully deregulated rates, but continues to approve forms through a file and use process.
- ▶ **Further study is needed before the legislature can evaluate the condition of the insurance industry and the effect of the reforms in 1995. In Texas, a common approach to addressing areas where there is a need for policy direction is to set up a select committee or task force.**
 - In 1987, the legislature statutorily created the Select Committee on Tax Equity to study the state's tax system. In 1989, Governor Bill Clements created the Governor's Task Force on Public Utility Regulation by executive order to evaluate the manner in which public utilities are regulated in the state. In 1991, Governor Ann Richards created the Governor's Task Force on Revenue by executive order to study state and local tax policy.
 - Most recently, the 72nd Legislature recognized the need for telecommunications planning and policy direction for state agencies. The Department of Information Resources, the State Comptroller of Public Accounts, and the General Services Commission have been charged with developing a statewide telecommunications operating plan for all agencies to implement a statewide network.
 - In general, all of these efforts address issues affecting all Texans. Each committee or task force was composed of governmental officials and public members and was charged with making recommendations to the governor and the legislature.

CONCLUSION

The reforms enacted by the 72nd Legislature represent a basic policy shift in the regulation of insurance in Texas. However, changes made to the board's rate authority are set to expire in 1995. By that time the legislature will have to renew, expand, or replace the deregulation and rate flexibility measures or allow them to expire. A study

of the impact of these changes is needed, however, in order to provide the legislature with information to decide whether to move forward with deregulation or to return to full regulation.

RECOMMENDATION

- **The state should establish a 15-member task force to examine questions of insurance policy. The task force would be staffed by the TDI and be composed as follows:**
 - the commissioner of insurance, serving as the chair of the task force;
 - the public counsel of the Office of Public Insurance Counsel;
 - six members representing segments of the insurance industry appointed by the governor;
 - five members representing consumer interests appointed by the governor;
 - one member of the senate appointed by the lieutenant governor; and
 - one member of the house of representatives appointed by the speaker of the house.
- **The task force would be charged with reviewing the effects of changes made to insurance regulation by the legislature in 1991 and developing a plan for insurance regulation in the state. The task force would publish this plan in a report to the governor, the legislature, and affected agencies. In the plan the task force would specifically:**
 - analyze the effects of changes made by the 72nd Legislature in insurance regulation to identify if and how the TDI's focus should be further shifted away from rate and form regulation and toward examining more closely the financial conditions of companies, market conduct, and consumer services;
 - examine the nature and growth of competition in the insurance industry in Texas; and
 - recommend rule changes or statutory changes needed for the regulatory system to respond appropriately to the task force's recommendations.
- **The TDI would be required to report back to the governor and to the legislature on its progress in implementing any recommended rules from the task force.**

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This recommendation would create a special task force that would review the effects of the changes made to insurance regulation by the legislature in 1991 and develop a plan for insurance regulation in the state. Appointments to the task force would be made by November 1, 1993. The commissioner of insurance would serve as chair of the task force and the TDI would provide staff. Initially, TDI staff would provide the task force with proposals and overall directions for the members of the task force to consider. The task force would meet monthly beginning December 1, 1993, and would issue its report by December 1, 1994, to the governor, the legislature, and affected agencies. Once the task force has issued its report it will then cease to exist. The 74th Legislature would act on the task force's recommendations. The TDI would issue its report to the governor and the legislature on its progress in implementing the recommendations for rule changes made by the task force by December 1, 1996.

FISCAL IMPACT

This recommendation would require additional funds for travel and per diem for task force members. Assuming that the 15-member task force would need to meet once each month for the year the task force is in existence, the estimated costs would be approximately \$54,000. Funds for the task force would be paid from the insurance operating fund through the TDI and would not affect the general revenue fund. No additional staff would be required because existing TDI staff would serve as staff for the task force.

***ACROSS-THE-BOARD
RECOMMENDATIONS***

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies is denoted in abbreviated chart form.

Texas Department of Insurance			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			A. GENERAL
	X		1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
	X		3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Require that appointment to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin of the appointee.
	X		5. Specify grounds for removal of a board member.
	X		6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
X			9. Provide for notification and information to the public concerning board activities.
		X	10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
X			11. Require files to be maintained on complaints.
X			12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			13. Require development of an E.E.O. policy.
X			14. Require the agency to provide information on standards of conduct to board members and employees.
X			15. Provide for public testimony at agency meetings.
X			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			17. Require development of accessibility plan.
X			18. Place agency under the state's competitive cost review program.

Texas Department of Insurance (cont.)			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			B. LICENSING
	X		1. Require standard time frames for licensees who are delinquent in renewal of licenses.
	X		2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
	X		3. Provide an analysis, on request, to individuals failing the examination.
X			4. Require licensing disqualifications to be: 1) easily determined, and 2) related to currently existing conditions.
	X		5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
	X		6. Authorize the staggered renewal of licenses.
X			7. Authorize agencies to use a full range of penalties.
X			8. Specify board hearing requirements.
X			9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			10. Authorize the board to adopt a system of voluntary continuing education.

Office of Public Insurance Counsel			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			A. GENERAL
	X		1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
	X		3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
	X		4. Require that appointment to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin of the appointee.
	X		5. Specify grounds for removal of a board member.
	X		6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
	X		9. Provide for notification and information to the public concerning board activities.
X			10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
		X	11. Require files to be maintained on complaints.
		X	12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			13. Require development of an E.E.O. policy.
	X		14. Require the agency to provide information on standards of conduct to board members and employees.
		X	15. Provide for public testimony at agency meetings.
		X	16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			17. Require development of accessibility plan.
X			18. Place agency under the state's competitive cost review program.

Office of Public Insurance Counsel (cont.)			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X X	4. Require licensing disqualifications to be: 1) easily determined, and 2) related to currently existing conditions.
		X X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

MINOR MODIFICATIONS

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

MINOR MODIFICATIONS TO THE TEXAS DEPARTMENT OF INSURANCE TEXAS INSURANCE CODE		
Change	Reason	Location in Code
1. Renumber sections.	To correct numbering of duplicate sections in the code.	Article 3.77 and Article 21.49-14.
2. Delete reference to Article 5.36 of the code.	To remove reference to an article that is no longer in the code.	Article 17.25, Sec. 5
3. Reletter subsections.	To correct lettering of duplicate subsections.	Article 21.48A, Sec. 2, Subsection (e)

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