Sunset Advisory Commission

Staff Report

Texas Department of Insurance

Office of Public Insurance Counsel

April 2010

Sunset Advisory Commission

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

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Summary

Summary

These special purpose reviews of the Texas Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC) follow up on the full Sunset reviews of the agencies conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on TDI and OPIC. However, the Legislature did not pass the Sunset bill on either agency. Instead, the Legislature continued both agencies for two years in separate legislation, and focused the current Sunset staff reviews of the agencies on the appropriateness of the recommendations voted on and adopted by the Commission in 2008.

Based on this re-examination, Sunset staff concluded the majority of Sunset's previous recommendations remain appropriate, and that the agencies continue to need statutory authority and direction to implement them. Of the 28 recommendations on TDI from 2008, Sunset staff recommends 18 for consideration again in 2010, finding the other 10 no longer necessary. No longer recommended are five recommendations concerning the Texas Windstorm Insurance Association, as the 81st Legislature passed House Bill 4409, which addressed many of the same issues as the Sunset recommendations. Also no longer recommended is one of three 2008 Sunset recommendations related to regulation of title insurance agents, as House Bill 4338, passed during the 81st Regular Session, gave TDI additional tools to monitor the solvency of title agents. Finally, the remaining TDI issues no longer recommended are two management recommendations the Department has implemented, and two recommendations to legislative committees that have been fulfilled. The current status of each of the TDI-related recommendations is shown in the chart, *Status of 2008 Sunset Commission Recommendations on the Texas Department of Insurance*, on page 7.

The majority of Sunset's 2008 recommendations on TDI and OPIC remain appropriate.

The 2008 Sunset Commission made only one recommendation related to OPIC, which was to continue the agency for 12 years. That recommendation continues to be appropriate, as discussed in Issue 1 of the OPIC section of this report.

The following material summarizes the 2008 recommendations on TDI and OPIC that continue to be appropriate for consideration in 2010. For additional information on the Sunset Commission's 2008 decisions see the *Sunset Advisory Commission's Report to the 81st Legislature*, published in February 2009, and for more detailed information on the original Sunset staff recommendations see the *Sunset Advisory Commission's Final Report on the Texas Department of Insurance and Office of Public Insurance Counsel*, published in July 2009. Both reports are available on the Sunset Commission's website.

Issues and Recommendations

Texas Department of Insurance

Issue 1

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

Recommendations

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

Issue 2

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

Recommendation

- Require Preferred Provider Organizations to obtain a certificate of authority from TDI to operate in Texas.

Issue 3

Without Additional Tools, TDI Cannot Effectively Regulate Title Insurance.

Recommendations

- Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.
- Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

Issue 4

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

Recommendations

- Eliminate 15 TDI advisory committees from statute.
- Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

Issue 5

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

Recommendations

- Require the SFMO to periodically inspect state-leased buildings.
- Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.
- Authorize the SFMO to charge a fee for inspections of privately owned buildings.

Issue 6

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

Recommendation

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

Issue 7

The Department's Statute Has Not Kept Pace With Available Electronic Transaction Technologies.

Recommendation

- Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.

Issue 8

Qualifications for Reduced Rate Filing Requirements for Certain Insurers Writing Residential Property Insurance in Underserved Areas May Need Adjustment.

Recommendation

- Require the Commissioner of Insurance to study the qualifications for reduced rate filings for insurers writing residential property insurance in underserved areas.

Issue 9

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

Recommendations

- Continue the Texas Department of Insurance for 12 years.
- Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.
- Apply the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Office of Public Insurance Counsel

Issue 1

The State Has a Continuing Need for the Office of Public Insurance Counsel.

Recommendations

- Continue the Office of Public Insurance Counsel for 12 years.
- Apply the standard Sunset across-the-board requirement for the Office to develop a policy regarding alternative dispute resolution.

Fiscal Implication Summary

None of the recommendations in this report would have a net fiscal impact to the State's General Revenue Fund, since both TDI and OPIC are funded through taxes and assessments on insurers.

Texas Department of Insurance

- ***Issue 2*** – Registering PPOs would result in additional administrative costs to TDI, and may increase appropriation levels. However, the Department would be authorized to charge certification fees, to the level necessary to regulate PPOs, to offset the costs.
- ***Issue 6*** – Authorizing the State Fire Marshal's Office (SFMO) to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.
- ***Issue 7*** – Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO, and cannot be estimated. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

Office of Public Insurance Counsel

None of the recommendations on the Office of Public Insurance Counsel in this report would have a fiscal impact to the State.

Status of 2008 Sunset Commission Recommendations

Texas Department of Insurance

Status of 2008 Sunset Commission Recommendations on the Texas Department of Insurance

2008 Recommendation	Status
Issue 1 – Rate Regulation for Homeowners Insurance Lacks Clarity, Predictability, and Transparency.	
Change in Statute	
1.1 Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.	**Not Implemented –** See Issue 1 of this report. The agency continues to need statutory and legislative direction to implement these recommendations.
1.2 Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.	
1.3 Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.	
1.4 Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.	
1.5 Require the Texas Department of Insurance to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims.	
Issue 2 – TDI's Involvement in TWIA's Operations, Along With Other Restrictions in Law, Limit the Department's Ability to Effectively Oversee TWIA as a Market of Last Resort.	
Change in Statute	
2.1 Increase the number of public representatives on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.	**Statutory Alternative Implemented –** The 81st Legislature passed H.B. 4409, which made many changes to TWIA including changes that relate to the Sunset Commission's 2008 recommendations. Among other changes, the bill restructured the Board, changed the way TDI approves TWIA rates, authorized TWIA to use recognized catastrophe models and establish rating territories, and authorized TWIA to require proof of one declination. Because TDI, TWIA, and policyholders need time to adjust to these changes as well as the bill's broader impact, the 2008 recommendations are not included in this report.

Status of 2008 Sunset Commission Recommendations on the Texas Department of Insurance

2008 Recommendation	Status
2.2 Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.	**Statutory Alternative Implemented** – The 81st Legislature passed H.B. 4409, which made many changes to TWIA including changes that relate to the Sunset Commission's 2008 recommendations. Among other changes, the bill restructured the Board, changed the way TDI approves TWIA rates, authorized TWIA to use recognized catastrophe models and establish rating territories, and authorized TWIA to require proof of one declination. Because TDI, TWIA, and policyholders need time to adjust to these changes as well as the bill's broader impact, the 2008 recommendations are not included in this report.
2.3 Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.	
2.4 Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.	
2.5 Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.	
Issue 3 – The State's Lack of Regulation of Preferred Provider Organizations Does Not Correspond With Changes in the Texas Healthcare Market.	
Change in Statute	
3.1 Require Preferred Provider Organizations to obtain a certificate of authority from TDI to operate in Texas.	**Not Implemented** – See Issue 2 of this report. This recommendation requires a change in statute.
Issue 4 – TDI Cannot Effectively Regulate Title Insurance Without Independent Financial Examinations and More Comprehensive Reporting.	
Change in Statute	
4.1 Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.	**Not Implemented** – See Issue 3 of this report. This recommendation requires a change in statute.
4.2 Require title agents to annually submit audited financial statements of operating accounts to TDI.	**Statutory Alternative Implemented** – The 81st Legislature passed H.B. 4338, which gave TDI additional tools to monitor the solvency of title agents, including minimal capitalization requirements and submission of IRS reports. This legislation took a different approach, but was aimed at resolving the same problem. TDI is still implementing these changes, so Sunset staff could not determine the impact of this alternative approach, but opted to not include the original Sunset recommendation on solvency in this report.
4.3 Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.	**Not Implemented** – See Issue 3 of this report. The Department continues to need statutory and legislative direction to implement this recommendation.

Status of 2008 Sunset Commission Recommendations on the Texas Department of Insurance

2008 Recommendation	Status
Issue 5 – Most of TDI's Advisory Committees No Longer Need to Be in Law.	
Change in Statute	
5.1 Eliminate all but two TDI advisory committees from statute.	**Not Implemented** – See Issue 4 of this report. These recommendations require a change in statute.
5.2 Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.	
Management Action	
5.3 Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.	**Implemented** – The Department has updated its operations manual to reflect this management recommendation.
Issue 6 – To Reduce the Risk of Fire Hazard, the State Fire Marshal's Office Needs Direction to Target Its Inspections of Buildings.	
Change in Statute	
6.1 Require the SFMO to periodically inspect state-leased buildings.	**Not Implemented** – See Issue 5 of this report. The Department continues to need statutory and legislative direction to implement these recommendations.
6.2 Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.	
6.3 Authorize the SFMO to charge a fee for inspections of privately owned buildings.	
Management Action	
6.4 Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.	**Implemented** – The SFMO has formed the Texas Fire and Life Safety Resource Team to identify fire prevention programs and create a series of web pages to provide information to communities on establishing their own fire marshal office. The SFMO has also started working with local communities to create a clearinghouse to help connect people with available fire safety services.
Issue 7 – The State Fire Marshal's Office Lacks the Ability to Issue Fines to Ensure Licensee Compliance.	
Change in Statute	
7.1 Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.	**Not Implemented** – See Issue 6 of this report. The Department continues to need statutory direction to implement this recommendation.

Status of 2008 Sunset Commission Recommendations on the Texas Department of Insurance

2008 Recommendation	Status
Issue 8 – The Department's Statute Has Not Kept Pace With Available Electronic Transaction Technologies.	
Change in Statute	
8.1 Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.	**Not Implemented –** See Issue 7 of this report. This recommendation requires a change in statute.
Issue 9 – Change the Reduced Rate Filing Requirements for Insurers Writing Residential Property Insurance in Underserved Areas.	
Change in Statute	
9.1 Change the threshold needed to be met for reduced rate filing requirements for insurers that write residential property insurance in areas designated as underserved.	**Not Implemented –** See Issue 8 of this report. This recommendation requires a change in statute. The Legislature considered this issue during discussions on the TDI Sunset bill during the 81st Session and made significant modifications to it, as discussed in Issue 8.
Issue 10 – Using Insurance Maintenance Taxes to Fund Other State Agencies May Shift the Cost Burden for Non-Insurance Related Activities to Insurers.	
Change in Appropriations	
10.1 Request that the Legislature study the use of insurance maintenance taxes to support other state agencies, and make appropriate changes in methods of finance as necessary.	**Implemented –** In February 2009, the Sunset Commission sent a letter to the Senate Finance Committee and the House Appropriations Committee with this request. The committees took no action on this issue.
Issue 11 – The Legislature Should Consider Creating a Health Insurance Innovations Program at TDI.	
Recommendation to Legislative Committees	
11.1 Request that the Legislature, through the appropriate legislative committees, consider creating a Health Insurance Innovations Program.	**Implemented –** In February 2009, the Sunset Commission sent a letter to the Senate State Affairs Committee and the House Insurance Committee with this request. In addition, Representative McClendon filed House Bill 505, which created the Health Insurance Innovations Program. That bill was considered by the House Insurance Committee, but no action was taken.
Issue 12 – The State Has a Continuing Need for the Texas Department of Insurance.	
Change in Statute	
12.1 Continue the Texas Department of Insurance for 12 years.	**Not Implemented –** See Issue 9 of this report. These recommendations require a change in statute.
12.2 Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.	

Texas Department of Insurance

Agency at a Glance

Agency at a Glance

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

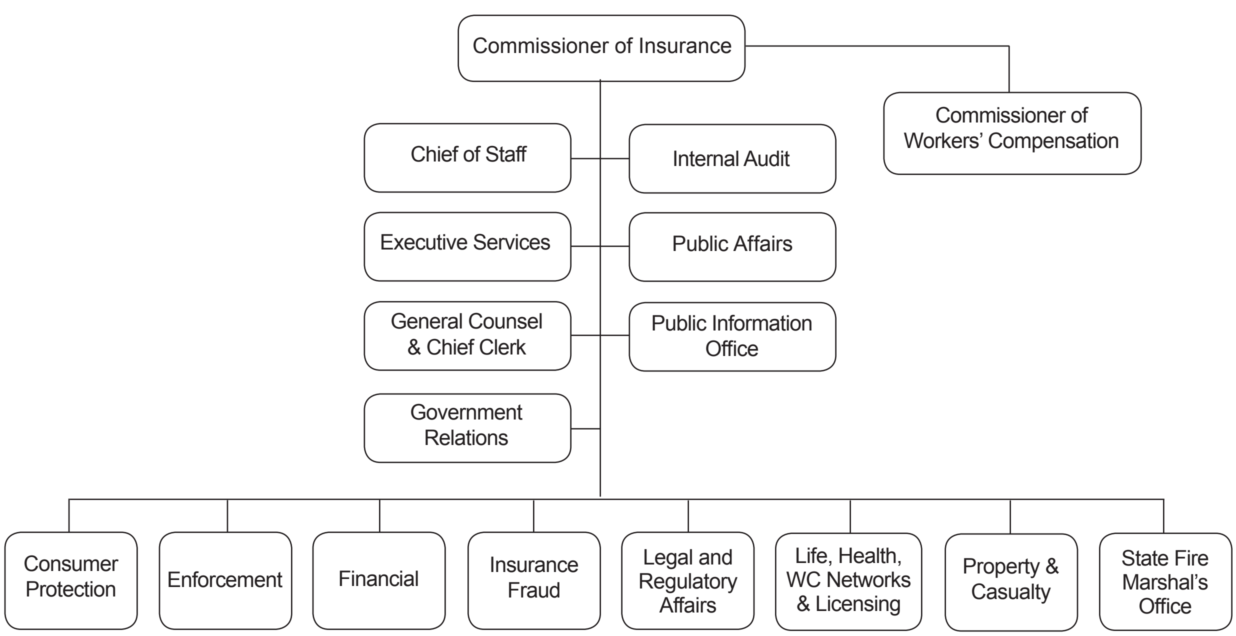
- regulating insurance companies' solvency, rates, forms, and market conduct;
- licensing individuals and entities involved in selling insurance policies;
- providing consumer education on insurance and helping consumers resolve complaints;
- investigating and taking enforcement action against those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

The Department also regulates workers' compensation in Texas through the Division of Workers' Compensation. Information about the Division can be found in a separate Sunset staff report.

Key Facts

- **Commissioner and Staff**. The Commissioner of Insurance, appointed by the Governor and confirmed by the Senate, administers the agency's functions, assisted by 1,572 staff.[1] Of those staff, 875 are dedicated to insurance-related activities; the rest are related to the agency's workers' compensation function. Most staff are based in Austin, but the agency also maintains eight field offices across the state. TDI's staff structure is depicted in the chart, *Texas Department of Insurance Organizational Chart*.

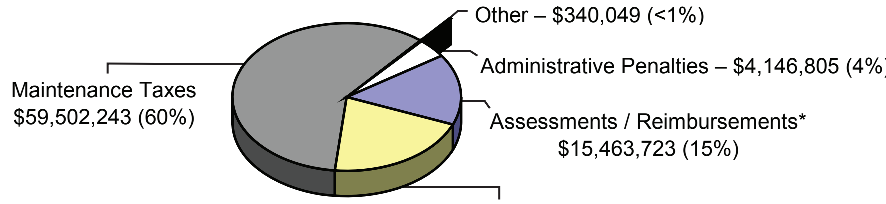
Texas Department of Insurance
Organizational Chart



The Commissioner, or his designee, regularly interacts with and is advised by more than 25 statutorily created entities, including advisory committees, guaranty associations, and residual market boards.

- **Funding**. In 2009, TDI collected a total of about $164 million, primarily from maintenance taxes on Texas insurers and user fees. About 61 percent of TDI's revenue was tied to insurance regulation, with the remainder linked to workers' compensation. The pie chart, *Insurance-Related Revenue*, details the agency's sources of revenue related to insurance regulation.

Insurance-Related Revenue
Appropriation Year 2009

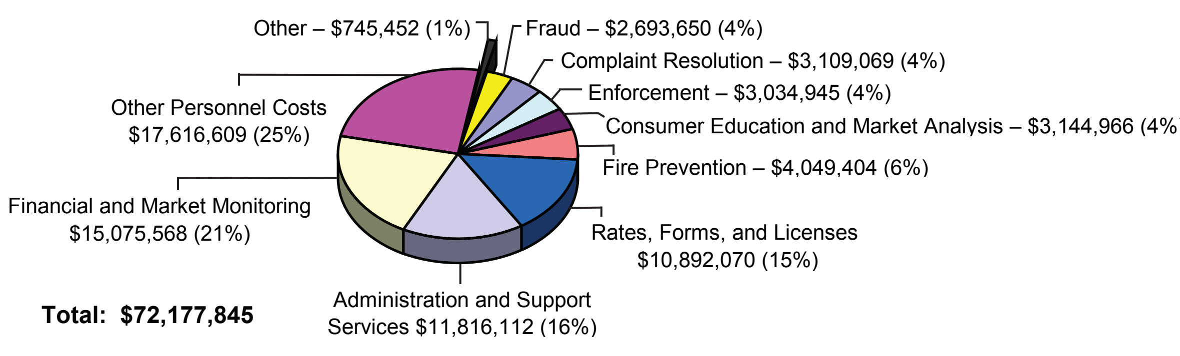


Total: $100,328,756

* Includes examination reimbursements, as well as other assessments and allocations, and a small amount ($125,926) of federal funds.

In 2009, the Department expended about $72 million on the regulation of insurance. The pie chart, *TDI Insurance-Related Expenditures by Function*, breaks down the agency's expenditures on insurance regulation. The Legislature also appropriated about $38 million in funds to support insurance-related functions at other state agencies.

TDI Insurance-Related Expenditures by Function
Appropriation Year 2009



Total: $72,177,845

- **Financial Solvency and Market Monitoring**. TDI monitors insurers' solvency to ensure that carriers are able to fulfill obligations and pay future claims. In fiscal year 2009, TDI regulated more than 2,400 insurance companies, conducted 136 financial examinations, and participated in 39 financial rehabilitations or court-ordered liquidations. The Department also monitors market trends and insurers' market behavior, conducting 17 market conduct examinations, 6,166 advertising reviews, 369 title audits, and 208 loss control audits.

- **Rate and Form Regulation**. TDI regulates all major insurance lines sold to individuals or commercial entities in Texas, including property and casualty, and life, accident, and health insurance. In fiscal year 2009, TDI reviewed 4,773 property and casualty rate filings and 12,160 property and casualty forms. TDI also reviewed a total of 25,045 life, accident, and health rate and form filings.
- **Licensing**. TDI licenses insurance agents, agencies, adjusters, and other personnel and entities involved in providing insurance services and products. In fiscal year 2009, TDI issued almost 73,000 new licenses.
- **Consumer Protection**. TDI resolves consumer complaints against insurance companies and agents. In fiscal year 2009, TDI resolved more than 28,000 complaints, resulting in $72.6 million in additional claims paid to consumers and $2.5 million in refunds made to consumers. In the same year, TDI responded to more than 674,000 consumer inquiries and distributed more than six million consumer publications.
- **Enforcement**. The Department investigates violations of insurance law or rule and, in fiscal year 2009, closed 363 enforcement actions, assessed $7.4 million in penalties, and ordered $20 million in restitution. That same year, TDI's investigation of insurance fraud cases resulted in 148 indictments and 116 convictions with restitution, fines, and penalties ordered in excess of $7.5 million.
- **State Fire Marshal's Office**. The State Fire Marshal's Office (SFMO) works to reduce loss of life and property due to fire and related hazards by inspecting the fire safety of buildings, investigating arson, and working to prevent fires through education and outreach. The SFMO also licenses people and firms that work in the fire alarm, extinguisher, sprinkler, and fireworks industries. In fiscal year 2009, the SFMO inspected 4,659 buildings for fire safety hazards and performed 513 arson investigations, of which 78 were referred for prosecution and 82 resulted in enforcement or legal action.

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[1] TDI's 1,572 staff include staff hired under Rider 5 of the agency's appropriations pattern, which authorizes TDI to hire an additional 32.5 full-time equivalent positions above the agency's appropriations cap to support liquidation oversight and title examiner activities.

Issues

Issue 1

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

Background

In 2003, the Legislature overhauled the way Texas regulates property and casualty insurance rates, including homeowners insurance rates.[1] The reforms included bringing all insurers writing homeowners insurance under one system, calling for rate reductions, and establishing a new process for rate and form regulation. State law establishes a file-and-use system that permits companies to quickly file and use rates, but authorizes the Commissioner of Insurance (Commissioner) to use both pre-market and post-market regulatory tools. The textbox, *TDI's Rate Regulation Tools*, provides a summary of the Texas Department of Insurance's (TDI) rate regulation tools.

> ***TDI's Rate Regulation Tools***
>
> Under the current regulatory system, insurers can file and use rates, bypassing pre-market review. However, TDI has both pre-market and post-market tools to regulate insurance rates, as described below.
>
> **Pre-Market Tools**
>
> - Review of all rates, as necessary.
> - Request additional information on rate filings.
> - Administratively disapprove rates prior to their use.
>
> **Post-Market Tools**
>
> - Review and disapprove a rate-in-effect.
> - Place a company under prior-approval regulation for future filings.

All insurers who write homeowners insurance must file rates with TDI before using them, but companies can use the rates immediately and without departmental approval. The Department can review rates, request additional information on rates, and administratively disapprove rates before insurers use the rates. A rate that is disapproved cannot be used or charged to consumers. Statute requires TDI to disapprove rates that are excessive, inadequate, or unfairly discriminatory.

TDI can also review and disapprove rates after rates go to market, and, if warranted, require select companies to go through a more rigorous prior-approval review for subsequent filings. Statute permits the Commissioner to place insurers under prior approval in the event of a statewide emergency, or if the insurer's rates require supervision due to the insurer's financial condition or ratings practices.

TDI faces a higher burden of proof to disapprove a rate-in-effect than to administratively disapprove a filed rate. To disapprove a rate-in-effect the Department must go through a contested case hearing process at the State Office of Administrative Hearings. Insurers may use rates during the hearings process, though companies are liable for refunds to policyholders if a rate is ultimately found to be excessive.

Finding

No significant changes have occurred to affect the Sunset Commission's 2008 decisions to require the Department to define and track its use of various rate regulatory tools.

Finding that TDI's use of both pre-market and post-market regulatory tools was largely undefined, the Sunset Commission made a series of recommendations to the Legislature to increase the transparency and predictability of the Department's processes for regulating property and casualty rates, including homeowners insurance. The table, *Rate Regulation Recommendations*, summarizes the Sunset Commission's recommendations and their status.

Rate Regulation Recommendations

2008 Sunset Commission Recommendation	Status
• Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system. • Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.	**Change in law still needed**. Both recommendations were based on findings that TDI used its pre-market regulatory tools – including its review of filed rates, requests for supplemental information, and administrative disapproval of rates – without defined practices, making aspects of rate regulation unpredictable. Nothing significant has changed in the way TDI reviews filed rates, and most insurers still do not file and use their rates immediately.[2] While TDI is examining its processes for rate review and tracking Department actions consistent with these recommendations, the Sunset Commission's recommendations remain appropriate to strengthen pre-market reviews; improve transparency and the exchange of information between insurers and TDI; and provide TDI with better information.
• Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval. • Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.	**Change in law still needed**. These recommendations were based on findings that TDI's use of one post-market tool – placing a company under prior-approval regulation for future filings – was largely undefined, creating uncertainty in the rate regulation system. Although no insurers are currently under prior-approval review, TDI still has not defined the factors that contribute to a company being placed under prior approval, nor the factors that lead to a company getting out from under prior approval. These recommendations remain appropriate to ensure that the prior approval process is predictable and transparent.
• Require the Texas Department of Insurance to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims.	**Change in law still needed**. This recommendation, brought forth through the public hearing process, is aimed at increasing the transparency of how insurers pay claims. The Department continues to need statutory authority to collect this information from insurers.

Sunset staff examined the appropriateness of these recommendations and found that nothing significant has changed in the way TDI regulates rates and that TDI still needs legislative and statutory direction to implement the recommendations. Staff also examined legislative changes that were made to the TDI Sunset bill related to these Commission recommendations, and identified changes that were made to simply clarify the Sunset Commission's original recommendations. Staff has incorporated those clarifying changes into the recommendations below.

Recommendations

Change in Statute

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

This recommendation would establish deemer dates for the Department's review of all property and casualty rate filings. The Department would have 30 days to request information from insurers, conclude rate review, and disapprove rates as necessary. The Commissioner would be authorized to extend the review period for one additional 30 day period only, and only for good cause. If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests would not count against the Department's review period.

Insurers would continue to be permitted to use rates as soon as they are filed, if they choose. This recommendation would only affect filings not immediately used, and is not intended to change the Department's ability to disapprove rates under current law, nor to give the Department the authority to approve rates under this regulatory system.

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

While the problems identified in this Issue pertain primarily to residential property insurance filings, state law requires similar regulation of all property and casualty rates, and these changes would affect all lines.

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

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

- make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;
- reduce the number of separate requests;

- more specifically define the kinds of information that the Department can request during a rate review; and
- track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

The Department would use data on requests to better focus education efforts for both TDI review staff and insurers, and to streamline future requests. This would help the Department ensure that requests are fair and practical, and improve insurers' initial filings of data and the ability to respond to supplemental requests.

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

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

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

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

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

1.5 Require the Department to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims.

This recommendation is intended to give TDI additional information about the timeliness of claims payment, including if they are paid promptly and in full. The recommendation would require TDI to collect aggregate claims data including the number of claims:

- filed during the reporting period;
- pending on the last day of the reporting period, including pending litigation;
- closed with payment during the reporting period;
- closed without payment during the reporting period;
- carrying over from the previous reporting period; and
- any other relevant information relating to the processing of claims.

This information would be collected on an annual basis, with the information broken down by quarter. In addition to collecting the data, TDI would be required to publish or disseminate the collected information to the general public via the agency's website. TDI would be authorized to adopt rules as necessary to implement a plan for collecting and publishing claims data.

Fiscal Implication Summary

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

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

2 According to TDI, in 2009, homeowners insurers did not use 90 percent of filed rates immediately.

Issue 2

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

Background

Texans with health insurance receive it in one of three ways: through their employer that contracts for a group policy with an insurer or by directly purchasing an individual policy from an insurer; through their employer that is self-insured; or through federal programs such as Medicaid or Medicare. The Texas Department of Insurance (TDI) only regulates health insurance provided by the first group, referred to as fully insured, which affects about 5.5 million Texans. The Department does not regulate health insurance plans provided through self-insured employers, which are historically regarded as exempt from state regulation through the federal Employee Retirement Income Security Act (ERISA), or through other federal programs. Within the fully insured group, TDI licenses and regulates insurance companies, Health Maintenance Organizations (HMOs), Third Party Administrators (TPAs), and agents and agencies selling insurance.

Of Texans fully insured, more than 80 percent receive their care through Preferred Provider Organization (PPO) plans – a type of managed care plan offered by insurers. However, unlike HMO plans, PPO plans are open-network, and consumers can choose providers who are in- or out-of-network. Insurers offer PPO plans to policyholders through organizations that develop networks for PPO plans. PPOs contract with providers, who give consumers services in accordance with reimbursement rates agreed to between the provider and the PPO. PPOs assemble and credential providers, and negotiate discounts for service. PPOs may also lease access to provider networks, re-price claims, and handle provider relations.

In some cases, large insurers create and own PPO networks, called proprietary PPOs. Independent PPOs contract directly with a licensed insurer or a TPA. However, the insurers, and not the PPOs or the TPAs, assume the financial risk of the policy.

Finding

The Department continues to need statutory authority to regulate Preferred Provider Organizations.

In 2008, the Sunset Commission recommended requiring PPOs to obtain a certificate of authority from TDI, based on findings that because PPOs provide care to more than 80 percent of fully insured Texans, TDI's lack of regulatory authority over PPOs is outdated and can result in consumer harm. The Sunset review had found that PPOs operate within a complicated system of health insurance in which the PPO has the direct contract with a health care provider who provides services to the consumer, but may have several contracts with TPAs or insurers that ultimately retain the risk of the policy.

Because PPOs play a significant role in healthcare delivery to the consumer and their decisions may affect care given, the complexity of the system can result in a lack of transparency and accountability about payment and coverage under PPO plans, potentially creating consumer harm.

Although PPOs provide services to more than 80 percent of fully insured Texans, TDI has no authority over them.

The review found that TDI regulates HMOs and TPAs that also operate within the health insurance system. Both HMOs and TPAs may provide insurance-like services that directly affect consumers, but HMOs bear the financial risk for those services, while TPAs do not. However, TDI has no regulatory authority over PPOs, although PPOs operate similarly to these other regulated entities and provide services to more than 80 percent of fully insured Texans.

In addition to requiring the regulation of PPOs, the Sunset Commission adopted two modifications brought forth through the public hearing process to exempt self-insured plans and insurers with proprietary PPOs from the certification requirements. These exemptions were based on arguments that these PPOs are either exempt from regulation by virtue of providing services through a federal ERISA plan, or by virtue of being subsidiaries of entities already regulated by TDI, such as insurance companies or TPAs. The resulting recommendation was therefore limited to the regulation of independent PPOs, which contract with an insurance company or TPA.

With the passage of federal health care reform, significant changes to the health insurance market will occur in the next few years. Even so, commercial health insurance carriers and networks, including PPOs, will continue to serve a vital role in the delivery of health care. As a result, and because TDI cannot regulate PPOs without specific statutory authority, the recommendation as modified continues to be appropriate even as health reforms are implemented.

Recommendation

Change in Statute

2.1 Require Preferred Provider Organizations to obtain a certificate of authority from TDI to operate in Texas.

This recommendation would require PPOs that operate within Texas to apply for a certificate of authority from TDI. Self-insured plans and insurers with proprietary PPOs would be exempt from this certification requirement.

Basic requirements for the process and application for certificate of authority would be similar to those already in law for HMOs and TPAs. The application for a PPO certificate of authority would include requirements for:

- a copy of the applicant's basic organizational document, if it exists, such as articles of incorporation or association;
- a copy of any organization bylaws;

- a list of all members in control of the organization, such as the board of directors or other governing committee, or principal officers or partners; and
- a template of any contract made between the applicant and physicians or providers.

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

Fiscal Implication Summary

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

Issue 3

Without Additional Tools, TDI Cannot Effectively Regulate Title Insurance.

Background

Title insurance is typically required by lenders in real estate transactions, as a guarantee that the buyer will have clear ownership of the property. A title insurance policy insures a property buyer and lender from claims against the property, such as outstanding liens due to unpaid taxes or improper deed recording that existed at the time of purchase. To regulate title insurance, the Texas Department of Insurance (TDI) licenses title insurers, title agents, and escrow officers and promulgates title insurance rates. In fiscal year 2009, Texas regulated 31 title insurers, 612 title agents, and 5,961 escrow officers.

To protect consumers' assets, TDI monitors the solvency of title insurers and title agents by enforcing financial requirements at licensure and on an ongoing basis, monitoring ownership changes, and performing regular financial examinations to ensure solvency. Although state law requires the Texas Title Insurance Guaranty Association (the Association) to retain staff to examine title agents, in practice TDI performs the examinations. The Department hires examination staff, and the Association approves TDI's examination budget and staffing levels, and reimburses TDI. In fiscal year 2009, TDI performed 367 title agent examinations, including 27 follow-up examinations.

Statute prohibits title agents and insurers from charging rates other than those promulgated by TDI. To set rates that are reasonable to the public and non-confiscatory to title insurers and agents, the Commissioner of Insurance (Commissioner) uses expense, profit, and loss data reported annually by all title insurers and agents operating in Texas. The Commissioner prescribes the content of the annual report and has not changed it substantially since the 1990s.

Finding

Despite recent legislative changes to address title agent solvency concerns, the Sunset Commission's recommendations on TDI's agent examination and rate promulgation authority continue to be appropriate.

The 2008 Sunset review found that without direct authority over examinations of title agents, consistent verification of expense data, and recurring assessments of factors used in rate promulgation, TDI could not effectively regulate title insurance and protect consumers. Since the Association retains the authority over examinations, TDI's ability to fulfill its responsibility to ensure the solvency of title agents and protect consumers is limited. Without direct authority over examinations of title agents, TDI may lack the flexibility to determine the necessary components of examinations or schedule examinations as needed to take timely action when financial problems arise.

The Sunset review also concluded that without consistently reviewing expense data obtained during financial exams, the Department could not ensure the appropriateness of promulgated rates. Because title agent expenses constitute

80 percent of the promulgated rate, TDI must be able to ensure that expenses are reported accurately. Since title agent examinations occur approximately once every three years, and only one in three title agent examinations includes a review of the expense report submitted for rating purposes, TDI cannot ensure accuracy of agents' expense reporting. Of the 367 examinations conducted in fiscal year 2009, of which 342 were comprehensive compliance audits, only 116 included an expense report review.

Recent legislative changes did not address TDI's authority over title agent examinations or rate promulgation information.

Finally, Sunset found in 2008 that because title insurers can only charge rates as promulgated by the Commissioner, consumers rely on TDI to set rates fairly and accurately. To ensure the Commissioner sets appropriate rates, TDI needs to re-evaluate the type of information the Commissioner requires to be reported.

During the 81st Legislative Session, while the Sunset bill failed to pass, the Legislature did adopt House Bill 4338, establishing additional tools for the Department to monitor title agent solvency. However, the bill did not address Sunset recommendations to transfer title agent examinations to TDI or require the Commissioner to assess what information is needed to promulgate rates. A change in statute is still required as the Association maintains the authority to conduct title agent examinations and to ensure that TDI collects adequate, but not unnecessary, information to promulgate rates in line with statutory requirements.

Sunset staff also examined changes that the Legislature made to the TDI Sunset bill in 2009 aimed at assisting the Department when conducting examinations. Staff has incorporated these changes into the recommendations below.

Recommendations

Change in Statute

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

Under this recommendation, the statutory authority for title agent examinations would transfer from the Texas Title Insurance Guaranty Association to the Department, and TDI would be required to conduct regular title agent examinations. Examinations should include a review of the overall financial condition of a title agent, including operating accounts and escrow accounts.

Every examination should also include a component to verify the expense, profit, and loss data reported for rate promulgation. This recommendation would clarify that in accordance with changes in statute brought about by the passage of House Bill 4338, the Commissioner can use this information in aggregate to effectively promulgate rates without revealing sensitive individual agent information.

To clarify TDI's authority in conducting financial examinations, the Department would be allowed to access offices or business locations of title agents or direct operations agents when conducting examinations. Additionally, preliminary or final examinations reports under this recommendation would not be subject to the Public Information Act, but the Department would be authorized to release preliminary or final examination reports to another regulatory or law enforcement agency for enforcement purposes.

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

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

This recommendation would require the Commissioner to assess, every five years, the expense data collected for purposes of promulgating rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary.

Fiscal Implication Summary

These recommendations would not have an overall net fiscal impact to the State. Under these recommendations, the Department would continue to hire examiners, and would require reimbursement from the Guaranty Association for examinations through the authority given to the Department in Recommendation 3.1.

Issue 4

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

Background

The Texas Department of Insurance (TDI) has 15 statutorily created advisory committees, councils, and boards. The Department uses advisory committees for input on a variety of topics, including licensing requirements, program development, market conditions, or other special projects. Some of these committees are active while others are not.

Chapter 2110 of the Texas Government Code lays out the basic structure and duties of state agency advisory committees. The chapter allows state agencies to create advisory committees as needed to fulfill their duties. The chapter also creates guidelines for committee membership and reimbursement. To ensure that committees remain useful, state law creates automatic expiration dates for committees four years from their creation, and requires agencies to act through rulemaking to continue needed committees.

Finding

Statutory change is still required to eliminate most of TDI's advisory committees in law, and to require TDI to adopt rules for the use of advisory committees.

In 2008, the Sunset Commission recommended removing 12 advisory committees from statute, and requiring TDI to adopt rules to ensure that any advisory committees TDI continues to use meet standard structure and operating criteria in general law. The chart on the next page, *TDI Advisory Committees*, summarizes the findings that were the basis for removing each of these committees from law. The chart does not include the Windstorm Building Code Advisory Committee, originally part of the recommendation, since the Legislature repealed it in the 81st Session.

Four additional advisory committees, identified after the original 2008 Sunset Commission decisions, have been incorporated into the recommendations. Three of these committees, the Consumer Assistance Program for Health Maintenance Organizations Advisory Board, the Examination of License Applicants Advisory Board, and the Insurance Adjusters Advisory Board, are committees that exist in statute but were never established and are not needed in law. In 2009, TDI reactivated the fourth committee – the Utilization Review Advisory Committee – to assess modifications to utilization review rules, but like other committees, it would function better in rule than in law.

TDI Advisory Committees

2008 Sunset Commission Finding	Advisory Committees
Committees that have fulfilled their purpose but continue to exist in law. The Legislature created advisory bodies to fulfill specific functions, but they have since completed their assigned tasks and are no longer active.	• Agents Study Proposal/Vendor Committee • Public Insurance Adjusters Examination Advisory Committee • Texas Health Coverage Awareness and Education Program Task Force • Texas Residential Property Insurance Market Assistance Program Executive Committee
Committees that have completed their tasks but TDI is unable to terminate their activities. These committees have largely met their goals established by the Legislature but are exempt from Chapter 2110 of the Government Code, preventing TDI from abolishing them.	• Technical Advisory Committee on Claims Processing • Technical Advisory Committee on Electronic Data Exchange
Committee that is no longer carrying out duties as intended, and drains TDI resources. This committee rarely meets, does not perform its intended functions, and takes up numerous hours of staff time.	• Health Maintenance Organization Solvency Surveillance Committee
Committees that are useful, but would function better in rule than in law. These committees provide benefits, such as public input and committee member expertise, but these benefits are limited by strict statutory requirements. TDI could re-establish them in rule, providing more flexibility to structure the committees in the best way to meet the Department's current needs.	• Fire Alarm Advisory Committee • Fire Extinguisher Advisory Council • Fire Sprinkler Advisory Council • Fireworks Advisory Council

Recommendations

Change in Statute

4.1 Eliminate 15 TDI advisory committees from statute.

This recommendation would eliminate 15 committees currently in statute. Specifically, this recommendation would eliminate the following committees:

- Agents Study Proposal/Vendor Committee;
- Consumer Assistance Program for Health Maintenance Organizations Advisory Board;
- Examination of License Applicants Advisory Board;
- Fire Alarm Advisory Committee;
- Fire Extinguisher Advisory Council;

- Fire Sprinkler Advisory Council;
- Fireworks Advisory Council;
- Health Maintenance Organization Solvency Surveillance Committee;
- Insurance Adjusters Advisory Board;
- Public Insurance Adjusters Examination Advisory Committee;
- Technical Advisory Committee on Claims Processing;
- Technical Advisory Committee on Electronic Data Exchange;
- Texas Health Coverage Awareness and Education Program Task Force;
- Texas Residential Property Insurance Market Assistance Program (MAP) Executive Committee; and
- Utilization Review Advisory Committee.

This change would eliminate several advisory committees, adjust statute as needed, and remove other unnecessary statutory language related to these advisory committees. The Commissioner of Insurance (Commissioner) would be allowed to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department.

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

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

- the purpose, role, responsibility, and goals of the committees;
- size and quorum requirements of the committees;
- qualifications of the members, such as experience or geographic location;
- appointment procedures for the committees;
- terms of service;
- training requirements;
- process to regularly evaluate the need for each committee;
- duration of the committee; and
- a requirement that the committees comply with the Open Meetings Act.

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

Fiscal Implication Summary

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

Issue 5

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

Background

The State Fire Marshal's Office (SFMO) works to prevent the loss of life and property due to fire by inspecting the safety of both state- and privately owned buildings. Inspectors check fires alarms, fire extinguishers, sprinkler systems, and escape routes, looking for potential fire hazards. Inspectors may also evaluate fire policies and communication plans to ensure employees know how to respond effectively to a fire in their workplace. Inspections help to identify and correct fire hazards and ensure better overall awareness of the importance of fire safety. In 2009, the SFMO performed a total of 4,659 inspections.

Findings

The SFMO continues to need statutory authority to inspect state-leased buildings.

While state law requires the SFMO to periodically inspect state-owned buildings and to take action to protect these buildings and their occupants, it does not address state-leased buildings. Finding that the State has a clear interest in protecting the safety of all state employees, including the thousands of state employees who work in more than 1,500 state-leased buildings, the Sunset Commission recommended requiring the SFMO to periodically inspect state-leased buildings. Since the SFMO cannot conduct inspections of state-leased buildings without statutory authority, the recommendation remains appropriate to protect state employees against an existing or threatened fire hazard.

The 2008 recommendations are still needed to help SFMO protect state employees and the public from fire hazards.

Texas would still benefit from requiring the SFMO to use a strategic approach to inspecting state buildings.

Finding that the SFMO has not targeted its routine inspections of state buildings based on potential fire safety risks, the Sunset Commission recommended requiring the SFMO to create a risk-based approach for inspections of state buildings. Though the SFMO is taking steps to create a risk-based model to use for state building inspections, it has yet to be fully implemented. This recommendation remains appropriate to ensure that the Office focuses its inspections on the most hazardous buildings for fire safety violations first.

The inability to charge an inspection fee continues to contribute to the SFMO's inappropriate involvement in private building inspections.

The 2008 Sunset review found that although the SFMO has limited resources to effectively perform fire safety inspections of privately owned buildings, it is often the inspector of choice because it cannot charge a fee, unlike local county and city fire marshals. Inspections of private buildings continue to represent almost 40 percent of the SFMO's inspection workload. As a result of these findings, the Sunset Commission recommended that the Legislature authorize the SFMO to charge a fee for inspections of privately owned buildings. This recommendation remains appropriate as the Office still needs statutory authority to charge inspection fees.

Recommendations

Change in Statute

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

As state law already requires of state-owned buildings, this recommendation would require the SFMO to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The recommendation would also require the SFMO to share and coordinate state-leased building inspection information with affected agencies, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings. This recommendation would allow agencies to make informed decisions regarding lease agreements, but is not intended to pre-empt compliance with locally adopted fire safety codes.

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

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

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

This recommendation would statutorily authorize the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO should consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses.

Fiscal Implication Summary

These recommendations would not result in a significant fiscal impact to the State. Authorizing the SFMO to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but the number of requests that would continue to come in once the SFMO can charge for this service could not be estimated.

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

Issue 6

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

Background

The State Fire Marshal's Office (SFMO) licenses individuals and entities to protect the public by ensuring that licensees properly carry out their duties, are qualified and competent, and adhere to professional standards. The SFMO licenses and registers all persons and firms engaged in the business of planning, installing, and servicing fire sprinkler systems, fire extinguishers, and fire alarm systems; and individuals and firms selling and handling fireworks. The SFMO regulated more than 17,500 individuals and firms in fiscal year 2009.

The SFMO conducts investigations of individuals and firms for compliance upon receipt of written complaints from local fire departments, SFMO employees, or members of the public. Sanctions for licensees found to be in violation of statute or rules can range from administrative fines to revocation of licenses and criminal prosecution.

Finding

The SFMO continues to need the authority to enforce penalties against its licensees, as recommended by the Sunset Commission.

The 2008 Sunset review found that although SFMO licensees are directly involved in protecting the public's welfare and preventing harm caused by fires, the SFMO lacks the necessary authority to adequately enforce penalties against its licensees, which allows many violators to go unsanctioned. The SFMO cannot issue fines against licensees without going through the Department's extensive enforcement process, and many SFMO violations may not meet the threshold the Texas Department of Insurance (TDI) has established to prioritize enforcement efforts. As a result of these findings, the Sunset Commission recommended that the Legislature require the Commissioner of Insurance (Commissioner) to establish a penalty matrix for violations by SFMO licensees, and to delegate enforcement authority to the SFMO.

Most SFMO violations do not meet TDI's threshold for enforcement.

Although the SFMO began working on a penalty matrix following the 2008 Sunset report, this recommendation continues to be appropriate since the Commissioner has not delegated any enforcement authority to the SFMO, and many SFMO violations continue to go unsanctioned. In fiscal year 2009, the SFMO had 748 valid complaints against its licensees. Because most of the violations still did not meet the Department's broader enforcement threshold, the SFMO referred only 91 of these complaints to TDI's enforcement division, resulting in 52 sanctions.

Recommendation

Change in Statute

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

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

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

Fiscal Implication Summary

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

Issue 7

The Department's Statute Has Not Kept Pace With Available Electronic Transaction Technologies.

Background

In today's technological environment, more businesses, including insurance companies, are conducting transactions electronically. The Insurance Code outlines requirements for many different types of business transactions related to insurance and consumers, including both financial and contractual transactions. In some cases, state law may require a transaction to be executed in a specific way, such as by certified mail.

Finding

No significant changes have occurred to affect the Sunset Commission's 2008 decision to clarify electronic commerce transaction provisions in state law.

This recommendation was brought forth through the public hearing process in 2008. The Sunset Commission found that because the Insurance Code does not specifically address the use of electronic transactions, businesses may be unclear if electronic transactions are permitted. The Sunset Commission recommended clarifying statute to permit the use of electronic commerce transactions, if agreed to by parties. This recommendation remains appropriate to ensure that state law clearly addresses these type of transactions and provides standards for how they should be used.

Recommendation

Change in Statute

7.1 Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.

This recommendation would clarify the applicability of existing and future provisions in the Insurance Code to permit electronic commerce transactions. The recommendation would supplement existing laws by removing barriers to electronic commerce transactions. The Department would provide businesses and consumers with standards for electronically delivering documents. The recommendation would not require parties to conduct business electronically, but would facilitate transactions in which the parties agree to conduct business electronically.

Fiscal Implication Summary

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

Issue 8

Qualifications for Reduced Rate Filing Requirements for Certain Insurers Writing Residential Property Insurance in Underserved Areas May Need Adjustment.

Background

By law, insurance companies that write a certain percentage of residential property coverage in underserved areas have reduced rate filing and approval requirements. The current exemption covers insurers that issue residential property coverage that accounts for less than 2 percent of the total amount of premiums collected by insurers in Texas, more than 50 percent of which covers property designated by the Texas Department of Insurance (TDI) in rule as underserved and valued at less than $100,000. If an insurer meets these qualifications, and if the proposed rate is less than a 10 percent increase, then the insurer's rate filing requirements are reduced, though TDI still has regulatory authority over the rate. Eight insurers currently meet these parameters to qualify for the reduced rate filing requirements.

Finding

The Department continues to need legislative guidance in determining the factors that insurers must meet to qualify for the reduced rate filing requirements.

In 2008, the Sunset Commission adopted a recommendation brought forth through the public hearing process related to changing the threshold for reduced rate filing requirements from less than 2 percent to less than 4 percent. During the 81st Legislative Session, the Legislature continued to have discussions about this issue, and modified this provision in the TDI Sunset bill to instead require the Commissioner of Insurance (Commissioner) to study the requirement and determine if such a change would be appropriate. In addition, the bill would have required the Commissioner to study the current areas designated as underserved and directed the Commissioner to consider certain factors when making that designation. With no statutory language passing, TDI still needs legislative direction on this issue.

Recommendation

Change in Statute

8.1 Require the Commissioner of Insurance to study the qualifications for reduced rate filings for insurers writing residential property insurance in underserved areas.

This recommendation would require the Commissioner to study the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements, and to include the study results in the Department's biennial report. This recommendation would also expand the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms. Finally, the Commissioner would be required to study areas of the state designated as underserved and to determine which areas to designate as underserved every six years.

Fiscal Implication Summary

This recommendation would not have a fiscal impact to the State.

Issue 9

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

Background

The Legislature created the Texas Department of Insurance's (TDI) original predecessor, the Department of Insurance, Statistics and History, in 1876. Today, TDI regulates the Texas insurance industry to ensure that Texans have access to fair and competitive insurance products. To accomplish this, the Department: regulates insurance companies' solvency, rates, forms, and market conduct; licenses individuals and entities involved in providing insurance products; provides consumer education and resolves complaints; enforces against those who violate law or rule; investigates those who engage in insurance fraud; and provides statewide fire prevention services through the State Fire Marshal's Office. TDI also regulates workers' compensation insurance in Texas; however, the Division of Workers' Compensation (DWC) has a separate Sunset date. Issue 7 of the DWC Sunset Staff Report addresses the continuing need for workers' compensation regulation.

Findings

No significant changes have occurred to affect the 2008 Sunset Commission recommendation to continue the Department and update its statutory duties.

In 2008, the Sunset Commission recommended that the Legislature continue the Department for 12 years. The recommendation is still appropriate. Through TDI's functions, the State protects consumers by ensuring that insurance companies remain financially healthy and can pay claims; ensuring that insurance products in the market are fair, nondiscriminatory, and not excessive; ensuring those involved in the insurance industry are qualified; and helping resolve complaints and taking enforcement action when needed. In addition, during the 2008 review, Sunset staff evaluated other organizational structures and concluded that TDI's structure gives Texas a full picture of an insurer's actions in many different arenas, making it easier to identify problems within the market or a specific company, and to take corrective action if required.

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

The Sunset Commission also recommended updating TDI's statutory mission to better reflect TDI's role in ensuring that consumers are protected and receive fair, nondiscriminatory, and reasonably priced insurance products, and that the insurance market in Texas is competitive. The Sunset Commission found that while state law does direct TDI to regulate specific aspects of the insurance industry that relate to these overall goals, statute does not clearly reflect these critical responsibilities of the agency. TDI's statutory mission has not changed and this recommendation remains appropriate.

The Department's statute does not reflect standard language typically applied across the board during Sunset reviews.

TDI's governing statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. Without this provision, the agency could miss opportunities to improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

Recommendations

Change in Statute

9.1 Continue the Texas Department of Insurance for 12 years.

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

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

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

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

9.3 Apply the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that TDI develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. This requirement for alternative dispute resolution would not affect the administrative dispute resolution process in statute elsewhere for the Division of Workers' Compensation.

The agency would also provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

If the Legislature continues TDI, its annual appropriation of about $120 million would need to be continued. However, since the agency is self-funding through maintenance taxes assessed on insurers and user fees, this recommendation would not affect General Revenue. Applying the Sunset across-the-board requirement on alternative dispute resolution would not have a fiscal impact to the State.

Office of Public Insurance Counsel

Agency at a Glance

Agency at a Glance

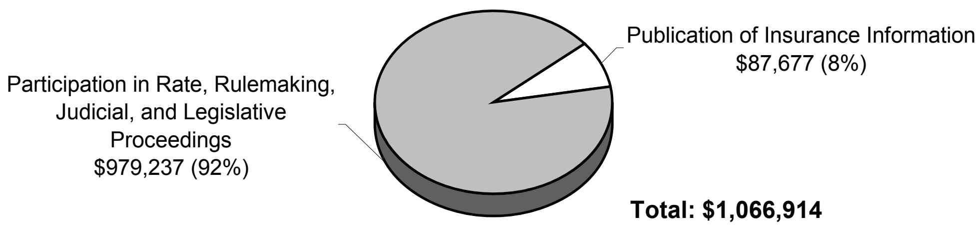
The Office of Public Insurance Counsel (OPIC) represents the interests of consumers as a class in insurance matters. The Legislature created OPIC in 1991 as an independent agency to advocate for consumers in rate, form, and rule proceedings primarily at the Texas Department of Insurance (TDI). To accomplish its mission, the Office of Public Insurance Counsel:

- reviews rate and policy form filings, and works with TDI and insurance companies to negotiate changes advantageous to consumers;
- participates in contested rate cases and industry-wide rate hearings before the State Office of Administrative Hearings, the Commissioner of Insurance, district court, and the court of appeals;
- advocates on behalf of consumers in rulemaking procedures at TDI; and
- provides information to consumers regarding insurance coverage and markets.

Key Facts

- **Public Counsel**. The Public Counsel directs the activities of the agency, which does not have a policymaking body. The Governor appoints the Public Counsel, and the Senate confirms the two-year appointment. The Public Counsel must be licensed to practice law in Texas, must have shown dedication to protecting the rights of the public, and must be able to practice effectively in insurance proceedings.
- **Funding**. In fiscal year 2009, OPIC operated on about a $1 million budget. Statute authorizes OPIC to assess insurers to offset the agency's operating costs. Annual assessments are 5.7 cents for each insurance policy in the property and casualty; title; and life, health, and accident lines. The pie chart, *OPIC Expenditures by Strategy*, details how OPIC spent its appropriations in fiscal year 2009.

OPIC Expenditures by Strategy
FY 2009



- **Staff**. OPIC has 16.5 approved full-time equivalent positions, including an economist, a statistician, attorneys, researchers, and administrative staff. All OPIC employees work in Austin.
- **Rate and Form Review**. To protect consumer interests, OPIC analyzes and intervenes in insurance company rate and form filings made to TDI for all lines of insurance. OPIC negotiates with companies and TDI to make changes to rate and form filings to benefit consumers. OPIC may

also contest individual filings and participate in individual and industry-wide contested case hearings or judicial appeals. The chart, *OPIC Rate and Form Filing Workload*, details OPIC's workload in fiscal year 2009. OPIC did not participate in any judicial appeals in that same year.

OPIC Rate and Form Filing Workload
FY 2009

Filing Action	Rates	Forms
Received and Analyzed	706	514
Negotiated	52	36
Contested Case Hearings	5	0

- **Rule Review**. OPIC reviews rule proposals and works with TDI to make modifications before publication for public comment. In rulemaking hearings, OPIC has the same legal status as any stakeholder group. In fiscal year 2009, OPIC reviewed 51 rule proposals and negotiated changes in 16 rule proposals.

- **Insurance Information for Consumers**. OPIC produces several types of consumer publications about insurance coverage including health maintenance organization reports, a guide for homeowners insurance on the Texas coast, a guide outlining recent changes in windstorm insurance law, consumer bills of rights, underwriting guidelines, and a homeowners' policy comparison tool. OPIC also has an interagency contract to review TDI publications from a consumer perspective.

Issue

Issue 1

The State Has a Continuing Need for the Office of Public Insurance Counsel.

Background

To represent insurance consumers in Texas, the Office of Public Insurance Counsel (OPIC) assesses the effect of insurance rates, policy forms, and rules on consumers and, as statute allows, intervenes when problems arise. The Office also performs a limited consumer education function, which consists of producing 11 publications and reviewing all TDI publications from a consumer perspective.

Findings

No significant changes have occurred to affect the 2008 Sunset Commission's recommendation to continue the Office of Public Insurance Counsel.

In 2008, the Sunset Commission considered the continuing need for an independent agency to represent consumers in insurance matters. The Sunset Commission also considered potential structural changes to the Office, including transferring some of OPIC's functions to TDI. The Sunset Commission concluded that the independence provided by being a separate, stand-alone agency was important and outweighed any potential benefits of changing the Office's structure. As a result, the Sunset Commission recommended that the Legislature continue the Office for 12 years. The recommendation remains appropriate since consumers continue to need an advocate in complex insurance matters, and Texas continues to need an agency to perform these functions.

In 2008, the Sunset Commission concluded that the Office's structure as an independent agency was important.

Statute does not reflect standard language typically applied across the board during Sunset reviews.

The Office's governing statute does not include a standard provision relating to alternative dispute resolution that the Sunset Commission routinely applies to agencies under review. Without this provision, the agency could miss opportunities to improve dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus.

Recommendations

Change in Statute

1.1 Continue the Office of Public Insurance Counsel for 12 years.

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

1.2 Apply the standard Sunset across-the-board requirement for the Office to develop a policy regarding alternative dispute resolution.

This recommendation would ensure that OPIC develops and implements a policy to encourage alternative procedures for dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The standard language would be modified to exclude references to rulemaking, since OPIC does not have rulemaking authority.

The agency would also provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

If the Legislature continues OPIC, its annual appropriation of about $1 million would need to be continued. However, annual assessments on insurance policies would continue to cover OPIC's appropriations. Applying the Sunset across-the-board requirement on alternative dispute resolution would not have a fiscal impact to the State.

Sunset Staff Review of the Texas Department of Insurance Office of Public Insurance Counsel

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