BILL ANALYSIS

C.S.H.B. 2449
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law requires the commissioner of insurance to make recommendations relating to an insurer's amount of required capital and surplus and to provide evidence on which those recommendations are based. In 1991, the legislature increased capital requirements for most insurers in response to the failure of a large number of insurance companies, but allowed a limited exemption for certain insurers, including county mutual insurers. Most other insurance companies are subject to risk-based capital, which recognizes that insurers vary in size, exposure, and types of risks assumed. Risk-based capital indexes the amount of capital a particular insurer needs to its own unique risk profile. The commissioner currently has the authority to adopt risk-based capital regulations for most other insurers based on any of the following factors: the nature and type of risks the insurer underwrites; the insurer's premium volume; the composition, quality, and liquidity of the insurer's investments; fluctuations in the market value of securities held by the insurer; and the adequacy of the insurer's reserves.

Current law does not authorize the commissioner to apply risk-based capital requirements to county mutual insurance companies, even though county mutuals hold over 43 percent of the Texas market for private passenger automobile insurance. These exempt insurers are exposed to the same risks as their competitors who are subject to risk-based capital. Applying risk-based capital standards to county mutuals will help ensure that these insurers are able to pay claims and remain solvent. Continuing to exempt county mutuals from risk-based capital requirements exposes Texas' general revenue funds in the event that one of these exempt insurers becomes insolvent, because unpaid claims of insolvent insurers ultimately result in a reduction of the state's premium tax collections.

C.S.H.B. 2449 applies risk-based capital requirements to county mutual insurance companies and sets forth a phase-in period to comply with new risk-based capital requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2449 amends the Insurance Code to authorize a county mutual insurance company that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the company's business independent of all other business of the company to continue to operate in that manner and to appoint and contract with one or more managing general agents in accordance with state insurance laws only if the company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. The bill requires such a company to file, for each managing general agent, district, or local chapter program, the rating information required by the commissioner of insurance by

rule. The bill requires each managing general agent, district, or local chapter program to be treated as a separate insurer for purposes relating to prohibitions against discrimination by an insurer, rates, rating territories, and premium refunds for certain personal lines of insurance.

C.S.H.B. 2449 requires a county mutual insurance company that cedes 85 percent or more of the company's direct and assumed risks to one or more nonaffiliated reinsurers to maintain unencumbered surplus, or guaranty fund and unencumbered surplus, equal to the greater of $2 million or five percent of the company's recoverable for reinsurance after taking full credit against the recoverable as otherwise permitted for premium payable to ceding insurers, net of any ceding commission due the company; collateral held, letters of credit, and security trusts that secure the collection of the reinsurance; and reinsurance through reinsurers whose financial strength is rated "A" or better by the A. M. Best Company, Incorporated, or another nationally recognized statistical rating organization acceptable to the commissioner.

C.S.H.B. 2449 requires the commissioner by rule to adopt a transition period for such insurance companies to meet these requirements and for the pro rata elimination of any deficiencies in the required amounts. The bill requires the transition period to be for a period of not less than five years.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2449 differs from the original by authorizing a company organized and operating as a county mutual insurance company that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the company's business independent of all other business of the company, to continue to operate in that manner and to appoint and contract with one or more managing general agents in accordance with state insurance laws only if the company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. The original requires a company organized as a county mutual insurance company that cedes 95 percent or more of its gross written premium to one or more unaffiliated reinsurers to maintain, as an asset or deduction from liability, unencumbered surplus equal to at least five percent of the insurance company's total credit for reinsurance ceded.

C.S.H.B. 2449 differs from the original by requiring such a company that cedes 85 percent or more of the company's direct and assumed risks to one or more nonaffiliated reinsurers to maintain unencumbered surplus, or guaranty fund and unencumbered surplus, equal to the greater of $2 million or five percent of the company's recoverable for reinsurance after taking full credit against the recoverable as otherwise permitted for premium payable to ceding insurers, net of any ceding commission due the company; collateral held, letters of credit, and security trusts that secure the collection of the reinsurance; and reinsurance through reinsurers whose financial strength is rated "A" or better by the A. M. Best Company, Incorporated, or another nationally recognized statistical rating organization acceptable to the commissioner of insurance. The original requires a county mutual insurance company to maintain unencumbered surplus equal to $2 million or the amount required by rules adopted by the commissioner and requires a company's required amount of unencumbered surplus to be reduced for ceded premiums payable and collateral held and for reinsurance placed with a reinsurer earning an "A" rating from at least two nationally recognized statistical rating organizations acceptable to the commissioner, to be fulfilled within a planned transition period, and to be at least $2 million.

C.S.H.B. 2449 differs from the original by requiring the commissioner by rule to adopt a transition period for such insurance companies to meet the unencumbered surplus, or guaranty

fund and unencumbered surplus requirement and for the pro rata elimination of any deficiencies in the required amounts, and requiring the transition period adopted to be for a period of not less than five years. The original requires the commissioner to adopt rules consistent with the bill's provisions regarding the amount and investment of such a company's unencumbered surplus and requires a planned transition period, not to exceed 10 years, as reported to the commissioner.

C.S.H.B. 2449 adds a provision not in the original to require such a company to file, for each managing general agent, district, or local chapter program, the rating information required by the commissioner of insurance by rule and to require each managing general agent, district, or local chapter program to be treated as a separate insurer for purposes relating to prohibitions against discrimination by an insurer, rates, rating territories, and premium refunds for certain personal lines of insurance.