

## **BILL ANALYSIS**

S.B. 1291  
By: Hegar  
Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Legislature has provided several state agencies with self-directed budgets, including the Department of Banking. S.B. 1291 is limited to providing a self-directed budget solely for the Texas Department of Insurance's (TDI) examination function.

Current Texas law requires TDI to periodically conduct examinations of insurers engaged in the business of insurance under the Insurance Code. TDI also examines other types of regulated entities. The majority of these examinations are performed for solvency regulation purposes under the authority of Chapter 401 (Audits and Examinations), Insurance Code. A smaller number of examinations are conducted under other provisions of the Insurance Code. Examinations are conducted on-site at the insurer's physical premises located throughout the United States. Section 401.151(a), Insurance Code, provides that Texas-domestic insurers examined by TDI are required to pay the expenses of the examination in an amount that the commissioner of insurance certifies as just and reasonable. Section 401.152(a), Insurance Code, provides that insurers domiciled in other states are required to reimburse TDI for the salary and expenses of each examiner participating in an examination of the insurer and for other TDI expenses that are properly allocable to TDI's participation in the examination. Section 401.156 (Deposit and Use of Assessment and Fee), Insurance Code, provides that TDI is required to deposit an assessment or fee collected under Subchapter D (Examination Expenses), Chapter 401, Insurance Code, to the credit of TDI's operating account. The TDI operating account is a dedicated account of the general revenue fund that is used to fund and pay expenses associated with the examination of insurers by TDI.

TDI is subject to budgetary restrictions that limit its ability to access adequate funds to pay the travel, salary, and related personnel expenses associated with the examination of insurers and other regulated entities by TDI. As a result, TDI has found it difficult to attract and retain qualified examiners and actuaries, which has negatively impacted TDI's ability to conduct the solvency examinations required by the Insurance Code. Moreover, budgetary constraints do not permit TDI to incur travel expenses at a level that is sufficient for TDI to adequately conduct these examinations, which is problematic because the examinations are required to be performed at the insurers' physical premises located throughout the United States.

S.B. 1291 provides TDI with a self-directed budget for the limited purpose of funding expenses incurred by TDI's Financial Examinations and Actuarial Divisions while administering the statutorily required examination function.

S.B. 1291 amends current law relating to the budget of certain divisions of the Texas Department of Insurance.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Insurance in SECTION 1 (Section 401.252, Insurance Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Chapter 401, Insurance Code, by adding Subchapter F, as follows:

## SUBCHAPTER F. SELF-DIRECTED BUDGET FOR CERTAIN DIVISIONS

Sec. 401.251. DEFINITIONS. Defines, in this subchapter, "actuarial division," "examination cost," "financial examinations division," and "financial program."

Sec. 401.252. SELF-DIRECTED BUDGET. (a) Requires the senior associate commissioner of the financial program to submit to the commissioner of insurance (commissioner) an annual budget of examination costs using generally accepted accounting principles. Authorizes the budget, notwithstanding any other provision of law, to be adopted and approved only by the commissioner.

(b) Requires the commissioner to submit the budget to the Legislative Budget Board (LBB) for approval not later than July 1 of each year. Requires the commissioner, if the LBB does not object to the budget in writing as provided by Subsection (c) before July 31 of the same year, to approve the budget.

(c) Requires the LBB, if the LBB objects to the budget, to provide the commissioner with a written statement describing changes to the budget that would result in the LBB not objecting to the budget. Requires the commissioner, not later than August 31 of the year in which the budget was submitted to the LBB, to submit to the LBB a budget that conforms with this statement.

(d) Prohibits the financial program from directly or indirectly causing the Texas Department of Insurance (TDI) operating account to incur any examination cost.

(e) Authorizes TDI, subject to any limitations in this code or another insurance law of this state, to set the amounts of fees required or permitted by statute or rule as necessary to:

(1) carry out the functions of the financial examinations and actuarial divisions relating to the examination of insurers and other regulated entities; and

(2) fund the budget adopted and approved under Subsection (b).

(f) Authorizes the financial program, notwithstanding this section, to receive funds appropriated from the state to fund costs other than examination costs.

(g) Requires that an assessment, fee, charge, or other source of revenue collected by the financial program relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the account described by Section 401.156(a) for the purposes described by that section.

Sec. 401.253. AUDITS. Provides that this subchapter does not affect the duty of the state auditor to audit the financial program.

Sec. 401.254. RECORDS; REPORTING REQUIREMENTS. (a) Requires the financial program to keep financial and statistical information as necessary to disclose completely and accurately the financial program's receipts and examination costs.

(b) Requires the financial program to submit to the commissioner and the LBB an annual report that states:

(1) the revenue received by the financial program from assessments and fees collected by TDI relating to the examination of insurers and other regulated entities;

(2) the total salary for each financial program employee who performs examinations of insurers and other regulated entities;

- (3) the portion of the salary paid to each employee from the self-directed budget approved under Section 401.252;
- (4) the portion of the salary paid to each employee from funds appropriated to the financial program by the state;
- (5) the total travel expenses incurred by each employee who performs examinations of insurers and other regulated entities;
- (6) the portion of travel expenses paid for each employee from the self-directed budget approved under Section 401.252;
- (7) the portion of travel expenses paid for each employee from funds appropriated to the financial program by the state; and
- (8) all other examination costs of the financial program.

Sec. 401.255. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that employees of the actuarial division and financial examinations division are members of the Employees Retirement System of Texas under Chapter 812 (Membership), Government Code, and the transition to a self-directed budget as provided by this subchapter has no effect on their membership or any benefits under that system.

SECTION 2. Amends Section 401.151(d), Insurance Code, as follows:

- (d) Provides that in determining the amount of the assessment under Subsection (c), TDI:
  - (1) is required to consider the insurer's total annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by Section 818(a), Internal Revenue Code of 1986, or the total amount of the insurer's insurance in force; and
  - (2) is prohibited from considering insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2 (Department of Human Services and Department of Protective and Regulatory Services), Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.).

SECTION 3. Amends Section 401.156, Insurance Code, as follows:

Sec. 401.156. DEPOSIT AND USE OF ASSESSMENT AND FEE. (a) Requires TDI to deposit any assessments or fees, rather than an assessment or fee, collected under this subchapter relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Section 401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company, to be used exclusively to pay examination costs, as defined by Section 401.251, rather than to the credit of the TDI operating account. Provides that money deposited under this subsection accumulates and is authorized to be disbursed to TDI in a manner consistent with Subchapter F.

(b) Requires that revenue that is not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the TDI operating account. Deletes existing text requiring that money deposited under this section be used to pay the salaries and expenses of actuaries and examiners and all other expenses relating to examinations of insurers.

(c) Provides that to the extent that another provision of law conflicts with this section or a provision of this section, this section or the provision of this section controls.

(d) Authorizes TDI to transfer funds between the account described by Subsection (a) and the TDI operating account as necessary to ensure that funds are deposited to the correct account and used for the correct purposes. Provides that this subsection does not authorize a disbursement or transfer of funds in a manner that is inconsistent with the purpose of Subchapter F.

SECTION 4. Amends Section 651.005, Insurance Code, as follows:

Sec. 651.005. DEPOSIT AND USE OF FEES. (a) Provides that except as provided by Subsection (b), each fee collected under this chapter:

(1) is required to be deposited to the credit of the TDI operating account; and

(2) is authorized to be used by TDI to enforce this chapter.

(b) Requires that an assessment or fee associated with examination costs, as defined by Section 401.251, be deposited to the account described by Section 401.156(a).

SECTION 5. Amends Section 843.154, Insurance Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires that fees collected under this section, except for fees collected under Subsections (e) (relating to requiring a health maintenance organization to pay certain fees to the commissioner) and (f) (relating to the amount of the fees required to be paid by a health maintenance organization), be deposited to the credit of the TDI operating account.

(b-1) Requires that a fee collected under Subsection (e) or (f) be deposited to the credit of the account described by Section 401.156(a).

SECTION 6. Amends Section 4151.206, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the commissioner to deposit a fee collected under Subsection (a)(1) (relating to a filing fee for processing an original application) or (3) (relating to a filing fee for an annual report), rather than under this section, to the credit of the TDI operating account.

(c) Requires the commissioner to deposit a fee collected under Subsection (a)(2) (relating to a fee for certain examinations) to the credit of the account described by Section 401.156(a).

SECTION 7. (a) Requires TDI, to provide a reasonable period for the financial program, as defined by Section 401.251, Insurance Code, as added by this Act, to establish a self-directed budget, for the one-year period following the effective date of this Act, to continue funding the financial program within TDI using money appropriated to TDI out of the general revenue fund and to deposit to the credit of the TDI operating account all revenue relating to the examination of insurers and other regulated entities by the financial program. Requires TDI to certify to the comptroller of public accounts (comptroller) the amounts deposited to the credit of the operating account under this subsection.

(b) Requires the comptroller, on September 1, 2012, on a finding by the comptroller that amounts deposited to the credit of the TDI operating account under Subsection (a) of this section are sufficient to fulfill the purposes of Subchapter F, Chapter 401, Insurance Code, as added by this Act, to transfer that amount to the credit of the account described by Section 401.156(a), Insurance Code, as amended by this Act.

SECTION 8. Effective date: September 1, 2011.

#### **EFFECTIVE DATE**

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