



Southwestern Insurance Information Service

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# Fact Sheet

Date: June 18, 2008  
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## Key Recommendations: Texas Sunset Advisory Commission and the Texas Department of Insurance and the Office of Public Insurance Counsel

The Texas Sunset Advisory Commission issued the staff report regarding the Texas Department of Insurance and the Office of Public Insurance Counsel in May 2008. The full report ([link below](#)) makes recommendations on the two agencies in ten issue areas. Those issues of primary interest to the property and casualty industry are highlighted below.

A hearing of the Sunset Commission is scheduled for June 24-25, 2008 in Austin. Insurers, consumers and other interested parties may present public testimony at the hearing. On September 23-24, 2008, the Commission is scheduled to make decisions on the recommendations it will submit to the Legislature, then legislation will be drafted for the 2009 legislative session which will determine how TDI and OPIC will operate in the future.

### SUNSET STAFF REPORT HIGHLIGHTS

#### FOR

### TEXAS DEPARTMENT OF INSURANCE

- **Homeowners Rate Regulation:** Rate regulation for homeowners insurance lacks clarity, predictability and transparency. TDI uses statutory pre-market regulatory tools without defined practices, making aspects of rate regulation unpredictable. The Legislature cannot judge the success of the shift to file-and-use rate regulation because the system has not been fully implemented. Recommendations:

*For Additional Information:*

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- Establish a deemer system to limit review time – rates would be deemed approved if not disapproved within review period.
  - Require TDI to track and define supplemental information requests.
  - Require TDI to set rules on factors leading to placing companies under prior approval.
  - Require TDI to routinely evaluate the need for insurers to remain under prior approval and to provide notice of actions necessary to return to file and use.
- **TWIA:** TDI's involvement in the Texas Windstorm Insurance Association's operations, along with other restrictions in law, limit the Department's ability to effectively oversee TWIA as the market of last resort. **Recommendations:**
    - Increase number of public members on the Board.
    - Require the Commissioner to appoint all Board members and the presiding Officer.
    - Make rate, form and operations changes subject to a more traditional administrative approval process instead of current commissioner modification authority.
    - Move windstorm inspections from TWIA to TDI.
    - Allow TWIA to consider additional factors in rate development.
    - Require applicants to show proof of two declinations from insurers writing windstorm insurance in Texas.
  - **Maintenance Tax:** Tax rates on life, accident and health insurance are capped much lower than other lines of insurance, causing other lines to absorb the deficit. **Recommendation:**
    - Increase the cap on life, accident and health insurance.
  - **Advisory Committees:** Most of TDI's Advisory Committees no longer need to be in law. **Recommendations:**
    - Eliminate all but two TDI advisory committees from statute; maintain a few by rule instead.
    - Require the Department to adopt rules for its use of advisory committees.
    - Direct TDI to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.
  - **State Fire Marshal Inspections:** To reduce fire hazard, the State Fire Marshals' Office needs to target its inspection of buildings. **Recommendations:**

*For Additional Information:*

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- Require they periodically inspect all state-leased buildings.
- Allow them to charge a fee for inspection of privately owned buildings.
- **State Fire Marshal Enforcement:** TDI's approach to enforcement does not allow SFMO to effectively ensure compliance with its licensing standards. Recommendations:
  - Require the Commissioner to establish a penalty matrix for violations and delegate administration of these penalties to the SFMO.
- **Continue TDI:** Texas has a clear and continuing interest in regulating the insurance industry and TDI is the most appropriate agency to regulate insurance. The statutory responsibilities of TDI do not clearly reflect TDI focus. Recommendations:
  - Continue TDI 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.

### SUNSET STAFF REPORT HIGHLIGHTS

#### FOR

#### OFFICE OF PUBLIC INSURANCE COUNSEL

- **OPIC:** OPIC's activities mirror the broader regulatory functions of TDI. Having two state agencies providing consumer education is inefficient. OPIC's advocacy role in a small number of industry-wide rate hearings does not provide a compelling justification for the continuation of a separate agency. Recommendation:
  - Abolish the Office of Public Insurance Counsel and create a Consumer Representative within the Department of Insurance responsible for seeing that TDI considers the consumers' perspectives in regulating insurance.
  - Transfer the Public Counsel's statutory board positions and nomination duties to the Consumer Representative at TDI.

*For Additional Information:*



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- Transfer the responsibility for OPIC's consumer publications to TDI.
- Transfer authority to assess insurers 5.7 cents per policy from OPIC to TDI.

## RESOURCES:

The full text of the Sunset Advisory Commission Staff Report may be accessed through the following link:

[http://www.sunset.state.tx.us/81streports/tdi/tdi\\_opic.pdf](http://www.sunset.state.tx.us/81streports/tdi/tdi_opic.pdf)

The Texas Department of Insurance's response to the Sunset staff report may be accessed through the following link:

<http://www.tdi.state.tx.us/general/documents/TDISunsetResponse.pdf>

Public Comments to the Sunset staff report may be accessed through the following link:

<http://www.sunset.state.tx.us/81streports/tdi/responses/chart.htm>

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