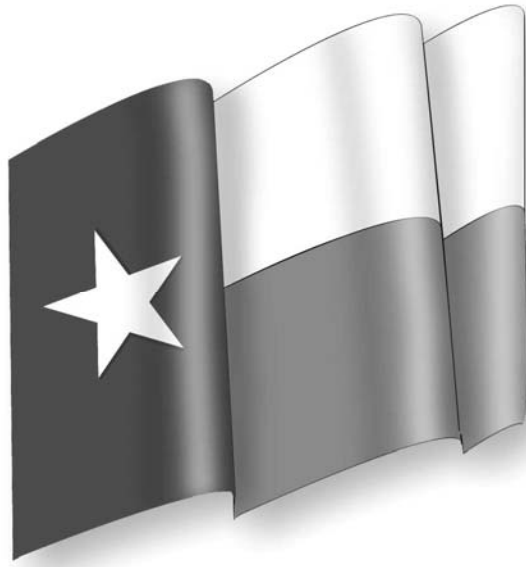


SUNSET COMMISSION DECISIONS



State Office of Risk Management

December 2006

Agency Information

Agency at a Glance

The State Office of Risk Management (SORM) functions as an insurance agency for Texas government. SORM's mission is to assist state agencies in protecting their employees and the State's physical and financial assets by reducing and controlling risk. To accomplish its mission, the agency:

- ◆ administers an employee workers' compensation insurance program;
- ◆ provides risk management services to state agencies; and
- ◆ coordinates state agency purchases of property, casualty, and liability insurance.

Key Facts

- ◆ **Funding.** SORM's revenue in fiscal year 2006 totaled \$64.7 million including \$57 million in assessments on state agencies for workers' compensation expenses, \$3.6 million from the General Revenue Fund, and \$4.4 million from interagency contracts.
- ◆ **Staffing.** The agency has a staff of 124 employees, all based in Austin.
- ◆ **Workers' Compensation.** SORM administers Texas' self-insured workers' compensation program for state agencies, covering 172,000 employees with about \$54 million in claims costs per year. The average annual cost of coverage per employee is about \$348.
- ◆ **Risk Management.** SORM performs consulting work for state agencies to identify and control workplace risks.
- ◆ **Work-Related Injuries.** The number of work-related injuries and illnesses per 100 full-time Texas state employees was 4.13 percent in 2004 compared to the national average of 5.04 percent.
- ◆ **State Agency Insurance.** SORM sponsors five lines of insurance for state agencies – directors' and officers', property, special events liability, automobile, and volunteer insurance – to leverage the State's buying power and reduce costs.
- ◆ **Administrative Attachment.** The Office of Attorney General performs administrative functions for SORM including human resources and payroll processing.
- ◆ **Exemptions.** The Texas Department of Transportation, University of Texas System, and Texas A&M University System are exempt from requirements to use SORM's services and each operate their own workers' compensation system. The Employees Retirement System and Teacher Retirement System are also exempt, but use SORM as an insurance provider.

Issues/Recommendations

Issue 1 The State's Approach to Return to Work Can Result in Higher Than Necessary Workers' Compensation Costs.

Recommendations

Change in Statute

1.1 Require SORM to develop an expanded case management program that focuses on facilitating the reintegration of injured employees.

This recommendation builds upon the requirements in H.B. 7 that insurance carriers evaluate claims as soon as possible to determine if case management is necessary. SORM should begin case management earlier than it does currently. This would allow case managers to provide services to injured workers before their chances of ever returning to work have diminished significantly. In addition to facilitating communication between parties and access to appropriate medical treatment, the program should focus on working directly with the injured worker to overcome any barriers to return to work. Case managers should identify injured employees who will need assistance re-entering the workforce early in a claim and help employees access assistance available to them from DARS, the Texas Workforce Commission, their employing agency, and other resources. As part of this recommendation, SORM may need to seek an increase in its authorized full-time equivalent (FTE) employees and additional funding through the appropriation process.

This recommendation may prove temporary in nature. Networks, as envisioned by H.B. 7, will have strong return to work components. When SORM contracts with networks, the networks will be responsible for case management. SORM will not likely have state-wide network coverage for some time, so SORM will need to continue providing

return to work case management for injured employees outside of the network.

1.2 Require SORM to evaluate lost time and return to work outcomes by agency, and report the results to the Legislature.

This recommendation would allow SORM to measure the success of its return to work efforts and to identify agencies whose claims coordinators or other staff may need additional training or risk management services related to return to work. SORM could also use this information to modify its assessment calculation to make agencies more effective in reducing costs.

This recommendation will require SORM to track and report lost time and return to work outcomes by agency. If applicable, SORM may incorporate the return to work outcome measures DWC is developing to implement changes previously passed by the Legislature. SORM may enlist the assistance of the Workers' Compensation Research and Evaluation Group (REG) to develop appropriate measures and analytical tools. Based on input from REG, SORM may require state agencies to report information in standardized formats including information on sick and annual leave used by injured workers. SORM should actively monitor the accuracy of state agency reporting of this information and should seek assistance from REG on validating data received, if necessary. SORM would use the information to evaluate outcomes over time and by agency. SORM should report findings on state agency return to work outcomes to the Legislature as part of its biennial report to the Legislature.

Fiscal Implication

Requiring SORM to expand case management to facilitate the quick return to work of injured employees would have an annual cost of \$91,700 for the first biennium to hire two additional case managers. By fiscal year 2010, SORM would reduce this

annual cost to \$45,850 by eliminating one of the two new positions and relying more on its newly instituted workers' compensation network. Savings in indemnity and medical benefits would offset these costs, but these savings would accrue to state agencies and not directly to the General Revenue Fund.

Responses

Agency

The State Office of Risk Management does not disagree with any of the recommendations, but does not agree that median temporary income benefits duration is an accurate measure for return to work outcome comparisons. The Office also respectfully clarifies that it has no deficiency or noncompliance with respect to Department of Assistive and Rehabilitative Services referrals. (Jonathan D. Bow, J.D., Executive Director – State Office of Risk Management)

Affected Agency

The Texas Department of Insurance agrees with the Sunset staff recommendations and both the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group stand ready to assist SORM in developing and evaluation return to work outcome measures. (Mike Geeslin, Commissioner of Insurance, and Albert Betts, Commissioner of Workers' Compensation – Texas Department of Insurance)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 1.1 and 1.2.

Commission Decision: Adopted Recommendations 1.1 and 1.2.

Issue 2 The State Needs to Be Better Prepared to Pay Workers' Compensation Claims Resulting From a Disaster.

Recommendation

Change in Statute

2.1 Require SORM to study how the State could structure its workers' compensation program to be prepared for claims resulting from a disaster and to report options to the Legislature.

This recommendation would require SORM to study various options, such as establishing a state employee workers' compensation catastrophe fund outside of the State Treasury, the purchase of catastrophe reinsurance, or other options which may be available to the State. SORM should work with TDI's Research and Evaluation Group to determine viable options on how the state can better prepare for workers' compensation claims resulting from a disaster. In addition, SORM may wish to contract with a consultant to analyze the costs of potential

disasters, and estimate the appropriate size for a catastrophe fund or level of reinsurance needed. SORM should complete the study by September 1, 2008 and transmit it to the Lieutenant Governor, Speaker of the House, and appropriate and standing committees of each house with responsibility for oversight of SORM.

Fiscal Implication

Requiring SORM to study how the State could best prepare to pay workers' compensation claims resulting from a disaster is estimated to cost \$20,000 for consulting services. Consultants would analyze the costs of potential disasters and the size of a catastrophe fund or level of reinsurance. The contract would be paid for from state agency assessments for workers' compensation insurance.

Responses

Agency

The State Office of Risk Management does not disagree with the recommendation. (Jonathan D. Bow, J.D., Executive Director – State Office of Risk Management)

Affected Agency

The Texas Department of Insurance agrees with the Sunset staff recommendations and will work with SORM to research viable options on how the State can better prepare for workers' compensation claims resulting from a disaster. (Mike Geeslin, Commissioner of Insurance, and Albert Betts, Commissioner of Workers' Compensation – Texas Department of Insurance)

The Texas Commission on Environmental Quality points out that the cost for the study would be provided to SORM from agencies through the annual assessments for workers' compensation coverage and would result in driving up the annual price. (Grace Montgomery Faulkner, Deputy Director, Office of Administrative Services – Texas Commission on Environmental Quality)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendation 2.1.

Commission Decision: Adopted Recommendation 2.1.

Issue 3 Mailing Indemnity Benefit Checks Delays Payments to Injured Workers.

Recommendation

Change in Statute

3.1 Require SORM to pay most indemnity benefits by direct deposit.

This recommendation would save time, effort, and money for both the State and injured workers by requiring the direct deposit of indemnity benefits instead of paper checks. The requirement would provide that state employees receive indemnity benefits through the same method they have selected for payroll, so that those currently paid salary by check would be able to receive benefits by check. SORM would be able to temporarily pay an individual's benefits by check instead of direct deposit in cases of administrative difficulty. The effective date of this recommendation would be February 1, 2008 to allow SORM additional time to implement these changes. The requirement would not change SORM's process of mailing explanations of benefits.

SORM should work with TxDOT and the Office of the Comptroller of Public Accounts to learn how TxDOT solved any problems related to implementation of direct deposit. SORM should also work with DWC to ensure DWC rules and procedures do not hamper implementation of direct deposit.

Fiscal Implication

Changing the method that SORM uses to pay indemnity benefits to injured state employees from mailing paper checks to direct deposit would have a positive fiscal impact of \$74,700 annually. These savings are based on the assumption that SORM will directly deposit 83 percent of the 50,000 checks it currently mails and the Comptroller's Office estimate of a savings of \$1.80 for each payment converted from paper check to direct deposit.

Responses

Agency

The State Office of Risk Management does not disagree with the identified benefits of direct deposit and believes that with statutory authorization the historical barriers to direct deposit can be addressed in cooperation with the Division of Workers' Compensation and the Comptroller. (Jonathan D. Bow, J.D., Executive Director – State Office of Risk Management)

Affected Agency

The Texas Department of Insurance agrees with the Sunset staff recommendation to pay most indemnity checks by direct deposit. (Mike Geeslin, Commissioner of Insurance, and Albert Betts, Commissioner of Workers' Compensation – Texas Department of Insurance)

The Texas Comptroller of Public Accounts agrees with the recommendation. The Comptroller is working with SORM to implement the recommendation and does not believe it will require a significant effort by SORM or the Comptroller's office. (Ken Welch, Director of Fiscal Management – Texas Comptroller of Public Accounts)

The Texas Department of Transportation has had many successes with providing workers' compensation benefits via direct deposit and welcomes the prospect of discussing this process with SORM. (Michael W. Behrens, P.E., Executive Director – Texas Department of Transportation)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendation 3.1.

Commission Decision: Adopted Recommendation 3.1.

Issue 4 Many Agencies Are at Risk of Not Being Able to Deliver Needed Services Following a Disaster Due to a Lack of Business Continuity Planning.

Recommendations

Change in Statute

4.1 Require all state agencies to develop business continuity plans.

This recommendation would require state agencies to develop agency level business continuity plans. These plans would include detailed steps for resumption of essential services such as scheduling emergency workforce, coordination with public authorities, management of media, customer services delivery, and assessing immediate financial or operational needs. Agencies involved in the initial delivery of emergency services as members of the Emergency Management Council or part of the DIR state data center project already have plans in place which would be deemed to meet this requirement. The recommendation would only require these agencies to forward their plans to SORM.

4.2 Require SORM to consult with state agencies on business continuity plans by developing guidelines, model plans, and training.

This recommendation would require SORM to assist state agencies with the development of business continuity plans by making available guidelines and models for key elements of the plan. These key elements

would include emergency workforce scheduling, coordination with public authorities, assessing immediate financial or operational needs in addition to other elements. SORM should also work with agencies to ensure plans are workable, that all agency staff are familiarized with plan elements, and that agencies practice implementation of the plan.

4.3 Require SORM to evaluate state agencies' business continuity plans and report the results to the Legislature.

This recommendation would require SORM to biennially report to the Legislature on the efforts of state agencies to develop and maintain business continuity plans. This report would include SORM's evaluation of each agency's plan for completeness and viability. The results should be included in SORM's biennial report to the Legislature already required by statute.

Fiscal Implication

Requiring SORM to consult with state agencies on business continuity plans would result in an annual cost of \$60,680 to hire an additional employee to perform the consultations and provide training.

Responses

Agency

The State Office of Risk Management does not disagree with any of the recommendations. (Jonathan D. Bow, J.D., Executive Director – State Office of Risk Management)

Affected Agency

The Texas Department of Insurance agrees that all agencies should be required to develop business continuity plans as a means of protecting the public by facilitating the resumption of critical functions following a disaster. (Mike Geeslin, Commissioner of Insurance, and Albert Betts, Commissioner of Workers' Compensation – Texas Department of Insurance)

The Texas Commission on Environmental Quality points out that the recommendation to require all state agencies to develop business continuity plans with SORM's consultation and training would provide outside oversight and strengthen the State's overall plan. (Grace Montgomery Faulkner, Deputy Director, Office of Administrative Services – Texas Commission on Environmental Quality)

The Texas Department of Transportation believes that the endeavor for all state agencies to develop business continuity plans for emergencies or disasters would undoubtedly be beneficial to the people of Texas. (Michael W. Behrens, P.E., Executive Director – Texas Department of Transportation)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 4.1 through 4.3.

Commission Decision: Adopted Recommendations 4.1 through 4.3.

Issue 5 The Three State Agencies With Safety Responsibilities Do Not Communicate Well, Creating the Potential for Harm to State Employees, Visitors, and Property.

Recommendations

Change in Statute

5.1 Require SORM and TBPC to enter into a memorandum of understanding on exchange of safety related information.

The recommendation would require each agency to agree on means of establishing improved communication links. The memorandum of understanding should detail the type, amount, and frequency of safety-related information that should be shared. This recommendation would also require designated points of contact within each agency to coordinate information sharing between the agencies.

5.2 Add SORM to the current statutorily required memorandum of understanding between SFMO and TBPC regarding fire safety.

This recommendation would add SORM as an official participant in the current interagency agreement. SORM would be opied on communication between SFMO and TBPC concerning fire related hazards, and would provide relevant information to the other agencies. SORM would be required to follow the same point of contact requirements as SFMO and TBPC.

Fiscal Implication

These recommendations would not have a fiscal impact to the State as they can be accomplished with current staff of the respective agencies.

Responses

Agency

The State Office of Risk Management does not disagree with any of the recommendations. (Jonathan D. Bow, J.D., Executive Director – State Office of Risk Management)

Affected Agency

The Texas Department of Insurance agrees that it is important for the State Fire Marshall’s Office and SORM to share information regarding state building fire hazards and mitigation efforts. The SFMO will include SORM in official communications and work with TBPC to include SORM as a fully participating partner in the statutorily required agreement between SFMO and TBPC. (Mike Geeslin, Commissioner of Insurance, and Albert Betts, Commissioner of Workers’ Compensation – Texas Department of Insurance)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 5.1 and 5.2.

Commission Decision: Adopted Recommendations 5.1 and 5.2.

Issue 6 Texas Has a Continuing Need for the State Office of Risk Management.

Recommendation

Change in Statute

6.1 Continue the State Office of Risk Management for 12 years.

This recommendation would continue SORM as an independent agency, responsible for providing workers' compensation, risk management, and insurance purchasing services to state agencies for the standard 12-year period, until 2019. The agency would maintain its activities focused on providing workers' compensation coverage for state agencies, improving safety for state employees, and providing insurance purchasing services for state agencies.

Fiscal Implication

If the Legislature continues the current functions of the State Office of Risk Management, using the existing organizational structure, the agency's annual appropriation of about \$4.2 million would continue to be required for its operations. In addition, SORM's \$57.3 million in annual assessments on other agencies to pay for workers' compensation expenses and \$2.7 million in interagency contracts for risk management, will also remain in place.

Responses

Agency

The State Office of Risk Management does not disagree with the recommendation. (Jonathan D. Bow, J.D., Executive Director – State Office of Risk Management)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendation 6.1.

Commission Decision: Adopted Recommendation 6.1.

Across-the-Board Recommendations

State Office of Risk Management

Recommendations	Across-the-Board Provisions
Modify	1. Require public membership on the agency’s policymaking body.
Apply	2. Require provisions relating to conflicts of interest.
Apply	3. Require unbiased appointments to the agency’s policymaking body.
Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Apply	7. Require separation of policymaking and agency staff functions.
Apply	8. Provide for public testimony at meetings of the policymaking body.
Apply	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

New Issues

New Issue

The following issue was raised in addition to the issues raised in the staff report. This issue is numbered sequentially to follow the staff's recommendations.

7. The State Office of Risk Management should work with the Texas Mutual Insurance Company for a peer review of SORM's operations. A report of the findings of the peer review, including recommendations, should be submitted to the legislative committees having oversight of SORM. (Senator Kim Brimer, Chair, Sunset Advisory Commission)

Staff Comment: This peer review would assist SORM in improving the efficiency and effectiveness of its operations.

Recommended Action: Adopt New Issue 7.

Commission Decision: Adopted New Issue 7.

