

By: Giddings

H.B. No. 118

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the abolition of the Research and Oversight Council on  
3 Workers' Compensation and the transfer of certain statutory  
4 functions of that entity to the Texas Workers' Compensation  
5 Commission.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 401.011(38), Labor Code, is amended to  
8 read as follows:

9 (38) "Research division [~~center~~]" means the division  
10 of the commission [~~Texas Workers' Compensation Research Center~~]  
11 established under Chapter 404.

12 SECTION 2. Section 402.011(b), Labor Code, is amended to  
13 read as follows:

14 (b) A member is entitled to reimbursement for actual lost  
15 wages or use of leave benefits, if any, for:

16 (1) attendance at commission meetings and hearings;

17 (2) preparation for a commission meeting, not to  
18 exceed two days in each calendar quarter;

19 (3) attendance at a subcommittee meeting, not to  
20 exceed one day each month;

21 (4) attendance by the chair or vice chair of the  
22 commission at a legislative committee meeting if attendance is  
23 requested by the committee chair; and

24 (5) attendance at a meeting by a member appointed to  
25 the [~~Research and Oversight Council on Workers' Compensation or~~  
26 ~~the~~] Texas Certified Self-Insured Guaranty Association.

1 SECTION 3. Section 402.085(a), Labor Code, is amended to  
2 read as follows:

3 (a) The commission shall release information on a claim to:

4 (1) the Texas Department of Insurance for any  
5 statutory or regulatory purpose;

6 (2) a legislative committee for legislative purposes;

7 (3) a state or federal elected official requested in  
8 writing to provide assistance by a constituent who qualifies to  
9 obtain injury information under Section 402.084(b), if the request  
10 for assistance is provided to the commission;

11 (4) the research division [~~Research and Oversight~~  
12 ~~Council on Workers' Compensation~~] for research purposes; or

13 (5) the attorney general or another entity that  
14 provides child support services under Part D, Title IV, Social  
15 Security Act (42 U.S.C. Section 651 et seq.), relating to:

16 (A) establishing, modifying, or enforcing a  
17 child support or medical support obligation; or

18 (B) locating an absent parent.

19 SECTION 4. Section 403.003(b), Labor Code, is amended to  
20 read as follows:

21 (b) In setting the rate of assessment, the commission may  
22 not consider revenue or expenditures related to:

23 (1) the State Office of Risk Management;

24 (2) the research division [~~and oversight council on~~  
25 ~~workers' compensation~~]; or

26 (3) any other revenue or expenditure excluded from  
27 consideration by law.

1 SECTION 5. Section 403.007(f), Labor Code, is amended to  
2 read as follows:

3 (f) The commission's actuary or financial advisor shall  
4 report annually [~~biannually~~] to the commission [~~Research and~~  
5 ~~Oversight Council on Workers' Compensation~~] on the financial  
6 condition and projected assets and liabilities of the subsequent  
7 injury fund. The commission shall make the reports available to  
8 members of the legislature and the public. The commission may  
9 purchase annuities to provide for payments due to claimants under  
10 this subtitle if the commission determines that the purchase of  
11 annuities is financially prudent for the administration of the  
12 fund.

13 SECTION 6. The heading to Chapter 404, Labor Code, is  
14 amended to read as follows:

15 CHAPTER 404. DUTIES OF RESEARCH DIVISION [~~AND OVERSIGHT COUNCIL~~  
16 ~~ON WORKERS' COMPENSATION~~]

17 SECTION 7. Section 404.001, Labor Code, is amended to read  
18 as follows:

19 Sec. 404.001. DEFINITIONS. In this chapter:

20 (1) "Division" [~~"Board"~~] means the research division  
21 [~~board of directors of the Research and Oversight Council on~~  
22 ~~Workers' Compensation~~].

23 (2) "Research" [~~"Council"~~] means the Research and  
24 ~~Oversight Council on Workers' Compensation~~.

25 [~~(3) "Executive~~] director" means the [~~executive~~]  
26 director of the division [~~council~~].

27 SECTION 8. Section 404.002, Labor Code, is amended to read

1 as follows:

2 Sec. 404.002. DIVISION [~~COUNCIL~~]; GENERAL POWERS AND  
3 DUTIES. (a) The division [~~Research and Oversight Council on~~  
4 ~~Workers' Compensation~~] is an advisory body to the members of the  
5 commission. For the purposes of implementing this chapter, the  
6 research division is administratively attached to the commission.  
7 The commission shall provide facilities for the division and  
8 fiscal, personnel, and administrative support to the division, but  
9 the division shall be independent of the direction of the  
10 commission.

11 (b) Notwithstanding Section 402.021, the research director  
12 shall report directly to the members of the commission.

13 (c) The division shall provide professional research and  
14 data analysis services for use by policymakers, system  
15 administrators, and system stakeholders. The division [~~council~~]  
16 shall be operated in a manner that ensures that its research,  
17 findings, and conclusions are factual, fair, and unbiased.

18 (d) [~~(b)~~] The division [~~council~~] shall conduct professional  
19 studies and research related to:

- 20 (1) the delivery of benefits;
- 21 (2) litigation and controversy related to workers'  
22 compensation;
- 23 (3) insurance rates and rate-making procedures;
- 24 (4) rehabilitation and reemployment of injured  
25 workers;
- 26 (5) workplace health and safety issues;
- 27 (6) the quality and cost of medical benefits;

1 (7) the Texas Mutual Insurance Company and the impact  
2 of that company on the workers' compensation system; and

3 (8) other matters relevant to the cost, quality, and  
4 operational effectiveness of the workers' compensation system.

5 (e) [~~(c)~~] In addition to the studies and research conducted  
6 under Subsection (d) [~~(b)~~], the division [~~council~~] shall conduct  
7 studies and research related to drugs in the workplace, giving  
8 priority to drug abuse in public and private establishments in  
9 which drug abuse could result in serious consequences to the  
10 public. The studies and research must include a survey designed to  
11 identify future needs and current efforts of employers to  
12 counteract drug abuse and its effects in the workplace.

13 (f) [~~(d)~~] The division [~~council~~] shall identify, collect,  
14 maintain, and analyze the key information required to assess the  
15 operational effectiveness of the workers' compensation system. The  
16 division [~~council~~] shall provide the information obtained under  
17 this subsection to the members of the commission, the governor, and  
18 the legislature on a quarterly basis.

19 (g) [~~(e)~~] The division [~~council~~], with the approval of the  
20 commission [~~board~~], may apply for and spend federal funds to  
21 implement this chapter.

22 SECTION 9. The heading to Section 404.003, Labor Code, is  
23 amended to read as follows:

24 Sec. 404.003. DIVISION [~~COUNCIL~~] FUNDING; MAINTENANCE TAX.

25 SECTION 10. Sections 404.003(a), (b), and (e), Labor Code,  
26 are amended to read as follows:

27 (a) The division [~~council~~] is funded through the assessment

1 of a maintenance tax collected annually from all insurance carriers  
2 except governmental entities.

3 (b) The commission shall set the rate of the maintenance tax  
4 for the division based on the expenditures authorized and the  
5 receipts anticipated in legislative appropriations. The tax rate  
6 for insurance companies may not exceed one-tenth of one percent of  
7 the correctly reported gross workers' compensation insurance  
8 premiums. The tax rate for certified self-insurers may not exceed  
9 one-tenth of one percent of the total tax base of all certified  
10 self-insurers, as computed under Section 407.103(b).

11 (e) Amounts received under this section shall be deposited  
12 in the state treasury to the credit of a special account to be used:

- 13 (1) for the operation of the division [~~council~~]; and  
14 (2) to reimburse the general revenue fund in  
15 accordance with Article 4.19, Insurance Code.

16 SECTION 11. Section 404.007, Labor Code, is amended to read  
17 as follows:

18 Sec. 404.007. GENERAL POWERS AND DUTIES OF COMMISSION  
19 REGARDING DIVISION [~~BOARD~~]. (a) The commission [~~board~~] shall:

20 (1) approve the operating budget of the division  
21 [~~council~~];

22 (2) adopt rules for the operations of [~~the board and~~]  
23 the division [~~council~~]; and

24 (3) approve an annual research agenda for the  
25 division, based on a proposed agenda offered for consideration by  
26 the research director, that includes [~~conduct~~] professional  
27 studies and research on [~~all~~] matters relevant to the cost,

1 quality, and operational effectiveness of the workers'  
2 compensation system with consideration as well for research related  
3 to:

4 (A) [~~+~~

5 [~~(4) monitor~~] the cost of income benefits under this  
6 subtitle, with emphasis on the availability and cost of  
7 supplemental income benefits; and

8 (B) [~~(5) monitor~~] the performance and operation  
9 of the Texas Mutual Insurance Company, with emphasis on the insurer  
10 of last resort program[~~+~~

11 [~~(6) hold regular public hearings and receive~~  
12 ~~testimony and reports from:~~

13 [~~(A) the commission,~~

14 [~~(B) the Texas Mutual Insurance Company,~~

15 [~~(C) the Texas Department of Insurance,~~

16 [~~(D) the State Office of Risk Management, and~~

17 [~~(E) any other public or private entity that is~~  
18 ~~involved in the workers' compensation system,~~

19 [~~(7) receive information about workers' compensation~~  
20 ~~rules and operations of an entity listed in Subdivision (6), and~~

21 [~~(8) review specific recommendations for legislation~~  
22 ~~relating to the Texas Workers' Compensation Act formally proposed~~  
23 ~~by an entity listed in Subdivision (6)].~~

24 (b) With the approval of the members of the commission, the  
25 division [~~The board~~] shall report to the governor, lieutenant  
26 governor, and speaker of the house of representatives not later  
27 than December 31 of each even-numbered year. The report must

1 include:

- 2 (1) the activities of the division [~~council~~];
- 3 (2) identification of any problems in the workers'
- 4 compensation system, with recommendations on how to improve the
- 5 system [~~for regulatory and legislative action based on research or~~
- 6 ~~testimony~~]; and
- 7 (3) the status of the effectiveness of the workers'
- 8 compensation system to provide adequate, equitable, and timely
- 9 benefits to injured workers at a reasonable cost to employers, with
- 10 recommendations for any additional necessary research.

11 (c) The division [~~board~~] shall publish and disseminate its

12 studies to interested persons and may determine charges for the

13 publications as necessary to achieve optimal dissemination.

14 (d) The commission [~~board~~] may:

15 (1) delegate powers to the research [~~executive~~]

16 director as it considers appropriate, including general guidance on

17 the identification of information needs and the conduct of

18 research;

19 (2) contract with other persons, including

20 institutions of higher education, for conducting economical

21 studies of high quality for the division [~~council~~]; and

22 [~~contract with the commission for a fiscal,~~

23 ~~personnel, or other support function,~~

24 [~~4~~] appoint expert advisory committees, composed of

25 system stakeholders, to provide technical assistance in conducting

26 research[, and

27 [~~5~~] request reports and other information on workers'



1 ~~compensation from an entity listed in Subsection (a)(6). Requests~~  
2 ~~made under this subsection shall be reasonable in scope and shall~~  
3 ~~take into account the availability of the information requested,~~  
4 ~~the preparation time required, and other relevant circumstances].~~

5 ~~[(c) The board may take action by majority vote when a~~  
6 ~~quorum is present.]~~

7 SECTION 12. Section 404.008, Labor Code, is amended to read  
8 as follows:

9 Sec. 404.008. RESEARCH [~~EXECUTIVE~~] DIRECTOR;  
10 APPROPRIATIONS REQUEST. (a) The commission [~~board~~] shall appoint a  
11 research [~~employ an executive~~] director, who shall administer the  
12 division [~~council~~] in accordance with commission [~~board~~] policies.  
13 The research [~~executive~~] director serves at the pleasure of the  
14 commission [~~board~~].

15 (b) The research [~~executive~~] director shall hire staff as  
16 necessary to accomplish the objectives of the division [~~council~~],  
17 and may delegate powers and duties to members of that staff as  
18 necessary.

19 (c) The research [~~executive~~] director shall prepare a  
20 request for legislative appropriations for the operations of the  
21 division for consideration and approval by the commission  
22 [~~council~~]. If the request is approved by the commission [~~board~~],  
23 the [~~board shall submit the request to the commission. The~~]  
24 commission shall include the request in the commission's  
25 legislative appropriations request.

26 (d) The research [~~executive~~] director shall prepare  
27 annually a complete and detailed written report accounting for all

1 funds received and disbursed by the division [~~council~~] during the  
2 preceding fiscal year. The annual report must meet the reporting  
3 requirements applicable to financial reporting provided by the  
4 General Appropriations Act.

5 ~~[(c) The executive director shall develop an intra-agency~~  
6 ~~career ladder program that addresses opportunities for mobility and~~  
7 ~~advancement for employees within the council. The program shall~~  
8 ~~require intra-agency posting of all positions concurrently with any~~  
9 ~~public posting.~~

10 ~~[(f) The executive director shall develop a system of annual~~  
11 ~~performance evaluations that are based on documented employee~~  
12 ~~performance. All merit pay for council employees must be based on~~  
13 ~~the system established under this subsection.~~

14 ~~[(g) The executive director shall prepare and maintain a~~  
15 ~~written policy statement to assure implementation of a program of~~  
16 ~~equal employment opportunity under which all personnel~~  
17 ~~transactions are made without regard to race, color, disability,~~  
18 ~~sex, religion, age, or national origin. The policy statement must~~  
19 ~~include:~~

20 ~~[(1) personnel policies, including policies relating~~  
21 ~~to recruitment, evaluation, selection, appointment, training, and~~  
22 ~~promotion of personnel that are in compliance with the requirements~~  
23 ~~of Chapter 21,~~

24 ~~[(2) a comprehensive analysis of the council workforce~~  
25 ~~that meets federal and state guidelines,~~

26 ~~[(3) procedures by which a determination can be made~~  
27 ~~about the extent of underuse in the council workforce of all persons~~

1 ~~for whom federal or state guidelines encourage a more equitable~~  
2 ~~balance; and~~

3 ~~[(4) reasonable methods to appropriately address~~  
4 ~~those areas of underuse.~~

5 ~~[(h) A policy statement prepared under Subsection (g) must:~~

6 ~~[(1) cover an annual period;~~

7 ~~[(2) be updated annually;~~

8 ~~[(3) be reviewed by the Commission on Human Rights for~~  
9 ~~compliance with Subsection (g)(1); and~~

10 ~~[(4) be filed with the governor's office.~~

11 ~~[(i) The governor's office shall deliver a biennial report~~  
12 ~~to the legislature based on the information received under~~  
13 ~~Subsection (h). The report may be made separately or as a part of~~  
14 ~~other biennial reports made to the legislature.~~

15 ~~[(j) The executive director shall provide to members of the~~  
16 ~~board and to council employees, as often as necessary, information~~  
17 ~~regarding their qualification for office or employment under this~~  
18 ~~chapter and their responsibilities under applicable laws relating~~  
19 ~~to standards of conduct for state officers or employees.]~~

20 SECTION 13. Section 404.009, Labor Code, is amended to read  
21 as follows:

22 Sec. 404.009. RESEARCH AGENDA. (a) The research  
23 ~~[executive]~~ director annually shall prepare a research agenda for  
24 commission ~~[board]~~ review and approval.

25 (b) With commission approval, the division ~~[The board]~~  
26 shall publish annually in the Texas Register a proposed research  
27 agenda and shall distribute the proposed agenda to educational

1 institutions in this state that have a demonstrated research  
2 capacity.

3 (c) The commission [~~board~~] shall accept public comments on  
4 the proposed agenda and shall conduct a public hearing on the agenda  
5 if a hearing is requested by interested persons.

6 SECTION 14. Section 404.010, Labor Code, is amended to read  
7 as follows:

8 Sec. 404.010. COORDINATION WITH OTHER STATE AGENCIES;  
9 CONFIDENTIALITY. (a) As required to fulfill the objectives of the  
10 division [~~council~~], the division [~~council~~] is entitled to access to  
11 the files and records of:

- 12 (1) the commission;
- 13 (2) the Texas Workforce Commission;
- 14 (3) the Texas Department of Insurance;
- 15 (4) the Texas Department of Human Services;
- 16 (5) the Texas Mutual Insurance Company; and
- 17 (6) other state agencies.

18 (b) A state agency shall assist and cooperate in providing  
19 the information to the division [~~council~~].

20 (c) Information that is confidential under state law is  
21 accessible to the division [~~council~~] under rules of confidentiality  
22 and remains confidential.

23 (d) The identity of an individual or entity selected to  
24 participate in a division [~~council~~] survey or who participates in  
25 such a survey is confidential and is not subject to public  
26 disclosure under Chapter 552, Government Code.

27 SECTION 15. The heading to Section 407A.301, Labor Code, as

1 added by H.B. 2095, Acts of the 78th Legislature, Regular Session,  
2 2003, is amended to read as follows:

3 Sec. 407A.301. MAINTENANCE TAX FOR COMMISSION AND RESEARCH  
4 DIVISION [~~AND OVERSIGHT COUNCIL~~].

5 SECTION 16. Section 407A.301(a), Labor Code, as added by  
6 H.B. 2095, Acts of the 78th Legislature, Regular Session, 2003, is  
7 amended to read as follows:

8 (a) Each group shall pay a self-insurance group maintenance  
9 tax under this section for:

10 (1) the administration of the commission;

11 (2) the prosecution of workers' compensation insurance  
12 fraud in this state; and

13 (3) the research division [~~Research and Oversight~~  
14 ~~Council on Workers' Compensation~~].

15 SECTION 17. Sections 408.0221(f), (h), and (i), Labor Code,  
16 are amended to read as follows:

17 (f) The advisory committee shall gather information from  
18 other entities, including the research division [~~Research and~~  
19 ~~Oversight Council on Workers' Compensation~~], the Texas Health Care  
20 Information Council, the Texas Department of Insurance, the Texas  
21 Department of Health, and the Employees Retirement System of Texas.

22 (h) The advisory committee and the research division  
23 [~~Research and Oversight Council on Workers' Compensation~~] shall  
24 develop evaluation standards and specifications as necessary to  
25 implement a regional network report card. The commission shall  
26 ensure that the report card is published and available for  
27 inspection. The commission may procure services as necessary to

1 produce the report card. The report card, at a minimum, must be  
2 based on contracted reviews and must include a risk-adjusted  
3 evaluation of:

- 4 (1) employee access to care;
- 5 (2) coordination of care and return to work;
- 6 (3) communication among system participants;
- 7 (4) return-to-work outcomes;
- 8 (5) health-related outcomes;
- 9 (6) employee, health care provider, employer, and  
10 insurance carrier satisfaction;
- 11 (7) disability and re-injury prevention;
- 12 (8) appropriate clinical care;
- 13 (9) health care costs;
- 14 (10) utilization of health care; and
- 15 (11) statistical outcomes of medical dispute  
16 resolution provided by independent review organizations.

17 (i) The regional network administrators shall report  
18 quarterly to the commission and the advisory committee on the  
19 progress of implementing the regional networks and shall submit  
20 consolidated annual reports. The research division [~~Research and  
21 Oversight Council on Workers' Compensation~~] shall report to the  
22 legislature by January 1 of each odd-numbered year on the status of  
23 the implementation of regional networks under this section.

24 SECTION 18. The following laws are repealed:

- 25 (1) Sections 404.0015, 404.004, 404.0041, 404.005,  
26 404.0055, 404.006, 404.0091, and 404.0092, Labor Code; and
- 27 (2) Section 413.021(f), Labor Code.

1           SECTION 19. (a) The Research and Oversight Council on  
2 Workers' Compensation and its board of directors are abolished on  
3 the effective date of this Act.

4           (b) All state records and other property, and unexpended and  
5 unobligated appropriations of the Research and Oversight Council on  
6 Workers' Compensation or its board as of August 31, 2003, are  
7 transferred to the research division of the Texas Workers'  
8 Compensation Commission for the dedicated purpose of implementing  
9 Chapter 404, Labor Code, as amended by this Act.

10          (c) All employees as of August 31, 2003, of the Research and  
11 Oversight Council on Workers' Compensation become employees of the  
12 research division of the Texas Workers' Compensation Commission as  
13 established under Chapter 404, Labor Code, as amended by this Act.

14          (d) Any reference in law to the Research and Oversight  
15 Council on Workers' Compensation, or to the board of directors of  
16 that entity, means the research division of the Texas Workers'  
17 Compensation Commission or the members of that commission, as  
18 appropriate.

19          (e) The special account created under Section 404.003,  
20 Labor Code, as that section existed immediately before amendment by  
21 this Act, is re-created and redesignated as a special account to be  
22 used for the purposes designated in Section 404.003, Labor Code, as  
23 amended by this Act.

24          SECTION 20. This Act takes effect immediately if it  
25 receives a vote of two-thirds of all the members elected to each  
26 house, as provided by Section 39, Article III, Texas Constitution.  
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect November 1, 2003.