

BILL ANALYSIS

Senate Research Center

S.B. 908
By: Brimer
Government Organization
8/15/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 75th Legislature created the State Office of Risk Management (SORM) in 1997 to assist state agencies in protecting their employees and the state's physical and financial assets by reducing and controlling risk. The three primary functions of SORM are administering an employee workers' compensation insurance program; providing risk management services to state agencies; and coordinating state agency purchases of property, casualty, and liability insurance. SORM currently covers 172, 000 employees with \$54 million in claims costs per year, with a staff of 124 employees and an annual budget of \$64.7 million. SORM is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature.

S.B. 908 continues SORM and contains the Sunset Advisory Commission on the State Office of Risk Management recommendations to improve the agency's functions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Office of Risk Management in SECTION 2 (Sections 412.0125 and 412.0127, Labor Code) of this bill.

Rulemaking authority is expressly granted to the risk management board in SECTION 2 (Section 412.0126, Labor Code) and SECTION 12 (Section 417.0082, Government Code) of this bill.

Rulemaking previously granted to the General Services Commission is transferred to the Texas Building and Procurement Commission in SECTION 12 (Section 417.0082, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 412.011, Labor Code, by adding Subsections (f), (g), (h), and (i), as follows:

(f) Requires the State Office of Risk Management (office) to work with each state agency to develop an agency-level business continuity plan under Section 412.054.

(g) Requires the office to make available to each agency subject to Section 412.054 guidelines and models for each element listed in Section 412.054. Requires the office to assist each agency as necessary to ensure that agency staff understands each element of the business continuity plan developed under Section 412.054, and each agency practices implementation of the plan.

(h) Requires the office and the Texas Building and Procurement Commission (commission) to adopt a memorandum of understanding that includes certain information and designates points of contact within the office and the commission to coordinate the sharing of information.

(i) Requires the office to maintain a system to promptly and efficiently act on complaints filed with the office; maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and disposition of the complaint; make information available describing the office's procedures for complaint investigation and resolution; and periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 2. Amends Subchapter B, Chapter 412, Labor Code, by adding Sections 412.0125 through 412.0129, as follows:

Sec. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE MANAGEMENT. (a) Requires the office to provide each state agency with return-to-work coordination services as necessary to facilitate an injured employee's return to employment. Requires the office to notify each state agency of the availability of return-to-work coordination services.

(b) Requires the office, as part of the return-to-work coordination services under this section, to establish a time frame for case management of an injured employee that ensures services are provided to the injured employee as soon as practicable to improve the employee's chance of returning to work as quickly as possible, provide guidance to each state agency to identify appropriate services for an injured employee; adopt rules that set standards and provide guidance to a state agency interacting with an injured employee; and implement any other services under Section 413.021 that will facilitate the reintegration of an injured employee.

Sec. 412.0126. ANALYSIS. (a) Requires the risk management board (board) to adopt rules as necessary to collect data on lost time and return-to-work outcomes of each state agency to allow full evaluation of successes and of barriers to achieving timely return to work after an injury.

(b) Requires the office to take certain measures in order to make assessments of and properly evaluate state agencies and assist state agencies that need additional training or case management services related to return-to-work services.

Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a) Requires the office, notwithstanding Section 403.016 (Electronic Funds Transfer), Government Code, and except as provided by Subsection (b), to pay an employee entitled to an indemnity benefit payment using the same payment method as the method by which the employee receives the employee's wages.

(b) Requires the office to adopt rules to facilitate the use of electronic funds transfer as the preferred method of payment under this section.

(c) Authorizes the office to issue an indemnity benefit payment by check on request or if electronic funds transfer is not feasible.

Sec. 412.0128. CONFIDENTIALITY OF INJURY INFORMATION. Provides that information in or derived from a workers' compensation claim file regarding an employee is confidential and is prohibited from being disclosed by the office except as provided by this subchapter (Office) or other law.

Sec. 412.0129. STUDY ON CATASTROPHIC CLAIMS. (a) Requires the office to study options to prepare state agencies for catastrophic claims.

(b) Requires the study to include certain information set forth in this subsection.

(c) Requires the office to work with the worker's compensation research and evaluation group, and authorizes the office to contract with a consultant to analyze predicted costs of potential disasters, and estimate the appropriate size for a catastrophe fund or level of reinsurance, in performing the duties under Subsections (a) and (b).

(d) Requires the office, not later than September 1, 2008, to report the findings of the study conducted under this section to certain elected officials and legislative bodies.

(e) Provides that this section expires on September 2, 2008.

SECTION 3. Amends Section 412.021, Labor Code, by adding Subsections (a-1), (g), and (h) and amending Subsections (d) and (f), as follows:

(a-1) Prohibits a person or a person's spouse from being a member of the board, if certain conditions exist.

(d) Requires the governor to designate one member of the board as presiding officer. Requires the presiding officer to serve in that capacity at the pleasure of the governor, rather than for a two-year term.

(f) Provides that the office, in addition to the risk management board, is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, the board is abolished and this section expires September 1, 2019, rather than September 1, 2007.

(g) Requires appointments to the board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(h) Requires the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the board and the management responsibilities of the director and the staff of the office.

SECTION 4. Amends Section 412.022, Labor Code, as follows:

Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. (a) Deletes existing text as it relates to the requirement that a member of the board complete at least one course of a training program that complies with this section to be eligible to take office. Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) Requires the training program established under this section to provide information to the member regarding the enabling legislation that created the office and the office's programs, functions, rules, and budget; the results of the most recent formal audit of the office; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies adopted by the office or the Texas Ethics Commission. Deletes existing text regarding the requirement that certain information as, it relates to the board and certain laws be included in the information that the training program, established under this section, provides to the member.

(c) Entitles a person appointed to the board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 5. Amends Section 412.023, Labor Code, as follows:

Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. (a) Defines "Texas trade association."

(b) Prohibits certain persons, provided certain conditions, from being a member of the board and an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

(c) Creates this subsection from existing text. Prohibits a person from serving as a member of the board or acting as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office, rather than that is regulated by or that has fees regulated by the board.

SECTION 6. Amends Section 412.024, Labor Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Amends the grounds for removal from the board to include a member who does not have at the time of taking office the qualifications required by Section 412.021; who does not maintain during service on the board the qualifications required by Section 412.021; who is ineligible for membership under Section 412.021 or 412.023; who because of illness or incapacity cannot discharge the member's duties for a substantial part of the member's term; or who is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(a-1) Provides that the validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

SECTION 7. Amends Subchapter C, Chapter 412, Labor Code, by adding Section 412.027, as follows:

Sec. 412.027. **USE OF TECHNOLOGY.** Requires the board to implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the office on the Internet.

SECTION 8. Amends Section 412.032, Labor Code, as follows:

Sec. 412.032. **BOARD'S REPORT TO LEGISLATURE.** (a) Requires the board, based on the recommendations of the director, to report to each legislature relating to return-to-work outcomes under Section 412.0126 for state agencies and the business continuity plan developed by state agencies under Section 412.054.

(b) Requires the report to include a report of outcomes by state agencies of lost time due to employee injury and return-to-work programs based on the information collected and analyzed by the office in Section 412.0126 and an evaluation of the business continuity plans developed by state agencies under Section 412.054 for completeness and viability.

SECTION 9. Amends Subchapter D, Chapter 412, Labor Code, by adding Section 412.034, as follows:

Sec. 412.034. **PUBLIC HEARING.** Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the office.

SECTION 10. Amends Subchapter D, Chapter 412, Labor Code, by adding Section 412.035, as follows:

Sec. 412.035. **DISPUTE RESOLUTION.** (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) Requires the office's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office

of Administrative Hearings for the use of alternative dispute resolution state agencies.

(c) Requires the board to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the office.

SECTION 11. Amends Subchapter F, Chapter 412, Labor Code, by adding Section 412.054, as follows:

Sec. 412.054. BUSINESS CONTINUITY PLAN. (a) Requires each state agency to work with the office to develop an agency-level business continuity plan that outlines procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. Requires the plan to include detailed information regarding resumption of certain essential services after a catastrophe.

(b) Provides that a business continuity plan is considered to meet the requirements of this section if the agency forwards the plan to the office for review and the agency is involved in the delivery of emergency services as a member of the governor's Emergency Management Council or part of the State Data Center program.

SECTION 12. Amends Section 417.0082, Government Code, as follows:

Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS AGAINST FIRE HAZARDS. (a) Requires the state fire marshal, under the direction of the commissioner of workers' compensation (commissioner), to take any action necessary to protect a public building under the charge and control of the Texas Building and Procurement Commission, rather than the General Services Commission, and the building's occupants, against an existing or threatened fire hazard. Requires the state fire marshal and the commission to include the office in all communication concerning fire hazards.

(b) Requires the commissioner, the commission, rather than the General Services Commission, and the board to make and each adopt by rule a memorandum of understanding that coordinates the agency's duties under this section.

SECTION 13. Requires a state agency to develop a business continuity plan under Section 412.054, Labor Code, as added by this Act, not later than May 1, 2008.

SECTION 14. Provides that the changes in law made by Sections 412.021, 412.022, and 412.023, Labor Code, as amended by this Act, regarding the prohibitions on or qualifications of members of the Risk Management Board do not affect the entitlement of a member serving on the board immediately before September 1, 2007, to continue to serve and function as a member of the board for the remainder of the member's term. Provides that the such changes apply only to a member appointed on or after September 1, 2007.

SECTION 15. Provides that Section 412.0127, Labor Code, as added by this Act, applies to indemnity benefit payments made on or after February 1, 2008.

SECTION 16. Effective date: September 1, 2007.