

By: Brimer

S.B. No. 908

Substitute the following for S.B. No. 908:

By: Giddings

C.S.S.B. No. 908

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the continuation and functions of the State Office of  
3 Risk Management.

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

5 SECTION 1. Section 412.011, Labor Code, is amended by  
6 adding Subsections (f), (g), (h), and (i) to read as follows:

7 (f) The office shall work with each state agency to develop  
8 an agency-level business continuity plan under Section 412.054.

9 (g) The office shall make available to each agency subject  
10 to Section 412.054 guidelines and models for each element listed in  
11 Section 412.054. The office shall assist the agency as necessary to  
12 ensure that:

13 (1) agency staff understands each element of the  
14 business continuity plan developed under Section 412.054; and

15 (2) each agency practices implementation of the plan.

16 (h) The office and the Texas Building and Procurement  
17 Commission shall adopt a memorandum of understanding that:

18 (1) includes the type, amount, and frequency of  
19 safety-related information that may be shared between the office  
20 and the commission; and

21 (2) designates points of contact within the office and  
22 the commission to coordinate the sharing of information.

23 (i) The office shall:

24 (1) maintain a system to promptly and efficiently act

1 on complaints filed with the office;

2 (2) maintain information about parties to the  
3 complaint, the subject matter of the complaint, a summary of the  
4 results of the review or investigation of the complaint, and  
5 disposition of the complaint;

6 (3) make information available describing the office's  
7 procedures for complaint investigation and resolution; and

8 (4) periodically notify the complaint parties of the  
9 status of the complaint until final disposition.

10 SECTION 2. Subchapter B, Chapter 412, Labor Code, is  
11 amended by adding Sections 412.0125 through 412.0129 to read as  
12 follows:

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

19 (b) As part of return-to-work coordination services under  
20 this section, the office shall:

21 (1) establish a time frame for case management of an  
22 injured employee that ensures services are provided to the injured  
23 employee as soon as practicable to improve the employee's chance of  
24 returning to work as quickly as possible;

25 (2) provide guidance to each state agency to identify  
26 appropriate services for an injured employee;

27 (3) adopt rules that set standards and provide

1 guidance to a state agency interacting with an injured employee;  
2 and

3 (4) implement any other services provided under  
4 Section 413.021 that will facilitate the reintegration of an  
5 injured employee.

6 Sec. 412.0126. ANALYSIS. (a) The board shall adopt rules  
7 as necessary to collect data on lost time and return-to-work  
8 outcomes of each state agency to allow full evaluations of  
9 successes and of barriers to achieving timely return to work after  
10 an injury.

11 (b) The office shall:

12 (1) collect and analyze data from each state agency  
13 regarding lost time, including sick leave and annual leave used by  
14 an injured employee;

15 (2) identify state agencies that need additional  
16 training or case management services related to return-to-work  
17 services;

18 (3) modify as necessary the office's assessment  
19 computation to encourage state agencies to effectively reduce  
20 workers' compensation costs;

21 (4) incorporate as necessary return-to-work goals  
22 developed by the division of workers' compensation under Section  
23 413.025;

24 (5) work with the workers' compensation research and  
25 evaluation group to develop analytical tools to assist the office  
26 with its duties under this section;

27 (6) require state agencies to report information in a

1 standardized format;

2 (7) monitor the information reported by each state  
3 agency; and

4 (8) evaluate the information provided under this  
5 section to determine outcomes over time for each state agency.

6 Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a)  
7 Notwithstanding Section 403.016, Government Code, and except as  
8 provided by Subsection (b), the office shall pay an employee  
9 entitled to an indemnity benefit payment using the same payment  
10 method as the method by which the employee receives the employee's  
11 wages.

12 (b) The office shall adopt rules to facilitate the use of  
13 electronic funds transfer as the preferred method of payment under  
14 this section.

15 (c) The office may issue an indemnity benefit payment by  
16 check on request or if electronic funds transfer is not feasible.

17 Sec. 412.0128. CONFIDENTIALITY OF INJURY INFORMATION.  
18 Information in or derived from a workers' compensation claim file  
19 regarding an employee is confidential and may not be disclosed by  
20 the office except as provided by this subchapter or other law.

21 Sec. 412.0129. STUDY ON CATASTROPHIC CLAIMS. (a) The  
22 office shall study options to prepare state agencies for  
23 catastrophic claims.

24 (b) The study must include information on:

25 (1) establishing a state employee workers'  
26 compensation catastrophe fund outside the state treasury;

27 (2) purchasing catastrophe reinsurance; and

1           (3) other options to prepare the state for  
2 catastrophic claims.

3           (c) In performing duties under Subsections (a) and (b), the  
4 office:

5           (1) shall work with the workers' compensation research  
6 and evaluation group; and

7           (2) may contract with a consultant to:

8           (A) analyze predicted costs of potential  
9 disasters; and

10           (B) estimate the appropriate size for a  
11 catastrophe fund or level of reinsurance.

12           (d) Not later than September 1, 2008, the office shall  
13 report the findings of the study conducted under this section to the  
14 lieutenant governor, the speaker of the house of representatives,  
15 and the appropriate standing committees of the house of  
16 representatives and senate with responsibility for oversight of the  
17 office.

18           (e) This section expires September 2, 2008.

19           SECTION 3. Section 412.021, Labor Code, is amended by  
20 adding Subsections (a-1), (g), and (h) and amending Subsections (d)  
21 and (f) to read as follows:

22           (a-1) A person may not be a member of the board if the person  
23 or the person's spouse:

24           (1) is employed by or participates in the management  
25 of a business entity or other organization regulated by or  
26 receiving money from the office;

27           (2) owns or controls, directly or indirectly, more

1 than a 10 percent interest in a business entity or other  
2 organization regulated by or receiving money from the office; or

3 (3) uses or receives a substantial amount of tangible  
4 goods, services, or money from the office other than compensation  
5 or reimbursement authorized by law for risk management board  
6 membership, attendance, or expenses.

7 (d) The governor shall designate one member of the board as  
8 presiding officer. The presiding officer shall serve in that  
9 capacity at the pleasure of the governor [~~for a two-year term~~].

10 (f) The risk management board and the office are [~~is~~]  
11 subject to Chapter 325, Government Code (Texas Sunset Act). Unless  
12 continued in existence as provided by that chapter, the board is  
13 abolished and this section expires September 1, 2019 [~~2007~~].

14 (g) Appointments to the board shall be made without regard  
15 to the race, color, disability, sex, religion, age, or national  
16 origin of the appointee.

17 (h) The board shall develop and implement policies that  
18 clearly separate the policymaking responsibilities of the board and  
19 the management responsibilities of the director and the staff of  
20 the risk management office.

21 SECTION 4. Section 412.022, Labor Code, is amended to read  
22 as follows:

23 Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A  
24 person who is appointed to and qualifies for office as a member of  
25 the board may not vote, deliberate, or be counted as a member in  
26 attendance at a meeting of the board until the person completes a  
27 training program that complies with this section. [~~To be eligible~~

1 ~~to take office as a member of the board, a person appointed to the~~  
2 ~~board must complete at least one course of a training program that~~  
3 ~~complies with this section. If the course has not been completed at~~  
4 ~~the time of the appointment, the training program is to be completed~~  
5 ~~within six months from the date of appointment, failure of which~~  
6 ~~constitutes grounds for removal from the board.]~~

7 (b) A training program established under this section must  
8 provide information to the member regarding:

9 (1) the enabling legislation that created the office  
10 and the office's programs, functions, rules, and budget ~~[board]~~;

11 (2) the results of the most recent formal audit of the  
12 office ~~[program operated by the board]~~;

13 (3) the requirements of laws relating to open  
14 meetings, public information, administrative procedure, and  
15 conflicts of interest ~~[role and functions of the board]~~; and

16 (4) ~~[the rules of the board, with an emphasis on the~~  
17 ~~rules that relate to disciplinary and investigatory authority,~~

18 ~~[(5) the current budget for the board,~~

19 ~~[(6) the results of the most recent formal audit of the~~  
20 ~~board,~~

21 ~~[(7) the requirements of:~~

22 ~~[(A) the open meetings law, Chapter 551,~~  
23 ~~Government Code,~~

24 ~~[(B) the public information law, Chapter 552,~~  
25 ~~Government Code, and~~

26 ~~[(C) the administrative procedure law, Chapter~~  
27 ~~2001, Government Code,~~

1           ~~[(8) the requirements of the conflict of interest laws~~  
2 ~~and other laws relating to public officials; and~~

3           ~~[(9)]~~ any applicable ethics policies adopted by the  
4 office [board] or the Texas Ethics Commission.

5           (c) A person appointed to the board is entitled to  
6 reimbursement, as provided by the General Appropriations Act, for  
7 the travel expenses incurred in attending the training program  
8 regardless of whether the attendance at the program occurs before  
9 or after the person qualifies for office.

10           SECTION 5. Section 412.023, Labor Code, is amended to read  
11 as follows:

12           Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. (a) In this  
13 section, "Texas trade association" means a cooperative and  
14 voluntarily joined statewide association of business or  
15 professional competitors in this state designed to assist its  
16 members and its industry or profession in dealing with mutual  
17 business or professional problems and in promoting their common  
18 interest.

19           (b) A person may not be a member of the board and may not be  
20 an employee of the office employed in a "bona fide executive,  
21 administrative, or professional capacity," as that phrase is used  
22 for purposes of establishing an exemption to the overtime  
23 provisions of the federal Fair Labor Standards Act of 1938 (29  
24 U.S.C. Section 201 et seq.) if:

25           (1) the person is an officer, employee, or paid  
26 consultant of a Texas trade association in the field of insurance or  
27 health care; or



1           (2) the person's spouse is an officer, manager, or paid  
2 consultant of a Texas trade association in the field of insurance or  
3 health care.

4           (c) A person may not serve as a member of the board or act as  
5 the general counsel to the board if the person is required to  
6 register as a lobbyist under Chapter 305, Government Code, because  
7 of the person's activities for compensation on behalf of a  
8 profession related to the operation of the office [~~that is~~  
9 ~~regulated by or that has fees regulated by the board~~].

10           SECTION 6. Section 412.024, Labor Code, is amended by  
11 amending Subsection (a) and adding Subsection (a-1) to read as  
12 follows:

13           (a) It is a ground for removal from the board if a member:

14               (1) does not have at the time of taking office  
15 [~~appointment~~] the qualifications required by [~~for appointment to~~  
16 ~~the board other than the requirements of~~] Section 412.021  
17 [~~412.022~~];

18               (2) does not maintain during service on the board the  
19 qualifications required by Section 412.021 [~~for appointment to the~~  
20 ~~board~~];

21               (3) is ineligible for membership under Section 412.021  
22 or [~~violates a prohibition established by Section~~] 412.023;

23               (4) cannot because of illness or incapacity discharge  
24 the member's duties for a substantial part of the member's term [~~for~~  
25 ~~which the member is appointed~~]; or

26               (5) is absent from more than half of the regularly  
27 scheduled board meetings that the member is eligible to attend

1 during a calendar year without an excuse approved by a majority vote  
2 of the board.

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

6 SECTION 7. Subchapter C, Chapter 412, Labor Code, is  
7 amended by adding Section 412.027 to read as follows:

8 Sec. 412.027. USE OF TECHNOLOGY. The board shall implement  
9 a policy requiring the office to use appropriate technological  
10 solutions to improve the office's ability to perform its functions.  
11 The policy must ensure that the public is able to interact with the  
12 office on the Internet.

13 SECTION 8. Section 412.032, Labor Code, is amended to read  
14 as follows:

15 Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. (a) Based on  
16 the recommendations of the director, the board shall report to each  
17 legislature relating to:

18 (1) methods to reduce the exposure of state agencies  
19 to the risks of property and liability losses, including workers'  
20 compensation losses;

21 (2) the operation, financing, and management of those  
22 risks; ~~and~~

23 (3) the handling of claims brought against the state;

24 (4) return-to-work outcomes under Section 412.0126  
25 for each state agency; and

26 (5) the business continuity plan developed by state  
27 agencies under Section 412.054.

1 (b) The report must include:

2 (1) the frequency, severity, and aggregate amount of  
3 open and closed claims in the preceding biennium by category of  
4 risk, including final judgments;

5 (2) the identification of each state agency that has  
6 not complied with the risk management guidelines and reporting  
7 requirements of this chapter; ~~and~~

8 (3) recommendations for the coordination and  
9 administration of a comprehensive risk management program to serve  
10 all state agencies, including recommendations for any necessary  
11 statutory changes;

12 (4) a report of outcomes by state agency of lost time  
13 due to employee injury and return-to-work programs based on the  
14 information collected and analyzed by the office in Section  
15 412.0126; and

16 (5) an evaluation of business continuity plans  
17 developed by state agencies under Section 412.054 for completeness  
18 and viability.

19 SECTION 9. Subchapter D, Chapter 412, Labor Code, is  
20 amended by adding Section 412.034 to read as follows:

21 Sec. 412.034. PUBLIC HEARING. The board shall develop and  
22 implement policies that provide the public with a reasonable  
23 opportunity to appear before the board and to speak on any issue  
24 under the jurisdiction of the office.

25 SECTION 10. Subchapter D, Chapter 412, Labor Code, is  
26 amended by adding Section 412.035 to read as follows:

27 Sec. 412.035. DISPUTE RESOLUTION. (a) The board shall

1 develop and implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter  
3 2008, Government Code, for the adoption of office rules; and

4 (2) appropriate alternative dispute resolution  
5 procedures under Chapter 2009, Government Code, to assist in the  
6 resolution of internal and external disputes under the office's  
7 jurisdiction.

8 (b) The office's procedures relating to alternative dispute  
9 resolution must conform, to the extent possible, to any model  
10 guidelines issued by the State Office of Administrative Hearings  
11 for the use of alternative dispute resolution by state agencies.

12 (c) The board shall designate a trained person to:

13 (1) coordinate the implementation of the policy  
14 adopted under Subsection (a);

15 (2) serve as a resource for any training needed to  
16 implement the procedures for negotiated rulemaking or alternative  
17 dispute resolution; and

18 (3) collect data concerning the effectiveness of those  
19 procedures, as implemented by the office.

20 SECTION 11. Subchapter F, Chapter 412, Labor Code, is  
21 amended by adding Section 412.054 to read as follows:

22 Sec. 412.054. BUSINESS CONTINUITY PLAN. (a) Each state  
23 agency shall work with the office to develop an agency-level  
24 business continuity plan that outlines procedures to keep the  
25 agency operational in case of disruptions to production, finance,  
26 administration, or other essential operations. The plan must  
27 include detailed information regarding resumption of essential

1 services after a catastrophe, including:

2 (1) coordination with public authorities;

3 (2) management of media;

4 (3) customer service delivery;

5 (4) assessing immediate financial and operational  
6 needs; and

7 (5) other services as determined by the office.

8 (b) A business continuity plan is considered to meet the  
9 requirements of this section if the agency forwards the plan to the  
10 office for review and the agency is:

11 (1) involved in the delivery of emergency services as  
12 a member of the governor's Emergency Management Council; or

13 (2) part of the State Data Center program.

14 SECTION 12. Section 417.0082, Government Code, is amended  
15 to read as follows:

16 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS  
17 AGAINST FIRE HAZARDS. (a) The state fire marshal, under the  
18 direction of the commissioner, shall take any action necessary to  
19 protect a public building under the charge and control of the Texas  
20 Building and Procurement [~~General Services~~] Commission, and the  
21 building's occupants, against an existing or threatened fire  
22 hazard. The state fire marshal and the Texas Building and  
23 Procurement Commission shall include the State Office of Risk  
24 Management in all communication concerning fire hazards.

25 (b) The commissioner, [~~and~~] the Texas Building and  
26 Procurement Commission, and the risk management board [~~General~~  
27 ~~Services Commission~~] shall make and each adopt by rule a memorandum

1 of understanding that coordinates the agency's duties under this  
2 section.

3 SECTION 13. A state agency shall develop a business  
4 continuity plan under Section 412.054, Labor Code, as added by this  
5 Act, not later than May 1, 2008.

6 SECTION 14. The changes in law made by Sections 412.021,  
7 412.022, and 412.023, Labor Code, as amended by this Act, regarding  
8 the prohibitions on or qualifications of members of the Risk  
9 Management Board do not affect the entitlement of a member serving  
10 on the board immediately before September 1, 2007, to continue to  
11 serve and function as a member of the board for the remainder of the  
12 member's term. The changes in law made by those sections apply only  
13 to a member appointed on or after September 1, 2007.

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

17 SECTION 16. This Act takes effect September 1, 2007.