

SUBJECT: Continuation and functions of the State Office of Risk Management

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons,
Zedler

0 nays

1 absent — Bailey

SENATE VOTE: On final passage, March 28 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2515 by McClendon:*)
For — None

Against — None

On — Jonathan D Bow, State Office of Risk Management; Steve Hopson,
Sunset Advisory Commission; (*Registered, but did not testify:* Stephen
Vollbrecht, State Office of Risk Management)

BACKGROUND: In 1997, the 75th Legislature enacted HB 2133 by Brimer to create the State Office of Risk Management (SORM), which administers insurance services obtained by state agencies, including the employees workers' compensation insurance program and the state risk management program. Prior to the formation of SORM, the Texas Workers' Compensation Commission provided risk management services for state agencies while the Office of the Attorney General (OAG) handled workers' compensation claims processing and payments.

In 2001, the 77th Legislature enacted HB 1203 by Brimer, which extended SORM's responsibilities to include oversight of state agency purchases of insurance coverage other than health or life insurance, including property and casualty insurance and liability insurance. The risk management board has five members appointed by the governor who serve staggered six-year terms. The agency has a fiscal 2006-07 budget of \$139 million in all funds, of which \$123.1 million is designated for workers' compensation benefit payments, funded by assessments to client state agencies. It has a

fiscal 2007 staff of 124 FTEs. If not continued by the 80th Legislature, the SORM risk management board will be abolished September 1, 2007.

The OAG performs certain administrative functions for SORM including human resources and payroll processing. The Texas Department of Transportation, the University of Texas System, and the Texas A&M University System are exempt from using SORM's services because each operates its own workers' compensation system. The Employees Retirement System and the Teacher Retirement System also are exempt but use SORM as an insurance provider.

DIGEST:

CSSB 908 would continue SORM and its board until September 1, 2019. The bill would require SORM to coordinate return-to-work services in order to facilitate an injured employee's quick return to employment, study the state's potential catastrophic claims, work with certain state agencies to develop a business continuity plan to keep the agency operational in case of major disruptive circumstances, establish improved communications with other state agencies with safety responsibilities, particularly for state property, and pay most indemnity benefits by electronic transfer.

Return to work coordination. SORM would provide each state agency with return-to-work coordination services as necessary to facilitate an injured employee's return to employment. The office would notify each state agency of the availability such services. As part of these services, SORM would:

- establish a time frame for case management of an injured employee that ensured services were provided to the 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 provided guidance to a state agency interacting with an injured employee; and
- implement any other services that would facilitate the reintegration of an injured employee.

CSSB 908 would authorize the board to adopt necessary rules to collect data on lost time and return-to-work outcomes of each state agency to allow full evaluations of successes and barriers to achieving timely return-

to-work after an injury. SORM would collect and analyze data from each state agency regarding lost time, including sick leave and annual leave used by an injured employee, as well as identify state agencies that needed additional training or case management services related to return-to-work services.

SORM would include in its biennial report to the Legislature the outcomes by state agency of lost time due to employee injury and return-to-work programs based on the information collected and analyzed by its office.

Requirement to study catastrophic claims. CSSB 908 would require SORM to study options to prepare state agencies for catastrophic claims. The study would have to include information on:

- establishing a state employee workers' compensation fund outside the state treasury;
- purchasing catastrophe reinsurance; and
- other options to prepare the state for catastrophic claims.

In fulfilling this requirement, SORM would work with the Workers' Compensation Research and Evaluation Group of the Texas Department of Insurance and could contract with a consultant to analyze predicted costs of potential disasters and to estimate the appropriate size for a catastrophe fund or level of reinsurance.

The bill would direct SORM by September 1, 2008, to report the findings of the study to the lieutenant governor, the speaker of the House, and the appropriate standing committees of the House and the Senate with responsibility for oversight of SORM.

Business continuity plan. CSSB 908 would instruct SORM to work with each state agency to develop an agency-level business continuity plan that outlined procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. The plan would have to include detailed information regarding resumption of essential services after a catastrophe, including:

- coordination with public authorities;
- management of media;
- customer service delivery;
- assessing immediate financial and operational needs; and

- other services as determined by SORM.

A business continuity plan would meet these requirements if the agency forwarded the plan to SORM for review and the agency was 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.

SORM would make available to each state agency guidelines and models for a business continuity plan. The office would assist the agency as necessary to ensure that the agency's staff understood each element of the plan and that each agency implemented the plan.

SORM would incorporate the business continuity plan developed by state agencies in its biennial report to the Legislature. The report would have to include an evaluation of the overall plan's completeness and viability.

Communication among agencies with safety responsibilities. The bill would direct SORM to adopt a memorandum of understanding with the Texas Building and Procurement Commission (TBPC) that included the type, amount, and frequency of safety-related information that could be shared between SORM and TBPC and designated points of contact within the two agencies to coordinate sharing such information.

Further, CSSB 908 would require the state fire marshal and TBPC to include SORM in all communication concerning fire hazards. The commissioner of insurance, TBPC, and SORM each would adopt by rule a memorandum of understanding that coordinated these duties.

Benefit payment by electronic funds transfer. CSSB 908 would direct SORM to pay an employee entitled to a benefit payment using the same payment method by which the employee received wages. The office would adopt rules to facilitate the use of electronic transfer as the preferred method of payment. The office could issue an indemnity benefit payment by check on request or if electronic funds transfer were not feasible.

The bill also would implement standard Sunset provisions, including those governing conflicts of interest, gubernatorial designation of the presiding officer, grounds for removing a board member, training of board members, separation of policymaking and agency staff functions, and information to be maintained on complaints.

State agencies would have to develop business continuity plans by May 1, 2008. Provisions regarding indemnity benefit payments would apply to payments made on or after February 1, 2008.

The bill would take effect September 1, 2007 and would apply to prohibitions or qualifications of a board member appointed on or after that date.

**SUPPORTERS
SAY:**

CSSB 908 would continue SORM for 12 years and maintain its functions administering workers' compensation coverage, providing risk management services, and purchasing certain lines of insurance, including property and casualty insurance and liability insurance, for state agencies.

The state essentially is self-insured, with SORM administering workers' compensation benefit claims for most state agencies. The Sunset Advisory Commission determined that this system is more efficient and cost-effective than allowing each agency to administer its own program. By grouping most state employees in a single risk pool, SORM can balance risks in a manner that would not be possible for individual state agencies, arriving at predictable loss trends and stabilizing costs. Also, SORM is able to recognize risk patterns that can affect more than a single agency.

SORM serves as the state's centralized risk manager, identifying and controlling risks to reduce workers' compensation costs, as well as other insurance claims costs. The office's risk management efforts have created a safer work environment for state employees. In addition, SORM acts as an insurance consultant and purchaser for state agencies. This function allows individual state agencies to have a level of insurance expertise that likely would not be available in-house and also to realize sizeable economic benefits. Due to its ability to leverage the state's buying power, for example, SORM has achieved large cost savings in automobile insurance.

While the Sunset commission found that SORM effectively accomplishes its mission, it did find areas for improvement. Its recommendations include coordinating return-to-work services for injured employees to reduce costs but also to benefit these workers financially and medically. CSSB 908 includes provisions to strengthen return-to-work coordination and provide guidance to state agencies interacting with injured employees.

Two other areas addressed in the Sunset findings concern the ability of the state to recover from a man-made or natural disaster. Since the Legislature funds workers' compensation for state employees on a pay-as-you-go basis, unlike private workers' compensation carriers that have large financial reserves, CSSB 908 would require SORM to study establishing a workers' compensation catastrophe fund outside the state treasury and purchasing reinsurance in preparation for a major disaster. Also, the bill would require SORM to work with the majority of state agencies to develop a business continuity plan in the event of disaster. SORM would have to report to the Legislature on the overall completeness and viability of the agencies' business continuity plans.

CSSB 908 would incorporate a recommendation to require that indemnity benefit payments be made by electronic transfer as TxDOT does for most of its workers' compensation benefit payments. This provision would save the state \$74,700 in general revenue each year, according to the Legislative Budget Board.

OPPONENTS
SAY:

About 6.5 percent of SORM's budget goes toward agency operations while the remainder is for workers' compensation claim benefits assessed to respective state agencies and interagency contracts for risk management. Like almost all state agencies, SORM has reduced funding in response to legislative requests over the last two budget cycles. This has left the office with little leeway in its budget to accommodate the new expenses the bill would require.

NOTES:

The committee substitute differs from the Senate-passed version in that CSSB 908 would:

- modify standard Sunset language regarding public membership on the board to remove restrictions on persons or their spouses registered, certified, or licensed by a regulatory agency in the field of insurance or health care;
- specify that the requirement for SORM to report on the creation of business continuity plans by state agencies be made on the overall completeness and viability of plans, not on each state agency's plan;
- establish that information about an employee held by SORM that was related to a workers' compensation claim be confidential and exempt from disclosure under the Public Information Act;

- clarify that SORM's requirement to pay workers' compensation indemnity benefits by electronic transfer was pursuant to the Labor Code, rather than provisions in the Government Code regarding the comptroller's electronic payment methods; and
- direct that the changes in prohibitions on or qualifications for board members apply only to a member appointed on or after February 1, 2008.

The bill would have a \$76,996 cost for fiscal 2008-09 in general revenue-related funds. According to the LBB, SORM will require fewer case managers beginning in fiscal 2010, at which point the bill would generate a savings to the state of \$18,851 per fiscal year due to the reduction of costs through payment of benefits by electronic transfer.