

STATE OFFICE OF RISK MANAGEMENT

SUNSET STAFF REPORT

SEPTEMBER 2006





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# SUMMARY



When the Legislature created the State Office of Risk Management (SORM) in 1997, it recognized the need for a single state agency to provide workers' compensation and risk management functions to all but a few other state agencies. Since its creation, the Legislature added responsibility for oversight of state agency purchasing of other types of insurance. The Sunset staff review sought to assess whether SORM's functions as the State's insurance provider were still needed and whether the State could save money by structuring the agency more like a private insurance carrier. The review noted that providing insurance services is important in protecting the State's human and physical assets, and that SORM has effectively discharged these responsibilities while making progress towards reducing the cost of the programs for the State. A study of other agencies with similar functions did not find any significant benefit to transferring SORM's responsibilities.

While SORM basically functions effectively as the State's insurance provider, Sunset staff identified several key concerns regarding the agency's operations. These concerns, outlined below, include the State's approach to returning injured employees to work, the State's preparedness in the event of man-made or natural disasters, and efficiencies in SORM's business operations. The intent of these recommendations is to improve the functioning of SORM and to better prepare the agency to handle its responsibilities.

- ◆ The speedy return to work of employees injured on the job reduces the cost of workers' compensation and is better, both financially and medically, for employees. The Legislature's recent reforms to the workers' compensation system included key provisions that highlight its interest in aggressive return to work efforts. In light of this interest, the Sunset review found that SORM could place



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*SORM's insurance services  
help state agencies protect their  
human and physical assets.*

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greater emphasis on helping injured state employees to quickly return to work.

- ◆ Two areas of concern relate to the ability of the State to recover from a man-made or natural disaster. The Legislature provides funding for state employee workers' compensation on a pay-as-you-go basis. Unlike the structure of private insurance carriers, SORM's funding does not include reserves for future obligations or as a cushion against a catastrophic event. Although SORM's funding method keeps current expenditures low, SORM is not structured to adequately protect the State against large claims that may arise from a disaster. Sunset staff also examined the requirements and assistance given to all agencies to prepare for disasters. While Texas' key emergency response agencies appear well prepared, the majority of state agencies have not planned for the resumption of their business operations. In addition, no single state agency is responsible for assisting all agencies in planning for inevitable interruptions.
- ◆ SORM could also achieve greater efficiency in its business functions. Each year SORM makes about 53,000 benefit payments to injured employees. Although state employees are accustomed to receiving paychecks by direct deposit, SORM pays the vast majority of indemnity benefits by mailing paper checks. Changing this approach to direct deposit would be faster, safer, less expensive, and more reliable than mailing paper checks.

- ◆ SORM has interrelated responsibilities for protecting state employees and assets with two other state agencies, the State Fire Marshal's Office (SFMO), and the Texas Building and Procurement Commission (TBPC). Despite the importance of their missions, the three agencies have not established clear lines of communication, leaving the State at increased risk of harm to people and property.

The recommendations in this report are designed to address these concerns. A summary follows of all the Sunset staff recommendations on the State Office of Risk Management.

## Issues and Recommendations

### Issue 1

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

##### **Key Recommendations**

- ◆ Require SORM to develop an expanded case management program that focuses on facilitating the reintegration of injured employees.
- ◆ Require SORM to evaluate lost time and return to work outcomes by agency, and report the results to the Legislature.

### Issue 2

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

##### **Key Recommendation**

- ◆ 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.

### Issue 3

#### **Mailing Indemnity Benefit Checks Delays Payments to Injured Workers.**

##### **Key Recommendation**

- ◆ Require SORM to pay most indemnity benefits by direct deposit.

### 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.**

##### **Key Recommendations**

- ◆ Require all state agencies to develop business continuity plans.
- ◆ Require SORM to consult with state agencies on business continuity plans by developing guidelines, model plans, and training.
- ◆ Require SORM to evaluate state agencies' business continuity plans and report results to the Legislature.

### Issue 5

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

##### **Key Recommendations**

- ◆ Require SORM and TBPC to enter into a memorandum of understanding on exchange of safety related information.
- ◆ Add SORM to the current statutorily required memorandum of understanding between SFMO and TBPC regarding fire safety.

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

**Key Recommendation**

- ◆ Continue the State Office of Risk Management for 12 years.

**Fiscal Implication Summary**

When fully implemented, the recommendations in this report would result in a net, first-year cost to the General Revenue Fund of \$78,000. In addition, one issue will have a one-time cost of \$20,000 that will be apportioned among state agencies as part of their annual workers' compensation assessment. The specific fiscal impact of these recommendations is summarized below.

- ◆ Issue 1 – 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.

- ◆ Issue 2 – 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.
- ◆ Issue 3 – 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.
- ◆ Issue 4 – 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.

<i><b>Fiscal Year</b></i>	<i><b>Cost to the State</b></i>	<i><b>Savings to the State</b></i>	<i><b>Change in FTEs From FY 2007</b></i>
2008	\$172,380	\$74,700	+3
2009	\$152,380	\$74,700	+3
2010	\$106,530	\$74,700	+2
2011	\$106,530	\$74,700	+2
2012	\$106,530	\$74,700	+2



# ISSUES



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

### Summary

#### Key Recommendations

- ◆ Require SORM to develop an expanded case management program that focuses on facilitating the reintegration of injured employees.
- ◆ Require SORM to evaluate lost time and return to work outcomes by agency, and report the results to the Legislature.

#### Key Findings

- ◆ The Legislature has placed considerable emphasis on the importance of return to work efforts in the workers' compensation system.
- ◆ Both SORM and state agencies play a key role in returning injured employees to work.
- ◆ Poor return to work outcomes increase workers' compensation costs and cause hardships for injured workers.
- ◆ SORM needs to place more emphasis and resources on return to work services.
- ◆ Other workers' compensation carriers and programs are able to focus more on return to work strategies.

#### Conclusion

Facilitating the quick return to work of employees injured on the job reduces the cost of indemnity and medical benefits. Rapid return to work is also better for employees and reduces the cost to employers for hiring and training replacement workers. The Legislature's recent reforms to the workers' compensation system included key provisions that highlight its interest in aggressive return to work efforts.

Despite this interest, the Sunset review found that the State Office of Risk Management needs to place a greater emphasis on helping injured state employees quickly return to work, and its record on return to work does not compare favorably with peer agencies. SORM must rely on client agencies to bring injured employees back, but most agencies have little experience or incentive to perform well. SORM also does not evaluate an individual agency's success or make full use of case management.

## Support

**The Legislature has placed considerable emphasis on the importance of return to work efforts in the workers' compensation system.**

- ◆ One of the enumerated goals of the major workers' compensation reform bill from 2005, House Bill 7, was to ensure that injured workers receive services to facilitate a return to productive employment as soon as deemed appropriate by a health-care provider. The textbox, *Return to Work Provisions in H.B. 7*, lists many of the return to work provisions in that bill.



*Over several sessions, the Legislature has signaled its interest in improving the return to work outcomes of injured workers.*

### **Return to Work Provisions in H.B. 7**

The Division of Workers' Compensation (DWC) was charged with the following.

- ◆ Provide information to employers and employees about the benefits of early return to work and methods for improving outcomes.
  - ◆ Provide appropriate referrals to employment assistance programs and initiate post-referral contact with injured workers.
  - ◆ Work with the Department of Assistive and Rehabilitative Service (DARS) to improve the effectiveness of vocational rehabilitation.
  - ◆ Refer injured workers to DARS for vocational rehabilitation when such services would assist an injured worker return to work instead of waiting until eligibility for supplemental income benefits (SIBs).
  - ◆ Improve data sharing and tracking with DARS, Texas Workforce Commission, and insurers to identify barriers to return to work and analyze outcomes.
  - ◆ Develop performance measures to assess carriers and providers in key areas including return to work outcomes.
  - ◆ Adopt return to work guidelines and treatment guidelines.
  - ◆ Require networks authorized under H.B. 7 to adopt return to work and treatment guidelines.
- ◆ Returning injured workers to productive employment is a shared responsibility of employees, health-care providers, employers, and insurance carriers. Injured workers are responsible for following their doctor's treatment plan. Health-care providers must evaluate the abilities of an injured worker and release an employee to work with or without restrictions when appropriate. Employers should communicate with injured workers and offer modified or alternate job duties, when possible. Insurance carriers bear responsibility for return to work efforts as well.

The Legislature increased insurers' responsibilities in H.B. 7 by requiring that insurers evaluate claims that result in lost time as soon as possible to determine if skilled case management is needed. In 2001, House Bill 2600 required insurance carriers to provide return to work coordination services to employers upon request. These services may include job analysis, job modification and restructuring assessments, medical case management, and vocational case management.

## Both SORM and state agencies play a key role in returning injured employees to work.

- ◆ State law requires state agencies to develop formal return to work programs. Return to work programs identify specific responsibilities and actions that should be taken by agency claims coordinators, supervisors, and employees to allow employees to return to work as soon as possible after injury or illness. A summary of SORM's recommendations for a successful return to work program are listed in the textbox, *Return to Work Program Components*. SORM's risk management specialists confirm that each agency has a return to work program during an agency's risk management program review.

### **Return to Work Program Components**

- ◆ Inform employees of the return to work policy and management's commitment to return to work.
- ◆ Designate a return to work coordinator.
- ◆ Have the return to work coordinator contact injured workers within 24 hours of an injury and weekly until the employee returns to work.
- ◆ Establish a period of guaranteed modified duty for injured workers who cannot return to full duty right away.
- ◆ Agree upon the therapeutic goals of modified duty.

SORM relies on state agency supervisors and claims coordinators to bring injured workers back by staying in contact with employees and offering positions or duties consistent with their abilities when released for work. Agencies that file many workers' compensation claims may have dedicated claims coordinators whose primary job duties are related to workers' compensation. However, most agencies file very few claims and cannot dedicate an employee to this purpose full-time.

- ◆ SORM generally initiates telephonic medical case management in claims when an injured worker has lost six to 10 weeks of work. SORM prioritizes case management for injured workers who have catastrophic injuries or have been hospitalized for 24 hours. Case managers have a different focus and provide different services than adjusters. Case management facilitates communication between the injured employee, physician, employing agency, and SORM. The agency employs one nurse case manager who facilitates communication between all parties to help the injured worker access medical care and obtain a medical release to work when appropriate. For example, the case manager collects job descriptions from employers and sends them to treating physicians. She also facilitates the movement of test results and recommendations between a treating physician and the referring physician. She re-visits injured workers' cases every 30 days, or more frequently if needed.
- ◆ The Department of Assistive and Rehabilitative Services (DARS) also plays a role in return to work efforts for injured employees. Injured workers whose disability creates a substantial impediment to employment can participate in DARS' vocational rehabilitation program, which helps people with disabilities prepare for, find, and keep jobs.



*Although SORM relies on state agencies to assist workers to return to work, most agencies cannot dedicate an employee to this purpose.*



*Speedy return to work helps workers by reducing financial, social, and psychological stress.*

### **Poor return to work outcomes increase workers' compensation costs and cause hardships for injured workers.**

- ◆ Poor return to work outcomes result in higher costs for workers' compensation benefits. Though relatively few injured workers have difficulty returning to work, those that do increase costs in the system. About 75 percent of injured workers never lose time from work, and of those that do, approximately 64 percent have returned to work within two years after the injury.<sup>1</sup> However, the longer injured workers are off work, the less likely they are to return to productive employment. Only about 50 percent of injured workers off duty for 12 weeks ever return to work.<sup>2</sup>
- ◆ Poor return to work outcomes hurt employers by increasing costs of workers' compensation insurance, decreasing productivity of the workforce, and increasing costs to recruit, hire, and train new employees.<sup>3</sup>
- ◆ Early return to work benefits injured workers by reducing the financial, social, and psychological strains associated with being injured and out of work.<sup>4</sup> Return to work programs have been shown to leave injured employees financially better off than vocational rehabilitation or job retraining.<sup>5</sup> Injured workers, who return to work as early as possible, recover faster than those that do not, achieve better medical outcomes, and have less overall physical impairment.<sup>6</sup>

### **SORM needs to place more emphasis and resources on return to work services.**

- ◆ SORM does not make full use of case management. SORM's case management policy assigns claims with sprain or strain injuries to case management when the injured worker has missed six weeks of work. The policy assigns all other injury types at 10 weeks of missed work. While the case manager generally receives claims in this time frame, in some cases she receives claims after the injured worker has missed more than a year of work. The return to work section of SORM's website highlights a study that found injured workers have a 60 day window to return to work after which a significant number never return. Despite SORM's reference to this study, for most injury types, SORM does not initiate case management within this 60 day window.

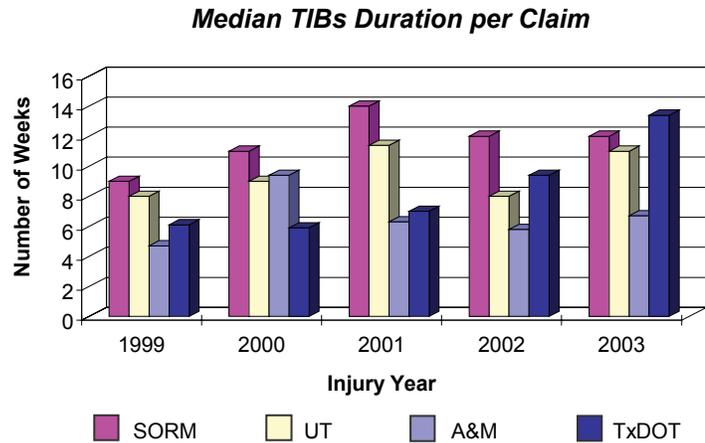
SORM's case manager generally revisits each claim only every 30 days and is often unable to reach the injured worker. She leaves messages when possible, but reports that less than a third of workers return her calls. SORM's case management caseload has increased greatly in the last year. Currently, SORM's nurse case manager has a caseload of about 100 claims, which has grown from about 20 claims a year ago.

- ◆ The return to work outcomes of state agencies covered by SORM are generally worse than Texas' other state, self-funded workers' compensation programs. Duration of payment of temporary income benefits (TIBs) is



*SORM's case manager's workload has increased greatly – from 20 cases last year to 100 cases today.*

used to gauge time lost from work and is considered a useful tool for comparing return to work outcomes. Half of all SORM claimants who received TIBs and were injured in 2003, received TIBs for more than 12 weeks. When compared to the workers' compensation programs at the University of Texas System, Texas A&M University System, and Texas Department of Transportation (TxDOT) over time, SORM has generally had the longest median TIBs duration, as shown in the graph, *Median TIBs Duration per Claim*.



- ◆ Unlike the three other state employee workers' compensation programs, SORM is not the injured worker's employer. Because of this limitation, SORM is unable to directly influence an agency's ability or willingness to modify job duties to meet injured workers' abilities. In addition, SORM can encourage, but not require, that employing agency staff maintain contact and communicate return to work expectations to injured workers. The UT System, Texas A&M System, and TxDOT are able to influence return to work outcomes by acting as both the employer and carrier.
- ◆ Most state agencies are not equipped to thoroughly perform return to work functions for employees. Although claims coordinators who attend claims coordinator training learn about return to work strategies, 28 percent of the claims coordinators surveyed by Sunset staff have not attended any of SORM's training classes. In fiscal year 2004, only 64 of the 269 agencies covered by SORM filed more than two claims. Claims coordinators in agencies with few claims generally spend too little time focused on the subject to be familiar enough with strategies to effectively assist injured workers. A few claims coordinators surveyed by Sunset staff have never used their agency's return to work policy. At a claims coordinator training held by SORM, some claims coordinators did not know about bona fide job offers, one of employers' most effective return to work tools.
- ◆ SORM does not refer injured workers to DARS for vocational rehabilitation before or after injured workers qualify for long-term benefits, as some carriers do. In fiscal year 2005, only 40 of SORM's claimants received DARS services. However, DARS provided vocational rehabilitation services to more than 10,000 injured workers, more than half of which received vocational rehabilitation prior to eligibility for long-term benefits. In 2005, DWC made more than 4,000 referrals to DARS.<sup>7</sup>
- ◆ SORM is unable to hold agencies accountable for poor return to work outcomes. While private workers' compensation insurers can influence employers' return to work efforts through higher premiums, SORM is less

  
*Unlike other state workers' compensation programs, SORM is not the employer.*

able to hold agencies accountable. This lack of accountability is because only 60 percent of agency assessments are based on claims costs; claims coordinators responsible for return to work efforts may not be motivated by SORM's assessments; and the State budget cycle reduces incentives because agencies budget for assessments two years in advance.

- ◆ The Legislature is unable to hold agencies accountable for poor return to work outcomes because SORM does not evaluate return to work outcomes by agency. SORM collects data on individual return to work outcomes but does not aggregate the data to determine which agencies may need additional assistance and training. In 2002, the Workers' Compensation Research and Evaluation Group (REG) attempted to perform a comparison of return to work outcomes at Texas state agencies. REG was unable to publish the study due to concerns about the validity of data. REG also looked at SORM return to work outcomes in 2004 and 2006 and continued to have difficulty validating data.



*Agencies are not accountable for poor return to work outcomes because SORM does not evaluate the data by agency.*

### **Other workers' compensation carriers and programs are able to focus more on return to work strategies.**

- ◆ Private workers' compensation carriers make more use of case managers to facilitate access to medical care and return to work programs. For example, Texas Mutual Insurance Company initiates nurse case management when a claim has reached three weeks of lost time, and is beginning to initiate case management sooner. In addition to using several nurse case managers, Texas Mutual employs two vocational case managers that work with injured workers on SIBs.
- ◆ Many component institutions in the University of Texas System require the original employer to continue paying an injured employee's salary if that division will not retake the worker, but another division does. UT reports that this program is rarely used, but the threat of paying an injured worker's salary while working in another division encourages employers to provide modified duties for injured workers.
- ◆ The Texas Department of Transportation has seven field adjusters located around the state. Adjusters are required to visit injured employees within seven days from the date of injury. Field adjusters continue to visit injured workers monthly with the employee's supervisor until the employee returns to work.

## **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 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**

These recommendations would have an additional cost to the General Revenue Fund of about \$91,700 beginning in fiscal year 2008 to hire two case managers to handle SORM’s expanded workload.<sup>8</sup> By fiscal year 2010, SORM should have a workers’ compensation network that covers most state employees and is primarily responsible for case management, and costs would be reduced to \$45,850 for one FTE. The costs of this recommendation would be offset by savings in indemnity and medical benefits. However, these savings would accrue to the assessments made on state agencies and not directly to General Revenue, which funds SORM’s claims management efforts.

<i><b>Fiscal Year</b></i>	<i><b>Cost to the General Revenue Fund</b></i>	<i><b>Change in FTEs From FY 2007</b></i>
2008	\$91,700	+2
2009	\$91,700	+2
2010	\$45,850	+1
2011	\$45,850	+1
2012	\$45,850	+1

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<sup>1</sup> Research and Oversight Council on Workers' Compensation and Med-FX, LLC, *Returning to Work: An Examination of Existing Disability Duration Guidelines and Their Application to the Texas Workers' Compensation System* (Austin, Texas, 2001), p. 24; and Workers' Compensation Research and Evaluation Group, Texas Department of Insurance, August 30, 2006.

<sup>2</sup> Research and Planning Consultants, L.P., *Recommendations for Improvements in Safety and Return-to-Work Programs for State of Texas Research and Oversight Council on Workers' Compensation* (Austin, Texas, 2001), p. 64.

<sup>3</sup> Research and Oversight Council on Workers' Compensation and Med-FX, LLC, *Returning to Work: An Examination of Existing Disability Duration Guidelines and Their Application to the Texas Workers' Compensation System* (Austin, Texas, 2001), p. 1.

<sup>4</sup> Research and Oversight Council on Workers' Compensation and Research and Planning Consultants, L.P., *Recommendations for Improvements in Texas Workers' Compensation Safety and Return-to-Work Programs*, (Austin, Texas, 2001), p. 28.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Department of Assistive and Rehabilitative Services, July 18, 2006.

<sup>8</sup> Calculated based on the minimum salary for a Claims Examiner III position of \$35,337 and fringe benefits of 29.74%.

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

#### **Summary**

##### **Key Recommendation**

- ◆ 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.

##### **Key Findings**

- ◆ SORM provides workers' compensation coverage for state employees on a pay-as-you-go funding basis.
- ◆ SORM is inadequately prepared to pay workers' compensation claims resulting from a catastrophic event.
- ◆ Self-insured companies and insurance carriers use many strategies to mitigate the risk of catastrophic claims.
- ◆ Other public, self-insured workers' compensation programs are better prepared to handle catastrophic events.

##### **Conclusion**

The Legislature provides funding for state employee workers' compensation to the State Office of Risk Management on a pay-as-you-go basis. Unlike the structure of private insurance carriers, SORM's funding does not include reserves for future obligations or as a cushion against a catastrophic event.

Sunset staff examined SORM's preparedness to pay the costs of catastrophic claims. Although SORM's funding method keeps current expenditures low, SORM is not structured to adequately protect the State against large claims that may arise from a natural or man-made disaster. In the event of a catastrophe, SORM would have to seek emergency appropriations to pay the cost of workers' compensation claims. However, these requests would arise at the same time that the Legislature would need to fund other emergency items.

## Support

### **SORM provides workers' compensation coverage for state employees on a pay-as-you-go funding basis.**



*SORM assesses client agencies for the cost of workers' compensation coverage based on past experience.*

- ◆ In 2002, the Legislature established an agency assessment program to cover the costs of workers' compensation claims. Annually, SORM estimates the expected costs of workers' compensation benefits in the upcoming year based on past experience. SORM uses a formula, set in rule, to apportion the total expected cost among agencies. SORM bases agency assessments on agency size, payroll, actual claims costs in the previous year, number of claims in the previous year, and the claims frequency rate. SORM can retain 10 percent of annual assessment funds in excess of actual claims to offset some of next year's costs. SORM returns amounts exceeding 10 percent to agencies.
- ◆ The General Appropriations Act also allows SORM some borrowing flexibility. If assessments are insufficient to cover claims in a year, SORM may, with the approval of the Legislative Budget Board, borrow up to 20 percent of the total assessment amount from the General Revenue Fund to cover claims. If SORM needs funding to cover claims in excess of the 20 percent borrowing limit, the agency must ask the Legislature for emergency or supplemental appropriations. SORM has not borrowed money under this provision.
- ◆ Each year, SORM has a few expensive, catastrophic claims. In fiscal year 2003, SORM paid \$950,000 for medical and indemnity benefits on a single claim. In each of the last five years, SORM has paid at least 10 claims costing more than \$100,000. SORM considers these expensive claims as a consistent part of its claims experience and anticipates these types of claims when making assessments.
- ◆ When SORM estimates workers' compensation claims costs for an upcoming year, SORM does not build in costs for unforeseen catastrophes or abnormally high claim volumes. SORM assumes that a few large claims will occur but does not anticipate numerous catastrophic claims that could result from a natural disaster or man-made disaster.
- ◆ Unlike SORM's pay-as-you-go financial structure, private insurance carriers maintain reserves sufficient to cover anticipated future liabilities from claims. Reserves allow insurers to pay future liabilities even if the company experiences financial troubles, but also provide insurers with a cushion to financially protect against abnormally high claims costs. Reserves are tapped to pay claims and replenished through increased premiums. The Texas Department of Insurance requires workers' compensation insurance companies to maintain sufficient reserves and submit an annual actuarial opinion on reserves.<sup>1</sup>



*SORM does not build in costs for unforeseen claims from a disaster.*

**SORM is inadequately prepared to pay workers' compensation claims resulting from a catastrophic event.**

- ◆ Unlike insurance carriers, SORM does not have reserves sufficient to cover future liabilities. SORM functions on a cash basis and calculates assessments to cover estimated costs for a fiscal year. Workers' compensation law entitles injured workers to up to seven years of indemnity benefits and lifetime medical benefits for treatment related to the compensable injury.
- ◆ SORM could be unable to pay workers' compensation claims resulting from a large-scale disaster, even with the flexibility to borrow up to 20 percent of total assessments from the General Revenue Fund. The table, *Workers' Compensation Funding Cushion*, shows the amount of funding SORM would have been able to access over the last five years to cover exceptional claims costs. Combining the excess assessments that were carried forward or refunded to agencies with the 20 percent of assessments that SORM may borrow from the General Revenue Fund, SORM has had a potential cushion ranging from \$14 million to \$38 million.
- ◆ While the amount of this cushion is substantial, it would prove insufficient to cover claims costs resulting from a large-scale disaster. For example, the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City killed 167 people and injured 684 people, most of whom were federal employees.<sup>3</sup> In response, the federal government has paid a total of \$46 million in workers' compensation benefits on 500 claims.<sup>4</sup> A similar attack on a state building could stretch SORM's funding beyond its capacities.
- ◆ In the event that high claims costs depleted both assessments and SORM's borrowing limit, the agency would have to seek emergency appropriations from the Legislature. Because a disaster that causes large state employee workers' compensation claims would also result in other demands for state resources for emergency management, facilities repair, and so forth, SORM's needs would compete against other financial demands.



*Unlike private carriers, SORM's pay-as-you-go funding could leave the State ill-prepared to pay for a catastrophe.*

**Workers' Compensation Funding Cushion <sup>2</sup>**

| <b>Fiscal Year</b> | <b>Total Assessment</b> | <b>Carried Forward to Next Year</b> | <b>Refunded to Agencies</b> | <b>Amount That can be Borrowed From GR (20% of Assessments)</b> | <b>Total Available Funding Cushion</b> |
|--------------------|-------------------------|-------------------------------------|-----------------------------|-----------------------------------------------------------------|----------------------------------------|
| 2002               | \$75,166,709            | \$2,537,387                         | \$0                         | \$15,033,342                                                    | \$17,570,728                           |
| 2003               | \$71,515,548            | \$6,931,259                         | \$0                         | \$14,303,110                                                    | \$21,234,369                           |
| 2004               | \$73,826,390            | \$7,864,840                         | \$15,635,267                | \$14,765,278                                                    | \$38,265,385                           |
| 2005               | \$52,066,514            | \$3,650,000                         | \$0                         | \$10,413,303                                                    | \$14,063,303                           |
| 2006               | \$54,704,930            | \$2,000,000*                        | \$7,550,000                 | \$10,940,986                                                    | \$20,490,986*                          |

\* Estimate

## **Self-insured companies and insurance carriers use many strategies to mitigate the risk of catastrophic claims.**

- ◆ In the event of a disaster, self-insured companies and insurance carriers may tap their reserves to pay claims and then replenish reserves through increased premiums.
- ◆ The Division of Workers' Compensation (DWC) regulates companies that self-insure for workers' compensation. Companies must prove financial strength, post a security deposit of at least \$300,000, and purchase excess insurance coverage to be eligible for a certificate of self-insurance. Excess insurance covers losses in excess of a defined amount. DWC requires self-insurers to buy excess insurance to cover losses exceeding the security deposit up to at least \$5 million per occurrence. Finally, state law requires each self-insurer to join the Texas Certified Self-Insurer Guaranty Association (Guaranty Association). The Legislature established the Guaranty Association in statute as a means of spreading risk and paying workers' compensation claims from impaired self-insured companies. The Guaranty Association has access to \$500 million in pooled security deposits to pay an impaired self-insurer's claims after excess insurance is exhausted.
- ◆ Workers' compensation insurance carriers commonly mitigate the risk of high claims costs by reinsuring. Reinsurance is essentially insurance purchased by insurance companies to further spread risk. Texas Mutual, the largest workers' compensation carrier in Texas, reinsures to mitigate risk.

Like self-insurers, insurance carriers also have a guaranty association that would pay claims if a carrier became impaired. All workers' compensation insurance carriers in Texas are members of the Texas Property and Casualty Insurance Guaranty Association.

## **Other public, self-insured workers' compensation programs are better prepared to handle catastrophic events.**

- ◆ The University of Texas System and the Texas A&M University System both operate a self-insured workers' compensation benefit program separate from SORM, and both have established reserves. Both systems annually assess component institutions to fund workers' compensation benefits. Unlike SORM, the UT and A&M assessments are sufficient to cover the expected cost of the life of a claim, not just costs incurred in the first year. Both systems have an annual actuarial study done that evaluates claims experience and reserve levels. The UT System has about \$53 million in reserves and the A&M System has about \$19 million in reserves.



*Private insurers and other state programs have reserves that may be used for catastrophic claims.*

## 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 TDP'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

The recommendation to study catastrophic event funding would not have a fiscal impact on the General Revenue Fund, as it would be paid for from state agency assessments. The study is estimated to cost \$20,000, which SORM would include in its annual assessment on state agencies.

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<sup>1</sup> Texas Insurance Code § 426.001 and § 802.002.

<sup>2</sup> State Office of Risk Management, Assessments. Online. Available: [www.sorm.state.tx.us/Legislative/assessments.php](http://www.sorm.state.tx.us/Legislative/assessments.php). Accessed: August 16, 2006; State Office of Risk Management, August 8, 2006.

<sup>3</sup> Oklahoma State Department of Health, *Oklahoma City Bombing Injuries* (December 1998). Online. Available: [www.health.state.ok.us/program/injury/Summary/bomb/OKCbomb.htm](http://www.health.state.ok.us/program/injury/Summary/bomb/OKCbomb.htm). Accessed: August 16, 2006.

<sup>4</sup> Division of Federal Employees' Compensation, U.S. Department of Labor, September 6, 2006.



## *Mailing Indemnity Benefit Checks Delays Payments to Injured Workers.*

### **Summary**

#### **Key Recommendation**

- ◆ Require SORM to pay most indemnity benefits by direct deposit.

#### **Key Findings**

- ◆ Paying workers' compensation indemnity benefits by check wastes taxpayer dollars.
- ◆ The Comptroller's Office makes most payments to state employees by direct deposit.
- ◆ The workers' compensation program operated by the Texas Department of Transportation pays most indemnity benefits through direct deposit.
- ◆ Direct deposit delivers workers' compensation benefits faster and reduces hardships for injured workers.

#### **Conclusion**

In fiscal year 2005, SORM made 53,000 indemnity benefit payments to injured state employees. Although state employees are accustomed to receiving paychecks by direct deposit, SORM pays 94 percent of indemnity benefits by mailing paper checks. Sunset staff examined SORM's method of paying indemnity benefits to assess whether the agency is using the most effective and efficient means.

Sunset staff found that paying indemnity benefits by direct deposit would be faster, safer, less expensive, and more reliable than mailing paper checks. In addition, direct deposit reduces the burden on injured workers to cash or deposit checks. Using direct deposit to pay indemnity benefits to injured state employees that have elected direct deposit for payroll will also result in an annual savings to the General Revenue Fund.

## Support

### **SORM pays most workers' compensation indemnity benefits by check.**



*SORM mailed about 50,000 paper checks to injured state workers last fiscal year.*

- ◆ Indemnity benefits replace a portion of the income lost due to work-related injuries or illnesses. SORM pays indemnity benefits on a weekly basis, except for supplemental income benefits, which SORM pays monthly. In fiscal year 2005, SORM made about 53,000 separate indemnity payments to injured workers.
- ◆ The Comptroller prints indemnity payment checks for SORM. Checks can be ordered, printed, and picked up in two business days. The Attorney General's Office (OAG) collects checks from the Comptroller's Office, which are later picked up by a SORM staff member. Checks are tracked throughout this process and must be signed for by authorized representatives of the agencies. SORM staff members manually match each check with an explanation of benefits (EOB) letter, fold the documents, and stuff envelopes. The EOB indicates the benefit paid, the timeframe covered, and the corresponding check number. Finally, SORM takes the payments to the OAG mailroom for postage and mailing.
- ◆ SORM makes some indemnity benefit payments through direct deposit instead of by check. Division of Workers' Compensation (DWC) regulations instruct insurance carriers to use direct deposit if they are expecting to pay workers' compensation benefits for at least eight weeks, and the injured worker requests direct deposit in writing. SORM used direct deposit to make about 3,300, or 6 percent, of indemnity payments in fiscal year 2005.<sup>1</sup> Because SORM sends an EOB to injured workers regardless of whether payment was made by check or direct deposit, the current process for sending payments by direct deposit is not paperless and does not avoid postage.

### **Paying workers' compensation indemnity benefits by check wastes taxpayer dollars.**

- ◆ Processing direct deposits is faster, safer, less expensive, and more reliable than checks. Printing checks requires more manual intervention by the Comptroller's Office and more resources such as paper and printing equipment. Checks also require expensive transportation and handling between each agency in the process. In 1991, the Comptroller's Office estimated that changing from a check-based payment system to direct deposit for state employee payroll would save the Comptroller's Office \$1.70 per transaction in computer service time and handling. In addition, the Comptroller's Office estimated that each check costs an individual agency 10 cents due to the resources needed to handle, sort, and track checks, as well as matching checks with statements of earnings and keeping checks secure.<sup>2</sup> The U.S. Treasury Department reports that the cost to the federal government of issuing a check is 86 cents, while processing a direct deposit payment only costs 9 cents.<sup>3</sup>



*Direct deposit is faster, safer, less expensive, and more reliable than paper checks.*

- ◆ Checks create additional burdens for the State and the claimant when lost, stolen, or delayed in the mail. SORM encourages injured workers to wait 10 days from the date it mails a check before requesting to stop the check, although SORM will process stop-check orders sooner if requested in writing. Once SORM submits a stop-check order, the Comptroller's Office takes a day to place a stop on the check. Once the check is stopped, SORM orders a replacement check. This process can leave injured workers waiting for two weeks until the replacement check arrives.

Stopped checks presented for payment create additional burdens for the State and injured workers, as the Comptroller's Office must investigate these incidents for fraud. In addition to doing research through financial institutions, the Comptroller's Office requires that injured workers sign and return affidavits indicating no connection to potentially fraudulent activity.

**The Comptroller's Office makes most payments to state employees by direct deposit.**

- ◆ State employees are accustomed to receiving payments through direct deposit. From 1991 to 1999, the State required most state employees to receive paychecks and travel reimbursements through direct deposit. Currently, the State allows employees to opt into payment through direct deposit, and 83 percent of state employees receive paychecks and travel reimbursements through direct deposit.
- ◆ The Employees Retirement System (ERS) actively encourages retired state employees to receive pension payments by direct deposit, and pays 87 percent of retirees this way.<sup>4</sup>



*Most state employees already receive salary and travel payments through direct deposit.*

**The workers' compensation program operated by the Texas Department of Transportation pays most indemnity benefits through direct deposit.**

- ◆ The Texas Department of Transportation (TxDOT) administers a workers' compensation program separate from SORM. The program also uses the Comptroller's Office to process indemnity payments either through direct deposit or check. TxDOT pays about 90 percent of its indemnity benefits through direct deposit. Any injured employee that receives a paycheck through direct deposit is automatically set up to receive indemnity benefits through direct deposit, but can request checks.
- ◆ TxDOT adjusters encourage all injured workers to use direct deposit because it is easier to administer. TxDOT reports the switch from checks to direct deposit reduced the number of calls received from injured workers asking when a check was sent. The agency also reduced the number of checks which it must ask the Comptroller's Office to stop and reissue because of being lost or delayed in the mail.



*A survey of state agency claims coordinators found that 85 percent believe that direct deposits would be helpful for injured employees.*

## **Direct deposit delivers workers' compensation benefits faster and reduces hardships for injured workers.**

- ◆ Receiving indemnity benefits quickly is helpful to injured workers who face financial hardships due to their inability to work. Workers' compensation benefits paid by direct deposit are available to injured workers faster than those paid by check. Direct deposit payments generally require no more than two days to process and deliver. Check payments require a day or more to process and additional time for delivery.
- ◆ Receiving benefits by direct deposit is also less burdensome for injured workers. Injured workers receiving benefits by direct deposit do not have to travel to a bank and wait in line to deposit weekly benefit checks. A Sunset staff survey found that 85 percent of state agency claims coordinators believe benefit payments by direct deposit would be helpful for injured workers.
- ◆ Benefits sent by direct deposit are also unlikely to be lost or delayed, reducing stress and financial burden placed on injured workers. In fiscal year 2005, SORM stopped 170 checks because they were lost in the mail.

## **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**

This recommendation would result in a positive fiscal impact of \$149,000 per biennium to the State based on the number of indemnity checks sent last year and the cost of processing a check.

In fiscal year 2005, SORM mailed about 50,000 indemnity checks to injured workers, and 83 percent of state employees were paid through direct deposit. Assuming these numbers are constant, under this recommendation, SORM would make an additional 41,500 indemnity payments by direct deposit instead of check. The Comptroller's Office estimates that each payment made by direct deposit instead of check saves the Comptroller's Office \$1.70 and the paying agency 10 cents.

This recommendation would result in annual savings of \$70,550 to the Comptroller's Office and \$4,150 to SORM.

SORM will also realize savings from a reduction in calls to the agency's customer service line inquiring about checks. The Comptroller's Office will realize additional savings from a reduction in the number of checks that must be stopped because they were lost in the mail and related fraud investigations. These additional savings cannot be calculated for this report.

| <b>Fiscal Year</b> | <b>Savings to the General Revenue Fund</b> |
|--------------------|--------------------------------------------|
| 2008               | \$74,700                                   |
| 2009               | \$74,700                                   |
| 2010               | \$74,700                                   |
| 2011               | \$74,700                                   |
| 2012               | \$74,700                                   |

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<sup>1</sup> State Office of Risk Management, July 25, 2006.

<sup>2</sup> Texas Comptroller of Public Accounts, *Breaking the Mold*, vol. 2 (July 1991). Online. Available: [www.window.state.tx.us/tpr/btm/btm/btmtoc.html](http://www.window.state.tx.us/tpr/btm/btm/btmtoc.html). Accessed: August 8, 2006.

<sup>3</sup> Financial Management Service, U.S. Department of the Treasury, Electronic Funds Transfer, [www.fms.treas.gov/eft](http://www.fms.treas.gov/eft). Accessed: August 2, 2006.

<sup>4</sup> Employee Retirement System of Texas, July 25, 2006.



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

### **Summary**

#### **Key Recommendations**

- ◆ Require all state agencies to develop business continuity plans.
- ◆ Require SORM to consult with state agencies on business continuity plans by developing guidelines, model plans, and training.
- ◆ Require SORM to evaluate state agencies' business continuity plans and report results to the Legislature.

#### **Key Findings**

- ◆ Business continuity plans prepare agencies to resume essential business functions after an emergency or disaster.
- ◆ Several state agencies provide assistance in business continuity planning to other state agencies.
- ◆ Most state agencies are not prepared to quickly resume business functions after a disaster leaving state government at risk of serious disruptions.
- ◆ Other states require all state agencies to have comprehensive business continuity plans.

#### **Conclusion**

Business continuity plans help state agencies prepare to resume functions after a disruption in normal business operations. In recent years, Texas has experienced a series of natural disasters that highlight the need for this planning. Continuing the functions of each governmental agency following a disruption is an important part in assisting the recovery efforts of the state as a whole. As the State Office of Risk Management (SORM) and other state agencies have roles in planning for emergency management, Sunset staff examined the requirements and assistance given to all agencies to prepare for natural and man-made disasters.

Sunset staff found that while Texas' key emergency response agencies are well prepared, the majority of state agencies have not planned for the resumption of their business operations. In addition, staff noted that no single state agency is responsible for ensuring that all agencies plan for inevitable interruptions. Staff concluded that SORM is well positioned to assist other agencies in business continuity planning and that this effort is important in protecting the functions of State government.

## Support

### **Business continuity plans prepare agencies to resume essential business functions after an emergency or a disaster.**

- ◆ A business continuity plan is designed to provide a quick and smooth restoration of operations after a disruptive event.<sup>1</sup> This planning outlines the step by step coordination of essential functions needed after a disaster. These functions include restoring information technology capability, coordinating with public authorities, scheduling emergency workforce, management of media, continuing customer service delivery, and assessing financial and operational needs. Planning for other important but non-essential functions could include review of on-going funding needs, day-to-day organizational structure, delegation of authority, virtual office requirements, and possible long-term change within the organization.
- ◆ Business continuity planning is distinct from disaster recovery planning as disaster recovery plans focus on restoring data and communications network functions after an interruption in service delivery. While important, recovery of lost technology is of little use without the recovery of other critical business functions including manpower needs, and financial and operational support.
- ◆ The Governor's Office has recognized the need for business continuity planning. The Governor's Emergency Plan states that "state agencies need to develop and maintain procedures for identifying and recalling key personnel, deciding which mission functions must continue at what level of performance/output for relocating existing work areas including computer operations to pre-selected alternate work areas and/or dispersal sites."<sup>2</sup>

### **Several state agencies provide assistance in business continuity planning to other state agencies.**

- ◆ State law requires the State Office of Risk Management (SORM) to review, verify, monitor, and approve risk management programs adopted by state agencies. SORM's risk management services include providing information on business continuity planning. This information can be provided during on site agency risk management reviews or obtained from SORM's website. Also, business continuity planning is a regular topic at SORM's quarterly risk manager user group meetings.
- ◆ The Governor's Office of Homeland Security has convened an Emergency Management Council comprised of representatives of 32 key state agencies who support the State's emergency response in any crisis situation. The Governor's Office of Homeland Security requires these agencies to have business continuity plans in place and tested so they can continue to function if physically affected by emergency. These key agencies are provided support in business continuity planning through the Governor's Office of Homeland Security.



- ◆ The Department of Information Resources (DIR) provides coordination, advice, and contract assistance to state agencies for resumption of computer and network services following a disaster. These services include assisting in arranging third party vendor contracts for a computer center hot site to permit agencies to bring systems up quickly. Under a DIR rule, each state agency is responsible for maintaining an up-to-date business continuity plan and DIR has a comprehensive business continuity planning template on its website. However, DIR does not provide services directly related to critical business functions other than data and network recovery and does not follow up with agencies to check compliance. DIR does not view disaster recovery as its primary mission, particularly with small to medium sized agencies that do not have contracted relationships with DIR.
- ◆ The Legislature directed DIR to secure a third party vendor to provide a state data operations center in San Angelo, Texas. This center will house consolidated information technology operations for more than 20 key state agencies, and will also provide emergency disaster recovery data support. The project to establish this center is underway and DIR requires these 20 participating agencies to submit business continuity plans for review. These 20 agencies are included in the 32 state agencies that make up the Emergency Management Council.

**Most state agencies are not prepared to quickly resume business functions after a disaster, leaving state government at risk of serious disruptions.**

- ◆ Most state agencies do not have written business continuity plans and are not fully prepared to resume or maintain adequate service levels after a disaster or emergency. Only the 32 agencies represented on the Governor’s Emergency Management Council are required to have approved business continuity plans. Of the 200 state agencies and institutions not part of the Governor’s Emergency Management Council, only 16 have business continuity plans in place.<sup>3</sup>
- ◆ Due to the nature of government services, the State has a need to ensure the resumption of all state agency operations after a disaster. While all state agency functions may not be critical to resume immediately after a disaster, they are essential to resuming secondary services to the public. For example, the Texas Medical Board is the state agency responsible for the licensure of Texas physicians, but not part of the Governor’s Emergency Management Council. Hurricane Katrina prompted an influx of physicians from Louisiana wanting to practice in Texas and help with the emergency health care of transplanted Louisiana citizens. Because these physicians needed a Texas License to practice in Texas, the Medical Board had to arrange for them to receive temporary licenses. These temporary licenses allowed them to practice and provide voluntary medical care to evacuees while applying through the normal process for a permanent Texas license.



*Only 16 of the 200 state agencies not part of the Governor’s Emergency Management Council have business continuity plans.*



Had the Medical Board not been able to provide this licensing service, Texas’ hurricane response would have been further hampered.

- ◆ No single state agency is responsible for ensuring that all agencies develop business continuity plans. SORM’s risk management services include business continuity planning, but state agencies are not mandated to develop plans. DIR rules require business continuity planning, but the agency does not enforce compliance. The Governor’s Office of Homeland Security requires only the 32 agencies on the Emergency Management Council to complete business continuity plans.

**Other states require all state agencies to have comprehensive business continuity plans.**

- ◆ States similar to Texas in population and size of state government, such as California, Florida, Illinois, and New York, require business continuity planning for state agencies, as detailed in the table, *Other States’ Requirements for Business Continuity Plans*. California, Florida, and Illinois mandate this requirement to all agencies by law or executive order. New York’s State Emergency Management Office requires key agencies involved in emergency assistance to prepare business continuity plans. All four of these states have assigned oversight of this function to their emergency management organization including assistance in development of the plan and final review.
- ◆ Texas’ border states, Arkansas, Louisiana, and Oklahoma, mandate by law or executive order that all agencies prepare business continuity plans. New Mexico requires, by executive order, that agencies with emergency functions have business continuity plans. All four states use their emergency management organization for oversight including assistance in development of the plan and final review.

**Other States’ Requirements for Business Continuity Plans**

| State      | Authority                                                                           | Oversight Agency                                                         |
|------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Arkansas   | Mandated by law for all agencies                                                    | Department of Emergency Management                                       |
| California | Governor’s Executive Order for all agencies                                         | Governor’s Office of Emergency Services                                  |
| Florida    | Mandated by law for all agencies                                                    | Division of Emergency Management – Requires 48 hour plan and 10 day plan |
| Illinois   | Governor’s Executive Order for all agencies                                         | Emergency Management Agency                                              |
| Louisiana  | Governor’s Executive Order for all agencies                                         | Office of Emergency Management                                           |
| New Mexico | Governor’s Executive Order – for agencies with emergency functions                  | State Office of Emergency Management                                     |
| New York   | Required by State Emergency Management Office for agencies with emergency functions | State Emergency Management Office                                        |
| Oklahoma   | Mandated by law for all agencies                                                    | Department of Emergency Management                                       |

## 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

Recommendations 4.2 and 4.3 would result in an annual fiscal impact to the State of \$60,680, as SORM would need an additional employee to adequately perform the business continuity planning assistance to state agencies, and the evaluation efforts required. Based on past experience, these functions could be provided by a Risk Management Specialist III. With fringe benefits and travel costs, this additional employee will cost an additional \$60,680 per year. The agency should request this additional funding through the legislative appropriations process.

| <i>Fiscal Year</i> | <i>Cost to the General Revenue Fund</i> | <i>Change in FTEs From FY 2007</i> |
|--------------------|-----------------------------------------|------------------------------------|
| 2008               | \$60,680                                | +1                                 |
| 2009               | \$60,680                                | +1                                 |
| 2010               | \$60,680                                | +1                                 |
| 2011               | \$60,680                                | +1                                 |
| 2012               | \$60,680                                | +1                                 |

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<sup>1</sup> Texas Department of Information Resources, *Business Continuity Planning Guide* (December 2004), p. 1. Online. Available: <http://www.dir.state.tx.us/IRAPC/bcpg/bcpg.pdf>. Accessed: August 7, 2006.

<sup>2</sup> Office of the Governor, *Governor's Emergency Plan* (February 2004), p. 44. Online. Available: [ftp://ftp.txdps.state.tx.us/dem/plan\\_state/state\\_plan\\_20040211.pdf](ftp://ftp.txdps.state.tx.us/dem/plan_state/state_plan_20040211.pdf). Accessed: August 8, 2006.

<sup>3</sup> State Office of Risk Management, "Planning for Hurricanes", *RISK-TEX*, Volume IX, issue 3 (April, 2006), pp. 8-9 (newsletter). Online. Available: [www.sorm.state.tx.us/publications/risk\\_tex/06/April/risktexapril06.php](http://www.sorm.state.tx.us/publications/risk_tex/06/April/risktexapril06.php). Accessed: August 10, 2006.

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

### Summary

#### Key Recommendations

- ◆ Require SORM and TBPC to enter into a memorandum of understanding on exchange of safety related information.
- ◆ Add SORM to the current statutorily required memorandum of understanding between SFMO and TBPC regarding fire safety.

#### Key Findings

- ◆ SORM, SFMO, and TBPC each have a role in overseeing and protecting state buildings.
- ◆ SORM and TBPC do not communicate risk information to each other to avoid harm to state workers and property.
- ◆ SORM and SFMO fail to communicate fire safety information to each other on a regular basis that could prevent harm to state employees and property.
- ◆ The Legislature has solved such communication failures in the past by requiring agencies with similar goals to work together.

#### Conclusion

The Legislature has assigned three state agencies – the State Office of Risk Management (SORM), State Fire Marshal’s Office (SFMO), and the Texas Building and Procurement Commission (TBPC) – interrelated responsibilities for protecting state employees and assets. Sunset staff reviewed actions by each agency to communicate information about risks to employees and property. Despite the importance of their missions, the three agencies have not established clear lines of communications, leaving the State at increased risk of harm to people and property.

## Support

**The State Office of Risk Management, State Fire Marshal's Office, and the Texas Building and Procurement Commission each have a role in overseeing and protecting state buildings.**

- ◆ The Legislature assigned SORM responsibility for assisting client agencies to develop, implement, and monitor programs to protect state employees, visitors, and its physical assets. To do so, SORM provides workers' compensation coverage to state employees and assists client agencies in developing risk management programs. SORM also works with state agency personnel to review needs for property insurance and other liability coverage.
- ◆ State law requires the State Fire Marshal's Office (SFMO) to investigate incidents of fire in state and university buildings. SFMO also inspects state buildings and university facilities for fire hazards when requested by an agency or after receiving a complaint from the public about a facility. The SFMO publishes an annual report detailing its reviews and findings from any fires it investigated.
- ◆ The Texas Building and Procurement Commission (TBPC) is responsible for facilities maintenance at 45 state-owned buildings and 18 state-owned garages in addition to 1,023 leased facilities around the state. As a result, TBPC is responsible for cleanup and repair after fires in state buildings that it maintains. TBPC also maintains facilities, including changes necessary to reduce fire and safety risks. TBPC protects State interests by ensuring that building construction bid proposals include information on environmental regulations and contractor liability insurance needs.



*SORM is not completely aware of risk situations encountered by the Building and Procurement Commission during its normal activities.*

**SORM and The Texas Building and Procurement Commission do not communicate risk information to each other to avoid harm to state workers and property.**

- ◆ Any situation involving serious safety and health concerns for occupants of state owned or leased buildings should be reason for SORM and TBPC to communicate with each other. However, SORM is not fully effective in its risk management function because the agency is not completely aware of risk situations that TBPC encounters during its normal activities. As SORM's responsibilities include assisting client agencies to reduce and manage risk, ignorance of situations that could affect worker injuries or property and casualty losses could have a financial impact on the State.

For example, in 2005, Texas Education Agency employees complained to SORM about poor lighting in a state garage that created a security and safety hazard. The employees had first complained to TBPC, with no results. TBPC had lowered lighting levels in several garages to reduce electricity costs as the agency exceeded its utility budget by 18 percent. When SORM

requested the lighting level be restored due to security and safety concerns, TBPC refused. SORM staff took light readings in the garage and compared them with recommended lighting standards for security and safety. When presented with the results showing the lighting to be substandard, TBPC restored the lighting to the original level.

Had TBPC routinely informed SORM of issues or concerns it receives relating to safety and health concerns of building occupants, this situation may have been avoided. Were a serious security or safety incident to occur in the garage during the time of substandard lighting, an employee could have been injured and the State may have been liable.

- ◆ SORM received complaints about air quality from state agencies housed in a leased building in Corpus Christi. Due to past flooding in the building, air quality was seriously affected. After efforts by the agencies to get results from the building's owner were unsuccessful, SORM suggested and worked with the agencies to relocate to another state leased building in the city. SORM was not notified by TBPC about this issue prior to being contacted by the affected agencies or during the investigation process. The Legislature addressed the air quality issue by requiring TBPC to report to State Health Services and SORM on any air quality and asbestos abatement issues it receives and has tested. SORM has not received any air quality reports required by this legislation.

**SORM and the State Fire Marshal's Office fail to communicate fire safety information to each other on a regular basis that could prevent harm to state employees and property.**

- ◆ Several times per year SORM uncovers minor fire hazards during a review of a state agency or university. While SORM includes the hazard in its write-up, the agency does not copy SFMO on the review for possible follow up. If a serious hazard is found, the risk specialist will notify a counterpart at SFMO by telephone. SFMO should be notified of any fire hazards uncovered as they may indicate a pattern of management inattention and be reason for an unscheduled SFMO review.
- ◆ The State Fire Marshal's Office does not regularly share its findings with SORM possibly delaying or even causing duplication of an investigation into the same risks at an agency. For example, several times in the past year, SORM risk specialists have uncovered a safety hazard and were told by the agency being reviewed that SFMO had already discovered the hazard and the agency is in the process of correcting the issue.

If SORM were copied on SFMO inspections of state and university buildings where safety findings occurred, SORM could follow up during its visit to ensure that the hazard was indeed being corrected. The SFMO's annual report on fire incidents from the previous year does not provide this hazard information in a timely fashion.



*SORM and the State Fire Marshal's Office do not regularly share information on fire safety problems with each other.*

**The Legislature has solved such communications failures in the past by requiring agencies with similar goals to work together.**

- ◆ Since 1995, the Legislature has required the State Fire Marshal's Office and Texas Building and Procurement Commission to adopt a memorandum of understanding that coordinates the agencies' duties related to fire hazards in state buildings.<sup>1</sup>
- ◆ The Legislature, in 2005, required state agencies that conduct higher education and financial aid outreach activities to establish a memorandum of understanding with Texas Guaranteed Student Loan Corporation (TG), ensuring that TG and the state agencies coordinate their activities to maximize resources and avoid duplication of effort.

## **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 copied 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.

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<sup>1</sup> Texas Government Code, sec. 417.0082.

## *Texas Has a Continuing Need for the State Office of Risk Management.*

### **Summary**

#### **Key Recommendation**

- ◆ Continue the State Office of Risk Management for 12 years.

#### **Key Findings**

- ◆ Texas has a continuing need for a centralized state agency insurance provider.
- ◆ SORM effectively accomplishes its mission.
- ◆ A review of SORM and other related agencies did not reveal any significant beneficial alternatives for consolidation or transfer of functions.
- ◆ While organizational structures vary, most states have established a state agency to provide workers' compensation services for state government.

#### **Conclusion**

The Legislature recognized the need for a single state agency to provide workers' compensation and risk management functions for other state agencies when it created the State Office of Risk Management (SORM) in 1997. Since its creation, the Legislature has added the responsibility of overseeing the purchasing of other types of insurance to the agency. Providing these insurance services is important in protecting the State's human and physical assets.

The Sunset staff review evaluated the continuing need for an independent agency to manage the insurance needs of other state agencies. The review found that SORM has effectively discharged these responsibilities and has made efforts toward reducing the cost of the programs for the State. A study of other agencies with similar functions did not disclose any significant benefit of transferring SORM's responsibilities.

## Support

### **The State Office of Risk Management functions as a workers' compensation insurance provider for Texas government.**



*The State funds its workers' compensation insurance costs on a pay-as-you-go basis – \$57 million in fiscal year 2006.*

- ◆ The Legislature created SORM in 1997 to administer state employee workers' compensation benefits and provide risk management services to state agencies. In 2001, the Legislature added insurance purchasing for other state agencies to SORM's functions. The agency's total revenue amounted to \$64.7 million in fiscal year 2006, and the agency has 124 employees, all based in Austin. The Office of Attorney General (OAG) performs administrative functions, including human resources and payroll processing for SORM on an administrative attachment basis established in state law.
- ◆ SORM's largest function, the provision of workers' compensation benefits, is operated as a pay-as-you-go system. In this system, the Legislature appropriates funds to each state agency to pay for projected workers' compensation costs. SORM assesses each agency for the projected costs and uses the funds to pay employee claims, medical costs, and administration of the system. In fiscal year 2006, SORM's state agency assessments totaled \$57 million. SORM also receives \$3.6 million from the General Revenue Fund for medical cost containment services.

SORM provides risk management and insurance purchasing services to other state agencies on an interagency contract basis. In fiscal year 2006, SORM's state agency interagency contracts totaled \$4.4 million.

- ◆ While SORM provides workers' compensation insurance for most state employees, several state agencies are exempt from SORM's coverage. These agencies – the Texas Department of Transportation, University of Texas System, and Texas A&M University System – were operating workers' compensation and risk management systems at the time of SORM's creation. The exempt agencies are each self-insured for workers' compensation and process employee claims in much the same fashion as SORM. SORM also provides workers' compensation insurance to Texas Tech University, although the University is exempt for risk management services.

### **Texas has a continuing need for a centralized workers' compensation insurance provider.**

- ◆ While the State has a number of options in providing workers' compensation benefits to employees, lawmakers created a system in which the State is essentially self-insured with a single state agency providing the administration of claims for most other state agencies.
- ◆ This system is more efficient than allowing each agency to administer its own program. By grouping all state employees into a single risk pool, SORM is able to balance risks in a way that would be not possible for individual state agencies, achieving predictability and stability in costs. In addition,

SORM is able to spot trends that may affect more than a single agency. For example, the agency has been able to find instances of medical providers billing for procedures that were not performed or were not appropriate for the employee's injury. SORM can more readily detect these instances of fraud through the experience that derives from handling a large volume of claims.

- ◆ The workers' compensation system operated by SORM is more cost-effective than the State could achieve by contracting with a private insurance carrier. As discussed previously, unlike insurance carriers, Texas operates a pay-as-you-go system. Insurance carriers set aside the estimated amount of a claim into the future, in essence pre-funding the claim. As Texas has many years of workers' compensation claims, a private insurance carrier would require pre-funding of active past claims before accepting a contract for future claims. Since the State's current system does not maintain a fund and pays for accrued liabilities with current appropriations, the State would need significant funding to pay for these potential liabilities if transferring the program to the private sector.

This funding problem would also apply were the State to contract with the State-chartered insurance fund, the Texas Mutual Insurance Company. The Legislature first chartered and funded Texas Mutual as the Texas Workers' Compensation Insurance Fund in 1991 to ensure the availability and affordability of workers' compensation coverage. In 2001, the company repaid the original State bonds and the Legislature redesigned the company's charter and changed its name. As done in several other states, the State could contract with Texas Mutual for workers' compensation coverage. However, as with contracting with any other private carrier, the State would need significant funding to pay for existing potential liabilities if transferring the program.

- ◆ SORM also functions as a centralized risk manager for the State, identifying, analyzing, and controlling risks to lower costs of workers' compensation and other insurance. While larger state agencies could create their own risk management departments, the advantage of the centralized approach is that SORM can provide experienced services to all agencies.
- ◆ In addition to workers' compensation coverage and risk management, SORM works with state agencies to coordinate coverage on other types of insurance, including property, liability for directors and officers, employment practices, special events, and volunteers. SORM actions as an insurance consultant to state agencies allows the State to reap economies of scale that are not available to individual agencies.

### **SORM effectively accomplishes its mission.**

- ◆ SORM shows its effectiveness through savings in workers' compensation costs. For example, from fiscal year 2004 to 2005, the average cost of workers' compensation per state employee declined from \$358 to \$348, a



*The State would need significant initial funding to privatize the workers' compensation program.*

total savings of \$2.1 million.<sup>1</sup> While other factors could have been the cause of these savings, SORM attributes these reductions to its aggressive strategies for risk management, state agency assessments, and cost containment.

- ◆ SORM's effectiveness as a risk manager contributes directly to its ability to control workers' compensation costs. SORM completes about 32 risk management program reviews of state agencies each year giving agencies assistance in correcting situations that could cause injury or in analyzing insurance needs. SORM also conducts training classes and seminars for agency claim coordinators and risk managers to teach the basics of claim filing and managing risk. These seminars cover topics such as disaster planning and recovery, computer security risks, employer practices liability, and driver education and fleet maintenance.

These risk management efforts have contributed to a safer environment for state workers. The incident rate of injuries and illnesses for covered full-time state employees dropped from 4.75 percent in fiscal year 2002 to 4.21 percent in fiscal year 2005.<sup>2</sup> In comparison, the national average rate for 2004, the most recent year available, is 4.8 percent, although this statistic includes all occupations, not just governmental workers.<sup>3</sup>



*SORM has documented more than \$500,000 in premium savings through its insurance purchasing program.*

- ◆ SORM is also effective in its insurance purchasing function. Of the agency's five lines of insurance coverage, property coverage is the most widely used. Property coverage protects an agency's assets and casualty coverage protects the agency from liability. With high profile legal cases on the rise in the past few years, director's and officer's insurance has sharply increased in demand and, as a result, price. The agency achieved its largest cost savings in automobile coverage through its efforts to leverage the buying power of the State. SORM's documented savings for client agencies in the insurance purchasing program has totaled more than \$500,000 in premiums.<sup>4</sup>

**A review of SORM and other related agencies did not reveal any significant beneficial alternatives for consolidation or transfer of functions.**

- ◆ Although other agencies have employee benefit functions, SORM's current structure is the most appropriate way to provide insurance services for state agencies. Sunset staff examined organizational options for workers' compensation, risk management, and insurance purchasing. While other agencies could perform these functions, Sunset staff did not find sufficient benefit to the State to warrant merger or transfer, as discussed below.
- ◆ The Employees Retirement System (ERS) delivers state employee health benefits. As the primary health benefits provider for state employees, ERS has considerable experience in oversight of benefit programs and medical networks.

However, a consolidation of SORM's workers' compensation program with ERS' health benefit services would present challenges in accounting for differing funding mechanisms. ERS is funded directly from the General Revenue Fund for state employee health benefits, while SORM receives workers' compensation funding from individual agencies in the form of assessments. SORM's assessment formula takes into account each state agency's payroll and workers' compensation history. Combining these funding formulas would prove difficult to achieve.

Consolidating SORM's workers' compensation program with ERS' health benefit program may not present a great savings as ERS would need greater expertise in workers' compensation and risk management. A major challenge for workers' compensation programs is the determination of compensability. This determination, which often must be made before providing services, is significantly different from the challenges faced in provision of ERS' health care benefits. While ERS could be restructured to operate SORM's functions, the program would likely be performed by a completely separate division resulting in little advantage to the State. In addition, a consolidation may dilute ERS' attention to its core mission, the provision of retirement.

- ◆ The Texas Department of Insurance (TDI) has great knowledge of workers' compensation in its Division of Workers' Compensation (DWC) and knowledge of other insurance programs through its other divisions. In fact, the Legislature created SORM through a consolidation of state risk management functions at DWC's predecessor agency, the Texas Workers' Compensation Commission (TWCC), and workers' compensation insurance at OAG. However, a consolidation of SORM's functions at TDI would present a conflict of interest as the agency has oversight authority over workers' compensation carriers including SORM. Even at the time of SORM's creation, TWCC did not provide state agency workers' compensation because of the inherent conflict of an oversight agency providing functions that it regulates. In addition, creating the administrative structure needed by TDI to operate the State's workers' compensation program would not result in significant savings from a transfer.
- ◆ The Texas Department of Transportation, University of Texas System, and Texas A&M University System each operate its own worker' compensation program. As each agency has experience in the provision of state employee's workers' compensation and operates a system for processing employee claims, these agencies have some of the experience needed to provide SORM's functions. However, each exempt agency's workers' compensation program is much smaller than SORM's program. Assigning responsibility for the workers' compensation needs of the 171,000 state employees served by SORM to one of these agencies would weaken the agency's core mission. Such a consolidation would also not represent a significant cost savings or benefit to the State.



*TDI has  
regulatory  
authority over  
SORM's functions  
preventing a  
consolidation of  
SORM into TDI.*

**While organizational structures vary, most states have established a state agency to provide workers' compensation services for state government.**

- ◆ A Sunset staff survey of all 50 states found that 38 states, or 76 percent, have created a state agency to provide workers' compensation coverage for state employees. In most states this structure covers most or all state employees, although many states permit universities and other large state agencies to provide their own coverage. Like Texas, 38 states have chosen to provide state employee coverage in an agency other than the primary workers' compensation regulatory agency.
- ◆ States that have chosen to not provide state employee workers' compensation coverage through a state agency contract with either a third-party administrator (TPA), or a State created fund. No state has fully privatized its workers' compensation. States such as Tennessee, Iowa, and Kentucky that have contracted with a third-party administrator use a state agency to administer the contract. In this structure, the State retains all the risks while the TPA merely manages the claims and pays injured workers and medical providers.

Idaho, Maryland, and Oklahoma have chosen to provide state employee workers' compensation through a state-created fund. In this model, the State provides funding support to a quasi-governmental body to provide competitive workers' compensation coverage and serve as the insurer of last resort. For state employee coverage, the State pays a fair-market premium for coverage and the fund acts essentially as a private carrier.



*No state has fully privatized its workers' compensation function.*

## **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.

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<sup>1</sup> State Office of Risk Management, *Self Evaluation Report*, (Austin, Texas, August 2005), p. 9, and State Office of Risk Management, *Self Evaluation Report Corrected Supplement*, (Austin, Texas, May 2006), p. 2.

<sup>2</sup> State Office of Risk Management, *Agency Strategic Plan for the 2007-2011 Period*, (Austin, Texas, July 2005), p. 9, and State Office of Risk Management, *Self Evaluation Report Corrected Supplement*, (Austin, Texas, May 2006), p. 2.

<sup>3</sup> Texas Department of Insurance, *Nonfatal Injury Rate Data*, (Austin, Texas, 2006). Online. Available: <http://www.tdi.state.tx.us/wc/sis/newpages01/nonfatalhomepag.html>. Accessed: June 17, 2006.

<sup>4</sup> State Office of Risk Management, *Self Evaluation Report*, p.28.



**ACROSS-THE-BOARD RECOMMENDATIONS**





**State Office of Risk Management**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
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.



# **Agency Information**



# 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.
- ◆ **Risk Management.** SORM performs consulting work for state agencies to identify and control workplace risks.
- ◆ **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.



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*SORM administers Texas' self-insured workers' compensation program, covering 172,000 state employees with an annual claims cost of \$54 million.*

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### Quick Facts About SORM

Work-related injuries and illnesses per 100 full-time Texas state employees in 2004	4.13 percent
National average work-related injuries and illnesses per 100 full-time employees in 2004	5.04 percent
Average cost of workers' compensation per covered Texas state employee in 2005	\$348
Total number of employees covered by SORM workers' compensation insurance, fiscal year 2005	170,501
Total Texas state employee workers' compensation claims costs in fiscal year 2005	\$54 million
Total Texas state employee workers' compensation claims costs in fiscal year 2004	\$54.7 million
Number of workers' compensation medical bills processed in fiscal year 2005	179,181

## Major Events in Agency History



*The Legislature created SORM in 1997 by combining divisions of two state agencies.*

- 1997 The Legislature created the State Office of Risk Management by combining the risk management division of the Texas Workers' Compensation Commission and the workers' compensation division of the Attorney General. The Legislature exempted state agencies with pre-existing workers' compensation programs from SORM's programs, including the Department of Transportation, and the University of Texas and Texas A&M systems.
- 2001 The Legislature created a cost-allocation program to pay workers' compensation costs by requiring state agencies to pay assessments based on claims costs and other variables. The Legislature also required state agencies to purchase all non-health and life insurance through SORM's Insurance Purchasing Program.
- 2003 The Legislature expanded SORM's coverage to community supervision and corrections departments and to members of Texas Task Force 1, a Federal Emergency Management Agency emergency responder team serving Texas.
- 2005 The Legislature restructured workers' compensation insurance and approved the use of health-care networks for workers' compensation medical care.

## Organization

### Policy Body

The five-member Risk Management Board oversees the State Office of Risk Management. The Governor appoints members to serve six-year terms and selects the presiding officer, who serves a two-year term. Members of the Board must have demonstrated experience in insurance, workers'

compensation, and risk management. The chart, *Risk Management Board*, provides information about each member.

The Board is responsible for adopting rules governing how state agencies must report work-related accidents and illnesses, and recommending ways to reduce state agency exposure to property and liability losses. The Board meets quarterly.

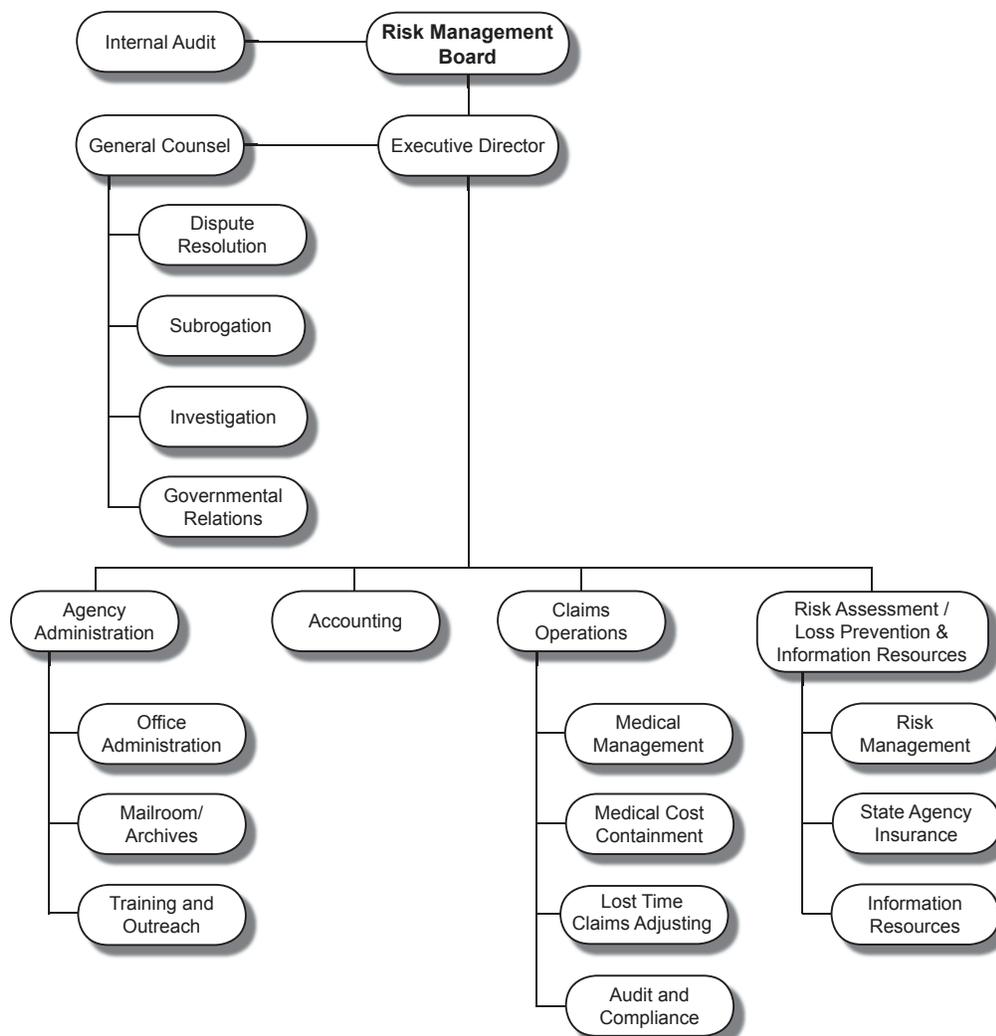
**Risk Management Board**

Member Name	City	Term Expires
Ernest C. Garcia, J.D., Chair	Austin	2009
Ron J. Walenta, Vice Chair	Dallas	2011
Dr. Ronald D. Beals	Tyler	2007
Kenneth N. Mitchell	El Paso	2009
Martha A. Rider	Houston	2007

**Staff**

The Board appoints an Executive Director to administer the daily operations of the agency and coordinate the activities of agency staff. The *State Office of Risk Management Organizational Chart* depicts the agency's structure. SORM's 124 full-time equivalent employees are located at the headquarters in Austin.

**State Office of Risk Management  
Organizational Chart**

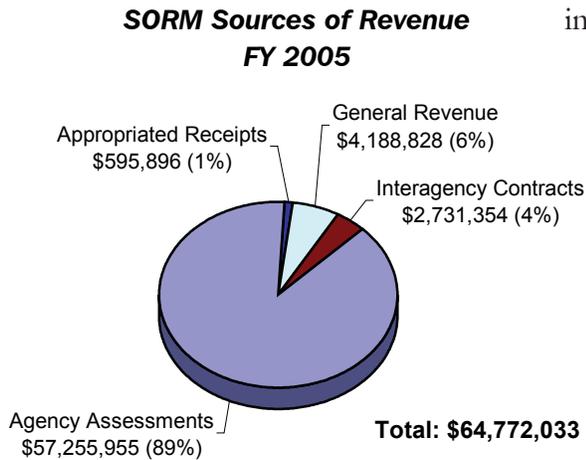


Appendix A compares the agency's workforce to the civilian labor force for the past three years. SORM generally meets or exceeds the minority workforce percentages in the private sector.

## Funding

### Revenues

SORM received \$64.7 million in revenue for fiscal year 2005, as shown in the pie chart, *SORM Sources of Revenue*. Assessments on state agencies for workers' compensation expenses accounted for \$57.2 million or 89 percent of the agency's total revenue. Included within this amount is \$7.8 million that the agency carried forward from fiscal year 2004. More information on agency assessments can be found in the textbox, *SORM Workers' Compensation Assessments*.



Other sources of revenue include interagency contracts, direct general revenue appropriations, and appropriated receipts. Interagency contracts amounting to \$2.7 million pay for risk management services that SORM provides to state agencies. SORM's \$4.2 million of general revenue funds pays for workers' compensation cost containment strategies. The agency received \$595,000 in appropriated receipts that are derived from subrogated settlements with other insurance carriers.

### **SORM Workers' Compensation Assessments**

In fiscal year 2005, SORM paid \$54 million in workers' compensation claims for medical services and indemnity benefits. These claims expenditures represented a 25 percent decline from \$70 million in fiscal year 2003. SORM attributes this reduction in workers' compensation claims to improved claim handling and fewer injuries due to the state agency assessments in the Risk/Reward program. As each agency's actual claim expenditures influence its annual workers' compensation assessment, agencies have an incentive to provide safe workplaces.

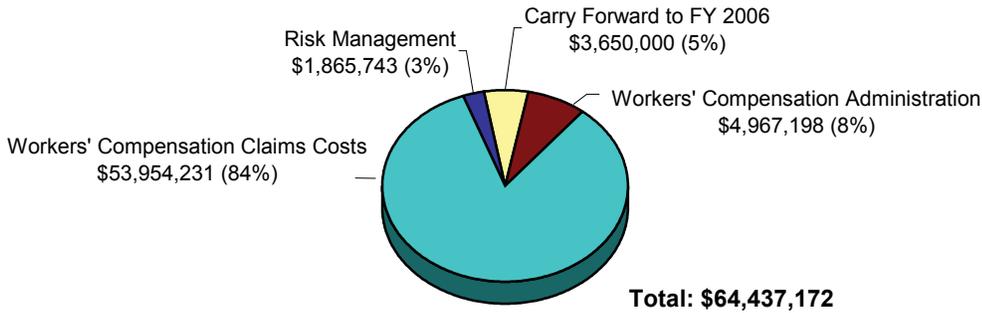
Agency assessments are based on a formula required by state law and set in SORM rule. The formula provides that 12.5 percent of the assessment is determined by an agency's annual payroll; 12.5 percent is based on the agency's number of employees; 60 percent is based on actual workers' compensation claim costs; and 15 percent is based on the number of injury claims.

### Expenditures

In fiscal year 2005, SORM spent \$64.4 million on its two strategies, workers' compensation and risk management. The pie chart, *SORM Expenditures by Strategy*, details the agency's expenditures in fiscal year 2005.

The agency spent \$59 million, or 91 percent of its total expenditures, on workers' compensation payments and expenses. In addition, the agency

**SORM Expenditures by Strategy  
FY 2005**



carried forward \$3.6 million, or 6 percent of its total spending, in agency workers' compensation assessments into fiscal year 2006. SORM uses these carry forward funds to reduce state agency assessments in future years. SORM's risk management strategy accounted for 3 percent of the annual expense at \$1.8 million.

Appendix B describes SORM's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2002 to 2005. SORM failed to meet the goal in purchasing of professional services in each of the years. The agency exceeded the goals for other services in three of the last four years and exceeded the goals for commodities in each of the years.

## Agency Operations

SORM provides three primary services to other state agencies: workers' compensation coverage; risk management consultations; and property, casualty and liability insurance purchasing. These functions are described in the material below.

### Workers' Compensation

#### Claims Processing

SORM processes workers' compensation claims for all state agencies except three statutorily exempt agencies: Texas Department of Transportation (TxDOT), University of Texas System, and Texas A&M University System.

State law provides that employees injured in the course and scope of employment are eligible to receive benefits for reasonable and necessary medical care and reimbursement for lost-time. In most cases, injured workers are entitled to receive medical treatments for work-related injuries or illnesses, without any specific time or cost limits. The textbox, *Exceptions to Workers' Compensation Coverage*, provides more information on the circumstances that limit the ability for workers to receive benefits.

#### **Exceptions to Workers' Compensation Coverage**

Workers injured in the course and scope of employment are entitled to workers' compensation benefits except if the injury occurred:

- ◆ while the worker was intoxicated,
- ◆ due to intentional self-abuse,
- ◆ because the worker was trying to harm someone else,
- ◆ during a voluntary off-work activity,
- ◆ due to an act of God, or
- ◆ because of horseplay.

### Claims Management System

SORM's automated CMS system intakes claims, assigns adjusters, maintains records, creates electronic edits, and tracks all payments. CMS also interfaces with vendors, the Department of Insurance, and the State Comptroller for the processing of state warrants.

Each state agency designates a claims coordinator who provides information about workers' compensation to injured employees and reports claims to SORM. SORM provides claims coordinators with training on handling claims and access to SORM's Claims Management System (CMS). The textbox, *Claims Management System* has more detail on SORM's primary system for receiving and processing claims.

SORM devotes a staff of 36 adjusters who manage all workers' compensation claims, assess compensability, and authorize medical services and wage replacement (indemnity) benefits. Indemnity benefits are payable to injured workers as five types of awards as described in the table, *Indemnity Benefits and Caseloads*.

### Indemnity Benefits and Caseloads

Benefit	Description	SORM's Average Total Caseload
Temporary Income Benefits (TIBs)	Injured employees unable to work are eligible to receive TIBs after the seventh day of lost time for a maximum 104 weeks.	431
Impairment Income Benefits (IIBs)	Workers become eligible for IIBs 104 weeks after the injury, or when the worker has a permanent injury and reaches maximum medical improvement. IIBs are paid based on a rating of the employee's disability in proportion to the entire body as assigned by a physician. For each percent of impairment, the employee receives three weeks of IIBs. For example, employees with an impairment rating of 5 percent receive 15 weeks of IIBs.	207
Supplemental Income Benefit (SIBs)	Injured workers actively seeking re-employment or participating in a vocational rehabilitation program may receive SIBs on a monthly basis if they have an impairment rating greater than 15 percent and are not earning at least 80 percent of pre-injury wages because of the injury.	84
Lifetime Income Benefits (LIBs)	Injured workers with severe and permanent impairments resulting from a work-related injury may receive LIBs.	10
Death Income Benefits (DIBs)	Beneficiaries of workers who succumb to fatal injuries may receive DIBs.	52



*In FY 2005  
SORM processed  
180,000 medical  
bills and 53,000  
indemnity  
payments.*

SORM makes about 1,000 indemnity payments each week. Adjusters determine the amount of indemnity payments based on each injured worker's average salary for 13 weeks before injury. State agencies are responsible for accurately reporting salary information to SORM. In fiscal year 2005 SORM processed 180,000 medical bills and 53,000 indemnity payments. While a substantial decrease in the number of claims administered from the previous year has increased SORM's average cost of processing each claim, the overall cost of claims has decreased. Greater detail on SORM's claims administration

performance is available in the table, *Medical, Indemnity, and Claims Administration Costs*.

To provide additional oversight for benefit payments and to bring closure to long-standing claims, SORM's medical management unit reviews the necessity of medical treatment for cases. The unit uses a third party reviewer – such as a private investigator, nurse case manager, or independent medical professional – in difficult cases.

SORM uses a case manager to facilitate communication between all involved parties, including the injured worker, the employer, providers, and SORM. The goal of case management is to avoid unnecessary costs by helping the injured worker access quality health care in a cost-effective manner and return to work sooner. SORM has one internal nurse case manager that becomes involved with claims in which more than six weeks of work is missed. The internal case manager talks with the injured worker, treating doctor, and employer and helps the adjuster develop an appropriate claims handling strategy. SORM's internal case manager also provides case management for all catastrophic claims until the claim stabilizes and can be turned over to an external case manager.

SORM contracts out field case management performed by certified case managers, registered nurses, or licensed vocational nurses. In addition to meeting with injured workers, case managers consult with doctors about treatment plans, and may visit employers to assess the physical challenges that work may present to the injured worker.

**Cost Containment**

SORM seeks to contain workers' compensation medical benefits through audits of medical bills. SORM checks each of the 2,000 to 3,000 health-care bills it receives each week to see that appropriate documentation is attached. If no documentation is attached, SORM requests more information from the provider. All health-care bills are then sent SORM's contracted cost containment vendors for auditing. The CorVel Corporation audits physician and hospital bills, while Forté, Inc. audits pharmacy bills and processes requests for preauthorization.

The vendors review bills to ensure that treatment is reasonable, necessary, and related to the compensable injury, and to detect duplicate bills and billing errors. The vendors also adjust bills for payment in accordance to the Department of Workers' Compensation's schedule of maximum allowable fees and submit payment recommendations to SORM. The agency then examines bills to ensure that the vendor processed the bill correctly and to identify bills that need additional review. In fiscal year 2005, health-care providers billed SORM \$108 million for medical services, but medical bill audits reduced these costs by \$76 million.

**Medical, Indemnity, and Claims Administration Costs  
FYs 2004 and 2005**

	FY 2004		FY 2005	
	Target	Actual Performance	Target	Actual Performance
Medical Bills Processed	198,400	209,132	200,000	179,181
Indemnity Bills Paid	69,000	56,877	69,000	53,268
Average Claim Administration Cost	\$335	\$383	\$335	\$410



*SORM audits each medical bill to detect billing errors and ensure the bill is for an on-the-job injury.*

### Preauthorization and Concurrent Review

State law and DWC rules require preauthorization and concurrent review by workers' compensation carriers for specific treatments.<sup>1</sup> Preauthorization allows carriers to avoid costs related to unnecessary or unreasonable care. SORM does not pay the cost of these medical services unless preauthorization was requested and granted. SORM contracts with Forté to determine the medical necessity of services needing preauthorization. In fiscal year 2005, Forté processed 4,425 preauthorization requests.

Forté also processes concurrent reviews for SORM. Concurrent reviews determine the medical necessity of extending ongoing treatments that were previously preauthorized.

### Pharmacy Benefit Manager

Forté contracts with a pharmacy benefit manager, ScripNet, which has a network of participating pharmacies through which SORM can receive discounts on prescription drugs purchased by injured workers. ScripNet sends each SORM claimant a prescription card in the mail. Injured workers are encouraged, but not required, to get prescriptions filled at pharmacies that participate in ScripNet's network. SORM pays about 10 percent less than DWC fee guidelines for prescriptions filled at participating pharmacies. In fiscal year 2005, SORM received \$320,961 in discounts through its pharmacy benefit manager.

### Preferred Provider Organization

A preferred provider organization (PPO) is a network of doctors that have agreed to treat injured workers at negotiated rates. CorVel, SORM's primary

cost containment vendor, also operates SORM's PPO. The current PPO is different than networks authorized by the Legislature in 2005 in House Bill 7. For more information on networks, see the textbox *Workers' Compensation Healthcare Networks*. SORM does not steer injured workers to providers in its PPO, but when a claimant sees a participating provider, SORM pays for services at pre-determined rates below DWC fee guidelines. In fiscal year 2005, SORM's PPO generated \$387,821 in savings.

#### ***Workers' Compensation Healthcare Networks***

House Bill 7, passed in 2005, calls for the creation of health-care networks to provide health-care services to injured workers. Workers' compensation networks, similar to managed care networks in health insurance, seek to reduce costs by negotiating payments with providers in advance, reducing inappropriate health care costs, improving outcomes, and minimizing disputes.

Workers' compensation carriers may establish unique networks or contract with existing ones. All networks must be certified by TDI. If an employer chooses a workers' compensation plan that includes a network, employees who live within the service area must receive non-emergency health care from in-network providers. Injured employees are free to choose treating physicians from the doctors in the network.

SORM is moving towards establishing a network and will release a request for proposals for network providers as soon as the agency finds that TDI has certified a sufficient number of networks to allow for adequate bid competition. SORM believes the savings from implementing this network will come from improved return to work initiatives, a greater reduction in claims, and overall cost containment.

### Required Medical Exams and Peer Reviews

The Texas Workers' Compensation Act grants carriers the ability to use medical examinations of the injured worker by an independent physician to resolve questions about the appropriateness of treatments.<sup>2</sup> These required medical exams (RMEs) verify that ongoing and proposed care is reasonable, necessary, and related to the compensable injury. SORM first asks the injured worker to voluntarily submit to an independent examination. If the injured worker refuses, SORM can request DWC to compel the injured worker to attend an RME with a physician selected by SORM. SORM also uses peer reviews to verify whether medical services or prescription drugs are an appropriate course of treatment given an injured worker's diagnoses. These peer reviews involve a medical professional conducting a paper review of medical files. In addition to helping SORM avoid costs of unnecessary and unreasonable care, RMEs and peer reviews help SORM defend determinations in the dispute resolution process.

### Impairment Rating Reviews

Statute grants both carriers and injured workers the ability to dispute the impairment rating on which an injured worker's impairment income benefits are based. Impairment ratings are reviewed by adjusters and SORM's nurse case manager. SORM may request an independent DWC-designated doctor to review an impairment rating. Reviewing ratings helps to ensure the accuracy of impairment ratings, and reduce the cost of indemnity benefits if initial impairment ratings are too high.

### Fraud Investigations

SORM has two staff members that investigate allegations of claimant and provider fraud. To investigate potential claimant fraud, SORM investigators interview involved parties, conduct surveillance, check wage records with the Texas Workforce Commission, and check for previous personal injury claims. If investigators find evidence that a claimant knowingly and intentionally lied to receive benefits they refer the case to the Texas Department of Insurance's (TDI) insurance fraud unit. The insurance fraud unit reviews the case to determine if it should be referred to a district attorney for prosecution, pursued as an administrative violation, or dropped. SORM can recover money through court-ordered restitution.

Cases of provider fraud are more difficult and time-consuming than claimant fraud. SORM cannot conduct full provider fraud investigations on its own, so SORM investigators team up with investigators from larger, private carriers to investigate providers.

In fiscal year 2005, SORM opened about 80 fraud cases and referred 10 claimant and two provider fraud cases to TDI's insurance fraud unit. The alleged fraud amount totaled \$18,244. Four cases resulted in penalties: one claimant was ordered to pay \$5,900 in restitution, one claimant was put on probation and ordered to pay \$4,100 in restitution, and one provider was removed from the approved doctor list. SORM also estimates costs that are avoided when ongoing fraudulent activities are detected and stopped.



*SORM's two  
investigators look  
into allegations  
of claimant or  
provider fraud.*

While avoided costs cannot be precisely calculated, SORM estimates that \$113,000 in potential costs were avoided in fiscal year 2005 as a result of fraud investigations.

**Subrogation**

In claims where a state employee’s injury is caused by a third party, SORM may be able to recover expenses for medical and indemnity benefits through subrogation.<sup>3</sup> For example, SORM may pursue subrogation proceedings to recover workers’ compensation costs from the insurance companies of drivers who injure state employees in automobile accidents. When processing claims, adjusters question injured workers and claims coordinators to determine the potential for subrogation. SORM’s subrogation specialist pursues cases directly and refers cases to the Attorney General’s Office when litigation is necessary. SORM’s subrogation specialist also reviews any possible malpractice incidents.

If an injured worker is awarded damages from a third party, SORM can use that award to reimburse previous medical and indemnity benefits. If the award exceeds reimbursable expenses, the excess is treated as an advance against future benefits. SORM resumes benefit payments if and when the cost of ongoing benefits exceeds the advance. In fiscal year 2005, SORM recovered \$596,000 through subrogation and the majority of cases involved auto accidents.

**Dispute Resolution**

Although the majority of workers’ compensation benefits are paid without problems, disputes do occur regarding indemnity and medical benefits. When issues arise in a claim, injured workers, providers, and SORM follow the dispute resolution process in workers’ compensation law, which provides separate processes for indemnity benefits, medical fees, and medical necessity disputes.<sup>4</sup>

Indemnity Benefit Dispute Resolution

Disputes over indemnity benefits commonly involve questions about whether an injury is work-related, the extent of an injury and the amount of benefits due. In fiscal year 2005, injured workers filed about 1,300 disputes with DWC concerning indemnity benefits at SORM. The textbox, *SORM Indemnity Disputes*, gives more information about the number of disputes regarding indemnity benefits at each stage of the resolution process.

SORM tries first to resolve issues by talking informally with the injured worker. Injured workers not satisfied with informal discussions may file a dispute with DWC, which follows a resolution process set out in the Labor Code. The process includes several informal and formal steps including opportunities for appeal.



*SORM seeks to recover workers’ compensation costs from insurance companies of drivers who injure state employees.*

<b>SORM Indemnity Disputes FY 2005</b>	
Indemnity disputes filed with DWC .....	1,331
Indemnity disputes that resulted in a benefit review conference .....	578
Indemnity disputes that resulted in a contested case hearing .....	211
Appeals Panel decisions on indemnity disputes .....	120
Indemnity disputes appealed to district court .....	45

### Medical Fee Dispute Resolution

Medical providers who disagree with SORM's denial of payment or reduction in reimbursement for health care treatments that have already been performed may initiate medical fee disputes. A provider first must request reconsideration of the medical bill audit by CorVel. If the provider is dissatisfied with the re-audit, SORM will attempt to resolve the dispute through informal discussions with the provider. The provider can file a dispute with DWC. DWC collects supporting documentation from SORM and the provider, and has a medical dispute resolution officer review the documentation and issue a decision. Either party can appeal the decision to District Court.

In fiscal year 2005, SORM processed 179,000 medical bills. Providers made 21,100 requests for reconsideration, and filed 361 medical fee disputes with DWC. DWC returned decisions for 106 disputes, with 43 percent decided in SORM's favor.

### Medical Necessity Dispute Resolution

Medical necessity disputes include disputes about both prospective and retrospective reviews of the need for specific medical treatments. A prospective dispute involves disagreement about the medical necessity of health care that has not been performed but was denied through preauthorization or concurrent review. A retrospective dispute involves a disagreement about the medical necessity of health care already provided. Necessity disputes are generally initiated by providers or injured workers whose preauthorization request, concurrent review request, or charges of services rendered were denied by SORM.

Providers or injured workers may ask SORM to review the denial. If dissatisfied, the provider or injured worker may informally discuss the issue with SORM. If not resolved informally, the provider or worker can file a dispute with DWC. DWC refers the dispute to an Independent Review Organization (IRO) certified by TDI to review the necessity and appropriateness of health care services. The IRO collects documentation from all parties and issues a decision. Either party can appeal the IRO's decision in District Court.

In fiscal year 2005, 109 medical necessity disputes on SORM claims were filed with DWC and 33 were decided by an IRO. About 70 percent of medical necessity disputes were decided in SORM's favor.

### **Risk Management**

SORM's risk management strategy assists state agencies in identifying, analyzing, and controlling risks to lower costs of workers' compensation and other insurance. The risk management effort focuses on the health and safety of state employees, and legal and contractor liabilities. SORM developed a Risk Management Information System (RMIS) to allow all agency information to be transferred online. RMIS uses a web-based platform, open architecture, and multiple security levels to protect information. Agency risk managers can access only data related to their agencies and comparison analyses of agencies in peer groups.



*The agency strives to identify and control risks to the health and safety of state employees.*

SORM has a staff of five risk management specialists who assist agencies in determining levels of risk and developing risk management plans. SORM's risk specialists also work with agencies to develop loss prevention plans designed to reduce workplace injuries, keep employees healthy, and reduce workers' compensation claims.

The first step of SORM's risk management process is its risk management program review (RMPR). SORM completes about 35 RMPRs per year and strives to review each of its client agencies every three years. The risk specialists attempt to see larger agencies every year to give an on-site consultation, plan review, and agency comparison information. SORM conducts about 250 of these on-site consultations per year, primarily in response to agency requests for assistance in correcting situations that could cause injury or analyzing insurance needs.



SORM conducts training classes and seminars for agency claim coordinators and risk managers to teach the basics of claim filing and managing risk. Seminars also cover topics such as disaster planning and recovery, computer security risks, employer practices liability, and driver education and fleet maintenance. SORM conducts these training sessions both in Austin and in regional locations to allow agencies to participate at lower travel cost. SORM's specialists also conduct one-on-one training at large agencies.

Each state agency has designated a risk manager and claims coordinator. SORM also provides training through a risk management users group of agency claims coordinators and risk managers. This group meets quarterly, discusses topics related to workers' compensation and risk management, and has an average attendance of 100 persons.

### **Insurance Purchasing**

In addition to workers' compensation coverage, SORM works with state agencies to coordinate preferred coverage on other types of insurance, including property, automobile, liability for directors and officers, employment practices, special events, and volunteers. SORM's client agencies may purchase policies from vendors not under contract with SORM, but must have the coverage and proposed policy approved by SORM. The agency's insurance specialists act as insurance consultants to their client agencies, responding to requests for assistance.

Of SORM's five lines of insurance coverage, property coverage is the most widely used. Property coverage protects an agency's assets and casualty coverage protects the agency from liability. With high profile legal cases on the rise in the past few years, director's and officer's liability insurance has sharply increased in demand and, as a result, price. The agency has been able to achieve its largest cost savings in automobile coverage through its efforts to leverage the buying power of the State. In its first year of coordinating this coverage, SORM saved client agencies more than \$350,000 in annual premiums.

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<sup>1</sup> Texas Labor Code sec. 413.014(b), and Texas Administrative Code, Part 2, sec. 134.600.

<sup>2</sup> As governed by the Texas Labor Code, sec. 408.004.

<sup>3</sup> As governed by the Texas Labor Code, Chapter 417.

<sup>4</sup> As governed by the Texas Labor Code, Chapter 410.



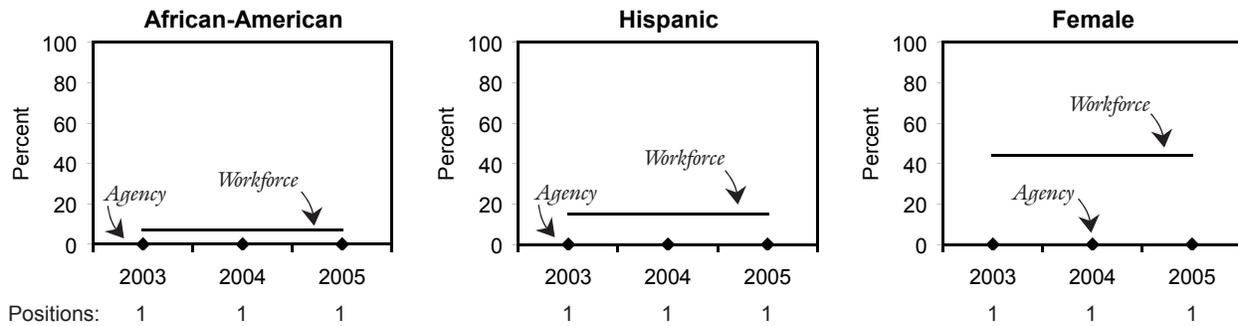
# APPENDICES



## Equal Employment Opportunity Statistics 2003 to 2005

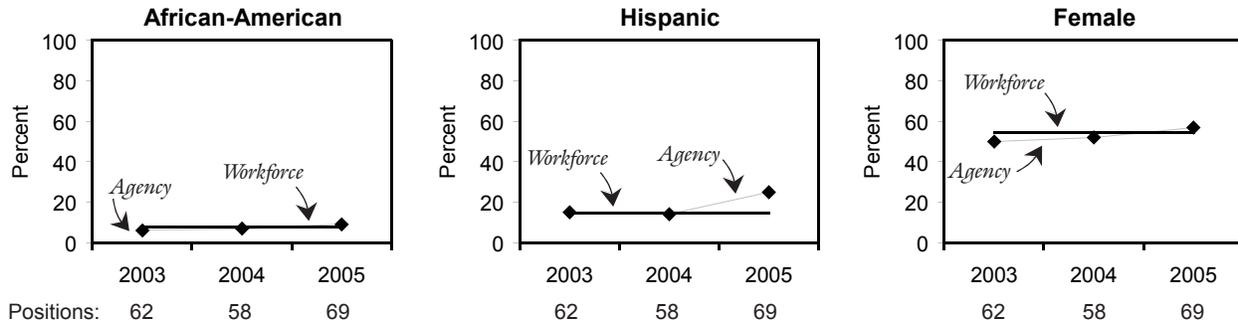
In accordance with the requirements of the Sunset Act, the following material shows trend information for the State Office of Risk Management's employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. While the agency has exceeded some of the civilian labor force guidelines, it has fallen below others. The agency does not employ persons in the skilled craft category.

### Administration



The agency fell below the statewide civilian workforce percentages in all three categories each year.

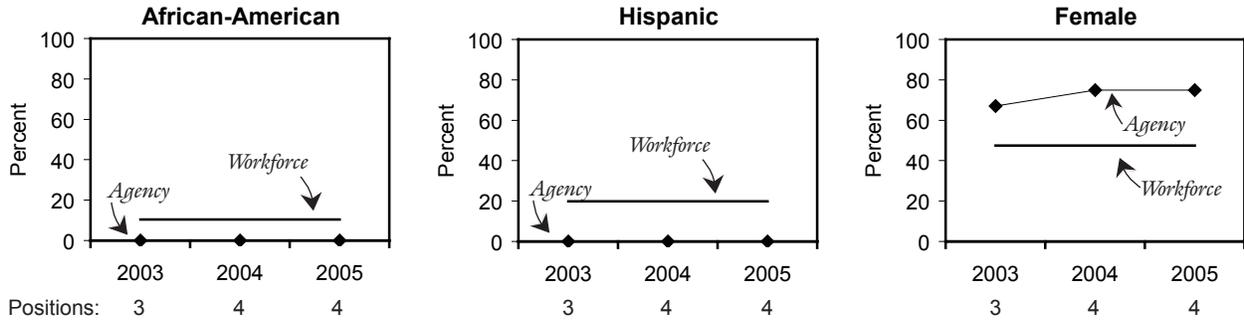
### Professional



The agency fell slightly below civilian workforce percentages for African-American employment in 2003, but met guidelines in 2004 and 2005. The agency met or exceeded percentages for Hispanic employment, while female employment fell below percentages in 2003 and 2004, but exceeded percentages in 2005.

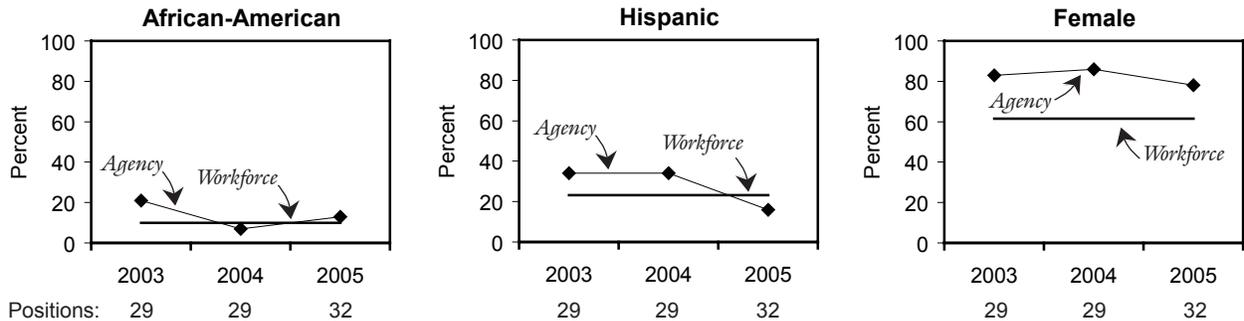
# Appendix A

## Technical



The agency fell short of the percentages for African-American and Hispanic employment for all three years, but consistently exceeded percentages for female employment.

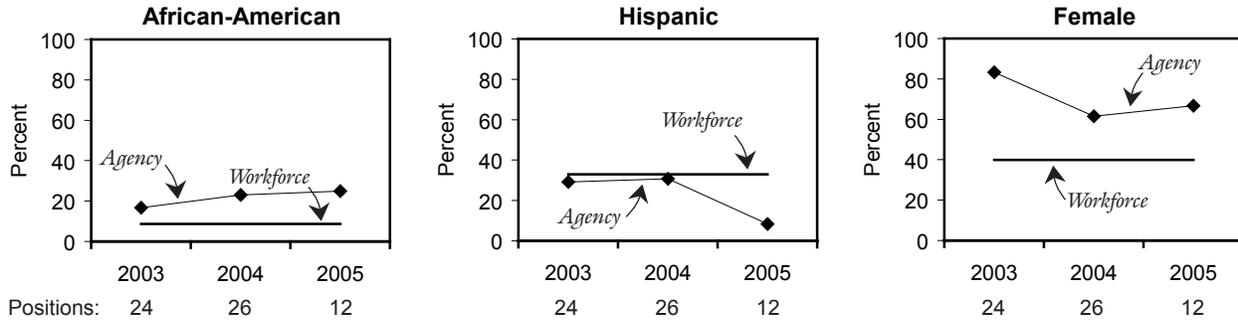
## Administrative Support



The agency's African-American employment in 2004 and Hispanic employment in 2005 fell short of state civilian workforce percentages, while in other years the agency exceeded the percentages for those categories. The agency consistently exceeded percentages for females.

# Appendix A

## Service/Maintenance



The agency consistently exceeded percentages for African-American and female employment, while it consistently fell below percentages for Hispanic employment.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501.



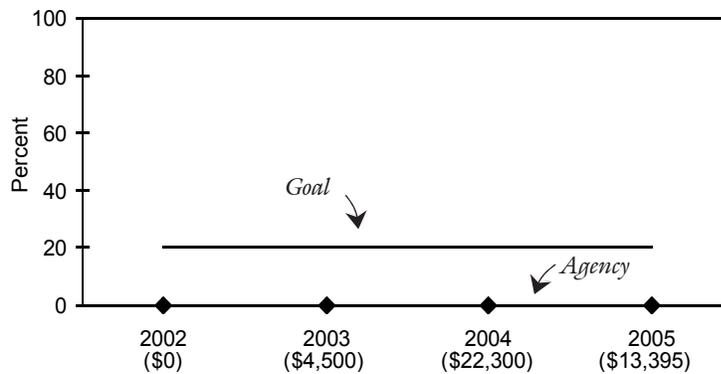
## Historically Underutilized Businesses Statistics

### 2002 to 2005

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the State Office of Risk Management's (SORM) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2002 to 2005. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. SORM has not met the goal for professional services but has generally exceeded the goal in other categories.

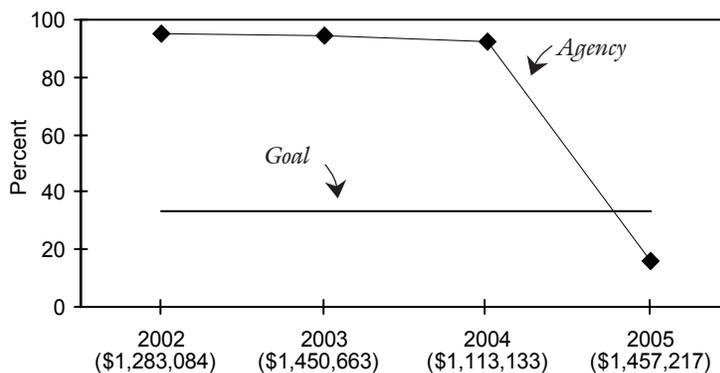
#### Professional Services



In past years, SORM failed to meet the goal or did not spend money in this category.

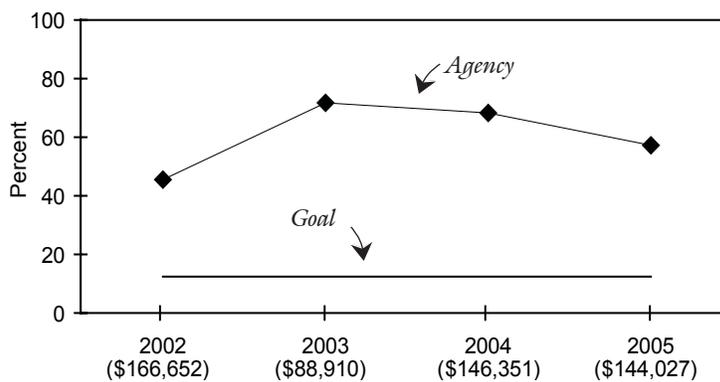
## Appendix B

### Other Services



SORM greatly exceeded the goal in three of the last four years.

### Commodities



SORM's spending in this category has generally far exceeded the goal.

## Staff Review Activities

During the review of the State Office of Risk Management, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Board meetings; met with staff from key legislative offices, Legislative Budget Board, and State Auditor's Office; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this agency.

- ◆ Surveyed more than 250 state agency executive directors, claims coordinators, and risk managers about SORM's operations.
- ◆ Interviewed staff from the Division of Workers' Compensation, Texas Department of Insurance; Texas Department of Transportation; University of Texas System, Texas A&M University System; Department of Rehabilitative Services; Governor's Office of Homeland Security; Department of Public Safety; Texas Building and Procurement Commission; State Fire Marshal's Office; Department of Information Resources; Texas Parks and Wildlife Department; Health and Human Services Commission; Employees Retirement System; Teacher Retirement System; Office of the Comptroller of Public Accounts; Texas Association of School Boards; and Texas Mutual Insurance Company.
- ◆ Attended risk management conferences hosted by the Texas Department of Insurance and SORM.
- ◆ Attended a Risk Management User Group meeting conducted by SORM.
- ◆ Attended claims coordinator training conducted by SORM.
- ◆ Attended an operational meeting between SORM and its cost containment vendor.
- ◆ Attended presentations given by the Secretary of the U.S. Department of Homeland Security; and the Commissioner of the Division of Workers' Compensation, Texas Department of Insurance.
- ◆ Interviewed staff from state employee workers' compensation programs in other states.
- ◆ Requested and received a research project comparing the state's four state employee workers' compensation systems from the Workers' Compensation Research and Evaluation Group.



**SUNSET REVIEW OF THE  
STATE OFFICE OF RISK MANAGEMENT**

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