

**STAFF REPORT**

**TO THE**

**SUNSET ADVISORY COMMISSION**

**ON THE**



**TEXAS WORKERS' COMPENSATION COMMISSION**

**TEXAS WORKERS' COMPENSATION INSURANCE FUND**

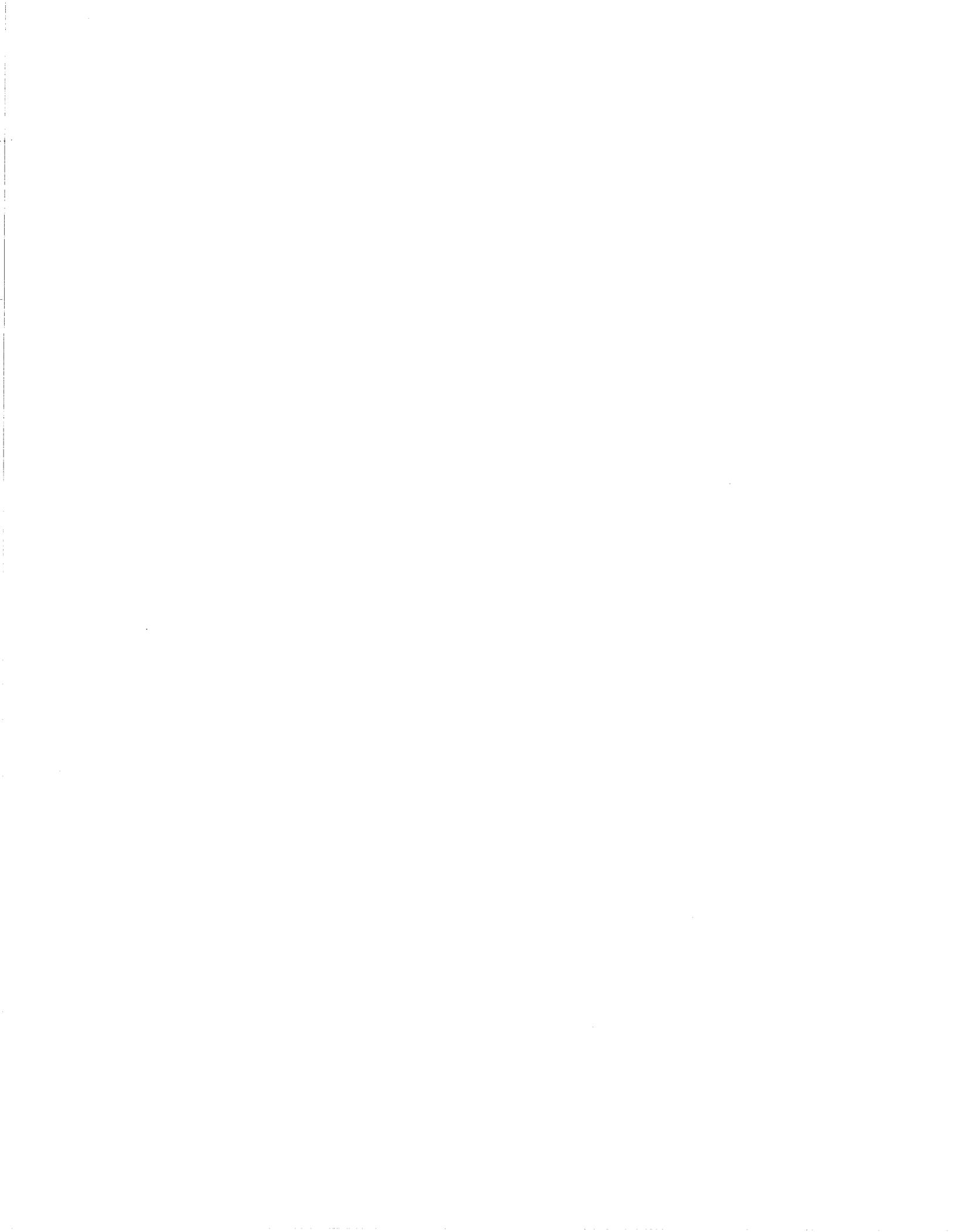
**TEXAS WORKERS' COMPENSATION RESEARCH CENTER**



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# EXECUTIVE SUMMARY

## Approach

The present Texas worker's compensation system was conceived in crisis and born in compromise. In 1987, the Texas economy and prospects for the future were clouded by the nation's highest workers' compensation rates, lowest benefits for workers and the worst record of workplace deaths and injuries. The skyrocketing cost of workers' compensation insurance left many employers and employees in Texas without insurance. Workers faced unsafe working conditions. Major employers threatened to move their operations out of Texas and new companies were reluctant to move in. Insurance companies faced losses great enough to push them out of the Texas market.

In 1987, the Legislature created the Joint Select Committee on Workers' Insurance to study the system. Acting on the Committee's recommendations, lawmakers overhauled the system in regular and special sessions in 1989 and 1991.

To date the new system seems to have controlled costs, brought a reduction in workers' compensa-

tion insurance rates, and reduced workplace injuries in Texas from 7.7 to 7.3 per 100 workers while the national injury incidence rate increased from 8.4 to 8.9 per 100 workers. However, because the system is relatively new, all the results of the overhaul are not yet known. Because the new system is undergoing legal challenges, continuing to develop, and is subject to examination by other governmental entities, the Sunset review focused on the operations and authority of the workers' compensation agencies—Texas Workers' Compensation Commission (TWCC), Texas Workers' Compensation Insurance Fund (Fund), and Texas Workers' Compensation Research Center (Research Center)—rather than the fundamental framework of the system. This focus on the effectiveness of the agencies' statutory structures and efficiency of operations led to a recommendation in this report that promises to reduce costs to the state by \$10 million over the next biennium, and identified \$340,000 in efficiencies that can be used to further enhance programs designed to make Texas a safer place to work.

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Over the last few years the national injury incidence rate increased to 8.9 per 100 workers while the Texas rate fell to 7.3.

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The primary focus of the review was how to improve the ability of TWCC to assist injured workers and increase safety in Texas workplaces.

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## Conduct of the Review

In conducting the review, the Sunset staff:

- Worked with several other legislative entities that are reviewing the workers' compensation system: Legislative Budget Board (LBB), Legislative Oversight Committee on Workers' Compensation Insurance (LOC), House Committee on Business and Industry, and State Auditor's Office (SAO);
- Worked with the state agencies that make up the system—TWCC, the Fund, and the Research Center—as well as related agencies including Texas Department of Insurance (TDI), Texas Employment Commission, State Office of Administrative Hearings, Attorney General's Office, and Department of Information Resources;
- Surveyed the agencies' constituent organizations including groups of both employers and employees to identify issues, problems and solutions;
- Reviewed agency documents and reports, state statutes, legislative reports, other states' reports and statutes, previous evaluations of agency activities, and background material

on workers' compensation systems; and

- Surveyed other states to compare key aspects of their operations with those in Texas, met with officials of national workers' compensation research organizations and reviewed workers' compensation programs in other countries.

## Results

One of the major results of the 1989 reforms was the creation of the Texas Workers' Compensation Commission to administer the Texas workers' compensation system. Compared to workers' compensation agencies in other states, TWCC has a great deal of administrative power and authority. TWCC is charged with processing claims, settling disputes, controlling medical costs, increasing workplace safety, and enforcing the statute and rules. For the Texas workers' compensation system to work, TWCC must carry out those functions in a way that is fair and cost-effective. The primary focus of the Sunset review of TWCC was how to improve the ability of the agency to process claims and assist injured workers, settle disputes, and increase safety in both public and private workplaces.

The Texas Workers' Compensation Insurance Fund was created by the Legislature in 1991 to both stabilize the workers' compensation insurance market and serve as insurer of last resort. The initial capitalization came from \$300 million in state revenue bonds. The Fund was given two years to start operations and write policies in the voluntary market before being required to assume the role of insurer of last resort in January 1994. The dual requirement to stabilize the market and serve as insurer of last resort is a challenge that, to date, the Fund has met. Our examination of public insurance funds in other states indicates that early performance often declines in later years as markets change and liabilities accumulate. The Sunset review focused on ways to improve the Legislature's oversight of the Fund to ensure its ongoing ability to meet its dual responsibilities.

A consistent complaint during the Legislature's review of the system in 1989 was the lack of timely, objective information on the workers' compensation system. In 1991, the Texas Workers' Compensation Research Center was created to provide such information to policymakers. Since then, the availability of information and the need for oversight of the workers' compensation system have increased. Several other

entities involved with workers' compensation now produce reliable system information. The Legislative Oversight Committee on Workers' Compensation Insurance, charged with oversight of the entire system, is scheduled to expire in 1995. The Sunset review focused on the role of the Research Center in a changing system and recommends several approaches to address the evolving situation.

As a result of the Sunset review activities described above, the staff recommends the following changes to the agencies' statutes designed to improve operation of the current system.

## Recommendations

### *Texas Workers' Compensation Commission*

#### **1. Extend workers' compensation responsibilities to state agencies to achieve a \$10 million savings.**

Under current statutes, state agencies have few incentives to implement risk management programs and many of the health and safety benefits of the 1989 law have not been extended to the state agency workforce. To create safer workplaces, staff recommends that the state risk management program should be given the authority to require comprehensive risk

management programs for all state agencies. Estimated cost reduction to all state funds—\$10 million per biennium.

## **2. Strengthen ombudsmen qualifications and training.**

The 1989 reforms dramatically altered the dispute resolution process by reducing the number of injured workers represented by attorneys and instituting an ombudsman program. To ensure that injured workers have adequate assistance in disputes, staff recommends that qualifications for ombudsmen be increased and that a comprehensive training program be established.

## **3. Improve programs to explain injured workers' rights in the workers' compensation process.**

Information is essential for injured workers to receive the proper benefits under the law and to understand how to operate within the system. To improve TWCC's information programs, staff recommends requiring TWCC to provide interpreters and alternate language brochures when necessary, and to contact injured workers when they become eligible for income benefits.

## **4. Rename and improve the extra hazardous employers program.**

Certain provisions in the statute related to the extra hazardous employers program reduce the effectiveness of the program. To improve the situation, staff recommends renaming the program and giving the TWCC executive director more authority to decide which employers belong in it. Also, the inspection time frame for safety programs should be modified to provide additional flexibility. Estimated cost reduction to be reallocated to programs to improve workplace safety — \$79,000 per year.

## **5. Give TWCC the authority to fine all employers who do not report injuries.**

While all employers are required to report injuries and illnesses to TWCC, only employers who carry workers' compensation insurance can be penalized for failure to report. To increase consistency in the treatment for all Texas employers, non-covered employers should be fined for failure to report injuries and illnesses.

## **6. Improve and standardize qualifications of safety professionals.**

Because of a lack of consistency of qualifications between safety representatives for the extra hazardous employers program and safety representatives in other programs, the staff recommends

that the Commission should have the authority to set consistent qualifications for field safety representatives.

**7. Reduce unnecessary bureaucracy in filing injury reports.**

To streamline the claims process, staff recommends that the insurance carrier should be allowed to report injuries electronically on behalf of the employer. The recommendation would also create certain safeguards for maintaining responsibility for reporting. Estimated cost reduction to be reallocated to programs to improve workplace safety—\$260,200 per year.

**8. Transfer administrative hearings to the State Office of Administrative Hearings.**

To improve the independence of Administrative Procedure Act hearings, staff recommends transfer of the APA hearings functions to the State Office of Administrative Hearings. Benefit dispute hearings would continue to be conducted by TWCC.

**9. Remove the TWCC executive director as a voting member of the Texas Certified Self-Insurance Guaranty Association Board.**

To ensure separation between policy-making and administration,

staff recommends that the TWCC executive director be removed as a voting member of the Texas Certified Self-Insurance Guaranty Association Board.

**10. Continue TWCC for an additional 12 years.**

***Texas Workers' Compensation Insurance Fund***

**1. Strengthen oversight of the Fund.**

Historical information about other states' workers' compensation funds indicates that early performance often declines in later years as conditions change and liabilities grow. To ensure that the Legislature has the information necessary to evaluate how well the Fund is meeting its statutory goals, staff recommends that the Fund be subject to oversight by the State Auditor's Office, Attorney General's Office and meet some specific requirements in the appropriations act.

**2. Require commonly-owned or controlled companies insuring with the Fund to cover all employees.**

To combat a common type of fraud known as "employee swapping", other insurance carriers in the state can require commonly-owned or controlled businesses to have workers' compensation insurance.

To allow the Fund to prevent this type of fraud, the staff recommends that the Fund have the authority to require commonly-owned or controlled businesses to have workers' compensation insurance when buying insurance through the Fund.

**3. Align the Fund's annual reporting requirements with those of other insurers.**

To make the Fund's reporting requirements to Texas Department of Insurance (TDI) consistent with other insurance carriers, staff recommends allowing the Fund to report to TDI thirty days after the close of its fiscal year.

**4. Continue the Fund for an additional 12 years.**

***Texas Workers' Compensation Research Center***

**1. Expand the role of the Research Center to include monitoring of Fund performance.**

While the Research Center has access to information from state agencies, it does not have the authority to access information from a vital part of the workers' compensation system, the Fund. Because key performance information on the system, including the Fund, is important in decision-making, staff recommends that the

Research Center have access to Fund information and report key performance measures about the system on a routine basis.

**2. Restructure the Research Center Board.**

The workers' compensation system in Texas continues to change and policymakers need timely, objective information to make good decisions. To ensure that the most critical information is gathered and analyzed and that the system has the proper level of oversight, staff recommends that the Research Center Board be restructured to include five elected state officials and four public members.

**3. Give the Research Center the authority to seek federal funds.**

Staff recommends that the Research Center be given specific authority to seek and receive federal funds on approval of the Research Center Board. The Research Center could qualify for grants ranging from \$10,000 to \$300,000.

**4. Continue the Research Center for an additional 12 years.**

## Fiscal Impact

While recommendations pertaining to the Fund and Research Center do not result in a fiscal impact to state funds, the recommendations on TWCC result in more than \$10 million in cost reductions to the state over the upcoming biennium. The recommendations will also allow \$340,000 annually to be reallocated within the agency to enhance workplace safety programs.

Total Fiscal Impact for TWCC Recommendations			
Fiscal Year	Total Cost Reduction to General Revenue	Total Cost Reductions to Special/Local Funds	Total Reallocations within TWCC
1996	\$3,106,400	\$423,600	\$339,200
1997	\$6,204,000	\$846,000	\$339,200
1998	\$6,204,000	\$846,000	\$339,200
1999	\$6,204,000	\$846,000	\$339,200
2000	\$6,204,000	\$846,000	\$339,200





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# ISSUE 1

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## **REDUCE STATE LOSSES FROM WORKER INJURIES THROUGH STRONGER RISK MANAGEMENT PROGRAMS.**

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### **BACKGROUND**

All employers have losses because accidents, injuries, and thefts are inevitable over time. However, the frequency and severity of incidents can be controlled. Risk management is the process an organization uses to identify, control, and reduce losses. Risk management programs often focus on improving health and safety within workplaces and returning injured employees to work as they recover.

Efforts to reduce state agency losses due to workplace injuries began in 1973 when the Legislature created a workers' compensation program for state employees and a health and safety program for state agencies administered by the Attorney General's Office. Further efforts to control state losses and exposure were implemented in 1987 when the Legislature created a risk management program for state agencies. Because risk management includes health and safety functions, the workers' compensation division of the Attorney General's Office (workers' compensation division) entered into a memorandum of

agreement in September 1991 to transfer safety training programs to the Texas Workers' Compensation Commission's risk management division.

The risk management division's goal is to reduce the state's workers' compensation, property, and liability losses by helping the 176 state agencies that report to the division develop effective risk management programs. State agencies that had workers' compensation, medical malpractice or other self-insurance programs with associated risk management programs before January 1, 1989, are exempt from the program. Agencies that qualify for this exemption include the University of Texas System, Texas A&M University System, Texas Tech University, and Texas Department of Transportation. State agencies whose authority is limited to a specific geographical portion of the state and state agencies with less than five employees are also exempt.

To prevent, control, and reduce losses, the division assists state agencies to develop and implement risk management programs,

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Risk management is a process to identify, control and reduce workers' compensation, property, and liability losses.

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monitors and evaluates the agencies' risk management and safety programs, and provides training and on-site technical consultations. The division prepares a comprehensive report to each Legislature that evaluates the claim exposures and losses of each state agency and recommends improvements to the state risk management program.

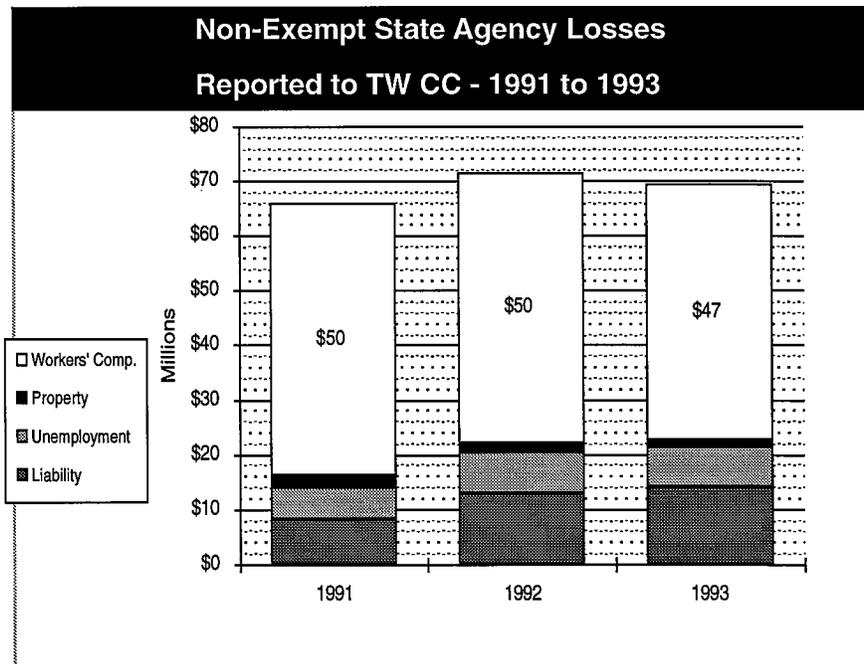
million in fiscal year 1993 and included \$46.9 million in workers' compensation, \$14.1 million in liability, \$7.3 million in unemployment, and \$1.1 million in property (see chart below). Funds to pay workers' compensation losses are directly appropriated to the Attorney General's Office, which in turn pays benefits to injured state workers.

State agencies reported workers' compensation losses of \$46.9 million last year.

The division's efforts are funded solely through interagency contracts. In fiscal year 1993, the division collected about \$846,000 and spent about \$835,000. The remaining \$11,000 was used by the division to partially reimburse TWCC for certain administrative costs.

Workers' compensation losses are the largest portion of agency losses reported to the division and the potential for losses is even greater in the future. The Texas Department of Mental Health and Mental Retardation (TXMHMR) and the Texas Department of Criminal Justice (TDCJ) together accounted for about 74 percent of workers' compensation losses in fiscal year 1993 (TXMHMR = 57.8% and

Losses for state agencies reporting to the division totaled \$69.4



TDCJ = 15.9%). TDCJ will add about 10,000 more employees in the next biennium. Since TDCJ employees represent high risk exposure due to the nature of their work, the addition of 10,000 employees increases the state's risk. Without proper risk management programs in place to control these risk exposures, the state could bear losses that will require additional appropriations from the state's general revenue.

The review focused on ways to assign responsibility for state workers' compensation and other losses to individual state agencies and then to actively control these losses by requiring implementation of risk management programs. The following recommendation is intended to improve services to state employees by providing safe workplaces, helping employees return to work, providing timely benefits to injured employees, and informing the Legislature about high risk agencies.

## FINDINGS

- ▼ **State agencies are not statutorily responsible for managing state employees' workers' compensation claims.**
  - ◆ Once an injury occurs, agencies have little incentive to help employees through the workers' compensation system. For purposes of

workers' compensation, state law defines the workers' compensation division as both the employer and insurance carrier. This means that the workers' compensation division is responsible for meeting all requirements of the workers' compensation law and is subject to all fines for violation of the law as it applies to employers and insurance carriers. No penalty exists for other state agencies.

- ◆ State agencies are responsible for reporting injuries and follow-up information to the workers' compensation division. The workers' compensation division, acting as the employer, files workers' compensation reports with TWCC, and then, acting as the insurance carrier, pays claims from a lump-sum biennial appropriation.
- ◆ The workers' compensation division has difficulty filing reports with TWCC on time because agencies are not providing timely information. This results in late benefit payments to injured employees. TWCC's compliance and practices division has charged the workers' compensation division with 13 employer administrative violations and 25 carrier administrative

These recommendations are intended to provide safe workplaces for state employees, timely benefits, and return-to-work programs for injured state workers.

State agencies now have a *disincentive* to bring injured workers back to the job quickly.

violations related to late filings of required reports and late payment of benefits. Most employer violations are the result of late reports by state agencies, but the number of carrier violations that are a result of late reporting by agencies is unknown. The workers' compensation division may have to pay more than \$100,000 in fines if these violations are upheld.

▮ TWCC's compliance and practices division can take action against virtually any public or private employer in Texas *except* individual state agencies because agencies are not treated as the employers for workers' compensation purposes.

▼ **Although TWCC encourages state agencies to develop risk management plans and follow risk management guidelines, agencies are not required to do so and few agencies have implemented programs voluntarily.**

▮ Present state law does not require agencies to develop risk management programs or that those programs be approved. This means that agencies are not statutorily required to implement health and safety programs or return-

to-work programs and that the risk management division has no authority to require them to do so. Without these and other essential elements, a risk management program cannot be effective at reducing and controlling losses.

▮ According to the risk management division, most state agencies have not implemented risk management programs or safety programs. As of May 24, 1994, about 80 percent of the 137 agencies that had undergone a risk management program review or safety evaluation did not have a formal, documented return-to-work program.

▼ **No financial incentives exist for agencies to implement risk management programs. In fact, agencies may have a financial *disincentive* to do so.**

▮ Under the current system, state agencies have little incentive to maintain safe workplaces and reduce losses because individual state agencies are not financially responsible for workers' compensation losses. Medical and indemnity claims are paid out of an account in the general revenue fund and not by the individual agencies. Without accountability, state

agencies have little incentive to reduce workers' compensation losses. This lack of accountability for workers' compensation losses is not consistent with losses for property and liability where individual agencies are held responsible for their individual loss expenses.

▶ During the time a state employee is off the job as a result of a workers' compensation injury, the employee receives workers' compensation income benefits that are paid out of appropriations to the Attorney General's Office for workers' compensation claims payments. The injured employee's salary payments cease when the employee begins receiving income benefits. The agency where the injured employee works retains the funds appropriated for the employee's salary. The agency can spend these salary funds for other authorized purposes, creating a *disincentive* to bring the worker back to work.

- ▼ **An effective risk management program includes health and safety programs and return-to-work programs that can identify and reduce on-the-job injuries**

#### **and control workers' compensation costs.**

▶ For example, employees at the University of Denver filed \$472,000 in claims in 1990. After implementing a safety program, claims costs were reduced 96 percent by 1991 to \$16,000, lost work days dropped from 2,377 to 78, and work-related accidents were cut by nearly 15 percent.

▶ In another instance, Colgate-Palmolive implemented an aggressive case management program at its Kansas City, Kansas plant that resulted in a 50 percent reduction in workers' compensation costs between 1989 and 1990 and a savings of nearly \$500,000.

▶ A *Crawford & Co.* quarterly report states that the Washington Business Group on Health estimated that an organization can expect an \$8 to \$10 savings for every dollar invested in a structured return-to-work program.

▶ Over a three-year period, a return-to-work program at the Denton State School has cut time lost due to injuries by 50 percent.

- ▼ **Legislative reporting requirements can be a strong**

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The University of Denver implemented a safety program that reduced claim costs 96 percent within a year.

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Extend workers' compensation responsibilities to state agencies.

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These recommendations would result in an estimated \$10 million in cost reductions over the next biennium and \$14 million during the following biennium.

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**incentive for state agencies to take risk management seriously.**

► The risk management division now issues a report to the Legislature each biennium with detailed information regarding state agency losses and liabilities. The information can be used by the Legislature to identify agencies with high risks and high losses. Having the division include information about agencies that refuse to develop risk management programs would encourage these agencies to implement effective programs.

### CONCLUSION

The 1989 Texas Workers' Compensation Act established the state's first proactive workplace health and safety program for private and public employers and developed controls within the workers' compensation system to contain costs to employers. The health and safety reforms enacted in 1989 have not been extended to state employees and state agencies to control costs. Trained, experienced, and productive state employees are among state government's most important resources. Ensuring their well-being is important for the employees and for the state. State agencies need to develop programs that

minimize workers' compensation losses to the state and maximize employee safety, health, and productivity. In addition, state agencies must be more accountable for managing workers' compensation programs.

State agencies should be required to develop comprehensive, effective risk management programs. Very few state agencies have taken risk management seriously and the division has no real compliance or enforcement authority. Very few incentives exist in the system to ensure that state agencies develop effective risk management plans. Without a way to influence agencies' efforts, the division cannot effectively meet its mandate to identify and reduce property, liability, and workers' compensation losses.

**RECOMMENDATION****▼ Change the statute to:**

- ▶ make state agencies directly responsible for managing worker injuries by defining each individual agency as the employer for workers' compensation purposes;**
- ▶ require agencies to actively manage risks and require the risk management division to review, verify, monitor, and approve agency risk management programs;**
- ▶ require state agencies to develop, implement, and maintain health and safety and return-to-work programs; and**
- ▶ require the division to identify state agencies that do not comply with statutory risk management requirements in its biennial report to the Legislature.**

This recommendation would greatly strengthen the state's risk management efforts. Because risk management guidelines are optional and the program does not have enough oversight authority, agencies have not taken action to prevent losses from theft, damage, liability and worker injuries. Under the recommended approach, agencies will have increased responsibilities related to workers' compensation and will have to take a series of actions to prevent losses. First, state agencies will be the official "employer" and take on the responsibilities of employers in the workers' compensation system. Second, agencies will have to prepare risk management plans that follow state guidelines and will undergo the scrutiny of the state's risk management program. Third, agencies' risk management programs must include the health and safety and return-to-work programs that are presently missing from many agencies' risk management efforts. Finally, the statute will place clear responsibility on TWCC's risk management division to regularly report all agencies' compliance, or lack thereof, to the Legislature.

Additional suggestions to minimize losses, increase health and safety, and reduce state expenditures are forthcoming. The Sunset staff is currently working with the staff of the Legislative Budget Board, the Legislative Oversight Committee on Workers' Compensation Insurance, and the House Business and Industry Committee to develop a series of recommendations to address problems with the state's risk management efforts that go beyond the duties and authority of TWCC's risk management program.

**FISCAL IMPACT**

If state agencies that report to the risk management division implement aggressive risk management programs, significant cost reductions to the state would occur. In determining the estimated amount of savings to the Workers' Compensation Payments Account within the Attorney General's Office, data was obtained from various sources documenting reductions in workers' compensation payments experienced when aggressive risk management programs were implemented. State agencies are responsible for identifying workers' compensation benefits paid to employees whose salaries are funded from a non-general revenue fund source and reimbursing the general revenue fund for that amount.

Historical statistics were compiled from the states of Arizona, New Mexico, and Oregon on workers' compensation payments before and after the implementation of risk management programs. In addition, in-state programs implemented by Harris County and the Denton State School were analyzed to determine reductions in workers' compensation payments. The analysis of the data indicates that aggressive risk management programs can result in cost reductions in amounts ranging from 10 to 60 percent.

Based on total workers' compensation payments before and after implementation of aggressive risk management programs and allowing adequate time for effective program implementation, state agencies that report to the risk management division would achieve estimated minimum cost reductions of 5-10 percent in the first year and 10-20 percent in the second year.

Information concerning claim amounts paid for workers' compensation were obtained from the TWCC risk management division and the Legislative Budget Board. Percent reductions applied to total amounts of workers' compensation claims to determine the cost reductions to general revenue in workers' compensation payments resulting from this recommendation.

The estimated cost reductions are based on current staffing at agencies required to report to the risk management division. The impact of additional employees, such as additional staffing expected at TDCJ, would result in increased savings.

Individual agencies may experience some initial costs to implement risk management programs. Estimates have been adjusted to account for implementation costs. These agencies should be able to recover any costs for program implementation through higher productivity, decreased costs in training new personnel to replace injured workers, avoidance of hiring temporary personnel, and providing service to the public with few interruptions. Effective risk management programs provide safer work environments, reduce on-the-job injuries and more quickly return injured employees to work resulting in continued agency savings.

<b>Reduction of Workers' Compensation Payment Costs</b>			
<b>Fiscal Year</b>	<b>Total</b>	<b>Reduction of Cost to General Revenue Fund (No. 0001)</b>	<b>Reduction of Cost to Special/Local Funds</b>
1996	\$3,530,000	\$3,106,400	\$423,600
1997	\$7,050,000	\$6,204,000	\$846,000
1998	\$7,050,000	\$6,204,000	\$846,000
1999	\$7,050,000	\$6,204,000	\$846,000
2000	\$7,050,000	\$6,204,000	\$846,000



## ISSUE 2

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### PROVIDE FOR BETTER QUALIFICATIONS AND TRAINING FOR TWCC OMBUDSMEN.

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#### BACKGROUND

One goal of the changes to the workers' compensation system made by the Legislature in 1989 was to reduce the amount of litigation in the system. To meet this goal, the Legislature changed the dispute resolution process from one that usually ended in the courts to an administrative hearing system that attempts to resolve disputes within the Texas Workers' Compensation Commission. The legislative overhaul also eliminated lump-sum settlements in almost all cases and changed the method used to calculate benefits. The new statute also requires the Commission to review and approve all attorney fees. Attorney fees for workers are limited to no more than 25 percent of benefits, but no specific fee limits are placed on attorneys for insurance carriers.

These changes have decreased attorney involvement on behalf of injured workers, driving down the percentage of workers retaining lawyers from 40 percent of all claims filed in 1990 to 8 percent in 1993. Some attorneys have said that this decrease in legal representation is primarily due to lower

fees and earnings for workers' attorneys.

While the new system is less litigious, disputes still arise. Because of these disputes, injured workers need to have some type of assistance in both the informal and formal dispute resolution process. To address this need, the statute created the position of ombudsman to:

- meet with or otherwise provide information to injured workers;
- investigate complaints;
- communicate with employers, insurance carriers, and health care providers on behalf of injured workers; and
- assist unrepresented claimants, employers, and other parties to enable those persons to protect their rights in the workers' compensation system.

Ombudsmen provide assistance in benefit review conferences (BRCs) and contested case hearings (CCHs) by presenting factual information, questioning witnesses, and making summary statements. This type of assistance is similar to the work that attorneys perform, but the statute

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Ombudsmen assist injured workers and employers by presenting factual information, questioning witnesses and making summary statements.

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exempts ombudsmen from the state's prohibition against practicing law without a license. Agency policy prohibits ombudsmen from representing workers or giving legal advice.

The Sunset review of the agency's dispute resolution function looked at the level of assistance required during the formal and informal phases of the system, the type and quality of services provided by ombudsmen, and their qualifications and training.

**FINDINGS**

- ▼ **Benefit review conferences and contested case hearings are complex proceedings where important decisions are made regarding a worker's benefits.**

► A BRC is a non-adversarial meeting where the claimant and insurance company or employer exchange information, discuss facts of the case, and try to resolve disputed issues. Typical issues addressed at these conferences include whether the injury was work-related, the worker has reached maximum medical improvement, and the worker has been impaired and to what degree. The conferences are administered by benefit review officers who may order the payment or non-payment of benefits.

► Disputes that are not resolved at a BRC are scheduled for a formal quasi-judicial CCH. At the conclusion of the CCH, the hearing officer enters a written decision that includes findings of fact, conclusions of law, and a determination and award of benefits if any are due.

► While the benefit review officers and contested case hearing officers explain the process and issues of the case to injured workers throughout the hearings process, the issues dealt with in these hearings can be complex. The primary role of the ombudsman is to help the worker understand the issues and options involved.

Benefit Review Conferences	Administrator	Benefit Review Officer
	Main Parties	Worker, and Insurance Carrier or Employer
	Assistance	Ombudsman, Attorney, or Adjuster
Contested Case Hearings	Administrator	Contested Case Hearing Officer
	Main Parties	Same as BRC
	Assistance	Same as BRC
Appeals Panel	Administrator	Appeals Panel Judges
	Main Parties	Same as BRC except that parties submit written comments instead of appearing in person.
	Assistance	Same as BRC except that parties submit written comments instead of appearing in person.

▶ Upon request of an injured worker, ombudsmen can take actions very similar to the actions of an attorney during a BRC or CCH, although agency policy prohibits ombudsmen from *representing* workers.

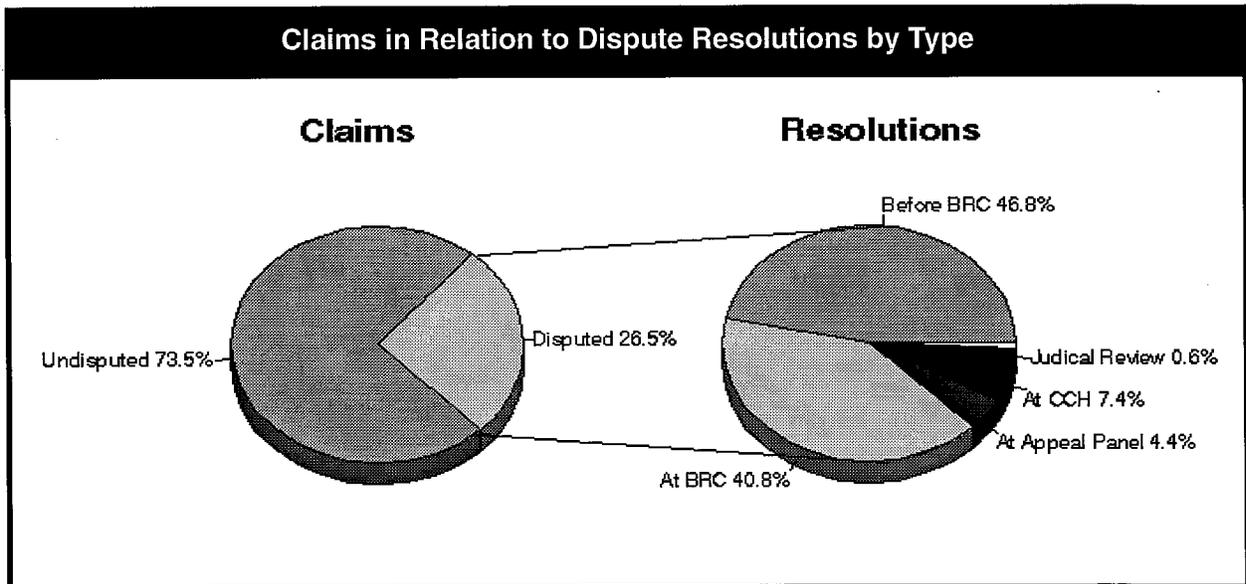
▶ In complex cases, such as those involving occupational hazardous substance exposures and some impairment determinations, a well-qualified ombudsman is crucial to a worker who is not represented by an attorney.

▼ **Current qualifications and training may not adequately prepare ombudsmen to fulfill their responsibilities in the dispute resolution system.**

▶ No statutory qualifications exist for ombudsmen. The agency now requires ombudsmen only to have some experience or general knowledge in counseling, basic knowledge of computer applications, and a bachelor's degree that may be waived in case of additional experience. Of the 46 current ombudsmen, 25 have a bachelor's degree or more education and 21 have less than a bachelor's degree.

▶ The agency provides all prospective ombudsmen with a five-day course in the agency's computer system and a five-day course in basic workers' compensation. These courses are supplemented with on-the-job training. An enhanced ombudsman training/certification program has been devel-

Of the current 46 ombudsmen, 21 have not earned a bachelor's degree.



oped and is being implemented by the agency. However, the statute has no requirements for training and qualifications to guarantee that the current skill level of ombudsmen will continue to improve or whether it will erode in the future.

► To remedy the lack of qualifications and training, many hearing officers supplement ombudsman education by conducting ad hoc, on-the-job training dealing with specific cases. By nature, this approach is reactive, inconsistent and potentially dangerous to the independence—real or perceived—of the ombudsmen and hearing officers.

▼ **Ombudsmen need to be well qualified and trained because a high percentage of injured workers involved in the dispute resolution system rely on their assistance.**

► In fiscal year 1993, ombudsmen assisted injured workers in more than one-

third of the benefit review conferences and almost half of the contested case hearings. While attorney involvement on behalf of injured workers has dropped under the new law to only eight percent of all claims filed, two out of three workers with disputed claims still seek formal assistance from private attorneys or ombudsmen. The chart, *Types of Assistance in TWCC Dispute Resolutions in 1993*, shows the percent and type of assistance at each level of the process.

▼ **Insurance carriers are well represented during the dispute resolution process.**

► In fiscal year 1993, insurance carriers were represented by attorneys in 40 percent of all benefit review conferences and 82 percent of all contested case hearings. Both of these percentages have increased during fiscal year 1994.

► When carriers are not represented by an attorney, the carriers are generally represented by an adjuster.

Although adjusters are usually not licensed attorneys, the role of an adjuster in BRCs and CCHs is similar to that of an attorney. Adjusters are required to obtain a certificate of licensure from the Texas Department of Insurance and

**Types of Assistance in TWCC Dispute Resolutions in 1993**

Type of Assistance	Benefit Review Conferences		Contested Case Hearings		Appeals Panels	
	Worker	Carrier	Worker	Carrier	Worker	Carrier
Ombudsman Assistance	35%	N/A	45%	N/A	8%	N/A
Attorney Representation	28%	40%	40%	82%	41%	78%

are usually well experienced in the workers' compensation insurance environment. A workers' compensation adjuster's license requires successful completion of an examination, continuing education, and may require a training course.

▼ **Creating higher entry qualifications and continuing education and training requirements would strengthen the ombudsman program.**

▶ College degrees are a common requirement for most of the highly technical positions at TWCC. For example, the state job classification for a benefit review officer requires graduation from an accredited four-year college or university with special training in insurance or a license to practice law with coursework in personnel or business administration. A combination of education and experience may be substituted for the education requirement.

▶ Allowing related experience in lieu of education would also be helpful for the ombudsman program. Many of the adjusters who work for insurance companies have many years of experience in dealing with workers' compensation claims. Many

workers are also assisted by labor representatives who likewise have many years of experience in dealing with workers' compensation claims.

▶ Continuing education requirements are common for state-regulated professions such as insurance adjusters or accountants. The chart, *Continuing Education Requirements*, indicates, for a selected group of Texas professions, the number of required continuing education hours.

Strengthen ombudsmen qualifications and training.

**CONCLUSION**

For many injured workers involved in benefit disputes, ombudsmen are critical in getting them their deserved benefits. Claimants use the help of ombudsmen in more than one-third of all disputes that go to benefit review conferences or hearings. These disputes often involve complex issues where insurance companies choose to be represented by attorneys or experienced adjusters. In cases where attorneys do not represent a worker, well-trained and qualified ombudsmen can assure that workers and insurance carriers are playing on a level field.

**Continuing Education Requirements for Selected Professions**

Profession	Hours per Year
Attorneys	15
Accountants	40
Professional Counselors	25
Workers' Compensation Insurance Adjusters	15

## RECOMMENDATION

### ▼ Change the statute to:

- ▶ require ombudsmen to have a college degree or five years of experience in workers' compensation;
- ▶ require TWCC to establish training guidelines and continuing education requirements for ombudsmen; and
- ▶ enact training requirements to include the successful attainment of a certificate of licensure as an insurance adjuster in workers' compensation from the Texas Department of Insurance.

The intent of the recommendation is to improve the minimum qualifications, training, and continuing education for ombudsmen. Higher qualifications and training for ombudsmen will give parties without attorneys a source of solid assistance in the dispute resolution process. A good training program might include education on the statute, rules, and appeals panel decisions with emphasis on benefits and the dispute resolution process. The training would also require an ombudsman trainee to observe and be observed by experienced ombudsmen during daily activities in the initial phases of active assistance. The continuing education requirement will ensure that ombudsmen are kept abreast of changes within the workers' compensation insurance system.

## FISCAL IMPACT

The fiscal impact of this recommendation cannot be determined as the costs of establishing training guidelines and providing continuing education cannot be estimated.

# ISSUE 3



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## IMPROVE PROGRAMS TO EXPLAIN INJURED WORKERS' RIGHTS IN THE WORKER'S COMPENSATION SYSTEM.

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### BACKGROUND

Workers' compensation is a complex process, difficult to understand for workers who usually only think about it when they are injured on the job. The system has a multitude of filing deadlines. An injured worker may be examined by several doctors. Maximum medical improvement, impairment ratings and the numerous types of income benefits available are very difficult to understand. If a dispute arises, the injured worker may be required to participate in several levels of the dispute resolution process. If an injured worker is unable to gain a basic understanding of the process and its requirements, the worker may not receive all the entitled benefits. The difficulty increases if the injured worker does not speak English or is disabled.

The Sunset review focused on the complexity of the process and TWCC efforts to help injured workers' understand the system.

### FINDINGS

- ▼ **The great number of processes and requirements of the workers' compensation**

**system can make the system difficult to understand. The following material describes several of the major processes that injured workers often need to understand.**

- ▶ For an injured worker to be eligible to receive benefits, the worker's employer must file an injury report with TWCC within eight days. To actually obtain income benefits, the injured worker must file a claim for benefits within a year of the injury. Failure to comply with these or other reporting requirements can jeopardize the worker's eligibility for benefits.

- ▶ An injured worker may be examined by several doctors in the system. The treating doctor is chosen by the worker. When necessary, the insurance carrier can hire a required medical examination doctor to determine whether the worker has reached maximum medical improvement (MMI) and to assign an impairment rating. If a medical dispute arises between the injured worker

and the insurance carrier, a TWCC designated doctor may also examine the injured worker to determine MMI or an impairment rating.

◆ Injured workers receive medical benefits and may also be entitled to several different types of income benefits. Temporary income benefits are paid to make up lost wages resulting from an injury and can be paid for up to two years. Impairment benefits are based on a doctor-assigned impairment rating and the worker gets three weeks of benefits for each percentage point of impairment. Supplemental income benefits are paid only if the impairment rating exceeds 15 percent. Seriously injured workers may be entitled to lifetime income benefits. Beneficiaries of workers killed on the job can receive death benefits.

◆ If a dispute arises, the injured worker may be required to attend an informal benefit review conference. If the dispute is not resolved at the benefit review conference, the case goes to arbitration or a contested case hearing. Decisions from the contested case hearing can be appealed to a TWCC appeals panel. If either party to the dispute is

still unsatisfied, the case can be appealed to district court.

▼ **Texas is a diverse state composed of many different ethnic groups and nationalities. English is the second language for many Texans. In addition, communications with disabled workers can pose special challenges. All injured workers must be able to understand the workers' compensation process.**

▼ **While TWCC currently helps injured workers understand the process through bilingual information brochures and interpreters, this effort needs to be institutionalized to ensure that it continues to improve.**

◆ While TWCC provides information brochures about the system to injured workers and their families, it is not required to do so by statute.

◆ Currently, TWCC provides information brochures to injured workers both in English and Spanish; attempts to contact all injured workers that are eligible for income benefits by mail or phone; and provides interpretive services to injured workers that present special communication challenges.

▶ These services have all been put in place by TWCC policy. Policies can change and can be influenced by budget constraints. Placing requirements in statute would ensure information efforts remain a priority for TWCC.

▼ **The Sunset Commission has recognized the importance of providing access to state agencies' services to all Texas citizens regardless of special needs or circumstances.**

▶ The Sunset Commission has developed an across-the-board recommendation that requires the agency to develop a written plan that describes how a person who does not speak English can be provided reasonable access to agency's programs and services.

▼ **The Texas Department of Insurance (TDI) has placed an emphasis on providing consumers with information that is easily understood. The Texas Department of Insurance provides that all insurance policy forms and information brochures be written in plain language.**

▶ The Insurance Code requires that all standard insurance policy forms developed by TDI and pro-

vided to carriers must be written in plain language. In addition, TDI also produces numerous information brochures in simple and clear terms. Many brochures are also produced in Spanish.

## CONCLUSION

The workers' compensation process is complex and difficult to understand. As a result, information is essential for injured workers to protect their rights and receive the proper benefits under the law. TWCC has the responsibility to make sure that information provided to injured workers is clear and in a language most understandable to injured workers.

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TWCC should strengthen efforts to explain workers' rights.

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**RECOMMENDATION****▼ Change the statute to:**

- ▶ require TWCC to develop plain language information for injured workers about the workers' compensation process both in English and Spanish; and
- ▶ require TWCC, by mail or phone if possible, to contact injured workers having missed eight or more days of work to provide information about the process.

This recommendation will strengthen present TWCC efforts to assist injured workers through the workers' compensation process.

**FISCAL IMPACT**

This recommendation will not result in a fiscal impact to the state. The recommended changes improve processes already in place and will not require additional staff.



# ISSUE 4

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## PROVIDE TWCC WITH MORE AUTHORITY AND FLEXIBILITY IN DEALING WITH COMPANIES WITH THE HIGHEST WORKPLACE ACCIDENT RATES.

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### BACKGROUND

The Texas Workers' Compensation Commission (TWCC) is directed by law to improve the safety of Texas workplaces. The extra-hazardous employer program (EHEP), one of the agency's key accident prevention programs, focuses on employers with high rates of injuries and illnesses by providing special assistance and attention to these employers. One of TWCC's goals is to reduce the overall incidence in injury in the state from the current level of 7.3 per 100 employees to 7.0 per 100 employees.

An employer with high injury rates is placed in the EHEP if:

- the employer has workers' compensation insurance;
- the employer does not have workers' compensation insurance but had **50 or more employees during calendar year 1993**; or
- the employer does not have workers' compensation insurance but has **five or more employees beginning in January 1994**.

A business designated as extra-hazardous must develop an accident prevention plan with the help of a safety consultant—a safety professional who is pre-approved by TWCC. Employers can choose a private safety consultant, a consultant from their insurance company, or a TWCC professional to develop their plan. The accident prevention plan helps the employer develop safety and accident reduction procedures to reduce worksite injuries and provide safer workplaces for employees. Six months after the business implements its accident prevention plan, TWCC staff conducts an inspection to ensure that the plan has been executed.

The review of EHEP concentrated on whether the appropriate structure is in place for the agency to effectively carry out the program's goal of reducing rates of injuries, illnesses and fatalities for workers in extra-hazardous companies.

### FINDINGS

- ▼ **A number of EHEP's participants are initially placed in the program as a result of fatalities not related to the**

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A number of employers are initially placed in the program who later prove workers' deaths were not work-related.

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**work environment. Employers typically challenge their extra-hazardous designation in administrative hearings and usually prevail. These hearings divert TWCC resources that could more effectively be used to improve workplace safety.**

▶ Since EHEP began, 441 employers have been identified as extra-hazardous. Of these, 35 percent (154) have been released from the program after an administrative hearing determined that the event that caused TWCC to place the employer in EHEP was not related to the work environment.

▶ With regard to fatalities, since EHEP began, about 46 percent of employers initially designated extra-hazardous because of a worker fatality have been released from EHEP after an administrative

hearing determined that the fatality was not related to the work environment.

▶ TWCC spends significant resources to prepare for administrative reviews of extra-hazardous designations. Safety staff from EHEP become involved in the hearings process as well as staff from the hearings division and the General Counsel's office. In fiscal year 1993, TWCC spent more than \$271,000 on EHEP hearings.

▶ The Commission recently adopted a policy giving the executive director discretion to release an employer from EHEP without an administrative hearing based on seven causes of death that *are not* related to the work environment. These seven causes are:

### How an Employer is Designated "Extra-Hazardous"

TWCC establishes expected injury frequency rates based on figures for each type of business published by the U.S. Bureau of Labor Statistics and the National Safety Council. The formula for identifying extra-hazardous employers modifies the employer's rate with several other factors, including each employer's total number of fatalities and the company's size. If an employer's adjusted injury frequency rate exceeds a threshold established by the formula in agency rules, the employer is designated as extra-hazardous. In many instances, a single employee fatality can push an employer into EHEP. If an employer wishes to dispute its designation as an extra-hazardous employer on grounds that the employee's cause of death was unrelated to the employer's workplace or working conditions, it can do so through an Administrative Procedures Act (APA) hearing.

- **Heart Attacks**

A fatal heart attack which is shown to result from causes other than work activities or the work environment can be excluded from EHEP.

- **Diseases of Life**

A fatal disease of life which is shown to result from causes other than work activities or the work environment can be excluded from EHEP.

- **Homicides**

A homicide that is shown to result from causes other than work activities or the work environment can be excluded from EHEP. A police or insurance investigator's report must establish that the homicide was a personal matter or random event and not directed at the employee or because of employment.

- **Suicides**

A suicide occurring at the workplace can be excluded from EHEP. A police or insurance investigator's report must indicate that the death was clearly a suicide with no indication that it was related to employment.

- **Third Party Vehicle Accidents**

A fatal vehicle accident, including vehicle/pedestrian accidents, which was caused by a third party with no cause attributable to the employer, the employee, or the work environment can be excluded from EHEP. A police report showing no cause by the employer, the employee, or the work environment must be provided.

- **Common Carrier Accidents**

A fatal injury that occurred while the employee was a passenger on a common carrier can be excluded from EHEP. Documentation must be provided showing that the employee was a passenger on the common carrier at the time of the accident, was not an employee of the carrier and was not involved in causing the accident.

- **Natural Events**

A fatal injury resulting from natural events, such as a lightning strike, can be excluded from EHEP, unless the employment exposed the employee to a greater risk of such injury than normally applies to the general public and could not be foreseen by a prudent employer. A docu-

The name "extra-hazardous" puts businesses in a defensive posture.

mented account of the event must be provided by the police, the Occupational Safety and Health Administration (OSHA), or an insurance investigator showing that the events' occurrence or severity could not have been foreseen or prevented by the employer.

- ▼ **To satisfy the criteria for exclusion from EHEP, TWCC's policy states that nothing in the case history should indicate that the employer or the work environment in any way contributed to the fatality. This policy has not been adopted as a rule and could be changed at any time without public comment.**
- ▼ **The name of EHEP has resulted in a lack of cooperation from businesses identified as extra-hazardous and has made it more difficult to improve safety of Texas' most dangerous workplaces.**

- ◆ According to TWCC staff, the name of the program, "extra-hazardous", puts businesses so designated in a defensive posture, making it difficult to implement effective safety programs. This defensive posture sets up a barrier TWCC staff must break through before any

effective dialogue on workplace safety can occur.

- ▼ **The current requirement for TWCC to inspect extra-hazardous employers exactly six months after safety plan implementation has resulted in premature inspections and unnecessary program costs.**

- ◆ Although most accident prevention plans must be in place for at least six months before their effectiveness can be determined, the statute requires that the implementation inspection take place exactly six months after the plan has been implemented. According to TWCC staff, if a time interval were established allowing for inspections to take place between six and nine months after plan formulation, the staff could more accurately determine the plan's effectiveness.

- ◆ In addition, as a result of the six-month inspection requirement, TWCC staff cannot schedule implementation inspections to allow for the most efficient use of travel. Currently, extra-hazardous employers reimburse TWCC for any travel expenses inspectors incur. The average travel costs associated with EHEP are \$146 per inspection. Another TWCC program that

requires employer inspections, the Rejected Risk Injury Prevention Program, has travel costs of about \$96 per inspection. The ability to schedule multiple inspections per trip results in a more efficient travel schedule. If a three-month window were established, inspections could be scheduled to allow staff to make more than one inspection per trip.

## CONCLUSION

The extra-hazardous employers program has been identifying some businesses as extra-hazardous as a result of fatalities later shown to be caused by factors outside the work environment. These businesses then successfully

appeal their designation as extra-hazardous in hearings which divert agency and employer resources that could be better used improving safety. In addition, the current name of the extra-hazardous employers program has resulted in defensiveness on the part of employers in the program making it more difficult to implement safety plans designed to increase workplace safety. TWCC is also unnecessarily restricted in the timing of its inspections of extra-hazardous businesses, resulting in higher than necessary program costs that are paid by employers. Given added flexibility, the agency can more effectively achieve its goal of increasing workplace safety for Texas workers.

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Provide flexibility to exclude employers from the extra-hazardous program.

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## RECOMMENDATION

### ▼ Change the statute to:

- ▶ give the executive director the discretion to exclude a business from being identified as an extra-hazardous employer if the business can show that it qualified as a result of a fatal accident not related to the work environment;
  - require that if anything in the case history indicates that the employer or the employment environment in any way contributed to an employee's accident, the case must go through an Administrative Procedures Act hearing;
  - require the Commission to adopt rules to address fatalities that may not be related to the work environment including heart attacks, diseases of life, homicides, suicides, third party vehicle accidents, common carrier accidents, and natural events;
- ▶ rename the Extra-Hazardous Employers Program the Accident Reduction Program; and
- ▶ establish an inspection time window so that TWCC can conduct an accident prevention plan implementation inspection between six and nine months after the plan has been implemented.

This recommendation will help TWCC reduce the overall incidence rate of workplace injuries and illnesses to 7 per 100 full-time employees from the current 7.3 per 100 full-time employees. By preventing businesses from inappropriate placement in the Extra-Hazardous Employers Program, TWCC can better dedicate its safety resources to achieving the program's goal. This recommendation will place the same safeguards as are in the current TWCC policy to ensure that *only* non-work related fatalities will allow businesses to be excluded from the program. In addition, changing the name of EHEP will make businesses less reluctant to cooperate with TWCC staff in reducing workplace accidents. Finally, giving TWCC the flexibility to choose the timing of EHEP inspections allows the inspection to take place at the most appropriate time and at reduced travel costs. This part of the recommendation will also provide an incentive for EHEP employers to implement their accident prevention plans as soon as possible since the exact date of the inspection will not be known far in advance.

## FISCAL IMPACT

TWCC would achieve cost reductions in the amount of \$79,120 as a result of these recommendations. The estimated cost reductions would be achieved by a decrease in administrative hearings for EHEP, the use of the General Counsel, and TWCC's health and safety division staff time associated with the hearings. All savings that would be achieved would be reallocated within TWCC for safety programs to improve workplace safety programs. Since TWCC is reimbursed for travel costs by employers in EHEP, any travel savings resulting from this recommendation will accrue to those businesses.



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# ISSUE 5

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## **ALLOW TWCC TO FINE NON-COVERED EMPLOYERS FOR FAILURE TO REPORT INJURIES AND ILLNESSES JUST LIKE COVERED EMPLOYERS.**

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### **BACKGROUND**

State law requires employers that do not subscribe to workers' compensation insurance (non-covered employers) and have five or more employees, and all covered employers, to report job-related injuries and illnesses to TWCC. The agency enters information from these reports into its job safety information system (JSIS) data base. JSIS data is used by the agency to develop safety programs and to identify employers who have injury rates in excess of industry norms. Covered and non-covered employers with higher-than-average injury frequencies for their respective industries, may be placed in the extra-hazardous employer program and required to institute specialized safety programs. To produce accurate JSIS data, the agency must receive information from as many Texas employers as possible.

The Sunset review focused on the reporting requirements, the level of compliance by non-covered employers, and TWCC's ability to encourage reporting.

### **FINDINGS**

- ▼ **While TWCC can penalize covered employers who do not report injuries, it has no authority to penalize non-covered employers who fail to report.**
  - ▶ Covered employers must file a written report of occupational injuries and illnesses with the Commission and the employer's insurance carrier. Unlike non-covered employers, covered employers who fail to comply with this reporting requirement can be assessed a \$500 administrative penalty.
  - ▶ State law requires non-covered employers with five or more employees to file a written report with the Commission detailing occupational diseases or injuries when the employee misses more than one day of work. Because no penalty exists for failure to comply with this provision, TWCC is largely dependent on non-covered employers to report voluntarily.

▼ **Non-covered employers are not reliably reporting on-the-job injuries and illnesses to TWCC as required.**

▶ TWCC reports that the incidence rate of occupational injuries and illnesses for all employers in Texas in 1992, the most recent year of available data, is 7.3 per 100 employees.

▶ Based on information from the Research Center, of the approximately 7.5 million employees in the state, about 1.5 million or 20 percent of the workforce are non-covered. The reported number of occupational injuries and illnesses for non-covered employers with five or more employees during this same time-period was 13,032. However, using the statewide injury incidence rate of 7.3 per 100 employees, the expected number of injuries and illnesses for the 1.5 million employees of non-covered employers is 94,112—more than seven times the number of reported injuries.

▶ The difference between the reported number of injuries for non-covered employers and the expected number of injuries is great enough to show that TWCC is not receiving all required injury

reports from non-covered employers.

▼ **The failure of non-covered employers to report injury and illness data results in less effective safety programs and allows unsafe employers to avoid entry into the extra-hazardous employer program.**

▶ TWCC's safety program specialists use JSIS data to target injury and illness trends needing action. Under-reporting of injuries skews the injury trends and may cause the agency to direct its safety program emphasis toward injury types and illnesses that do not require priority attention, while overlooking some important injuries.

▶ Receiving injury and illness information from non-covered employers who are not currently reporting would allow the agency to identify those with above average injury frequencies. Non-reporting of injuries may allow employers to escape identification as extra-hazardous employers and avoid entry into the program altogether.

▼ **Authority for TWCC to penalize non-covered employers is not unusual. TWCC has oversight and**

**penalty authority over non-covered employers in areas such as safety programs.**

► TWCC has the authority to place both covered and non-covered employers in the extra-hazardous employer program, which requires the employer to implement special safety programs.

► TWCC has penalty authority over non-covered employers who fail to report their choice to not obtain workers' compensation insurance. State law also prescribes a penalty for employers who do not notify each employee of whether the employer has

workers' compensation insurance coverage.

**CONCLUSION**

TWCC can fine covered employers who do not report needed injury information, but cannot fine non-covered employers even though they can fine non-covered employers for other problems. The lack of an effective enforcement mechanism impairs TWCC's ability to gather injury information from non-covered employers. The inability to gather this information allows employers with high injury frequencies to avoid the extra-hazardous employer program and prevents the agency from developing comprehensive data on injuries to support appropriate safety programs.

Authorize fines for non-covered employers that fail to report injuries.

**RECOMMENDATION**

▼ **Change the statute to authorize TWCC to impose an administrative fine of up to \$500 on non-covered employers with five or more employees who fail to file required reports on injuries and illnesses.**

The penalty for non-covered employers who fail to report will be assessed the same way the current penalty is assessed for violations by covered employers. These violations are investigated by the compliance and practices division and, if any resulting penalty is disputed, the case is resolved in an administrative hearing held by the hearings division. If a company repeatedly fails to file an injury report, existing penalties can be used. The statute provides that anyone who violates an order of the Commission or commits repeated administrative violations may be assessed an administrative penalty of up to \$10,000. Use of penalties will encourage non-covered employers to report illnesses and injuries. Improving the job safety information system will allow for more accurate information for safety programs and better identification of extra-hazardous employers who currently escape inclusion in the extra-hazardous employer program.

**FISCAL IMPACT**

This recommendation would result in a positive fiscal impact on the general revenue fund. The actual amount cannot be determined because the number of administrative penalties levied and the amounts of the penalties cannot be estimated.



# ISSUE 6

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## PROVIDE FOR CONSISTENCY IN QUALIFICATIONS OF TWCC SAFETY EXPERTS.

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### BACKGROUND

TWCC's accident prevention services program oversees workers' compensation insurance companies' safety services. TWCC reviews companies' accident prevention efforts at least once every two years to ensure that those companies provide quality accident prevention services to their policyholders. In fiscal year 1993, TWCC reviewed 127 insurance companies' safety services.

As part of its accident prevention services, each insurance company hires field safety representatives (FSRs) to help policyholders find unsafe working conditions and develop safety programs that reduce accidents. To qualify as an FSR, state law requires a person to meet **one** of the following criteria:

- have a bachelor's degree in science or engineering;
- be a registered professional engineer;
- be a certified safety professional;
- be a certified industrial hygienist;

- have 10 years experience in occupational safety and health; or
- have completed a certified training program in accident prevention services approved by TWCC.

TWCC is required to evaluate FSR qualifications. Of the most recent 1,000 evaluations about 34 percent of those reviewed have qualified as an FSR by earning a bachelor's degree in science. However, because the statute does not specify the type of bachelor of science degree required, a person with a bachelor's degree in science in a non-safety-related field may be able to qualify as an FSR.

The review examined TWCC's authority to oversee insurance company safety programs focusing on whether individuals providing safety services have appropriate training and experience.

### FINDINGS

- ▼ **Persons with a bachelor's degree in science can become FSRs without appropriate training or experience.**

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Field safety representatives help employers find hazards and take steps to improve worker safety.

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▶ One of the ways a person can qualify as an FSR is with a bachelor's degree in science. The Workers' Compensation Act does not specify particular subject areas for that degree. As a result, persons with bachelor of science degrees in fields unrelated to safety and industrial hygiene can qualify as FSRs. For example, a person with a bachelor of science degree in geology can become an FSR without health and safety training or experience.

▼ **Other TWCC safety programs allow the agency to determine the qualifications for safety experts. Those qualifications differ from those for FSRs.**

▶ The extra-hazardous employers program makes use of persons similar to FSRs known as "professional sources" or "independent safety consultants." In that program, TWCC has the statutory authority to determine the qualifications for those safety consultants.

Those qualifications include:

- a total of 10 years active practice in the occupational health and safety field; or

- at least five years active practice within the last eight years in the occupational and health profession; and **one** of the following-

a bachelor's degree in safety, science, or engineering;

a professional engineer registered in Texas;

a certified safety professional certified by the Board of Certified Safety Professionals;

a certified industrial hygienist certified by the American Board of Industrial Hygiene;

a certification by another certifying organization that is approved by the division; or

completion of a certified safety training program in accident prevention services approved by the division.

▼ **Populous states such as New York and Florida, and other states such as Arkansas, Louisiana and Kansas have qualifications for FSRs that require a bachelor of science degree that directly relates to**

**occupational health and safety.**

- ▼ **Providing rulemaking authority to TWCC to establish the qualifications for FSRs has previously been identified as appropriate to provide consistency in qualifications for TWCC safety experts.**

▶ The Legislative Oversight Committee on Workers' Compensation (LOC) staff identified the statutory criteria for FSRs as ambiguous with respect to the degree requirements and recommended giving TWCC rulemaking authority to establish qualifications for FSRs.

▶ In its discussions with the Sunset Commission staff, TWCC staff identified the same qualification disparity. TWCC staff indicated that the Commission needs rulemaking authority to establish the qualifications for FSRs rather than having the qualifications established by statute.

## CONCLUSION

Currently, persons with no health and safety experience can qualify under the statute as field safety representatives for an insurance company. Such persons are not in a position to make sound and effective recommendations to minimize workplace illnesses and injuries. With rulemaking authority over FSR qualifications, TWCC can better ensure that persons who qualify as FSRs have the training necessary to make effective recommendations for increased workplace health and safety in Texas.

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Field safety representatives should be qualified by education or experience.

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**RECOMMENDATION**

- ▼ **Change the statute to authorize TWCC to develop the qualifications for field safety representatives (FSRs) by rule.**

This recommendation would allow TWCC to adopt rules governing the qualifications for field safety representatives that provide safety services to policyholders on behalf of insurance companies. Such rules will allow TWCC to require more specific education and experience requirements for FSRs. In addition, this recommendation will provide TWCC with the same authority for the accident prevention services program as it has for the extra-hazardous employers program. TWCC should be allowed to phase in higher requirements over a two-year period so that a temporary shortage of FSRs does not result.

**FISCAL IMPACT**

This recommendation would result in a no fiscal impact to the state. Providing rulemaking authority to TWCC regarding FSR qualifications would require no additional resources on the part of TWCC.



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# ISSUE 7

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## **STREAMLINE THE CLAIMS PROCESS BY LETTING INSURANCE COMPANIES REPORT WORKER INJURIES ELECTRONICALLY.**

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### **BACKGROUND**

**M**uch of the work of the Texas Workers' Compensation Commission involves processing information. In fiscal year 1993, the agency's central office received 3.7 million pieces of mail and two million electronically transmitted documents. The agency stored almost two million paper files on more than three miles of shelving. This volume of information forces TWCC to be as efficient as possible in its use of information-processing technology. TWCC uses electronic submission to reduce the costs of data entry and paper storage and now receives 96 percent of its eligible documents by electronic submission.

State law requires employers to report to TWCC when a worker, who is injured on the job, is absent from work more than one day. The law also requires that employers make their report to TWCC and their insurance carrier within eight days. Employers must also submit reports on workers who contract occupational diseases. In fiscal year 1993, TWCC received

210,000 of these employer first report of injury forms.

The review of TWCC's current information-collection procedures focused on its ability to collect information, particularly notices of employee injuries and illnesses.

### **FINDINGS**

▼ **Current law requires TWCC to receive injury reports directly from employers which prevents the agency from fully using its electronic submission capabilities.**

▶ The first report of injury form must be submitted by an injured worker's employer and may not be accepted from the employer's insurance carrier. The employer is also required to submit the report of injury to its insurance carrier.

▶ Electronic submission of forms from employers is not feasible due to the large number of employers with varying electronic capabilities. The most recent estimates indicate that 159,000 employers purchase workers' com-

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TWCC cannot fully use its electronic submission capability.

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Unnecessary data entry caused the agency to spend an extra 10.5 person-years on entering data.

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pensation insurance. Most employers average only one or two injury reports each year. Consequently, the small volume of information received from individual employers does not warrant the enactment of standards necessary for electronic filing of injury reports by employers.

► By contrast, only 59 insurance carrier groups write workers' compensation policies in Texas. (While there are 108 insurance companies writing workers' compensation insurance, many of these companies are allied together into larger carrier groups who share administrative functions.) If these insurance carrier groups were authorized to submit their policyholders' reports of injury to TWCC, they could each electronically submit an average of 3,560 forms per year. Considering the significantly smaller number of carriers than employers, allowing carriers to electronically submit injury reports to TWCC on behalf of their policyholders would simplify the process.

▼ **TWCC's cost and time to process claims is higher than necessary because only**

**employers can file official injury reports.**

► Based on cost information provided by the agency, the cost to data-enter each employer's report of injury averages \$1.06. In 1993, the agency received 210,000 employer's first report of injury forms resulting in a data-entry cost of \$222,600. An additional cost of six cents per form is necessary to store paper forms. The total annual cost for paper storage of employer's first report of injury forms is \$12,600. In addition, the cost of paper submission involves lost time. Based on the agency's estimate of six minutes per injury form for data entry, the 210,000 forms submitted in paper format required the agency to expend 21,000 hours or 10.5 person years for data entry.

► Authorizing carriers to report injury information electronically will allow TWCC to reduce the time required to process workers' compensation claims. Currently, when an employer is notified of a worker's injury, the employer has eight days to send an injury report to TWCC and its insurance carrier. After the carrier is notified by the employer, the carrier reports to

TWCC its intention to initiate payment or dispute the claim. In many cases the carrier's report reaches the agency before the employer's report. These events create duplication of effort.

▶ Filing the injury report forms on paper requires a large amount of data entry that can lead to a backlog in processing other types of forms. At the end of fiscal year 1993, TWCC had a backlog in the processing of another required form—the initial medical report—that forced the agency to hire temporary personnel at a cost of \$25,000.

▶ Cost and time savings could also allow TWCC to shift resources to other efforts such as programs to improve workplace safety.

▼ **Most large insurance carriers now use electronic filing and could easily file injury reports.**

▶ Seven of the 10 largest workers' compensation insurance carriers in Texas either electronically submit or are preparing to electronically submit data very similar to that contained on the employer's first report of

injury form. This data is currently on the carrier's initiation of payment form.

▶ All workers' compensation insurance carriers in Texas are required by rule to submit medical bills electronically. The insurance carriers who do not have the capability to file electronically may contract with an insurance services corporation. As of April 1994, the agency had approved 36 insurance services corporations to electronically submit certain forms. In fiscal year 1993, 66.7 percent of the medical bills were submitted electronically. After expanding electronic filing requirements, the agency now receives 96 percent of them electronically.

▼ **The agency is properly equipped and has the capacity to accept forms electronically.**

▶ The agency has well-developed electronic submission capacity. In fiscal year 1993, the agency received 2,017,000 forms electronically. The employer's first report of injury forms received from insurance carriers will not pose a difficulty for TWCC to integrate into its electronic filing system.

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Require insurance carriers to file injury reports on the behalf of employers.

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▼ **The agency should ensure that the injured worker knows that the injury report is accurate and has been sent to the carrier, has a copy of the worker's claim for benefits form, and knows how the workers' compensation claim process works.**

► To ensure that benefits are not delayed, the employer should provide a copy of the injury report to the injured worker.

► Assisting the injured worker to file the claim for benefits form (TWCC-41) ensures that the injured worker receives entitled income benefits.

► Providing key information about the injured worker's rights and responsibilities under the law at the time of injury is essential to allow the worker to understand the process.

## CONCLUSION

Electronic filing of reports would expedite the claims process and reduce costs. The statute now prevents TWCC from getting injury reports from insurance carriers on behalf of employers. The carrier, on behalf of the employer, should be allowed to transmit to TWCC the information from the employers' injury report electronically. No reason was identified to continue to prevent carriers from filing employer injury report information.

**RECOMMENDATION****▼ Change the statute to:**

- ▶ require insurance carriers to file employer reports of injury on behalf of their policyholders;**
- ▶ require employers to give a copy of the injury report to the worker;**
- ▶ require the worker's copy of the injury report to contain a summary of the worker's rights and responsibilities under the statute written in plain language; and**
- ▶ require the employer to give a copy of the workers' claim for benefits form to the worker at the time of injury.**

This recommendation would get benefits to injured workers sooner and reduce processing costs for the agency by streamlining the injury reporting process. Instead of requiring employers to file injury reports with both the agency and their insurance carrier, employers would report to their carriers who would directly submit injury reports to TWCC. Employers would still be responsible for reporting injuries to their carriers and could still be sanctioned if they fail to make those reports. Insurance carriers would still be responsible for reporting injuries to TWCC and could be sanctioned if they fail to make those reports. As an added safeguard, insurance carriers would be required to provide a list of reported injuries to their policyholders on at least a monthly basis.

Sunset Staff has heard many times that workers just don't know how to get through the system. This recommendation ensures that workers are given information on how the system works as soon as the injury is reported. TWCC should revise the employer's report of injury form to include a plain-language explanation of the worker's rights and responsibilities under the statute, and information on how to contact the agency. Currently when injury reports are received by TWCC, the agency mails a notice to the worker. This practice would be continued and would function as a cross-check to notify workers that their injury report has been received by the agency. Requiring the employer to provide the claim benefits form to the injured worker would make it easier for the worker to file the claims form, preserve income benefits, and provide additional safeguards in the claim-filing process.

In addition, the agency should develop guidelines for the transition to electronic filing of injury report forms. The guidelines would allow insurance carriers to work with the agency on submitting reports until the carriers have developed sufficient electronic data interchange capability.

**FISCAL IMPACT**

This recommendation would allow TWCC to achieve cost reductions in the amount of \$260,200. Cost reductions result from the elimination of data entry and temporary personnel and reduction in paper storage needs. All savings achieved through these reductions would be reallocated within TWCC for programs to improve workplace safety.

# ISSUE 8

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## IMPROVE THE ADMINISTRATIVE VIOLATION HEARINGS PROCESS BY TRANSFERRING IT TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.

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### BACKGROUND

**T**WCC conducts two distinct types of hearings: benefit contested case hearings and Administrative Procedure Act (APA) hearings. Benefit contested case hearings address questions on the eligibility and amount of benefits due injured workers and are held around the state. The typical benefit contested case hearing involves an injured worker and an insurance carrier.

APA hearings are held to consider administrative violations of the statute or rules, medical disputes, and disputes over extra-hazardous employer identification. All APA hearings are held in Austin. This issue addresses only APA hearings — those related to violations of the statute or rules, medical disputes and the extra-hazardous employer program.

APA hearings are now held by TWCC staff hearing officers. After a hearing, the hearing officer issues a written decision and a final order. Unlike many administrative hearing processes used by state agencies, the workers' compensation statute does not

require the record and hearing officer's recommendation to be reviewed by the Commission. This means that the hearing officer's decision is final unless appealed to district court in Travis County. In fiscal year 1993, the hearings division held 88 APA hearings and 146 pre-hearing conferences, and spent about \$175,000 for this function. The division employs three hearing officers and two support personnel and expects to spend about \$241,000 for APA hearings in fiscal year 1994.

In 1991, the Legislature created the State Office of Administrative Hearings (SOAH) to conduct administrative hearings for state agencies. The Sunset review focused on whether transferring the agency's APA hearings to SOAH would increase the independence, quality or cost effectiveness of the hearings process.

### FINDINGS

- ▼ **TWCC's administrative hearings process would be more independent if located at SOAH.**

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This issue addresses only APA hearings - not hearings about disputed claims.

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Based on historical savings, SOAH estimates that it has conducted hearings costing 27 percent less than individual agencies.

◆ TWCC holds APA hearings at the agency's central office in Austin. The majority of participants—the hearing officer, the prosecutor, and staff that investigated and brought the charge—are employed by TWCC. This process and the close physical proximity of participants increases opportunities for ex parte communications and leads to the perception that the hearings process and its decisions are not independent of the agency.

◆ The problem of independence would not exist if APA hearings were conducted by SOAH since the administrative law judge (ALJ) would be a SOAH employee. This would effectively separate the investigation and prosecution functions from the hearings function.

◆ As with other agencies' hearings, SOAH would consider the applicable TWCC rules or policies in conducting hearings. In this way, TWCC will still determine how broader policy matters or recurring issues will be treated by ALJs. Decisions of the ALJ will be final and appeals will continue to go to district court. The ALJs assigned to perform hearings for TWCC will be housed at SOAH.

▼ **SOAH has the experience and ability to hold quality administrative hearings.**

◆ SOAH currently holds hearings for 62 agencies including the Texas Alcoholic Beverage Commission, the Texas Department of Insurance, the Texas Department of Transportation, the Employees' Retirement System (ERS), and 29 occupational licensing agencies.

▼ **SOAH has reduced overall hearing costs for state agencies that have transferred their hearings functions to SOAH.**

◆ During its eight months of operation in fiscal year 1993, SOAH estimates that it saved more than \$260,000 in hearings costs that would have been incurred had the hearings been conducted by state agencies. This savings represents a 27 percent reduction in the cost of hearings.

◆ APA hearings at TWCC are similar to the hearings conducted at SOAH. SOAH already conducts APA hearings for ERS and health licensing agencies such as the Board of Medical Examiners and the Board of Pharmacy that involve a variety of medical and technical topics.

SOAH serves as the central administrative hearings office for the state and is in a unique position to hire some of the most qualified ALJs in Texas. SOAH currently employs 13 ALJs with an average of 13.6 years of experience. To enhance their skills and abilities, each ALJ receives more than 77 hours of continuing education and in-house training in hearing and law-related topics each year.

## CONCLUSION

The Legislature has clearly expressed its intent to consolidate the hearings functions of state agencies if such a transfer would improve the independence, quality, or cost effectiveness of hearings. The review of TWCC's APA hearings process indicated that SOAH has the ability to conduct the hearings and that a transfer would provide more independence, -- both real and perceived -- an equal level of quality, and could improve the cost effectiveness of the hearings process.

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Transfer the APA  
hearings to the State  
Office of Administra-  
tive Hearings

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**RECOMMENDATION**

- ▼ **Change the statute to transfer TWCC's Administrative Procedure Act hearings to the State Office of Administrative Hearings.**

This recommendation would transfer TWCC's APA hearing function to the State Office of Administrative Hearings. The hearing division would remain at TWCC and continue to conduct benefit contested case hearings as part of the benefit dispute resolution process. The APA hearing staff would be transferred to SOAH and the cost of these hearings would be paid through interagency contract.

In conducting hearings, SOAH would consider the applicable substantive rules or policies of TWCC. In this way, TWCC would still determine how broader policy matters or recurring issues will be treated by administrative law judges. The Commission would continue to determine whether the ALJ would issue proposals for decisions or make the final decision. TWCC hearing officers now make final decisions.

**FISCAL IMPACT**

Historical data indicates that transferring the administrative hearings function from TWCC could result in cost reductions of up to 27 percent. The fiscal impact cannot be estimated at this time because the ultimate structure of the interagency contract with SOAH and the specific costs to conduct administrative hearings cannot be determined. Any cost reductions that are achieved by transferring this function would be reallocated by TWCC for programs to improve workplace safety.



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# ISSUE 9

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## **ELIMINATE AN INHERENT CONFLICT IN THE TWCC EXECUTIVE DIRECTOR'S SERVICE AS A VOTING MEMBER OF THE TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION BOARD.**

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### **BACKGROUND**

The Texas Certified Self-Insurer Guaranty Association (Guaranty Association) is composed of all employers in the state who are certified by TWCC to self-insure for workers' compensation. Certified self-insurance means that an employer covers its own workers' compensation costs subject to provisions of the Texas Workers' Compensation Act. Employers who are certified self-insurers must be members of the Guaranty Association. The Guaranty Association pays benefits to injured workers in the event that a member employer is unable to cover workers' compensation claims costs.

A seven-member Board of Directors governs the Guaranty Association. The Board is composed of two certified self-insurers elected from the Guaranty Association, one TWCC commissioner representing employees, one TWCC commissioner representing employers, the executive director of TWCC, the public counsel of the Office of Public Insurance Counsel, and TWCC's director of the self-insurance regulation

division who serves as a non-voting member. The Guaranty Association Board reviews applications for self-insurance, administers the certified self-insurer trust fund, and manages the Guaranty Association's business.

An employer wishing to self-insure under the Act must apply for certification through TWCC's self insurance regulation division, which evaluates the applications and forwards a report to the Guaranty Association Board. The Board reviews the reports and votes to approve or deny membership for the business. The staff forwards the approved applications to the Commission, which votes to approve or deny a certificate to self-insure. If the applicant is approved, the employer provides a security deposit to the director of the self-insurance division of TWCC, and is issued a certificate of authority to self-insure. The employer then becomes a member of the Guaranty Association.

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Certified self-insurance means that an employer covers its own workers' compensation costs after TWCC approval.

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The Sunset review focused on the appropriateness of the Guaranty Association Board's structure.

## FINDINGS

▼ **The current structure of the Guaranty Association Board blurs the separation between policymaking and administration of TWCC.**

► The executive director of TWCC manages the day-to-day operations of TWCC, while the Commission is responsible for making broad policy decisions that guide TWCC.

► The executive director and two TWCC Commission members serve as equal members of the Guaranty Association Board, thus mixing administration and policymaking related to TWCC.

▼ **The lack of separation results in a potential conflict between the executive director of TWCC and Commission members.**

► The executive director of TWCC is appointed by and serves at the pleasure of the Commission. However, as a voting member of the Guaranty Association Board, the director is placed in a position that could result in the director

voting against the position of one or both of the Commissioners.

► The executive director could allow the position of a Commission member to influence his or her vote rather than going against the positions of the Commission member.

▼ **The executive director of TWCC must maintain a neutral position between employers and employees.**

► Having the executive director on the Guaranty Association Board as a voting member may jeopardize this neutral position.

► By serving as a voting member of the Board, the executive director's vote could give the appearance that he or she is siding either with employees or employers.

▼ **While the executive director has information that is useful to the Texas Certified Self-Insurer Guaranty Association Board, this information can continue to be provided without the director serving as a voting member of the Board.**

**CONCLUSION**

By serving as a voting member on the Guaranty Association Board, the executive director is placed in an awkward position by having equal authority with his or her employers, the TWCC Commission members. As a result, the

director may be required to vote against the Commissioners and positions taken by Commissioners may influence the director's vote. Removing the executive director's voting authority would solve this dilemma.

Remove the TWCC executive director as a voting member of the Guaranty Association Board.

**RECOMMENDATION**

- ▼ **Change the statute to remove the executive director of TWCC as a voting member of the Texas Certified Self-Insurer Guaranty Association Board and require continued service on the Board as a non-voting member.**

This recommendation would prevent the executive director from being placed in a situation of voting against the position of the Commission members and would remove the opportunities for conflicts of interest that result from voting on an issue seen to benefit either employers or employees. Five voting members would remain on the Board. The executive director should remain on the Board as a non-voting member to provide information on workers' compensation to the Board.

**FISCAL IMPACT**

This recommendation would result in no fiscal impact to the state.



# ISSUE 10

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## CONTINUE THE TEXAS WORKERS' COMPENSATION COMMISSION FOR 12 YEARS TO ADMINISTER THE WORKERS' COMPENSATION SYSTEM IN TEXAS.

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### BACKGROUND

In 1989, the 71st Legislature, 2nd Called Session, made extensive changes to the workers' compensation system. One of the most significant provisions of the new Workers' Compensation Act was the replacement of the Industrial Accident Board (IAB) with the Texas Workers' Compensation Commission (TWCC). The creation of TWCC was an important part of the shift from a jury-driven system under the old law to an administrative system under the new law. TWCC was created:

- to administer a system designed to ensure that injured and ill workers get timely, fair, and appropriate benefits;
- to administer a program to resolve claim disputes outside the court system;
- to develop programs that reduce medical and legal costs;
- to help Texas employers provide safer workplaces;
- to enforce compliance with state law and TWCC rules;

- to aid state agencies in establishing effective risk-management programs; and
- to regulate certified self-insurance for private employers.

To justify the continuation of an agency's functions, certain conditions should exist. A current and continuing need should exist for the state to provide the functions or services; the functions should not duplicate those currently provided by any other agency; and the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to any other state agency.

### FINDINGS

- ▼ **Workers' compensation is an important system for workers and employers in Texas.**

► Injuries in the workplace are inevitable. In 1993, more than 295,000 injuries were reported to TWCC resulting in 123,800 indemnity/income claims.

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In 1993, more than 295,000 worker injuries were reported to TWCC.

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In 1993, injured workers received benefits in an average of 13 days.

► The workers' compensation process is designed to provide medical and income benefits to injured workers in a prescribed manner without having to go to court to receive benefits. Covered employers do not face the risk of lawsuits related to on-the-job injuries that could result in costly judgments.

▼ **TWCC administers the workers' compensation process in Texas and attempts to ensure that injured workers receive appropriate benefits, that workplaces are safe, and that the statute and rules are followed.**

► To ensure that injured workers receive benefits, TWCC has developed a claims administration process that attempts to provide appropriate benefits as quickly as possible. In 1993, injured workers received benefits in an average of 13 days. To settle disputes between participants in the system and to get benefits flowing to injured workers as soon as possible, TWCC resolves disputes administratively. In 1993, about 90 percent of all benefit disputes were resolved within the agency without going to court. To ensure that workers get the appropriate

medical treatment at reasonable costs, TWCC has developed a program to evaluate treatments and resolve medical disputes. In 1993, TWCC was responsible for monitoring insurance carriers' processing of more than 106,900 medical treatment preauthorization requests and 3.3 million medical bills. TWCC also resolved more than 1,200 medical disputes.

► TWCC provides a variety of safety services to employers in Texas. Safety programs reduce physical suffering and health care costs by preventing injuries. In 1993, TWCC safety programs reached more than 5,300 employers and 350,000 employees. TWCC estimates that employers participating in TWCC safety programs in the first six months of fiscal year 1993 experienced an estimated reduction in injuries of 32 percent. This reduction in injuries is based on a review of employers 12 months before and 12 months after receiving TWCC safety services.

► TWCC has the important responsibility of enforcing the statute and rules. Acts of fraud in the system can result in improperly paid benefits and higher costs. Administrative violations of the statute or

rules may result in unfair treatment of participants in the system. In fiscal year 1993, the agency conducted approximately 1,210 field investigations of fraud resulting in 25 fraud indictments and five convictions. TWCC also conducted more than 5,300 administrative investigations of statutory and rules violations that led to the collection of over \$417,000 in administrative penalties.

▼ **While organizational structures may vary, most states use an agency or department similar to TWCC to administer their workers' compensation systems.**

▶ Workers' compensation laws are generally administered by commissions or boards created by law. Forty-four other states, including California, Florida and New York, use a commission or board to administer their workers' compensation systems.

▶ Louisiana, Nebraska, Tennessee, and Wyoming use a combination of courts and an administrative agency to administer their workers' compensation systems. Alabama uses a court-administered workers' compensation system.

▼ **The state could lose federal funds and support if the agency is not continued. TWCC receives more than \$1.5 million in federal grants for safety-related programs each year.**

▼ **The examination of the agency's major functions led the staff to conclude that most could not be combined with another agency and achieve any substantial cost savings or other tangible benefits.**

▶ Locating workers' compensation functions in a single agency ensures that claims flow smoothly and that employers and employees contact one agency to get assistance and information about workers' compensation. No other agency reviewed had the expertise or capability to assume these functions and improve the administration of the Act or reduce costs.

▶ Two functions were identified that could be transferred to other agencies: the agency's hearings conducted according to the Administrative Procedure Act (APA) and the agency's risk management function.

- The APA hearings function could be transferred to the

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Most TWCC functions could not be combined with another agency and achieve any substantial cost savings.

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State Office of Administrative Hearings (SOAH). Created in 1991 to conduct hearings for state agencies, SOAH increases the independence of hearings officers. This issue is addressed in another section of the report.

- The agency's risk management division, responsible for assisting state agencies in the development of effective risk management plans, is self-supporting and is not directly part of the workers' compensation system. Sunset staff is currently working with the Legislative Oversight Committee on Workers' Compensation, the House Sub-Committee on the State Employees' Workers Compensation System, and the Legislative Budget Board to examine the

funding and organization of the state employees' workers' compensation system, which includes the functions of the risk management division.

## CONCLUSION

Most of the functions currently assigned to TWCC are appropriately placed in the agency as currently structured. The related nature of these functions and the services provided suggest that one central agency is the best approach to administering a workers' compensation system. No local entities or other state agencies were identified that could assume TWCC's functions with increased benefits to the state or at reduced costs. Two functions, Administrative Procedure Act hearings and the risk management program, were identified as potential candidates for transfer to other agencies.

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Continue TWCC for  
12 years.

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**RECOMMENDATION****▼ Change the statute to continue the Texas Workers' Compensation Commission for 12 years.**

Continuing the functions of the agency will ensure that the administration of the workers' compensation system continues. If the state discontinued TWCC, no other state entity would be capable of handling the administration of the workers' compensation system. Functions would need to be transferred to other state agencies and the courts to continue the processing and payment of claims, resolution of disputes, enforcement of the Act and rules, and provision of safety services. In addition, the state could lose federal funds if the functions performed by TWCC were abolished.

**FISCAL IMPACT**

If the Legislature continues the current functions of TWCC using the existing organizational structure, its annual appropriations of \$37.2 million would continue to be required. The maintenance tax used to support the agency would continue to be levied and deposited in the general revenue fund.



<b>Texas Workers' Compensation Commission</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Apply/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Update	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Update	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	7. Require the agency to establish career ladders.
Update	8. Require a system of merit pay based on documented employee performance.
Apply/Modify	9. Provide for notification and information to the public concerning agency activities.
Already in Statute	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	11. Require information to be maintained on complaints.
Update	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Update	13. Require development of an E.E.O. policy.
Update	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Update	15. Provide for public testimony at meetings of the policymaking body.
Apply	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Update	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply/Modify	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

<b>Texas Workers' Compensation Commission (cont.)</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Provide an analysis, on request, to individuals failing the examination.
Not Applicable	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	6. Authorize the staggered renewal of licenses.
Not Applicable	7. Authorize agencies to use a full range of penalties.
Not Applicable	8. Specify disciplinary hearing requirements.
Not Applicable	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.



# BACKGROUND

## CREATION AND POWERS

The Texas Workers' Compensation Commission (TWCC) attempts to ensure that injured workers receive the proper amount of benefits in a timely manner, at reasonable costs, and with a minimum of disputes and litigation. Workers' Compensation is a no-fault system that protects businesses with workers' compensation insurance coverage from unlimited financial liability for job-related injuries or illnesses and entitles workers to benefits without having to sue their employer. In return, employers lose the right to pursue the common-law defenses. All 50 states administer some type of workers' compensation insurance program to provide benefits to injured workers and protect employers from unlimited liability.

Since its creation in 1990, TWCC has been responsible for:

- **Benefits**  
ensuring timely, fair, and appropriate benefits for injured and ill workers;
- **Disputes**  
providing an effective forum for parties to resolve claim disputes without going to court;

- **Safety**  
helping Texas employers provide safer workplaces;
- **Cost**  
developing programs to contain or reduce medical and legal costs;
- **Self-Insurance**  
regulating self-insurance for private employers;
- **State Risk**  
helping state agencies establish effective risk-management programs; and
- **Compliance**  
enforcing compliance with state workers' compensation laws and agency rules.

## Overhaul of the Texas Workers' Compensation System

In 1987, major defects in the Texas workers' compensation system began surfacing. Among charges levied against the system were that:

- costs were among the highest in the nation;
- benefits were among the lowest;

Workers' compensation insurance is based on the concept that the risk of injury to workers is a societal risk.

## ORIGIN OF WORKERS' COMPENSATION INSURANCE

Workers' compensation began with a 19th-century Prussian injury fund that collected contributions from both employers and employees to compensate workers for work-related injuries. England's 1897 Workmen's Compensation Act became the model for workers' compensation insurance as used today. This insurance system is based on the concept that the risk of injury to workers is a societal risk that should be borne by consumers through charges added to the price of goods. The idea of compensating workers for work-related impairments gradually spread throughout Europe and first appeared in the United States in the early 1900s.

### Major Changes to Texas Workers' Compensation Laws - 1931 to 1975

- 1931: Workers' compensation coverage extended to minors.
- 1937: Attorney fees statutorily fixed.
- 1947: Some diseases classified as compensable, weekly benefits raised, and a second-injury fund was created.
- 1957: Lifetime medical benefits provided, maintenance tax levied on insurance carriers, and maximum weekly benefits increased from \$25 to \$35.
- 1959: Attorney fees prohibited in fatal cases in which the carrier accepted liability.
- 1969: Pre-hearing system adopted to help resolve disputes, attorney fee structures changed, and weekly benefits increased to \$49.
- 1973: Injured workers allowed to choose their health care providers.
- 1975: Certain public employees included in the workers' compensation system.

Sam Barton, *The Texas Experience with Workmen's Compensation*

States enacted workers' compensation insurance laws to replace the common-law system of employer's liability, which allowed workers to sue their employers to recover the costs of workplace injuries. Common-law systems had a number of shortcomings: difficulties in proving cases and determining the causes of accidents, delays in securing payments, and a potential for unfounded claims. Employers benefited under the common-law system due to three legal doctrines: the principle of contributory negligence, the fellow-servant rule, and the assumption-of-risk doctrine. The principle of contributory negligence voided the worker's claim if his own negligence contributed to the injury. The fellow-servant rule canceled lawsuits if another worker's negligence contributed to the injury. The assumption-of-risk doctrine nullified the worker's case if the job's risks were well known. Today workers' compensation in the U.S. has evolved into a no-fault insurance system based on compromise between business and labor.

### Texas Workers' Compensation Insurance

Texas passed its first workers' compensation law in 1913, establishing the principle that employers may purchase insurance to compensate laborers for medical costs and lost wages due to workplace injuries. The Texas law did not require employers to participate and today only three states—Texas, New Jersey and South Carolina—do not have mandatory workers' compensation.

Revisions to the state law in 1917 provided the basic workers' compensation framework until 1989. Two state agencies administered workers' compensation: the Industrial Accident Board (IAB) and the Board of Insurance Commissioners (BIC). The IAB held hearings on claims and made awards, while the BIC regulated insurance carriers and adjusters, set premiums and experience modifiers.

- insurance rates had doubled in the previous five years;
  - medical costs were higher than in other states and had increased faster than medical costs outside the system;
  - high workers' compensation insurance rates encouraged businesses to leave Texas;
  - new industries were discouraged from entering Texas; and
  - insurance carriers were getting out of the workers' compensation market, making policies difficult to buy.
- Responding to these problems, in 1987, the Legislature appointed the Joint Select Committee on Work-

Workers' Compensation is a no-fault insurance system based on compromise between business and labor.

## **Workers' Compensation Problems and Legislative Solutions**

### ***Problems Identified by the Joint Select Committee on Workers' Compensation Insurance***

- *Workers' compensation costs to employers were among the highest in the nation before 1989.*
- *Texas benefits and payment durations were less generous than other states, particularly for seriously injured workers.*
- *Workers' compensation medical costs were higher than other states and had increased faster than medical costs for the general public.*
- *Attorneys were involved in nearly 50 percent of compensated lost-time claims.*
- *Parties were compromising disputes based on factors not contemplated in the law, such as temporary hardship and administrative costs.*
- *Too many disputes were being resolved in the judicial system.*
- *Safety resources were not being used effectively.*
- *The system had no effective incentive for employers to rehabilitate injured workers.*
- *Texas was one of only three states that did not allow private employers to self-insure*

### ***Changes Adopted by the Texas Legislature***

- *Replaced the Industrial Accident Board with the Texas Workers' Compensation Commission on April 1, 1990.*
- *Shifted toward a more objective method of computing compensation benefits based on impairment guidelines.*
- *Established cost-containment programs to reduce the medical costs in the system.*
- *Placed limitations on attorney fees and eliminated lump-sum awards.*
- *Changed the dispute resolution system from being jury-driven to a multi-layered administrative process.*
- *Changed the judicial review process from trial de novo, which does not allow administrative findings to be presented in court, to a process that allows consideration of TWCC's administrative record.*
- *Consolidated state-administered workplace health and safety programs.*
- *Allowed private employers who meet strict qualifications to self-insure.*

ers' Compensation Insurance to study the system and recommend improvements. Following a comprehensive two-year study, the Joint Select Committee in 1989 identified numerous problems which were addressed by the Legislature. See sidebar, *Workers' Compensation Problems and Legislative Solutions*, for more information.

The Legislature created a new agency, the Texas Workers' Compensation Commission, which took over the duties of the IAB on April 1, 1990. Major differences between the two agencies include budget size, staff size, and enforcement authority. See box, *Major Differences Between the IAB and TWCC*, for details.

Although the overhauled system retained voluntary participation on the part of employers, the majority of Texas employers do purchase workers' compensation insurance. A study by the Texas Workers' Compensation Research Center found that 56 percent of Texas employers purchase the insurance

and these companies employ 80 percent of Texas' workers.

The reforms appear to have had significant impacts on Texas' workers' compensation system, although full comparisons are difficult to make until the system has had more time to operate. The box, *Early Results of Workers' Compensation Reform*, lists the significant impacts of the new law.

### Legal Challenges to the Reforms

Several parties have filed lawsuits to challenge the new law's constitutionality. The AFL-CIO, the Texas Legal Services Union Local No. 2, and three Texas workers filed a suit known as *Garcia v. Texas Workers' Compensation Commission*. The lawsuit contended that the new law violates the Texas Constitution's provisions on open courts, equal protection, and due process. The trial court agreed with the plaintiffs and the case was appealed to the Texas Court of Appeals which found the following provisions unconstitutional:

Major Differences Between the IAB and TWCC		
	IAB - 1990	TWCC - 1993
Annual Budget	\$8.87 million	\$41.5 million
Staff FTEs	343	1,082
Governing Board	3 Full-Time Members	6 Part-Time Members
Enforcement Authority	Limited Authority to Sanction Violators	Expanded Administrative Authority to Sanction Violators

- use of American Medical Association (AMA) guidelines to determine impairment,
- limits on qualifications for supplemental income benefits,
- limits on workers' rights to opt out of the workers' compensation system,
- limits on the right to trial by jury,
- establishment of a hybrid system of judicial review, and
- enforcement of fee schedules that may discourage attorneys from representing injured workers.

The Texas Supreme Court heard arguments on the lawsuit in May 1994 and the parties are awaiting the court's decision.

### Early Results of Workers' Compensation Reform

- While the national occupational injury rate has risen from 8.4 injuries and illnesses per 100 workers in 1991 to 8.9 in 1992, the Texas rate has fallen from 7.7 to 7.3. *US Bureau of Labor Statistics and TWCC Workers' Health and Safety Division.*
- Statistics show a 25 percent decrease in the number of claims in which income benefits are paid (1990 compared to 1993). *IAB annual report and Workers' Compensation System Data, 1991-1993.*
- The percentage of attorneys representing injured workers who have filed claims dropped from 40 percent to 8 percent of all claims (1990 compared to 1991). *National Conference of State Legislatures.*
- The average rates for the top 27 workers' compensation insurance carriers has dropped from 12 percent above the 1991 benchmark rate to 2.3 percent below the benchmark in 1994. Further, four of the state's largest insurers have announced additional reductions of about 20 percent. *Texas Department of Insurance.*
- While costs have decreased, the average weekly compensation to injured workers has increased from \$190 under the former law to \$254 under the new law. Maximum benefits have nearly doubled to \$464 per week.
- Claimants are receiving their payments 57 percent faster than under the old law.
- In 1990, the IAB issued \$66,350 in penalties. In 1993, TWCC issued \$2.6 million in administrative penalties for non-compliance by insurance carriers and others. *IAB and Workers' Compensation System Data, 1991-1993.*
- Employers participating in the health and safety programs implemented as part of the worker's compensation reform have seen a 32 percent reduction in injuries.
- Between 1991 and 1993, 2,838 injured workers were protected from unnecessary spinal surgery, thus saving \$28,380,000
- Because of the implementation of medical fee guidelines, over \$176.8 million has been saved in medical costs since 1991.

Unless otherwise noted, all information is from *Workers' Compensation System Data, 1991-1993.*

The Texas Workers' Compensation Commission is composed of three members representing employers and three members representing employees.

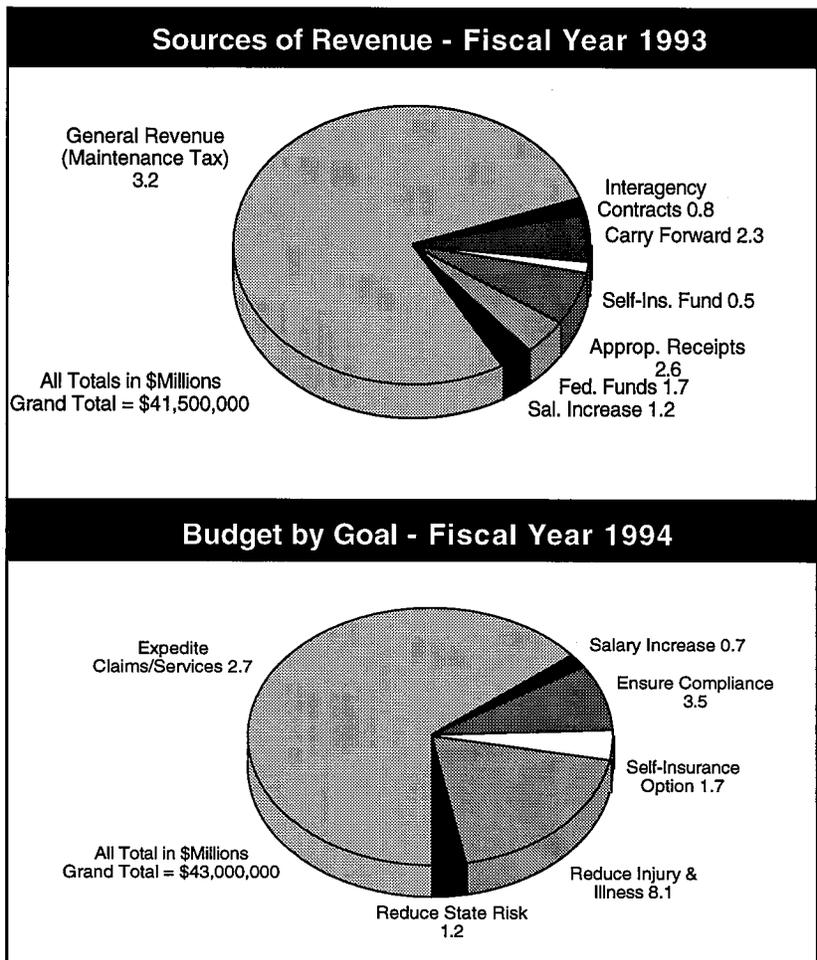
The Texas Municipal League Intergovernmental Risk Pool and Bridge City have also filed a lawsuit challenging the new law's requirement for benefits awarded by a hearing officer to be paid pending an appeal to TWCC's appeals panel. The lawsuit claims the provision violates both the U.S. and Texas Constitutions because the law does not provide for reimbursement of benefits paid by insurance carriers if the decision is overturned on appeal. The district court issued an injunction preventing the Commission from

enforcing the hearing officer's order to pay benefits while the appeal is pending. The case is now on appeal before the state's Third District Court of Appeals.

**POLICYMAKING STRUCTURE**

TWCC has six part-time commissioners appointed to staggered six-year terms by the Governor with the advice and consent of the Texas Senate. Three members of the Commission must be employers and three members must be wage earners. To ensure balanced representation, the Governor must consider each appointee's social, geographic, and economic background and may also consider employment or number of employees. The Commission elects its chair and vice-chair every two years and, by rule, the chair and vice-chair rotate between the two groups. The Commission may take action only by a majority vote and meets at least once each quarter.

Commission members adopt rules to implement and enforce the statute as well as set cost and fee schedules for health care providers and attorneys. If the agency detects a violation of the Act or rules, the Commission may levy an administrative penalty of up to \$10,000 and, in some instances, each day can be a separate violation. The Commission appoints the agency's executive



director and internal auditor, sets fees for services provided by the agency, and appoints advisory committees.

**Funding and Organization**

TWCC is primarily funded through a maintenance tax set by the Commission assessed on workers' compensation insurance carriers. The tax rate may not exceed two percent of gross annual workers' compensation premiums and was set at 1.26 percent in 1993. The agency also collects fees from employers, insurance carriers, and health care providers for audits, safety inspections and consultations. All of the agency's revenues are deposited into the general revenue fund. The graph, *Sources of Revenue - Fiscal Year 1993*, displays this information.

TWCC operates with an annual budget of about \$43 million, which is allocated among the agency's five major strategic planning goals plus a salary increase. The graph, *Budget by Goal - Fiscal Year 1994*, shows a breakdown of the agency's total expenditures for each goal. The chart, *Expenditures by Division*,

provides more detailed information on each division's expenditures. The agency has made a concerted effort to place its expenditures with historically underutilized businesses (HUBs). Fiscal year 1993 expenditures with HUBs represented 17 percent of eligible spending.

TWCC employed 1,082 full-time equivalent employees in fiscal year 1993. The agency's central office in Austin housed 680 employees while the agency's regional and field offices employed the remaining 402 employees. The central office supports the regional and field offices and provides information about the law and agency rules to injured workers, employers,

Expenditures by Division Fiscal Year 1993	
Division	Expenditures
Executive	1,552,917
Administration	2,976,514
Communications & Public Information	280,895
Compliance & Practices	1,695,687
Data Services	8,017,302
Employee/Employer Services	11,492,448
Hearings	2,292,237
Internal Audit	145,762
Medical Review	1,890,847
Records	4,069,229
Risk Management	830,943
Self-Insurance Regulation	382,565
Workers' Health & Safety	4,989,474
<b>TOTAL</b>	<b>\$40,616,820</b>

Texas Workers' Compensation Commission Equal Employment Opportunity Statistics					
Job Category	FY 1991 Total Work Force		FY 1993 Total Work Force		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	Percent Minority	Total Positions	Percent Minority	
Administrator	59	9%	53	11%	14%
Professional	407	27%	452	27%	18%
Technician	41	37%	44	34%	23%
Protective Service	0	0	0	0	48%
Para-Professional	143	41%	146	44%	25%
Administrative Support	315	62%	400	61%	25%
Skilled Craft	0	0	0	0	29%
Service/Maintenance	0	0	0	0	52%

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TWCC's mission is to develop, implement, and monitor a workers' compensation insurance program which provides fair and appropriate benefits for injured workers.

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insurance carriers, health care providers, and attorneys.

TWCC has 23 field offices, one satellite office, and two regional offices. The regional offices give administrative direction to the field offices, coordinate activities, and develop staff training materials. The field offices provide customer assistance, claims services for area employers and injured workers, records maintenance, and safety and compliance services.

The organizational structure and allocation of staff among the agency's divisions is illustrated in the chart, *Texas Workers' Compensation Commission Organizational Chart*. Changes in the agency's work force from 1991 to 1993 in different categories of employment and how it compares with minority work force goals set in the General Appropriations Act are shown in the chart, *Texas Workers' Compensation Commission Equal Employment Opportunity Statistics*.

### **Strategic Planning**

The Texas Workers' Compensation Commission's mission is to develop, implement, and monitor a workers' compensation insurance program that provides fair and appropriate benefits for injured workers.

In 1991, Texas incorporated a strategic planning and budgeting system into the legislative appropriations process. The intent of strategic planning is to move from short-term crisis intervention to long-term goal setting, allocate funds by priority, and improve agency accountability. The strategic plan focuses the budgetary process on results rather than efforts.

In Texas, each agency's strategic plan states its mission, goals, objectives, and strategies. The agency's strategies describe the actual activities through which the agency accomplishes its goals. Strategies also serve as the basic funding element in performance-based budgeting. Much like the past system of line-item appropriations, agencies request and receive appropriations to implement specified strategies. Performance measures monitor each agency's progress toward achieving its goals and objectives by comparing the agency's projected performance with its actual performance.

TWCC's mission is to develop, implement, and monitor a workers' compensation insurance program that provides fair and appropriate benefits for injured workers. The agency has developed five goals to support its mission. Although there is some crossover of functions, seven of

the agency's 11 divisions directly support the agency's goals and strategies, while the other four divisions provide support services to the entire agency. The goals and supporting divisions are listed below.

#### **Goal A: Expedite Claims/ Services**

The agency's first goal is to provide fast, fair, and efficient services to parties with workers' compensation claims. The agency's strategies to achieve this goal are to establish efficient systems for processing claims; provide an effective dispute resolution system to resolve disputes fairly and impartially; and create a medical cost-containment program that allows fair compensation to health care providers while ensuring quality medical care to injured workers. Four divisions, *employer/employee services, medical review, records, and hearings*, work directly to achieve this goal.

#### **Goal B: Reduce Injury and Illness**

The agency's second goal is to reduce the overall rate of on-the-job injuries and illnesses in Texas. The agency's strategies towards meeting this goal are to develop health and safety services to employers, employees, and other entities in the Texas workplace,

and identify and provide safety services to extra-hazardous employers. The *workers' health and safety* division helps the agency achieve this goal.

#### **Goal C: Ensure Compliance**

The agency's third goal is to ensure widespread compliance with workers' compensation statutes and rules. The agency's strategies to meet this goal are to develop processes to educate all parties on legal requirements and agency rules; establish fair and equitable monitoring and enforcement activities to investigate and prosecute violators of the law and agency rules; and use auditors and investigators to evaluate compliance. The *compliances and practices, medical review, health and safety, and self-insurance regulation* divisions help the agency achieve this goal.

#### **Goal D: Provide a Self-Insurance Option**

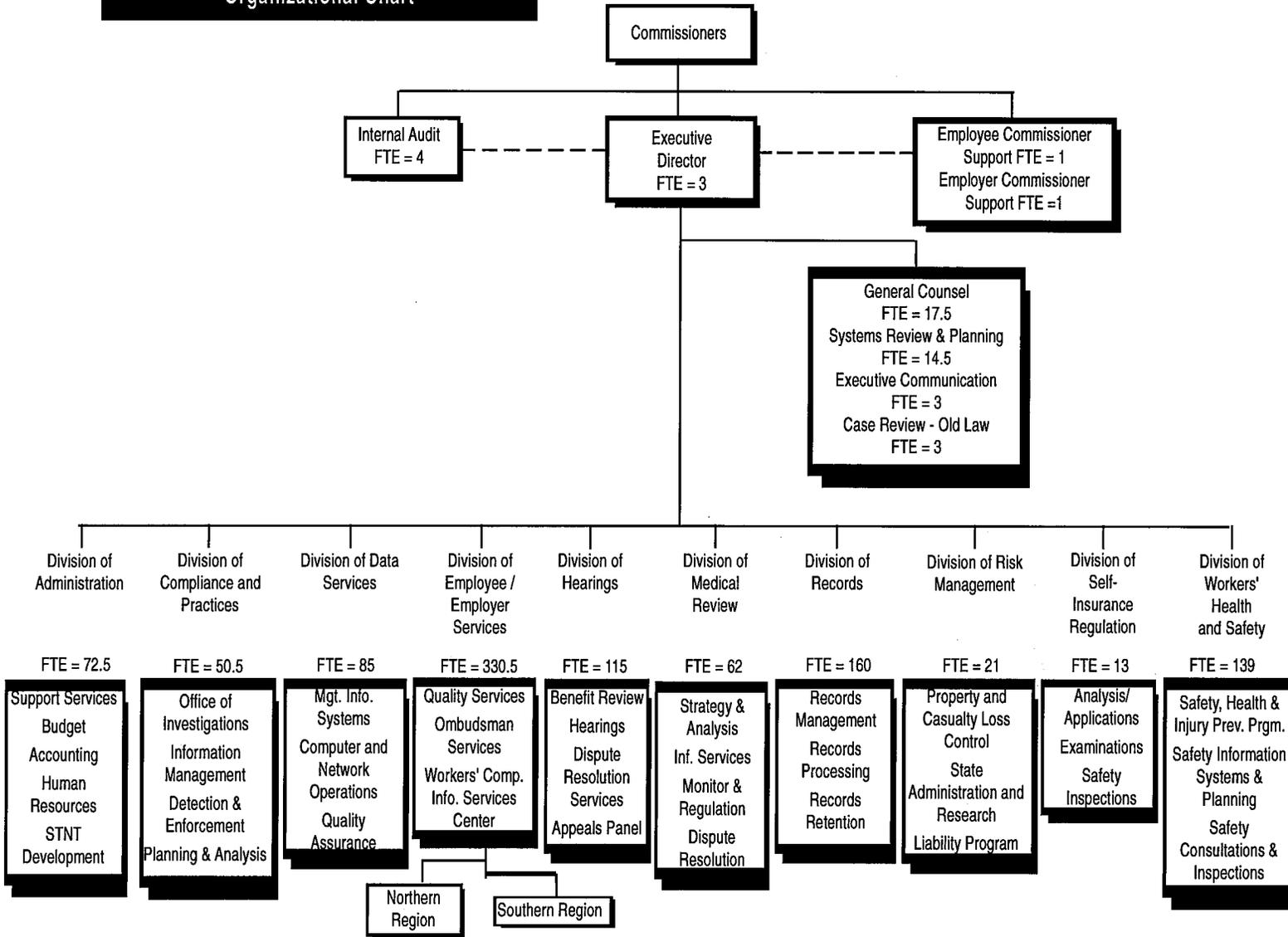
The agency's fourth goal is to provide a self-insurance alternative to qualified employers. The strategy for meeting this goal is to develop and implement automated procedures for qualifying, monitoring, and administering employers' self-insurance programs. The *self-insurance regulation* division works to provide this option.

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The risk management division identifies, monitors, evaluates and reports state risk exposure for workers' compensation, property and liability losses.

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**Texas Workers' Compensation Commission  
Organizational Chart**



**Goal E: Reduce State Risk**

The agency's fifth goal is to reduce state agencies' losses from workers' compensation, property, and liability exposure. The agency's strategy for meeting this goal is to identify, monitor, evaluate, and report the state's risk exposures associated with workers' compensation, property, and liability of state agencies; provide consultations to state agencies; develop and implement guidelines; and develop automated systems for the risk management program. The *risk management* division seeks to accomplish this goal.

Each of the agency's 11 divisions report directly to the executive director, while the internal audit section and the employee/employer commissioner support section report directly to the Commission. The strategic flow-chart on the following page shows an overview of the relationship between the agency's organizational structure and its goals.

**Agency Functions**

TWCC has five major functions that match the agency's goals: processing claims, reducing injuries and illness, enforcing statutes and rules, providing self-insurance, and reducing risks to the state. These functions are evaluated in the following section.

**Processing Workers' Compensation Claims**

While businesses can develop safety programs, and provide training in the proper use of equipment, some injuries are an inevitable part of doing business. These injuries can result in medical expenses and the loss of income. It is important to have a claims process that provides appropriate benefits as quickly as possible. TWCC attempts to provide benefits quickly by administering the claims process as set out in statute and resolving disputes within the agency.

**Claims Administration**

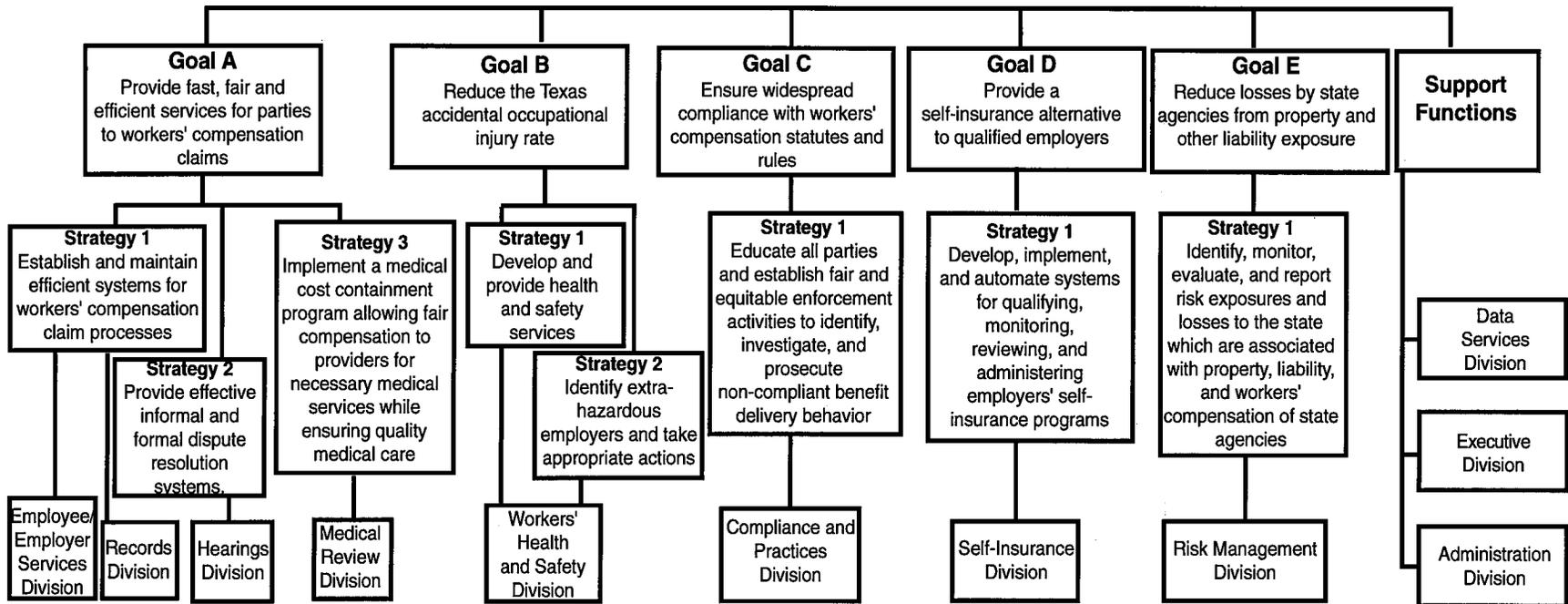
The claims process begins when an employee of an insured employer is injured on the job. The employee has 30 days to report the injury to the employer and one year to file a claim with TWCC. The employer has eight days to file the employer's first report of injury with the insurance carrier and TWCC. The insurance carrier then has a week to either dispute the claim or initiate payment. The insurance carrier may also, within 60 days, dispute a claim after an investigation.

Within 45 days of receipt, the insurance carrier must pay or dispute a medical bill. If it takes longer than 45 days to determine the payment amount, the carrier

**Texas Workers' Compensation Commission  
Strategic Flowchart Chart**

**TWCC Mission**  
The Texas Workers' Compensation Commission's mission is to develop, implement, and monitor a workers' compensation insurance program which provides fair and appropriate benefits for injured workers

Note: This flowchart is intended to provide a visual approximation of how TWCC's divisions relate to the agency's goals and strategies. As many divisions support multiple strategies, this flowchart represents an overview of TWCC's strategic organization.



must pay at least 50 percent of the billed charges. The medical review division is available to informally resolve disputes between health care providers and insurance carriers. If this informal process does not work, either party may request an administrative hearing.

Injured workers may be entitled to lifetime medical benefits, income benefits, or both. Income benefits are available to workers who are temporarily or permanently disabled. A disability is the inability, because of a work-related injury, to obtain and retain work at pre-injury wages. Income benefits are available after losing eight days of work. Injured workers or their survivors may be entitled to five types of benefits depending on the extent or circumstances of the injury: temporary income benefits, impairment income benefits, supplemental income benefits, lifetime income benefits or death benefits. For more information on types of benefits, see the chart, *Benefits in the Workers' Compensation System*.

The employee/employer services division is the frontline of the agency's efforts on claims administration. The division maintains a central office, two regional offices, and 23 field offices. A Texas map showing TWCC's service regions

and field office locations is included in this background report.

### **Administrative Resolution of Claims Disputes**

The amount and duration of benefits, as well as other issues, may be disputed during the claims process. Disputes may be raised by either the claimant, an insurance carrier or an employer. All disputes go through a dispute resolution process at TWCC including: informal contact with the participants, benefit review conference, contested case hearing or arbitration, and appeals panel review. Disputed issues that cannot be resolved at TWCC may be appealed to the judicial system. The disability determination officer (DDO), of the employee/employer services division, contacts the participants to discuss the disputed issue and attempt resolution. If the DDO cannot resolve the issue, it is scheduled for a benefit review conference and, if the claimant is unrepresented, the issue is referred to an ombudsman.

The ombudsmen in the employee/employer services division are available to unrepresented parties to disputed issues. The ombudsmen provide direct assistance during the administrative dispute resolution process by explaining the benefit process and reviewing the disputed issue. The ombudsmen prepare participants by

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Ombudsmen explain the dispute resolution process, prepare participants for hearings and conferences by helping to gather evidence, and present information.

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## Income Benefits in the Workers' Compensation System

**Temporary Income Benefits (TIBs)** - Compensates workers for lost wages resulting from on-the-job injuries. If the injured worker has earned less than \$8.50/hour before the injury, the first 26 weeks of TIBs are paid at 75 percent of the injured worker's average weekly wage (AWW). Otherwise, TIBs are paid at 70 percent of the worker's AWW. Maximum TIBs are adjusted each year based on the average manufacturing wages. The current maximum rate is \$464 per week. Injured workers are entitled to TIBs until reaching maximum medical improvement or 104 weeks after benefits begin to be counted, whichever is earlier.

**Impairment Income Benefits (IIBs)** - Compensates workers for permanent damage resulting from on-the-job injuries. IIBs are paid at 70 percent of the injured worker's AWW. Maximum weekly IIBs payment is \$325. The duration of IIBs is based on an impairment rating assigned by a doctor. IIBs are paid for three weeks for each percentage point of impairment regardless of the worker's work status or wages.

**Supplemental Income Benefits (SIBs)** - Paid at the expiration of IIBs if the worker has an impairment rating of 15 percent or greater, is earning less than 80 percent of the wage paid prior to the injury, has not received IIBs in a lump-sum payment, and has attempted to find work commensurate with the worker's ability to work. SIBs are paid at 80 percent of the difference between 80 percent of the worker's AWW and current wage. Maximum SIBs payment is \$325 per week. SIBs end when the worker is no longer eligible or 401 weeks after the date of injury, whichever is earlier.

**Lifetime Income Benefits (LIBs)** - Paid to workers until death for total and permanent loss of sight in both eyes; loss of both feet at or above the ankle; loss of both hands at or above the wrist; loss of one foot at or above the ankle and the loss of one hand at or above the wrist; a spinal injury that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or a skull injury resulting in incurable insanity or imbecility. LIBs are paid at 75 percent of the worker's AWW and increase 3 percent annually. Maximum LIBs payment is \$464 per week.

**Death Benefits** - Paid to the legal dependent beneficiary if an on-the-job injury results in the worker's death. Death benefits equal 75 percent of the employee's average weekly wage. Maximum death benefit payment is \$464 per week. The duration of death benefits varies according to the beneficiary's relationship to the worker.

helping determine required information and available options. They may, if requested, present information at conferences and hearings, and explain the option of seeking judicial review. The ombudsmen are not allowed to provide legal advice or make decisions. In calendar year 1993, 38 ombudsmen assisted unrepresented workers and employers in about 37 percent of the cases held at benefit review conferences and contested case hearings.

### BENEFIT REVIEW CONFERENCES

Benefit review conferences are non-adversarial and are designed to bring parties together in an informal setting to discuss the issues and bring out the facts of the case. Benefit review conferences are held in the field offices by benefit review officers who are trained in the principles and procedures of dispute mediation. Typical issues addressed at these conferences include whether injuries are work-related, maxi-

mum medical improvement, impairment ratings, and disabilities.

At the conclusion of a conference, the benefit review officer may issue a temporary order that requires the insurance carrier to either pay income and medical benefits or suspend benefits in a worker's claim. If the parties agree to resolve the dispute, the benefit review officer writes an agreement for the parties to sign. If the conference does not result in an agreement, the benefit review officer will write a report listing the points of dispute. When unresolved issues remain after a benefit review conference, the parties may either agree to binding arbitration or continue on to a contested case hearing.

**ARBITRATION**

Arbitration is an alternative to contested case hearings that precludes any further appeal of the dispute. As defined by law, arbitration is intended to reach formal, binding agreements on issues when possible, resolve issues that cannot be agreed to, and render a final award on all disputed issues. Arbitration is held in the field offices, where the arbitrator is selected from a randomly ordered list of qualified arbitrators. Either party may reject the chosen arbitrator, but each party has the right to only one

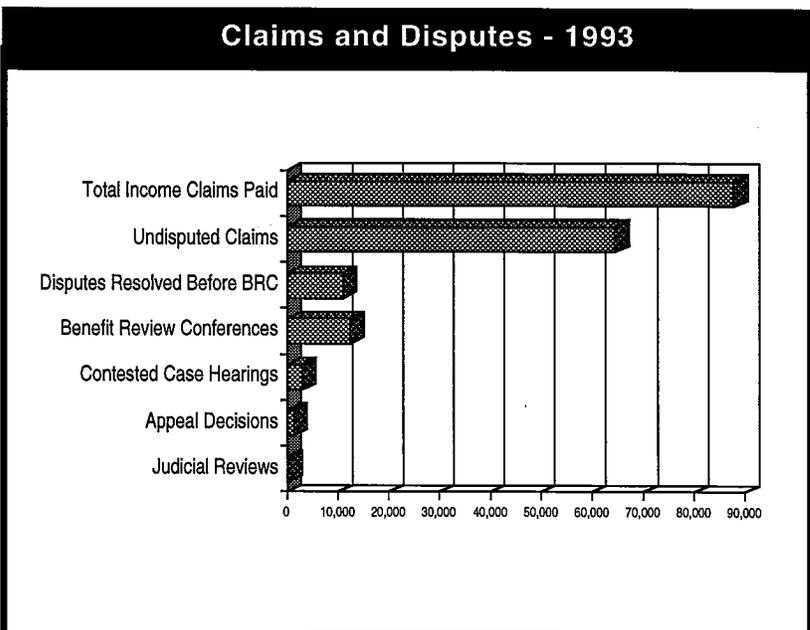
rejection. No disputes went to arbitration in fiscal year 1993.

**CONTESTED CASE HEARINGS**

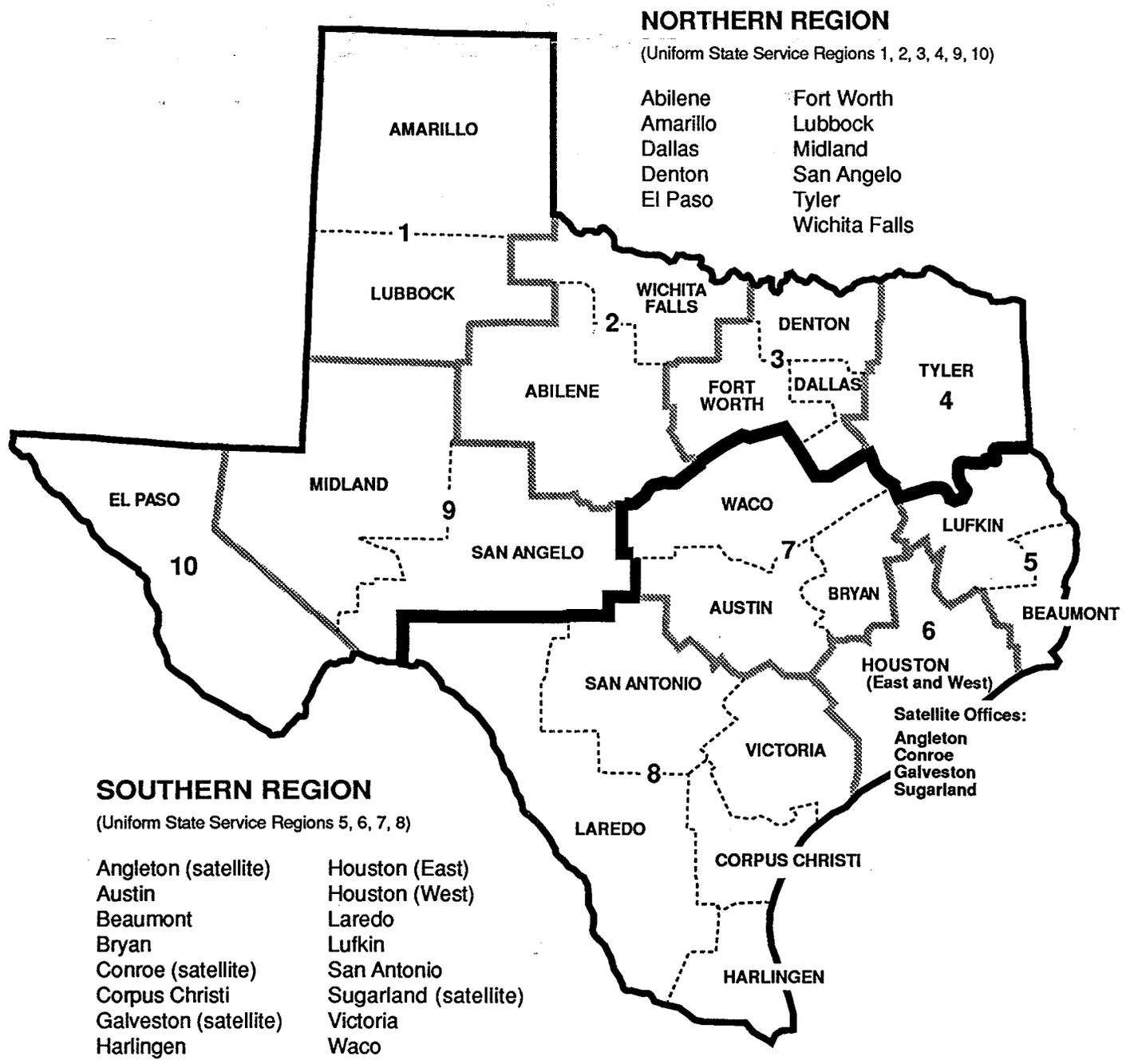
When parties cannot resolve a dispute at the benefit review conference and do not agree to arbitration, the case moves to a contested case hearing. Contested case hearings, conducted in the field offices by hearing officers who must be attorneys, are formal proceedings in quasi-judicial settings. The hearing officer is required by statute to develop the record of the case and bring out all relevant facts. During the hearing, both sides may present evidence, question witnesses, and provide statements. At the end of the hearing, the hearing officer renders a written decision that includes findings of fact, conclusions of law, and a determination and

Typical issues addressed at benefit review conferences include whether injuries are compensable, whether workers have reached maximum medical improvement, and whether the impairment ratings are correct.

**Claims and Disputes - 1993**



# Texas Workers' Compensation Commission Region and Field Office Map



award of benefits if any are due. If either party is not satisfied with the results of the contested case hearing, the dispute may be appealed to TWCC's appeals panel.

**ADMINISTRATIVE APPEALS**

Upon appeal, a three-judge agency panel reviews the complete record of a contested case hearing for conformity with the law and issues a decision. Appeals panel judges must be attorneys appointed by TWCC's director of hearings. The panel may only review written records and tapes of the contested case hearing—no oral arguments or presentations are allowed. State law allows the appeals panel 30 days to issue a decision. If the panel does not meet this time requirement, the hearing officer's decision is final. In fiscal year 1993, the appeals panel issued 1,003 decisions. Of these decisions, 78 percent affirmed the hearing officer's decision, 10 percent reversed and remanded the hearing officer's decision, seven percent reversed and rendered a decision, and five percent were disposed of as untimely appeals, motions for reconsideration, and the like.

**JUDICIAL APPEALS**

Either party may request a district court to review the decision resulting from an administrative

appeal. When issues regarding compensability or income or death benefits are involved, the party appealing the case must prove its case by a preponderance of the evidence. Evidence on the extent of impairment is limited to that presented to the Commission unless the court finds a substantial change of condition. In fiscal year 1993, claimants and carriers appealed 179 cases to the Texas courts.

**Medical Cost Containment**

As part of its claims administration function, TWCC develops and implements a medical cost containment program. The Commission develops guidelines of appropriate treatments at a standard reimbursement. Fee guidelines have been developed for medical treatments, pharmaceuticals, hospital stays, and dental services. TWCC maintains a list of doctors approved for practice in the workers' compensation system and monitors their conduct. The medical review division is on the agency's front-line in pursuing this function.

One major program operated by the

Average Cost of Administrative Proceedings at TWCC		
<b>Benefit Review Conferences</b>		
Year	FY 1993	FY 1994 (est.)
Average Cost	\$147	\$98.80
Conferences	12,554	13,389
<b>Contested Case Hearings</b>		
Year	FY 1993	FY 1994 (est.)
Average Cost	\$558	\$660.50
Hearings	2,852	2,032

The Commission's safety programs are the first and only contact most Texas workers will have with the agency.

medical review division is the spinal surgery second opinion program. Agency staff reviewed 9,810 spinal surgery requests in fiscal year 1993. Second opinion doctors found that surgery was unnecessary in 1,226 cases. Based on an average savings of \$10,000 per surgery, this program is estimated to have saved \$12.3 million in medical costs.

When medical disputes arise, the medical review division provides an informal process for resolving them. Medical disputes concern fees, necessity of medical treatments, pre-authorization of treatments, and second opinions on spinal surgeries. Methods used to resolve these disputes are mediation, administrative reviews, and peer review. If a dispute cannot be resolved informally, either party may request an Administrative Procedures Act hearing to be conducted by the hearings division.

### **Safety Programs**

The first and only contact most Texas workers will have with TWCC is through its health and safety programs. These programs are intended to reduce injuries and illnesses in the workplace. Safety programs are

an important way to reduce suffering and costs by preventing accidents. TWCC attempts to help businesses develop quality safety programs. The occupational injury and illness incidence rate for Texas has fallen from 8.0 per 100 workers in 1990 to 7.3 in 1992. This change is encouraging but additional services and more effort to further reduce the injury rate are still needed. The staff also monitors the quality of safety services provided by insurance carriers to their policyholders.

### **EXTRA-HAZARDOUS EMPLOYER PROGRAM**

TWCC identifies employers with high accident rates for placement in the extra-hazardous employers program. Extra-hazardous employers are those who have injury rates that substantially exceed the expected average injury rate for a business in that employer's standard industrial code. Both employers with and without workers' compensation insurance can be required to enter the extra-hazardous employer program.

The workers' health and safety division identified 360 extra-hazardous employers in fiscal year 1993. Extra-hazardous employers must develop accident prevention plans with the assistance of a TWCC consultant, the employer's insurance carrier, or another professional source approved by

<b>TWCC Dispute Resolution Process - Fiscal Year 1993</b>	
Claim or Dispute Type	Number
Total New Law Claims	120,445
Benefit Review Conferences	12,554
Contested Case Hearings	2,852
Arbitrations	0
Appeals Panel Reviews	1,003
Appeals to District Court	179

the division. TWCC charges a fee for consulting services it provides and deposits fees into the general revenue fund. Six months after the plan has been developed, the workers' health and safety division staff inspect the work site to verify that the plan is in place. If the employer fails to implement the plan, the Commission may assess an administrative penalty of up to \$5,000 for each day the employer is not in compliance. TWCC estimates that employers in the extra-hazardous employers program during the first six months of fiscal year 1993 have reduced workplace injuries by 72 percent. However, workplace deaths for the state have remained steady at about 350 since 1991.

#### **START PROGRAM**

TWCC and the Texas Workers' Compensation Insurance Fund (Fund) work together to administer the Fund's rejected risk (START) program. The Fund is the state's insurer of last resort and provides workers' compensation insurance to employers who cannot get insurance from private insurance carriers. The START program requires rejected risk employers to hire TWCC-approved consultants to develop plans to improve safety and reduce risks. Three to six months after the business develops the plan, TWCC staff inspect the work site to verify

compliance with the accident prevention plan. If the policyholder has failed to implement the plan, either the policyholder or the Fund may cancel the policy. If neither party cancels, the Commission may assess an administrative penalty of \$5,000 for each day the employer is not in compliance.

#### **OTHER SAFETY PROGRAMS**

The workers' health and safety division also provides safety education materials and services such as a drugs-in-the-workplace program and a peer-review safety program to encourage employers with good safety records to work together. Additionally, TWCC inspects policyholder job sites and insured companies' accident prevention services, to include evaluation of field safety representative qualifications.

TWCC also administers the federally-funded Occupational Safety and Health Consultation Program (OSHCON), which provides safety consultations to small business employers, with priority given to employers with 250 or fewer employees. An OSHCON consultation may exempt an employer from Occupational Safety and Health Administration inspections for one year if all identified hazards are corrected and the employer has demonstrated an effective safety program. In addition, TWCC administers a

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Employers in the extra-hazardous employer program have injury rates that substantially exceed the expected injury rate for businesses in that industry's standard industrial code.

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Compliance and practices division's enforcement priorities are criminal fraud, late payments and reports, and enforcement of Commission orders.

Mine Safety and Health Administration grant to provide safety and health training in the mining industry.

### Ensuring Compliance

Four divisions are responsible for ensuring compliance with the Act: workers' health and safety, self-insurance, medical review, and compliance and practices. These divisions conduct audits, inspections, and examinations of system participants to monitor compliance. When noncompliance is detected, the compliance and practices division can recommend suspensions or restrictions of practice before the Commission, assess administrative penalties of up to \$10,000 per day, and issue cease and desist orders. Ensuring compliance with the statute and rules is essential for the system to

provide appropriate benefits to injured workers and control costs.

The compliance and practices division is the enforcement unit for the Commission. This division works with the other divisions of TWCC, state and federal agencies, the Fund, the Texas Workers' Compensa-

sation Insurance Facility, and other entities to investigate criminal and administrative violations.

The division's enforcement priorities are criminal fraud, delinquent carrier payments and employer reports, and enforcement of Commission orders. During fiscal year 1993, TWCC issued 983 notices of violation and penalty assessment and collected \$260,520 in penalties.

To identify potential violations, the division audits insurance carriers and employers on-site, audits claims data electronically, and investigates referrals from field offices. Typical violations include failure of carriers to pay workers benefits, late or inaccurate benefits, inaccurate indemnity payments, and late filings by employer. Upon finding evidence of a violation, the division may assess administrative penalties. The division also conducts field investigations of criminal violations in the workers' compensation system. When evidence of fraud is found, the division refers charges to the appropriate authorities, such as district attorneys, for prosecution.

### Optional Self-Insurance for Employers

In January 1993, Texas joined 47 other states in permitting qualified

#### Members of the Texas Certified Self-Insurer Guaranty Association

- 2 self-insurers from the Guaranty Association,
- 1 TWCC employee Commissioner,
- 1 TWCC employer Commissioner,
- TWCC Executive Director,
- Public Insurance Counsel from the Office of Public Insurance Counsel, and
- Director of TWCC Self-Insurance Division (non-voting member).

employers to self-insure for workers' compensation. Employers who meet strict requirements for financial stability, claims administration, workplace safety, and ability to provide the same protections to workers as carrier-insured employers may be authorized by the Commission to self-insure.

To self-insure, the Self-Insurance Regulation Division evaluates an employer based on the criteria discussed above and forwards a completed application to the seven-member Board of Directors of the Texas Certified Self-Insurer Guaranty Association (Guaranty Association) for its review. The box, *Members of the Texas Certified Self-Insurer Guaranty Association*, illustrates the membership of the Guaranty Association board. The Board reviews self-insurance applications and forwards approved applications to the Commission for final approval. Upon Commission approval, TWCC issues a certificate to self-insure for one year.

Each employer who desires to become a certified self-insurer must be a member of the Guaranty Association. All self-insured employers are assessed by the Guaranty Association, which pays workers' compensation insurance benefits to injured employees if a member employer becomes

insolvent. As of July 1, 1994, there are 46 certified self-insured employers in Texas.

**Lower Risk of Losses to State Agencies**

TWCC helps state agencies identify and reduce their property, liability, and workers' compensation losses by helping them establish effective risk management programs. The state risk management program currently applies to 176 state agencies. Major exemptions include the Department of Transportation, the University of Texas and Texas A&M University Systems, and Texas Tech University.

Losses to the state can be tremendous. According to the risk management division interim report, total losses for state agencies that report were \$69.4 million in fiscal year 1993. The box, *State Agency Losses Reported to TWCC*, gives a break-out of the types of losses for which TWCC receives reports.

Methods of lowering risks include developing statewide risk management

<b>Non-Exempt State Agency Losses Reported to TWCC in Fiscal Year 1993 (in Millions)</b>	
Workers' Compensation Payments	46.9
Liability Losses	14.1
Unemployment Losses	7.3
Property Losses	1.1
<b>Total Losses</b>	<b>\$69.4</b>

guidelines for agencies; assisting individual agencies with loss reduction programs; and on-site evaluations of risk management and safety programs. State agencies pay the cost of the division's programs based on the number of employees, the dollar value of the property, asset and liability exposure, and the number and cost of claims and losses incurred. The division also prepares comprehensive reports for the legislature on state agencies' risks, losses, and methods of reducing exposures to losses.

### **Support Functions**

TWCC has established four divisions to provide support to other agency divisions. The four support divisions are executive, administration, records, and data services.

The executive division develops and oversees implementation of policies and procedures and manages the agency's daily operations. The executive division also provides public information, monitors the agency's performance, provides legal services to the Commission, and reviews and manages workers' compensation claims that stem from the old workers' compensation law.

The administration division provides support to the agency divisions by maintaining financial integrity, hiring staff, providing training, and managing the agency's facilities.

The records division manages inactive claim files and processes mail. Improvements in information processing efficiency, electronic form submission, and a reduction in the number of injuries and claims combined to reduce the number of pieces of mail handled by this section from 7.5 million in the central office in fiscal year 1992 to 3.7 million in fiscal year 1993. Electronic form submission accounted for 67 percent of all eligible forms submitted to the agency during fiscal year 1993.

The data services division provides computer and automated technology services for TWCC by assessing, acquiring, and developing computer resources to meet TWCC's information needs. The division is responsible for ensuring that claims and dispute information is available to TWCC employees who provide direct services to injured workers throughout the state.



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# ISSUE 1

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**THE FUND, AS A STATE-CREATED ENTITY, SHOULD BE SUBJECT TO SUFFICIENT OVERSIGHT TO ENSURE THE STATE'S INTERESTS ARE FULLY PROTECTED.**

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## BACKGROUND

Because the Fund is not defined by its statute as a state agency, it is not subject to some of the usual state oversight procedures such as requirements in the General Appropriations Act; the deposit of its funds in the State Treasury; compliance with the Internal Audit Act; approval of outside legal counsel by the Attorney General's Office; audit by the State Auditor's Office (SAO); and compliance with state policies regarding the use of Historically Underutilized Businesses (HUBs) and minority hiring. The Fund is treated as an insurance company and is required to meet all applicable rules and regulations of the state's insurance regulatory agency, the Texas Department of Insurance (TDI).

The Sunset review focused on whether, under current law, the state can determine if the Fund meets its statutory obligations and follows standards in the appropriations bill and other legislation. The review also analyzed ways that oversight requirements could enhance the Fund's ability to maintain its competitive position

in the workers' compensation insurance market as required by its statute.

Below is a set of recommendations that can be considered together or separately. Each recommendation deals with a particular area of state oversight that applies to regular state agencies. The areas include oversight by the State Auditor's Office, internal audit requirements, purchasing requirements and the use of HUBs, guidelines for hiring women and minorities, and review of outside legal counsel. Because of the unique nature of the Fund, the recommendations below do not track the oversight requirements for state agencies provision by provision, but do provide increased oversight necessary to help the Fund meet its statutory goals.

## SUB-ISSUE 1.1

### OVERSIGHT BY THE STATE AUDITOR

The Fund is not subject to any state oversight, other than the Sunset process, that can show how well it is performing its statutory goals or fulfilling its public purpose. This lack of oversight was identified by both the Sunset

Current Fund oversight does not provide an adequate flow of information to the Legislature.

Commission staff and the State Auditor's Office (SAO) during the review process. As a result, the staff examined whether an appropriate level of information and oversight is available for the Legislature to determine the effectiveness of the Fund.

### FINDINGS

- ▼ **The Fund is not subject to oversight, other than the 12-year Sunset review, that can determine if the Fund is meeting its statutory goals and objectives.**
  - ◆ Although TDI examines Fund activities, its primary role is to determine if the Fund operates within the confines of the Texas Insurance Code, meets the needs of its policyholders, and remains financially solvent. TWCC oversees the Fund's compliance with the Texas Workers' Compensation Act and related rules but does not evaluate the Fund's functions overall.
  - ◆ The current structure of legislative oversight of the Fund does not provide for adequate information flow to the Legislature. SAO has no clear authority to conduct an audit of the Fund or have any input into the Fund's internal or independent audits. In addition, Sunset reviews of the Fund are scheduled to occur

every 12 years. During the years between Sunset reviews, significant events affecting the operations of the Fund may occur that could result in needed legislative changes.

- ▼ **Allowing SAO to specify issues that must be addressed in the Fund's audits ensures that state interests are investigated and reported.**

- ◆ SAO has been given access, as a courtesy, to some information developed by the Fund's independent auditor. However, no provision in the Fund's statute ensures this will continue over time. Subjecting the Fund to SAO direction in its audits would provide the Legislature with information regarding the effectiveness of the Fund.

- ◆ In addition, the Fund has multiple missions: stabilize the market, lower workers' compensation insurance rates, and serve as insurer of last resort. These goals do not always go hand in hand. For example, acting as insurer of last resort does not necessarily make it possible to lower rates. SAO input in effectiveness audits can help ensure that information is available so the Legislature can better deter-

mine how well those competing goals are being met.

- ▼ **SAO has specific statutory responsibilities for at least three other types of quasi-state agencies: Texas river authorities, certain metropolitan transit authorities, and the Texas Guaranteed Student Loan Corporation (TGSLC).**

- ◆ In the case of river authorities and TGSLC, the statute requires annual submission of copies of their independent financial audits to SAO which then has authority to conduct its own audit if the data submitted indicates the need.

- ◆ In the case of metropolitan transit authorities in Austin and Houston, state law requires SAO to approve the independent audit firms selected by the agencies.

- ▼ **Since the Fund must be a competitive factor in the market, proprietary information must be protected. SAO has the ability to protect such information from disclosure.**

- ◆ The working papers of SAO are exempt from disclosure under the Open Records Act. This exemption allows SAO to protect from release any proprietary information SAO may receive from the Fund.

## CONCLUSION

Little oversight is in place to ensure that the Fund meets goals that support legislative policies. SAO can direct activities to determine how effective an agency is at fulfilling its legislative mandate. Subjecting the Fund by statute to SAO-directed activities will help ensure that the Legislature has access to information regarding the effectiveness of the Fund.

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Require that issues identified by the State Auditor be included in the Fund's internal and independent audits.

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## RECOMMENDATION

▼ **Change the statute to:**

- ▶ **require the State Auditor's Office to identify issues related to the operational efficiency and effectiveness, and statutory compliance of the Fund;**
- ▶ **require the Fund to include all issues identified by State Auditor's Office in its independent and internal annual audit plans;**
- ▶ **require the independent and internal auditors to send copies of their audit reports to the State Auditor's Office; and**
- ▶ **require the State Auditor's Office to provide a memorandum to the Legislative Audit Committee summarizing conclusions of the Fund's audit reports.**

This recommendation will help ensure that the Legislature receives information regarding the Fund's effectiveness in fulfilling its statutory missions. Such evaluations should include analyses of the balance of policies written between the rejected risk (START) program and the voluntary market, the effect of the Fund on workers' compensation insurance premiums written in the state, and the effect of the Fund on the overall workers' compensation insurance industry in Texas. Conclusions reached by the independent and internal auditors should be submitted by the State Auditor's Office to the Legislative Audit Committee by memorandum.

## FISCAL IMPACT

This recommendation would result in additional costs from increased use of the Fund's independent auditor and the State Auditor's Office. These costs should be paid by the Fund and cannot be estimated at this time. No costs will be out of the general revenue fund.

**SUB-ISSUE 1.2  
REPORTING OF INTERNAL AUDIT  
FINDINGS**

The Legislature passed the Internal Audit Act (the Act) to assure that boards and commissions receive information on the adequacy and effectiveness of agency activities. Although the Act does not apply to the Fund, the Fund voluntarily follows most of its requirements. However, Fund policies are inconsistent with several key provisions of the Act.

**FINDINGS**

▼ **The Fund has not adopted policies consistent with the Internal Audit Act.**

• Currently, the Fund does not submit an annual internal audit report detailing the Fund's internal audit efforts to the Governor, the Legislative Budget Board, the Sunset Commission, or the State Auditor as required by the Act. Instead, the internal auditor makes a quarterly report to the Fund's Board of Directors.

• The report made to the Fund's Board of Directors does not contain a copy of the following materials required by the Act:

- an annual audit plan;

- an explanation of any deviation from the audit plan;
- a table listing the auditor's recommendations and their five-year fiscal impact;
- a table detailing the status of all internal audit recommendations made in the prior fiscal year; and
- a statement of the last date on which an external peer review of the Fund's internal audit program was conducted.

• The Fund has other policies that are not consistent with the Act. The internal auditor is currently hired and fired by the President of the Fund and not the Board of Directors as required by the Act. Such an arrangement can call into question any recommendations the internal auditor makes regarding the President. In addition, the internal auditor has participated in implementing audit recommendations. Such an arrangement can prevent the internal auditor from objectively evaluating the effectiveness of internal functions and procedures.

▼ **The Governor's Office, the Legislature, the State Auditor's Office, the Texas**

The Fund has internal audit policies that are inconsistent with the Internal Audit Act.

**Performance Review and the Sunset Commission have all recognized the importance of the internal audit function through executive orders, legislation, audit findings, and recommendations.**

▼ **A stronger internal audit function would better protect the Fund's significant assets and provide better management information.**

▶ The Fund has assets that must be protected with adequate financial controls. In fiscal year 1993, the Fund had assets totaling over \$959 million. A strong internal audit function would assist the Board in tracking Fund activities.

▶ An effective internal audit function is essential to provide accurate and consistent information for managers to use in evaluating program performance. Internal audit findings and recommendations allow managers and administrators to identify potential problem areas and to take the necessary steps to correct them before they result in declining performance or loss of assets.

▼ **A stronger internal audit function can help ensure the Fund's use of Historically**

**Underutilized Businesses (HUBs).**

▶ The state has a policy of making a good faith effort to use HUBs in 20 to 30 percent of purchases. The Fund's purchasing policy only requires that HUBs receive "due consideration" in the choice of vendors. However, no definition of "due consideration" is given. This has resulted in the Fund using HUBs for 8.4 percent of all purchases. About 34 percent of contracts awarded for daily purchases made use of HUBs, but only 7.5 percent of contracted consultants and non-routine purchases were awarded to HUBs.

▶ An effective internal audit function has the ability and duty to review purchasing policies. Such reviews can result in findings that can improve the participation rate of HUBs in Fund purchases.

▼ **Requiring the Fund to submit a summary of its internal audit findings to the Governor, the Lieutenant Governor, and the Speaker of the House would provide for further oversight.**

▶ Because much of the information in the Fund's internal audit reports is proprietary, a system of checks

are needed to protect proprietary information while allowing for an adequate flow of information to the Legislature. As a result, requiring the Fund to submit a summary of its internal audit report to the Governor, the Lieutenant Governor, and the Speaker of the House will protect the Fund's proprietary information.

requirements of the Internal Audit Act. However, it does not comply with several significant requirements that provide essential information to the Governor, the Lieutenant Governor, and the Speaker of the House. Such a lack of reporting severs oversight lines established in the Act to ensure that state entities operate in an efficient and effective manner. In addition, the Fund does not provide adequate opportunity for HUBs, an area that can be addressed by the Fund's internal auditor.

Require the Fund to develop policies consistent with the Internal Audit Act.

**CONCLUSION**

The Fund has developed policies that are consistent with most of the

**RECOMMENDATION**

▼ **Change the statute to require:**

- ▶ **the Fund's Board to directly receive internal audit reports from the internal auditor,**
- ▶ **the Fund's Board to hire and fire the internal auditor,**
- ▶ **the Fund's internal auditor to submit a summary of its annual internal audit report to the Governor, the Lieutenant Governor, and the Speaker of the House; and**
- ▶ **the Fund's internal auditor to include in that summary an analysis of the Fund's use of HUBs.**

This recommendation would require the Fund to develop policies consistent with the Internal Audit Act. Requiring such policies would further protect the Fund's assets and establish a flow of information to the Governor, Lieutenant Governor, and Speaker of the House to ensure adequate oversight of the Fund. In addition, this recommendation will place a greater emphasis on the use of HUBs than is currently given by the Fund.

**FISCAL IMPACT**

This recommendation would not result in a fiscal impact to the state. However, ensuring an effective internal audit function enhances the control over the Fund's \$959 million of total assets.

The only current oversight of outside counsel is Board approval of outside contracts.

### **SUB-ISSUE 1.3 REVIEW OF OUTSIDE COUNSEL**

The Fund uses outside attorneys to provide a variety of legal services such as general tax advice, representation before TWCC, liability lawsuits and subrogation cases. Other services such as bill analysis, bill drafting, and oversight of outside law firms are provided by the Fund's general counsel. State agencies generally do not contract with private law firms for legal services. Legal services are normally provided by in-house counsel or by the Attorney General's Office. When state agencies use outside counsel, they must meet requirements set out in the General Appropriations Act.

### **FINDINGS**

▼ **The Fund currently has no state oversight of its use of outside counsel.**

► In calendar year 1993, the Fund hired 12 different legal firms at a total cost of slightly over \$1 million. The only oversight of outside counsel is through the Board approval of contracts.

▼ **State agencies must get authorization from the Attorney General's Office before hiring outside counsel.**

► The Texas Constitution requires the Attorney

General's Office to handle all legal matters of state agencies with statewide jurisdiction. The Legislature has supported this policy by including a provision in the Attorney General's Office's statute that prohibits state agencies from spending money for outside legal counsel without the express authorization of the Attorney General's Office.

► The Texas Supreme Court declared in Maud v. Terrell (200 S.W. 2nd 375) that the Attorney General has the constitutional right to decline an agency's use of outside legal counsel.

► The General Appropriations Act requires state agencies to obtain the approval of the Attorney General's Office to use outside counsel.

▼ **Requiring the Fund to have its use of outside counsel reviewed by the Attorney General's Office will establish oversight similar to that over state agencies' use of outside counsel.**

► When approving state agencies' hiring of outside counsel, the Attorney General's Office examines the minority hiring practices of the law firms in question. Requiring the Fund to have its use of

outside counsel reviewed by the Attorney General's Office will establish similar oversight to ensure that the Fund does not make use of firms that discriminate based on race, sex, or ethnic background.

► In addition, the Attorney General's Office determines if a conflict of interest exists. Requiring the Fund to have its use of outside counsel reviewed by the Attorney General's Office will establish similar oversight to ensure that the Fund does not make use of firms that may lead to a conflict of interest.

## CONCLUSION

The Fund makes extensive use of outside legal counsel. However, contrary to established state policy, the Fund's use of outside counsel has no oversight. Requiring the Fund to have its use of outside counsel reviewed by the Attorney General's Office will establish oversight of such counsel, and ensure that its use is reviewed in a manner similar to that of state agencies.

Require an annual review of the Fund's outside counsel by the Attorney General's Office.

## RECOMMENDATION

- ▼ **Change the statute to require the Fund to have its use of outside counsel reviewed annually by the Attorney General's Office.**

This recommendation would require the Fund to subject its use of outside counsel to an annual oversight process similar to that for state agencies. The Attorney General's Office would analyze the firms hired by the Fund to ensure that the firms employ adequate numbers of minorities and do not result in a conflict of interest. If the Attorney General's Office finds any discriminatory practices on the part of the outside legal counsel or any circumstance that may form a conflict of interest, the Attorney General's Office will notify the Fund's Board of Directors of its findings. Reviewing the use of outside counsel would in no way interfere in the Fund's ability to obtain legal services.

## FISCAL IMPACT

This recommendation would not result in a fiscal impact to the state. The Attorney General's Office estimates that it can perform the review of the Fund's outside counsel with current resources.

**SUB-ISSUE 1.4  
GUIDELINES FOR HIRING WOMEN  
AND MINORITIES**

The state has established a policy, set out in the General Appropriations Act, of employing a workforce that is reflective of the statewide labor force. Such a policy was developed to ensure that entities established by the state do not discriminate based on sex, race, or ethnic background in their hiring practices.

**FINDINGS**

- ▼ **The Fund is not subject to the state's hiring goals for women and minority established in the appropriations act.**
- ▼ **Populous states such as California and New York require their workers' compensation insurance funds to hire staff using standard civil service procedures that include stipulations for hiring women and minorities. Other states that apply formal hiring programs for women and minorities to workers' compensation insurance funds include Arizona, Louisiana, Michigan, New Mexico, Ohio, and Oklahoma.**

Require the Fund to pursue the same goals as state agencies for hiring of women and minorities.

- ▼ **Although the Fund meets all of the current employment goals set out in the appropriations act, applying these goals to the Fund would ensure that the Fund continues its efforts to provide career opportunities for women and minorities.**

**CONCLUSION**

The state has established guidelines regarding the hiring of women and minorities that do not currently apply to the Fund. Requiring the Fund to pursue the same goals as state agencies will ensure that the Fund continues its efforts to offer career opportunities to women and minorities.

**RECOMMENDATION**

- ▼ **Change the statute to apply the guidelines in the General Appropriations Act for hiring women and minorities to the Fund.**

This recommendation would require the Fund to make the same efforts regarding the hiring of women and minorities as other state agencies. This recommendation would not require the Fund to set aside a certain number of jobs for women or minorities but would require the Fund to continue making efforts to hire women and minorities.

**FISCAL IMPACT**

This recommendation would not result in a fiscal impact to the state.



## ISSUE 2




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### REDUCE THE POTENTIAL FOR FRAUD BY ALLOWING THE FUND TO INSURE ALL COMMONLY-OWNED OR CONTROLLED BUSINESSES.

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#### BACKGROUND

Companies with the same owner or controlling persons are known as commonly-owned or controlled businesses. If the owner or controlling person of multiple businesses only insures one company against workers' compensation claims, that employer can fraudulently obtain workers' compensation benefits for injured workers at the non-covered businesses by altering salary and employment data to indicate that the injured worker is employed by the covered business. As a result, the employer can fraudulently obtain coverage for all the workers in each company but only pay premiums on the covered company. This method of fraud is known as "employee swapping".

Requiring persons owning or controlling businesses to insure all of their businesses with a particular insurance company if the owner wishes to insure any of those businesses, prevents swapping employees between covered and non-covered businesses. Due to the Fund's lack of authority to place this requirement on appli-

cants, it remains exposed to this type of fraud.

#### FINDINGS

- ▼ **The Fund, when acting as insurer of last resort, cannot turn down a business requesting insurance, even if the business has the potential to swap employees with other commonly-owned or controlled businesses.**
  - ▶ With few exceptions, the Fund must provide insurance to businesses that cannot get insurance in the open market. As a result, if approached by a business wanting insurance through the Fund's insurer of last resort program, the Fund cannot require all commonly-owned businesses to buy insurance to prevent the potential for employee swapping.
- ▼ **The Workers' Compensation Insurance Facility, had statutory authority as insurer of last resort to require commonly-owned businesses to obtain workers' compensation insurance.**

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"Employee swapping" occurs when an employer buys insurance for one business and switches injured employees from an uninsured business so that injuries are covered.

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Allow the Fund to require a business owner to insure all commonly-owned or controlled businesses.

► In response to incidents of employee swapping by businesses insured by the Facility, the Legislature in 1983, authorized the Facility to require all commonly-owned businesses insured through the Facility to have workers' compensation insurance.

▼ **Private workers' compensation insurance companies can and do require all commonly-owned businesses to obtain insurance to prevent the potential for employee swapping.**

▼ **When employee swapping occurs and carriers detect the fraud, injured workers' claims would not be covered.**

► If an injured worker is the victim of employee swapping by an employer and fraud is detected, the insurance company has no responsibility to pay the workers' compensation claim. This situation can leave an injured worker with a loss of income and mounting medical bills that are not covered under workers' compensation.

## CONCLUSION

When the Fund acts as insurer of last resort, it must, with few exceptions, provide insurance to any business that cannot get

insurance in the open market. If the business has the same ownership or control as another business without workers' compensation insurance, the potential exists for employee swapping to take place when there is an injury. Some insurance carriers deal with this potential by requiring all commonly-owned businesses to buy workers' compensation insurance. However, the Fund cannot usually turn down a business requesting insurance through the insurer of last resort program.

Even if the business chooses not to buy insurance for all commonly-owned or controlled businesses, the Fund cannot refuse to insure the one company requesting insurance. This restriction prevents the Fund from taking precautions against fraud that are common for other insurers. In addition, if fraud occurs and the business is caught, injured workers would not be covered and would not receive expected benefits.

While private insurance companies and the Facility are allowed to prevent employee swapping by requiring business owners to insure commonly-owned businesses, the Fund has no such authority.

## RECOMMENDATION

- ▼ **Change the statute to authorize the Fund to require a business owner seeking workers' compensation insurance from the Fund to insure all commonly-owned or controlled businesses.**

This recommendation provides the Fund with a tool to prevent employee swapping that was previously provided to the Facility when it operated as the insurer of last resort. All commonly-owned or controlled businesses would be required to obtain workers' compensation insurance when applying for coverage from the Fund as the insurer of last resort. Among a set of commonly-owned businesses, only the business that cannot obtain coverage on the open market would be covered by the Fund acting as insurer of last resort. The portions of the commonly-owned or controlled businesses that are eligible for lower rate coverage from the voluntary market would be allowed to obtain that coverage.

## FISCAL IMPACT

The Fund has only had the responsibility for the insurer of last resort program since January 1, 1994. To date, the Fund has not detected any instances of employee swapping. However, as the Fund takes over more policies from the Facility, the potential for employee swapping will increase. With the recommended preventive measure against employee swapping, the Fund would be protected against losses that would result from this type of fraud.



# ISSUE 3



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## **MAKE THE FUND'S REPORTING REQUIREMENTS CONSISTENT WITH OTHER INSURERS.**

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### **BACKGROUND**

All insurance companies writing workers' compensation insurance in Texas are required to file annual reports with the Texas Department of Insurance (TDI) highlighting company operations, detailing board membership, and providing extensive financial information. This information allows TDI to evaluate a company's solvency and ability to process claims filed by policyholders. TDI rules require insurance companies, with the exception of the Fund, to complete their annual reports by March 1st of each year.

The Fund's statute exempts it from TDI's reporting timeframe, but requires the Fund to publish and submit its report not later than 30 days after the Fund's fiscal year ends. Since the Fund's fiscal year coincides with the calendar year, the Fund's annual report to TDI is due no later than January 30th of each year. In the 30-day time period, the Fund is required to compile the report and have it

independently audited to ensure its accuracy.

### **FINDINGS**

- ▼ **While the Fund is required to submit its annual report to TDI no later than January 30th of each year, all similar insurance companies writing workers compensation policies in Texas have until March 1st of each year to submit their annual reports.**
- ▼ **Requiring the Fund to meet the same requirements as other insurance companies would not create any additional problems for TDI. According to TDI, no reason can be identified as to why the Fund should be required to follow a different time frame than other insurance companies writing workers' compensation insurance policies in the state.**
- ▼ **The Fund spent \$109,000 in 1994 for overtime expenses to produce the annual report by the January 30th deadline.**

## CONCLUSION

The requirement for the Fund to file its annual report with TDI no later than January 30th of each year is inconsistent with requirements for other insurance companies and results in additional costs. TDI could not identify any reason to require the Fund to file one month sooner than all other workers' compensation insurers.

Make the Fund's reporting requirements the same as other insurance companies.

## RECOMMENDATION

- ▼ **Change the statute to require the Fund to file its annual report with the Texas Department of Insurance no later than March 1st of each year.**

This recommendation would require the Fund to meet the same TDI reporting requirements as other insurance companies writing workers' compensation policies in the state. This approach would not create any difficulties for TDI in fulfilling its oversight of the Fund's activities.

## FISCAL IMPACT

The Fund indicates that in January 1994, about \$109,000 in overtime wages were paid to complete the annual report on time. Savings of a similar amount would accrue to the Fund annually if this recommendation is enacted.

# ISSUE 4



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## CONTINUE THE TEXAS WORKERS' COMPENSATION INSURANCE FUND FOR 12 YEARS.

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### BACKGROUND

The Texas Workers' Compensation Insurance Fund (Fund) was created in 1991 to help stabilize the workers' compensation insurance market in Texas. The Fund replaced the Texas Workers' Compensation Insurance Facility (Facility) as the insurer of last resort in Texas beginning on January 1, 1994. The Facility was a pool of all workers' compensation insurance companies in Texas. These companies shared losses resulting from covering businesses unable to purchase workers' compensation insurance in the private sector. Losses were distributed based on an insurance company's share of the workers' compensation market. Due to system-wide problems in the 1980's, the Facility had amassed large losses. Since losses were distributed among insurers in the state facility, companies withdrew from the workers' compensation market in the state to avoid sharing additional losses. The Legislature created the Fund to address these and other workers' compensation problems.

The main functions of the Fund are to guarantee the availability of workers' compensation insurance, serve as the insurer of last resort and stabilize the workers' compensation insurance market in Texas. The Fund attempts to stabilize the market by providing the following services:

- establishing insurance rates to be used as a benchmark for rates across the state;
- educating policyholders, agents and the general public regarding workers' compensation issues;
- instituting policies designed to combat fraud;
- instituting policies designed to increase safety and health in the workplace; and
- providing benefits to injured workers.

Since the Fund is required by statute to operate as a private insurance company, it receives no appropriations from the Legislature, uses no state funds, and its employees do not receive state benefits. In addition, the Fund is statutorily prohibited from writing

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The Fund serves as the insurer of last resort and a stabilizer of the market.

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any type of insurance other than workers' compensation insurance and from establishing any subsidiaries.

To justify the continuation of an agency's functions, certain specific conditions should exist. First, the state should have a current and continuing need for the agency's functions or services. Second, those functions should not duplicate those currently provided by any other agency. Third, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to other state agencies.

## FINDINGS

▼ **The functions of the Fund continue to be needed to make workers' compensation insurance more affordable and available at lower rates.**

► The state needs to continue efforts to make workers' compensation insurance available and affordable. The Fund is a non-profit corporation that competes with private insurance companies and acts as a downward influence on rates. Lower rates makes workers' compensation insurance more affordable to businesses in Texas.

► The Fund should continue to serve as insurer of last resort. The Facility ceased acting as insurer of last resort on December 31, 1993. However, many businesses still cannot get workers' compensation insurance in the open market. Since January 1, 1994, the Fund has insured 425 such businesses. The Fund's role as insurer of last resort allows all businesses desiring workers' compensation insurance coverage to get that coverage.

► The Fund needs to continue as a stabilizer of the market. Currently, the Fund sells standard policies at 20 percent below the benchmark rate set by Texas Department of Insurance (TDI) and preferred policies 30 percent below the benchmark rate. This downward pressure on rates serves as a stabilizing influence on the workers' compensation market by requiring other insurance companies to continually respond to the pricing structure of the Fund.

► Since its creation, the Fund has become the largest writer of workers' compensation insurance in the state; insuring more than 35,000 Texas businesses and providing coverage for more than

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Since its creation, the Fund has become the largest writer of workers' compensation insurance in the state.

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600,000 employees. As of December 31, 1993, the Fund covered about 18 percent of the workers' compensation insurance market in the state, with premiums on policies valued at about \$407 million.

▼ **Since the Fund was established, insurance companies have reduced their rates thereby making workers' compensation insurance more affordable.**

► Since the Fund began operation, it has filed for three rate reductions with TDI. Such reductions have placed competitive pressure on other workers' compensation insurance companies to do the same. As a result of the Fund and changes to the system, 12 of the top 25 companies writing workers' compensation insurance have decreased their rates a total of 16 times since the Fund was established. According to TDI, additional rate decreases across the market are forthcoming.

▼ **Information from TDI shows that the Fund has performed as well or better than other workers' compensation insurance carriers in Texas.**

► In calendar years 1992 and 1993, the Fund's loss ratio was significantly below that of the

industry as a whole. The loss ratio of an insurance company is the percentage of each dollar earned that is needed to cover losses. In 1992, the Fund's loss ratio was about 64 percent while the workers' compensation industry averages a loss ratio of about 83 percent. In 1993, the Fund's loss ratio was again 64 percent while the workers' compensation industry was about 88 percent. Because the Fund has experienced such low losses, it has been in a position to lower its rates and thereby remain competitive in the workers' compensation market.

► Compared to other workers' compensation insurance carriers, the Fund has not experienced unreasonable costs. In fiscal year 1993, the Fund spent 23 percent of total expenses on claim adjustment. Claim adjustment ensures that the appropriate care is administered to injured workers at minimal cost. The other 10 largest insurance companies writing workers' compensation insurance policies in Texas had claim adjustment costs of between 11 percent and 44 percent of total expenses. During the same year the Fund spent about .3 percent of total expenses on advertising compared to a

range of between zero and .6 percent for the 10 largest workers' compensation insurance companies. In addition, in 1993, the Fund's salaries were about 20 percent of total expenses. This compares with a range of between eight percent and 35 percent of total expenses for the 10 largest workers' compensation insurance companies.

▼ **An assessment of other states' approaches to state workers' compensation Funds did not reveal any beneficial or less costly alternatives to the Fund's existing structure.**

► Twenty-six states, including Texas, make use of some sort of state workers' compensation fund. Seventeen states, including Texas, make use of a competitive state fund. Those states include California, New York, Michigan, Oklahoma, Louisiana, and New Mexico. Nine states do not have a private market and require businesses to buy their workers' compensation insurance from a state fund. The review did not identify any benefits or savings that could be gained by switching from a competitive to a state-monopoly Fund.

► Structures of state workers' compensation funds in other states include variations in the status of the funds' workers as state employees, receipt of state appropriations to operate, and the organizational placement within a state's hierarchy. The evaluation of these variations did not reveal any beneficial or cost saving alternatives to the Fund.

▼ **The Fund does not duplicate the efforts of other state agencies.**

► The Fund was created to operate like a private insurance company. No state agency was identified that performs functions similar to the Fund. Although the Attorney General's Office acts as the workers' compensation insurance company for state employees, it is not equipped to provide insurance services to private businesses.

## CONCLUSION

Analysis of the Fund's activities revealed that it has effectively carried out the functions assigned by the Legislature and that those operations serve a public purpose. The Fund, along with other workers' compensation reforms, has had a downward effect on workers' compensation rates. Since January 1, 1994, the Fund has provided workers' compensa-

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The Fund should be continued to provide a stable source of last resort insurance for Texas workers.

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tion insurance to companies that could not get insurance elsewhere. In addition, the Fund has stabilized the workers' compensation insurance market by continually placing pressure on other insurance companies to take into account the pricing structure and market share of the Fund. No benefits were identified from discontinuing the Fund or transferring its responsibilities.

## RECOMMENDATION

- ▼ **Change the statute to continue the Texas Workers' Compensation Insurance Fund for 12 years.**

Continuing the Fund for 12 years would ensure a state entity is available to guarantee the availability of workers' compensation insurance, function as the insurer of last resort, and stabilize the workers' compensation insurance market in Texas.

## FISCAL IMPACT

This recommendation would not result in a fiscal impact to the state. The Fund does not receive any appropriations from the Legislature. Rather, the Fund is financed by a maintenance tax surcharge levied on insurance companies writing workers' compensation insurance in the state.



<b>Texas Workers' Compensation Insurance Fund</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Not Applicable	1. Require at least one-third public membership on state agency policymaking bodies.
Not Applicable	2. Require specific provisions relating to conflicts of interest.
Apply/Modify	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Apply	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Apply/Modify	7. Require the agency to establish career ladders.
Apply	8. Require a system of merit pay based on documented employee performance.
Apply/Modify	9. Provide for notification and information to the public concerning agency activities.
Not Applicable	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Apply/Modify	11. Require information to be maintained on complaints.
Apply/Modify	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Apply	13. Require development of an E.E.O. policy.
Apply	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	15. Provide for public testimony at meetings of the policymaking body.
Apply	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Already in Statute	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

<b>Texas Workers' Compensation Insurance Fund</b>	
(cont.)	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Provide an analysis, on request, to individuals failing the examination.
Not Applicable	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	6. Authorize the staggered renewal of licenses.
Not Applicable	7. Authorize agencies to use a full range of penalties.
Not Applicable	8. Specify disciplinary hearing requirements.
Not Applicable	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.



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# BACKGROUND

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## CREATION AND POWERS

The 72nd Legislature created the Texas Workers' Compensation Insurance Fund (Fund) in 1991 as part of the ongoing workers' compensation insurance overhaul that began in 1989. The Fund was created to stabilize the workers' compensation insurance market in Texas and serve as the insurer of last resort. Although created by statute and capitalized by state revenue bonds, the Fund operates like a private insurance company. This approach to workers' compensation is used by 17 other states. The Texas Department of Insurance (TDI) regulates the Fund in the same manner as other workers' compensation insurers in the state.

The Fund was created to address the problems of availability and affordability of workers compensation insurance. Before the creation of the Fund, the Texas Workers' Compensation Assigned Risk Pool (Risk Pool) provided workers' compensation insurance to employers who could not get insurance in the voluntary market. The Risk Pool was not authorized to write in the competitive market.

The Risk Pool was not an insurance company, but rather a pool of

all insurance companies writing workers' compensation insurance in the state. All of these private insurance carriers were required to be members of, pay fees to, and share any losses incurred by the Risk Pool. Employers unable to obtain insurance coverage were assigned to carrier members of the Risk Pool based on the amount of business that each carrier did in the state. In 1989, legislation changed the name of the Risk Pool to the Texas Workers' Compensation Insurance Facility (Facility).

Beginning in the 1980s, the Facility sustained significant losses and by the mid-1980s was paying out far more in claims than it received in premiums. As losses grew, insurance carriers began to withdraw from the workers' compensation insurance market. Assessments for Facility losses increased for the remaining carriers, limiting the availability of insurance. At the same time, the financial burden on the remaining insurance carriers, coupled with the deficit, caused the Facility difficulty in fulfilling its insurer of last resort role.

The Legislature created the Fund as a competitor in the voluntary market to address the problems of

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The Fund was created to stabilize the Texas market and insure companies who could not otherwise buy insurance.

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availability and affordability, and transferred the Facility's role of insurer of last resort to the Fund effective January 1, 1994. The major differences between the services provided by the Fund and the Facility are illustrated in the box, *Major Differences Between the Fund and the Facility*.

The Fund sells workers' compensation insurance to Texas employers in both the voluntary and the rejected risk markets and performs all the functions associated with providing insurance: underwriting applications to determine risk and the appropriate premium to be charged, providing safety services

### Major Differences Between the Texas Workers' Compensation Insurance Fund and the Texas Workers' Compensation Insurance Facility

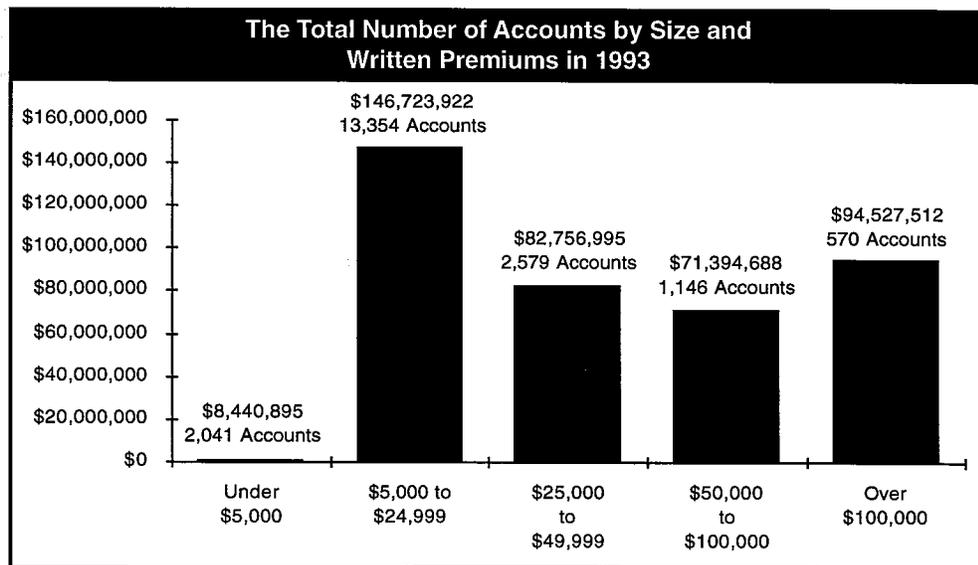
	Texas Workers' Compensation Insurance Fund	Texas Workers' Compensation Insurance Facility
<b>Mission</b>	To stabilize the workers' compensation insurance market and serve as insurer of last resort.	To serve as insurer of last resort.
<b>Organizational Structure</b>	Organized as a quasi-public insurance company.	A pool comprised of all workers' compensation insurers.
<b>Restrictions on Policies</b>	May write policies in the voluntary market as well as policies for employers who cannot obtain insurance in the voluntary market.	Could only write policies for employers unable to obtain insurance in the voluntary market; otherwise prohibited from writing policies in the voluntary market.
<b>Treatment of Profits and Losses</b>	Acts as a private insurance carrier by absorbing any profits or losses on its own.	Profits and losses rebated or assessed, as applicable, to the insurance carriers based on their percentage of the workers' compensation insurance market.
<b>Claims Processing</b>	Directly administers the organization including claims, benefits and workplace safety.	Contracts with servicing companies to administer and process claims and claim-related information.
<b>Governance</b>	A nine-member board of directors appointed by the Governor with the advice and consent of the Senate; operates like a private insurance company board.	A nine-member board of directors (plus two non-voting members); five appointed by the State Board of Insurance and four appointed by the Governor with the advice and consent of the Senate.
<b>Capitalization</b>	Premiums paid by subscribers, income investments, and \$300 million in state revenue bonds. The bonds are retired by a maintenance tax surcharge assessed on all policies written by workers' compensation insurers in the state.	Fees and claims paid by members based on each members' share of the workers' compensation market.

The Ten Largest Workers' Compensation Insurers in Texas in 1993		
Company Name	Premium Vol.	Market Share
Texas Workers' Compensation Insurance Fund	\$407,508,014	18%
Liberty Mutual Fire Insurance Company	\$191,738,431	8%
St. Paul Fire & Marine Insurance Company	\$113,620,748	5%
Lumberman's Mutual Casualty Company	\$82,826,490	4%
Employers Insurance Company of Wausau	\$82,487,022	4%
Travelers Indemnity Company of Rhode Island	\$75,786,632	3%
Houston General Insurance Company	\$61,885,006	3%
Liberty Mutual Insurance Company	\$57,035,328	2%
American Motorists Insurance Company	\$45,855,351	2%
Service Lloyds	\$42,160,898	2%
<b>TOTAL</b>	<b>\$1,160,903,920</b>	<b>51%</b>

In the two years since its creation, the Fund has become the largest workers' compensation insurer in Texas.

to policyholders, identifying and investigating fraud, and administering claims and benefits. The Fund pays state premium taxes, maintenance taxes, and the maintenance tax surcharge just as other insurance carriers that write workers' compensation insurance in Texas. In an effort to offset losses anticipated in its role as the insurer of last resort, the Fund is granted a tax credit equal to

two percent of the gross workers' compensation premiums written by the Fund. This tax credit equalled \$3.8 million in 1993.



The Fund has more than twice the Texas business as the second largest company in the market.

Policies Written by Standard Industrial Classification (SIC) Code in 1993				
Industry Type	No. of Accounts	Amt. of Premiums	Pct. of Premiums	No. of Employees
Agriculture	1,596	\$20,479,389	5%	17,828
Construction	4,232	\$115,761,026	29%	58,382
Financial	1,302	\$24,692,855	6%	40,723
Manufacturing	2,208	\$57,290,156	14%	49,506
Mining/Oil	994	\$21,732,547	5%	12,792
Public Adm.	4	\$75,359	0%	115
Retail	2,130	\$34,198,559	9%	46,421
Services	4,358	\$74,117,066	18%	152,916
Transportation	944	\$23,332,501	6%	20,566
Wholesale	1,741	\$31,572,937	8%	32,107
Other	181	\$591,617	0%	905
<b>TOTAL</b>	<b>19,690</b>	<b>\$403,844,012</b>	<b>100%</b>	<b>432,261</b>

In the two years since its creation, the Fund has become the largest writer of workers' compensation insurance in the Texas, with 18 percent of the market. The chart, *Total Number of Accounts by Size and Written Premiums* shows the Fund with more than twice the Texas business as the second largest insurer in the market.

The Fund insures employers in a variety of industries throughout the state. The map, *Fund Policies Written by Region* shows a breakdown of policies across Texas.

The Fund operates the Small Business Insurance Protection Program (SBIPP) for voluntary policies under \$5,000 in premiums. It also writes policies in the voluntary market at \$5,000 or

above in premiums. Rejected risk employers are served by what is known as the START program. The Fund also writes policies that were previously written by the Facility.

### POLICYMAKING BODY

A nine-member Board of Directors appointed by the Governor, with the advice and consent of the Senate, governs the Fund. The members serve staggered six-year terms and annually select the chair, vice-chair and secretary. Board members must be Texas citizens and either Fund policyholders or their employees. The statute requires the Governor to attempt to appoint Board members who reflect the social, geographic and

economic diversity of Texas. An individual may not serve on the Board if the individual or any of the individual's family members are registered or licensed under the Texas Insurance Code, or are required to register as a lobbyist.

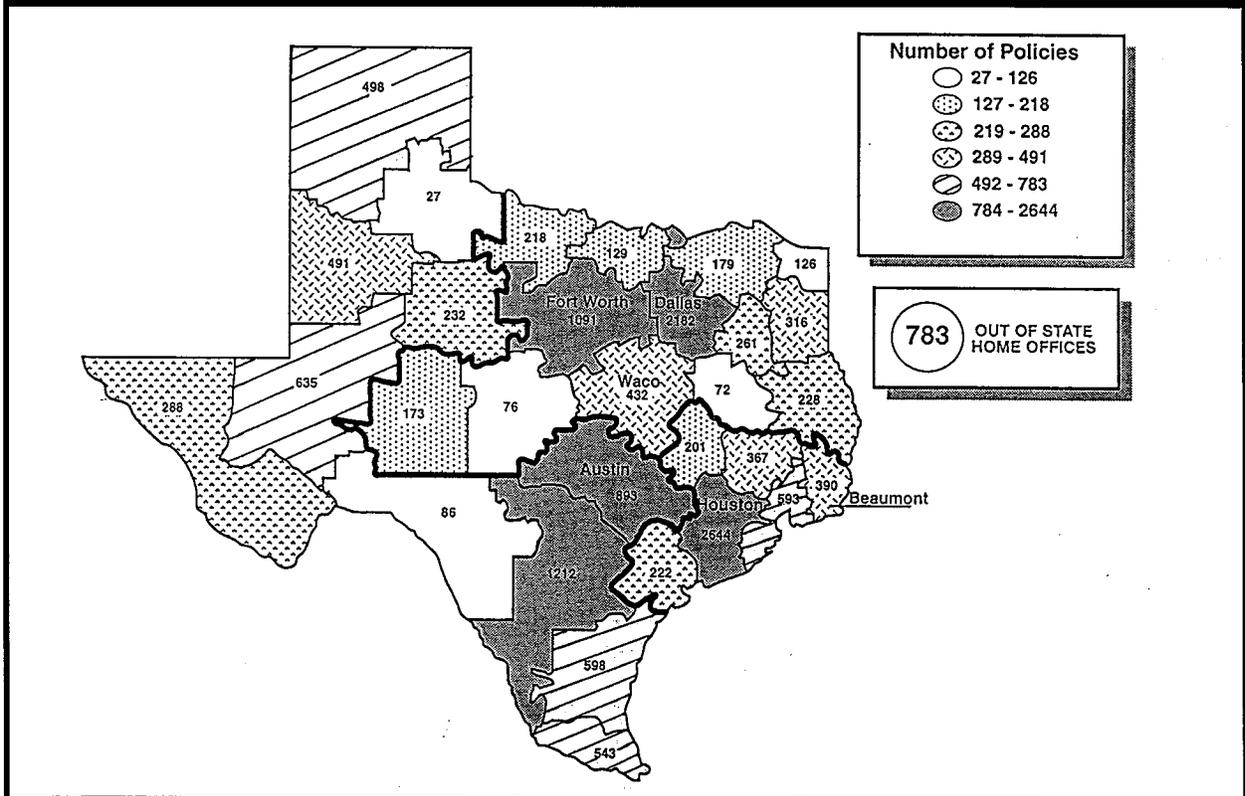
Operating like directors of a private insurance company, the board develops and adopts policies to govern the Fund's operation. The Board also proposes rates for the Fund's insurance policies, hires and supervises the Fund's chief executive officer, delegates specific responsibilities to the chief executive officer, enters into

and approves contracts. The Board must meet at least once a month.

**FUNDING AND ORGANIZATION**

The initial funding to capitalize the Fund came from the sale of \$300 million in state revenue bonds on December 1, 1991. The \$300 million established the Fund's initial reserve, which is used to support the Fund's written policies. The statute requires the Fund to maintain a ratio of written premiums to surplus of not more than 3.3 to 1. The revenue bonds

**Fund Policies Written by Region in 1993**



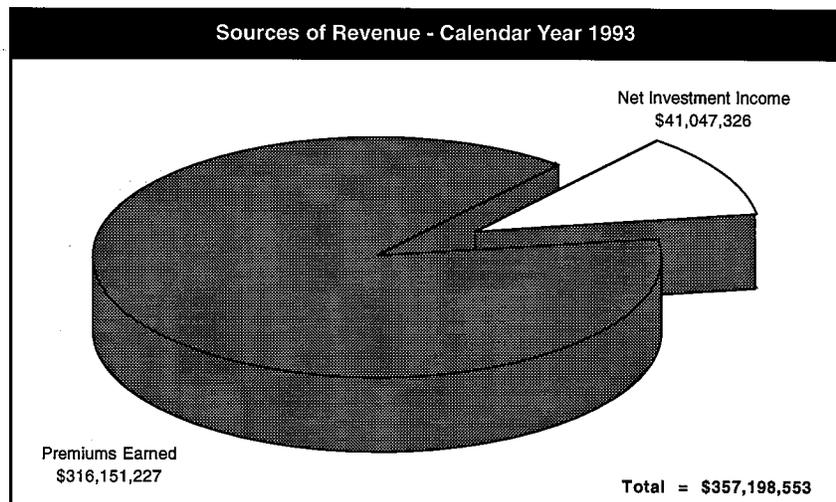
The Fund began with \$300 million in state revenue bonds.

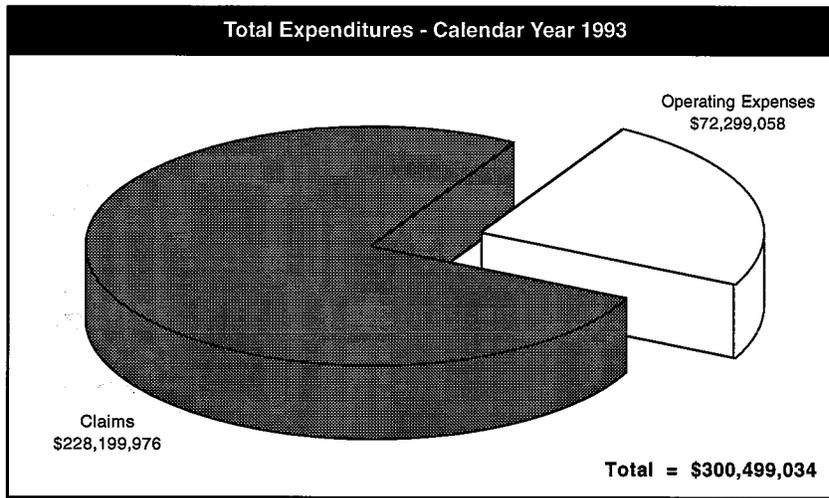
are retired by revenue generated from a maintenance tax surcharge on premiums levied on insurance carriers that write workers' compensation insurance, including the Fund. The Texas Department of Insurance assesses the tax surcharge, the State Comptroller of Public Accounts collects the tax, and the funds are held and disbursed on behalf of the Fund by the Texas Public Finance Authority of approximately \$37 million per year through 2006. Currently, the maintenance tax surcharge rate is set at 1.2083 percent. This rate is set by TDI in an amount sufficient to pay all debt service on the bonds. The total debt service related to the initial bond issue is \$480.9 million over the 15-year life of the bonds. For reporting purposes, the Fund's fiscal period is based on a calendar year (January 1st to December 31st).

The Fund receives no appropriations from state funds. Revenue to support the Fund is generated by premiums received on written policies and by income earned on investments. In 1993, total Fund revenue was \$357 million. As shown in chart *Sources of Revenue*, the Fund received 89 percent, or \$316 million of its income from premiums and 11 percent, or \$41 million from investment income in 1993.

The Fund follows an investment policy approved by the State Treasurer and consistent with the investment policies of other workers' compensation insurers in the state.

The Fund's expenditures are primarily for losses on claims and operating expenses. Total 1993 Fund expenditures were \$302 million. As shown in the chart, *Fund Expenditures*, the Fund paid





The Fund earned \$57 million in profit in 1993.

out 76 percent or \$228 million for claims; 15 percent or \$45 million for claims administration, and \$27 million or 9 percent for operating expenses in calendar year 1993. The Fund earned \$57 million profit in 1993. This net income is deposited in the Fund's surplus account to be used primarily for premium rate reductions and to keep the premium-to-surplus ratio low. These low premium-to-surplus ratios allow the Fund to insure additional businesses.

Since the Fund does not receive appropriations, its budgetary process is completely internal. The Fund staff proposes a budget for Board approval. Each department within the Fund is budgeted an amount for operating expenses. In calendar year 1993, the total operating expenses for all departments was \$72 million.

The Fund has 1,055 full-time equivalent (FTE) employees located in the headquarters office in Austin and in regional offices in Austin, Dallas, Houston and Lubbock, as illustrated in the box, *Full Time Equivalent Employees*. The headquarters manage the overall operation of the Fund. The regional offices provide direct benefits services, account services, loss prevention, premium audit, and marketing to clients.

The Fund has developed policies to recruit qualified employees regardless of race, sex, disability, or religion. Using the categories and minority employment goals set out in the General Appropriations Act, the minority composition of the Fund's workforce has changed over a two-year period. Accompanying charts show the Fund's workforce composition, organizational structure, and the number of employees by department.

## MAJOR FUNCTIONS

The activities of the Fund can be divided into five major functions:

- marketing the Fund's services to agents to attract policyholders;
- underwriting policies to ensure that policyholders are charged the correct premium and placed in the correct program;

market and fulfill its role as insurer of last resort.

### MARKETING

The marketing department works directly with independent insurance agents to increase business with the Fund through personal visits, participation in agent trade associations, and town meetings, and distribution of newsletters and other informational materials to agents throughout the state. These

The Fund has 1,055 employees in five offices.

Full Time Equivalent Employees by Fund Office in 1994		
Location	No. of Employees	Percentage
Austin headquarters	710	67%
Austin regional office	83	8%
Dallas regional office	112	11%
Houston regional office	108	10%
Lubbock regional office	42	4%
<b>TOTAL</b>	<b>1,055</b>	<b>100%</b>

- providing accident prevention services to reduce illness and injury among policyholder employees;
- conducting claims administration to ensure that injured workers receive appropriate benefits at reasonable costs; and
- providing financial management to ensure that the Fund can stabilize the insurance

independent agents produce approximately 99 percent of the Fund's premium volume. The Fund also provides direct access to coverage for individual businesses that prefer not to use the services of an agent.

The marketing department attempts to increase customer awareness of the Fund's products and programs with radio, newspaper, and direct mail advertising. The department also develops and analyzes statistical information on

<b>Fund Minority Employment Composition in 1992 and 1994</b>					
<b>Job Category</b>	<b>1992 Total Work Force 176</b>		<b>1994 Total Work Force 1,055</b>		<b>1993-1994 Minority Work Force Benchmarks</b>
	<b>Total Positions</b>	<b>Percentage Minority</b>	<b>Total Positions</b>	<b>Percentage Minority</b>	
Administration	35	14%	77	21%	13%
Professionals	113	33%	709	31%	14%
Technicians	1	--	32	41%	27%
Protective Service	--	--	--	--	55%
Administrative Support	27	44%	237	48%	33%
Skilled Craft	--	--	--	--	31%
Service/Maintenance	--	--	--	--	51%

Fund productivity and competitor activity using the information to project Fund growth, and evaluate the effectiveness of existing products and programs in meeting customer needs.

**UNDERWRITING**

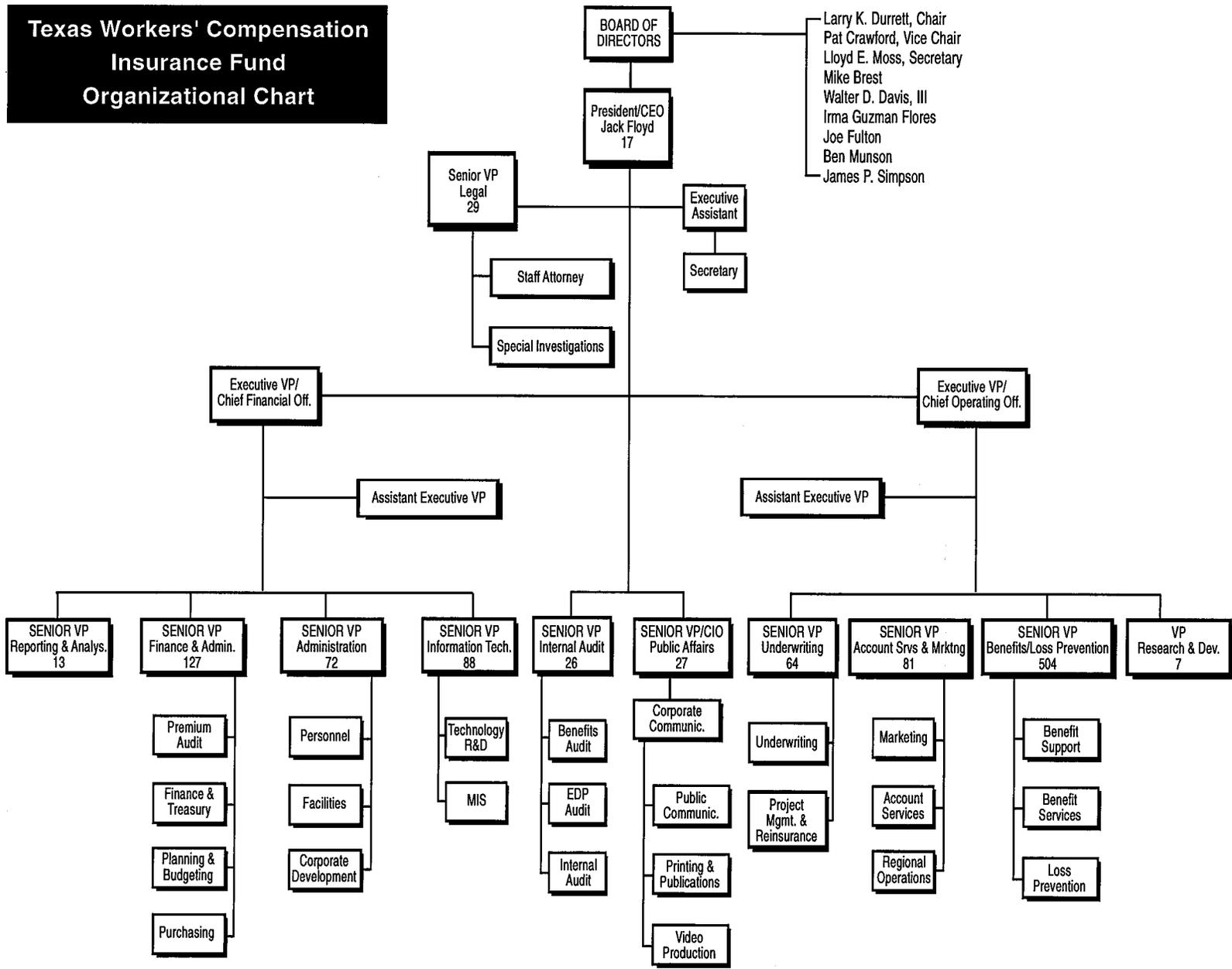
An employer seeking coverage by the Fund submits an application for coverage to the underwriting department, which analyzes each application for acceptability under its guidelines. These guidelines evaluate the applicant's type of business operation, geographical location, estimated premium size, history of claims, and other factors. When an application is accepted, the Fund issues a policy and assigns it to one of the Fund's three insurance programs: the

voluntary market program, the START program, or the Small Business Injury Protection Plan.

The Fund writes policies in four price tiers: preferred risk, standard risk, manual, and the non-standard tier based on the applicant's risk characteristics. The Fund's current preferred tier rate is 30 percent below the 1991 benchmark rate set by the Texas Department of Insurance. The standard tier rate is 20 percent below the TDI 1991 benchmark rate, the manual tier rate is equal to the benchmark rate, and the non-standard tier rate is 12.5 percent above the benchmark rate.

The Fund became the insurer of last resort and began writing

**Texas Workers' Compensation  
Insurance Fund  
Organizational Chart**



Larry K. Durrett, Chair  
Pat Crawford, Vice Chair  
Lloyd E. Moss, Secretary  
Mike Brest  
Walter D. Davis, III  
Irma Guzman Flores  
Joe Fulton  
Ben Munson  
James P. Simpson

rejected risk accounts under its START program on January 1, 1994 for businesses unable to obtain workers' compensation insurance in the voluntary market. In addition to insurance, this program provides employers safety and health information to reduce losses. The START program is intended to move rejected risk businesses into the voluntary market by improving their insurability.

The Fund also operates a voluntary Small Business Injury Protection Plan for the smallest companies with average or better risk characteristics and premiums below \$5,000.

The underwriting department also monitors policyholders to identify operational changes that may impact their insurability, and detect potential insurance fraud.

#### **LOSS PREVENTION**

The loss prevention department conducts on-site workplace surveys to identify potential health and safety hazards. Policyholders then get help with programs designed to create safer workplaces. Policyholders participating in the Fund's START Program for rejected risks, as well as those identified by Texas Workers' Compensation Commission (TWCC) as extra hazardous employers, receive additional

safety assessments and consultations. An extra hazardous employer is one who has an above average history of claims frequency and severity.

#### **BENEFITS**

The benefit services department provides payments to policyholder employees who suffer work-related illnesses or injuries, and uses a managed care approach to control costs with early intervention; a toll-free hotline for claims reporting; cost-management computer systems to flag overcharges, duplicate charges, unnecessary or unrelated charges; provider organizations; and early return-to-work programs.

When the Fund receives a claim, an employee determines if the injury is covered by the employer's policy. A benefits administrator then reviews the employee's case for the type and severity of the employee's injury, work status, and prior disability. The benefits administrator also investigates any unusual facts or questionable claim information and looks for indicators of claim fraud. After the review is complete, the benefits administrator supervises the Fund's payment of all health care provider bills and income replacement benefits.

Like all insurance companies writing workers' compensation

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The START program is intended to move rejected risk businesses into the voluntary market by improving their insurability.

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insurance in Texas, the Fund participates in the TWCC dispute resolution process. This process begins with an informal benefit review conference and can end with a decision rendered by a court of law. As illustrated in the box, *Number and Type of Administrative Reviews*, the Fund participated in a total of 428 administrative reviews out of a total of 24,876 claims in 1993.

As a matter of policy, the Fund does not regularly use legal representation at benefit review conferences but uses attorneys in contested case hearings. If and when the Fund does use legal representation, it relies on outside counsel and not Fund staff. In 1993, the Fund paid a total of \$357,300 to outside counsel for legal consultation on workers' compensation claims, defense of employers liability lawsuits, subrogation cases, and general tax advice.

#### *FINANCIAL SERVICES*

Sound financial management is crucial for the Fund to meet the policy goals set out in statute. The Fund must not only provide insurance to those employers that cannot get insurance in the voluntary market, but also stabilize the workers' compensation insurance market in Texas. The financial services department manages the Fund's assets to ensure adequate

liquidity and to maximize the return on investments. In 1993, the financial services department invested a net total of \$267 million. The total rate of return was 9.7 percent. The staff also handles financial forecasting, financial reporting to TDI, payroll administration, retirement fund investments for Fund employees and employee expense reimbursements.

Fraud investigation is an important tool in keeping costs and insurance rates down. Financial services staff work to identify and investigate fraud committed against the Fund by agents, policyholders, injured employees, medical providers, or other service providers. Department staff work with other departments to identify potential cases of fraud. In 1993 and 1994, the Fund referred 55 cases involving possible fraud to county and district attorneys. Of these 55 cases, 15 led to indictments and ten have resulted in convictions to date.

#### *SUPPORT FUNCTIONS*

Support functions include purchasing, personnel management, management information services, and internal audit.

Goods and services are purchased centrally by the purchasing staff. The Fund is not required to follow the General Services

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Rejected risk companies receive special attention designed to cut injuries.

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Commission's purchasing guidelines since it is defined in statute as a corporate entity and not a state agency. Fund policy states that informal bids be solicited for purchases valued between \$1,000 and \$10,000. All purchases valued over \$10,000 follow a formal bidding process, according to this policy. In calendar year 1993, the Fund made use of Historically Underutilized Businesses (HUBs) in 8.4 percent of the total dollar volume of purchases.

Other support functions include personnel services, technical and computer services and internal audit. Using a risk-assessment model, the internal audit staff identifies those areas that pose the greatest risk to the Fund's solvency and efficiency and conducts audits in those areas. The staff submits an annual report to the Fund's executive officers and Board of Directors.

Suspected frauds are referred to county and district attorneys.

Type and Number of Administrative Reviews in 1993	
Review Type	No. of Reviews
Benefit review conference	319
Contested case hearing	78
Appeals panel reviews	28
Judicial reviews	3
<b>TOTAL</b>	<b>428</b>



# ISSUE 1



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**GIVE THE RESEARCH CENTER THE DUTY TO MONITOR PERFORMANCE AND REPORT ON ALL ASPECTS OF THE WORKERS' COMPENSATION SYSTEM, INCLUDING THE WORKERS' COMPENSATION INSURANCE FUND.**

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## BACKGROUND

During legislative sessions in 1989 and 1991, the Legislature overhauled the workers' compensation system and created three entities to administer, research, and stabilize the workers' compensation process in Texas. The 71st Legislature created the Texas Workers' Compensation Commission (TWCC) in 1989 to administer the workers' compensation system.

The Texas Workers' Compensation Research Center was also created in 1989 to ensure that objective information on workers' compensation would be available to policymakers. During its 1987 review, the Joint Select Committee on Workers' Compensation Insurance noted difficulty in obtaining objective, timely information on workers' compensation in Texas. Because much of the needed information on the system's performance was outdated, unavailable, or disputed, accurate decision making was very difficult. The Research Center was created to meet future informational needs.

In 1991, the Legislature established the third major component of the current workers' compensation system by creating the Texas Workers' Compensation Insurance Fund (Fund) to stabilize the insurance market and serve as insurer of last resort.

The statute directs the Research Center to conduct professional studies and research on key aspects of the workers' compensation system, including matters relevant to the cost, quality, operational effectiveness of the workers' compensation system, and litigation and controversy related to workers' compensation.

To provide useful information, the Research Center was given authority to access data from other state agencies including TWCC and the Fund. However, the Research Center only has access to the same data from the Fund that it has from the other insurance carriers. TWCC generates a great deal of information on claim costs, benefits, safety, and dispute resolution. The Fund has information on the dynamics of the workers' compensation insurance

market that is useful to the Research Center.

The Sunset review of the Texas Workers' Compensation Research Center focused on the Research Center's ability to access needed information, its performance in generating key objective information needed by the Legislature, and whether its duties are broad enough to meet legislative needs.

## FINDINGS

### ▼ Key system-wide information is needed by legislators to evaluate the performance of the system and identify potential problems.

► The type of information that would be useful to the Legislature includes:

- cost of the system, including medical costs, litigation expenses, and trends;
- insurance costs and rates;
- benefits provided to injured workers per premium dollar;
- characteristics of the dispute resolution process, including outcomes at each level;
- safety programs and impact on injury rates; and
- efforts to combat fraud and violations of the Texas

Workers' Compensation Act or rules.

### ▼ Information related to the workers' compensation system is now available from many sources.

► Under the old system no reliable information was available to evaluate the system.

► TWCC has recently compiled key information, including information related to claims, injuries, litigation, and safety.

► The Texas Department of Insurance (TDI) maintains a database on workers' compensation insurance rates.

### ▼ No other entity puts all this information together and analyzes it to get a complete understanding of the workers' compensation system as a whole.

► Other agencies related to the workers' compensation system that do collect system performance data collect the information primarily for their own internal purposes.

► No state agency routinely collects and analyzes data from all available sources including TWCC, TDI, and the Texas Employment Commission (TEC).

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The Research Center is in a position to provide crucial information to policymakers.

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▼ **The Research Center is in a position to compile and analyze information, identify issues, and provide crucial information to support decisions by state policymakers.**

▶ During its first year of operation, the Research Center performed the research mandated in its enabling legislation. The Legislative Oversight Committee on Workers' Compensation Insurance, TWCC, and the Research Center have recently compiled key information related to the activities of TWCC. The Research Center is in a position to analyze this data.

▶ The Research Center has access to data from TWCC, TEC, TDI, Texas Department of Human Services, and other state agencies.

▶ The Research Center has the expertise to collect, manage, and analyze workers' compensation data. The Research Center staff includes a programmer analyst, a statistical services manager, and two research specialists.

▶ The Research Center has the technical capability to compile and manipulate this information, including data-processing capacity on the

TWCC mainframe and access to statistical software.

▼ **The Fund is a vital part of the Texas workers' compensation system. Information about the Fund is crucial in evaluating the system as a whole.**

▶ The Fund was established by the Legislature in 1991 as a vital part of the reform to stabilize the workers' compensation insurance market in Texas by providing competitive rates and serving as insurer of last resort. Recommendations to improve state oversight are included in the staff's recommendations for the Fund.

**CONCLUSION**

Now that TWCC, the Research Center, and the Fund are established and the system is maturing, key information must be gathered and analyzed for these purposes: to identify the long range needs of the system; to target potentially critical problems before they reach crisis level; and to provide a tool to assist the Legislature in developing plans, programs, and legislation. Overall performance information on the system has not been collected, analyzed, and presented in a manner that provides a broad overview of the entire system. This role fits with the Research Center's current responsibilities.

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Require the Research Center to collect, maintain, and analyze information on the effectiveness of the state's workers' compensation system.

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**RECOMMENDATION**

- ▼ **Strengthen the statute by requiring the Research Center to perform the following functions:**
- ▶ **identify, collect, maintain, and analyze the key information needed to assess the operational effectiveness of the state's workers' compensation system and provide this information to the Governor and the Legislature on a quarterly basis; and**
  - ▶ **collect information from the Texas Workers' Compensation Insurance Fund and determine its impact on the workers' compensation system.**

The intent of this recommendation is to provide the Legislature with the information necessary to adequately monitor and evaluate the performance of the workers' compensation system in Texas, including the Fund. The Research Center needs specific statutory authority to obtain data records from the Texas Workers' Compensation Insurance Fund so the Research Center will have access to all the records it needs to monitor the health and operations of this important component of the workers' compensation insurance system. Any confidential or proprietary information provided to the Research Center would retain its protected status while used by the Research Center. In addition, while the Research Center is currently required to conduct professional studies and research on key aspects of the workers' compensation system, the recommendation mandates that on a continuous basis the Research Center should analyze key data, provide a broad overview of the entire system, and report regularly to the Legislature.

**FISCAL IMPACT**

The collection and maintenance of key performance information would not have a fiscal impact on the Research Center. The Research Center currently has the staff, resources, and capability to collect and maintain key performance information.

## ISSUE 2



### RESTRUCTURE THE BOARD TO FOCUS THE RESEARCH ON INFORMATION NEEDS OF THE LEGISLATURE.

#### BACKGROUND

The 71st Legislature created the Texas Workers' Compensation Research Center (Research Center) in 1989 to provide objective information to the Legislature on the workers' compensation system. When the Joint Select Committee on Workers' Compensation reviewed the system in 1987, this type of data was unavailable. Pertinent, credible information is crucial for keeping track of the system and preventing crises like the one that occurred in the late 1980s.

The Legislature established the Research Center as a separate state entity to be independent from other workers' compensation agencies and interest groups. The structure of the Research Center's Board of Directors (Board) structure was intended to insulate the Research Center and its research from special interest groups. The Board consists of nine members. Three of the members are ex officio. The ex officio members include two members selected by TWCC — one commissioner who represents wage earners and one who repre-

sents employers. The third ex officio member is the public counsel of the Office of Public Insurance Counsel. The Governor, Lieutenant Governor, and the Speaker of the House of Representatives each appoint two of the six

#### *Research Center Board Structure*

- *TWCC member representing wage earners*
- *TWCC member representing employers*
- *Public counsel of Office of Public Insurance Counsel*
- *Two Governor appointees*
- *Two Lieutenant Governor appointees*
- *Two Speaker appointees*

public members who serve staggered four-year terms.

The Board's major responsibility is setting the annual research agenda for the Research Center. The Board must set the agenda based on research topics outlined in the Research Center's enabling statute. Suggestions for specific research topics are solicited from related state agencies. The proposed research agenda is published in the *Texas Register* and is sent to academic institutions, interested state agencies, and outside groups for input. A

public hearing is held if requested by interested parties. The Board considers all suggestions and sets the final research agenda. Below is a list of major Board responsibilities:

- (1) approve the research agenda and operating budget of the Research Center;
- (2) issue an annual report to the Governor and the Legislature on Research Center activities;
- (3) adopt rules for the operations of the Board and the Research Center;
- (4) publish and disseminate studies; and
- (5) hire and delegate powers to the executive director.

The Sunset review focused on the structure of the Research Center's Board and whether this structure enabled the Research Center to provide relevant and unbiased information to the Legislature.

## FINDINGS

- ▼ **Restructuring the Board to provide for the direct involvement of the leadership allows for early detection and appropriate action to deal with emerging problems before full blown crises occur.**
  - ◆ Based on other states' experiences, new workers'

compensation systems work well in the early years. As claims and liabilities grow and accumulate, hazards emerge in the system.

- ▼ **Continued legislative oversight of the Research Center is needed.**

- ◆ The Legislative Oversight Committee on Workers' Compensation Insurance (LOC) was created in 1989 to oversee the workers' compensation reforms. One of the functions of the LOC is to provide oversight and legislative direction to the Research Center. According to Chapter 401 of the Texas Workers' Compensation Act, the LOC's functions end on September 1, 1995.

- ◆ Legislators should have direct input into the Research Center agenda.

- ◆ Restructuring the Research Center Board to include legislators would provide the legislative oversight that is still needed.

- ▼ **Restructuring the Board's composition to include legislators would ensure that, as the system changes, the Legislature has direct input into the changing**

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The Legislative Oversight Committee on Workers' Compensation Insurance (LOC) is due to go out of business September 1, 1995.

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**information needs of the Legislature.**

By restructuring the Board composition to include legislators, policymakers will be directly involved in setting the research focus.

Policymakers, who ultimately legislate change, are aware of the type of information they need to effectively make policy decisions.

**CONCLUSION**

The Texas workers' compensation system has three components — TWCC to administer the workers' compensation system claims and benefits; the Fund to stabilize the insurance market and serve as insurer of last resort; and the Research Center to provide objective information needed to

effectively monitor and evaluate the workers' compensation system.

The components are now established. The workers' compensation system is maturing. Now, the challenge is to ensure that the system continues to improve and that ongoing information is available to make policymakers aware of trends and potential problems. A change in the Board's structure would allow the Research Center's efforts to be more appropriately focused on the changing information needs of the Legislature, providing the needed tools to effectively monitor the workers' compensation system.

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Create a new Research Center Board that includes the Governor, the Lieutenant Governor and the Speaker.

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**RECOMMENDATION**

- ▼ **Change the statute to abolish the current Research Center Board and create a nine-member Board with the following structure:**
- ▶ **the Governor or a designee;**
  - ▶ **the Lieutenant Governor or a Senator designated by the Lieutenant Governor;**
  - ▶ **the Speaker of the House of Representatives or a House member designated by the Speaker;**
  - ▶ **the chairman of the Senate Committee with oversight of workers' compensation legislation;**
  - ▶ **the chairman of the House Committee with oversight of workers' compensation legislation;**
  - ▶ **two public members appointed by the Governor;**
  - ▶ **one public member appointed by the Lieutenant Governor; and**
  - ▶ **one public member appointed by the Speaker of the House of Representatives.**

The intent of this recommendation is to ensure that the Research Center provides the Legislature with the information needed to effectively monitor and evaluate the Texas workers' compensation system. The existing Board would be abolished on August 31, 1995 and replaced by the new Board. Legislative members would serve on the Board while holding their legislative offices. Designees of state officials would serve at the pleasure of the Governor, Lieutenant Governor, and Speaker of the House. Public members would serve staggered four-year terms, with two members' terms expiring on February 1 of each odd-numbered year.

**FISCAL IMPACT**

This recommendation would not result in a fiscal impact.



# ISSUE 3

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**PROVIDE THE RESEARCH CENTER WITH STATUTORY AUTHORITY TO SEEK AND USE FEDERAL FUNDS.**

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## BACKGROUND

The Research Center is funded by the maintenance tax on workers' compensation insurance carriers and certified self-insurers. The maintenance tax is set annually by the Texas Workers' Compensation Commission (TWCC) based on the Research Center's legislative appropriation. In fiscal year 1993, the Research Center spent a total of \$578,998. The Research Center does not have specific statutory authority to apply for and use federal funds.

The Sunset review focused on the availability of federal funds and the Research Center's ability to receive and use the funds.

## FINDINGS

▼ **The Comptroller of Public Accounts (Comptroller) has general authority to accept federal money for state agencies.**

▶ While the Comptroller has general authority to accept federal money, this authority has been questioned because it is not agency-specific. Several Attorney General opinions have been requested by state

agencies who do not have specific authority in their statutes.

▼ **Some state research agencies have specific statutory authority to receive federal funds for their research efforts.**

▶ State agencies and entities that receive federal funds for research include the Department of Agriculture, Criminal Justice Policy Council, Department of Human Services, Department of Mental Health and Mental Retardation, Texas Department of Transportation, and the state's university systems.

▼ **Accessing and securing federal funds is becoming a priority as a source of state agency funding.**

▶ The Comptroller's revenue estimate for the 1994-95 biennium shows that federal receipts will surpass the sales tax to become the single largest source of revenue to the state.

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The Comptroller's authority to accept federal funds is not agency-specific.

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Authorize the Center to apply for and use federal funds.

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◆ In 1990, the Comptroller identified the importance of obtaining available federal funds and made recommendations for obtaining those funds in *Dollars We Deserve*, a series of five publications that encouraged state agencies to take advantage of available federal funds. Other Comptroller publications have made recommendations to increase the use of federal funds.

◆ The Office of State-Federal Relations (OSFR) provides assistance to state agencies in finding, applying for, and receiving federal funds. In 1991, the functions of the Governor's Central Office of Federal Funds Management were transferred to the OSFR to provide a greater emphasis on securing federal grants.

▼ **Federal funds would be available to the Research Center if the authority to apply for and use federal money was provided in statute.**

◆ The OSFR searched available federal funds to see if any would be available to the Research Center, identifying Occupational Safety and Health Research Grants ranging from \$10,000 to \$300,000. Additional funds

could become available during future federal spending cycles.

## CONCLUSION

The Research Center lacks specific statutory authority to use federal funds that are potentially available for research on the workers' compensation system in Texas. Other state agencies with the authority to access federal funds use millions of dollars every year for program support and research. No reason was identified as to why the Research Center should be prevented from accessing federal funds.

**RECOMMENDATION**

- ▼ **Change the statute to authorize the Research Center to apply for and use federal funds with approval of its Board of directors.**

This statutory clarification would enable the Research Center to apply for funds from the federal government. Funds received could be used for additional research on workers' compensation issues.

**FISCAL IMPACT**

The fiscal impact cannot be estimated at this time. However, the Research Center would be eligible to apply for grants from the U.S. Department of Health and Human Services on workplace health and safety issues that range from \$10,000 to \$300,000. Other federal funds may be available in future federal budgets.



# ISSUE 4

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## CONTINUE THE TEXAS WORKERS' COMPENSATION RESEARCH CENTER FOR 12 YEARS.

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### BACKGROUND

The Texas Workers' Compensation Research Center (Research Center) was created in 1989 to provide objective information to the Legislature on the workers' compensation insurance system in Texas. Before the Research Center was created, little objective information was available on the Texas workers' compensation system.

The Research Center was charged, in the workers' compensation reform legislation, to conduct studies and to report the findings to the 73rd Legislature on the following workers' compensation topics:

- the feasibility and effectiveness of vocational rehabilitation programs;
- the effectiveness of insurance deductibles;
- the effectiveness of arbitration as a method of dispute resolution;
- the cost-effectiveness of providing mandatory workers' compensation through a state-administered, employer-

financed workers' compensation self-insurance program, modeled after the current Texas Unemployment Insurance Trust Fund and Act but taxed on 100 percent of payroll; and

- the feasibility and effectiveness of alternative models for a state workers' compensation insurance fund.

In addition, the Research Center is responsible for conducting professional studies on workers' compensation issues and serving as a collection center for information on workers' compensation. The statute specifies that the Research Center conduct objective research on the following topics:

- delivery of benefits;
- litigation and controversy related to workers' compensation;
- insurance rates and rate-making procedures;
- rehabilitation and reemployment of injured workers;
- workplace health and safety issues;

- the quality and cost of medical benefits;
- other matters relevant to cost, quality, and operational effectiveness of the workers' compensation system; and
- research related to drugs in the workplace.

To justify the continuation of an agency's functions, specific conditions should exist. First, the state should have a current and continuing need for providing the functions or services. Second, the agency's functions should not duplicate the services or functions provided by other agencies. Third, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to any other state agencies.

## FINDINGS

### ▼ **The functions of the Texas Workers' Compensation Research Center are needed.**

- ▶ To evaluate the health of the workers' compensation system, objective and timely information must be available to policymakers and their staffs. To make informed decisions on the workers' compensation system, policymakers must have specific information on key measures of the system.

Policymakers also need to know the trends in these areas and their causes.

▶ The workers' compensation system has changed since its creation in 1989. The three component agencies of the system — TWCC, the Fund, and the Research Center — are established. The system is maturing. Credible data is needed to adequately compare the old workers' compensation system with the new, to determine how well the new system is working, and to determine whether legislative changes are needed to improve the system.

▶ When a crisis occurs in the system, objective diagnostic information is needed to evaluate the system and recommend change. An independent research source is needed to monitor the system, to be proactive and to prevent crises from recurring.

### ▼ **Lack of objective information led to the creation of the Research Center.**

▶ A report of the Senate Jurisprudence Committee in 1982 called attention to the lack of credible information about the workers' compensation system.

Lack of objective information led to the creation of the Research Center.

*“Texas literally has no substantiated idea how good or bad its workers’ compensation system is. Competing interest groups provide information to support their own positions, but what has emerged has not been a synthesis of available data, but rather a fragmented, parochial, seriously qualified collection of numbers that is so amorphous as to be almost meaningless. Regardless of what the interested parties may say and even believe, Texas is ignorant of where its workers’ compensation system is going and only slightly more aware of where it has been.”*

- ◆ In 1985, the House Select Interim Committee on Workers’ Compensation Insurance called for better information, more research, continued study, and attention to workers’ compensation issues.
- ◆ In 1988, the Joint Select Committee on Workers’ Compensation recommended creation of an independent research body to conduct research and provide objective information pertinent to the workers’ compensation system to policymakers in Texas.
- ▼ **An assessment of the Research Center and related state agencies revealed no appropriate options for transferring functions.**
- ◆ The review examined whether any benefits would result from combining the functions of the Research Center with other state agencies. While other state agencies including TWCC, the Fund, Texas Department of Insurance, and Texas Employment Commission generate data pertaining to workers’ compensation, none have the statutory mission to gather all the data and develop comprehensive analyses of the workers’ compensation system in Texas.
- ◆ Although the Research Center could be administratively attached to a larger agency, the perception of independence and credibility is important in research. Information provided by the above agencies cannot be viewed with the credibility that is provided by an independent research body. To be credible, information needs to be performed by a research body that does not have a financial interest in the workers’ compensation system.
- ▼ **Texas is the only state that has an independent research center.**
- ◆ While other state and national research centers focus on workers’ compensation,

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Continue the Research Center for 12 years to ensure the availability of objective information on the system.

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none are independent from interest groups. For example, the Workers' Compensation Research Institute in Cambridge, Massachusetts provides practical research on workers' compensation. While their information is highly respected, the research takes a national approach and a large portion of the funding is provided by the insurance industry. The California Workers' Compensation Research Institute in San Francisco is a private entity funded by the insurance industry and state funds. The research focus is state directed.

- ▼ **While the Research Center's functions need to continue, the Research Center needs to improve the direction of its research efforts.**

- ▶ Two Sunset staff recommendations address the direction of research efforts. One requires the Research Center to collect and maintain key performance information while the other restructures the Research Center Board to put those individuals using the information on the board.

## CONCLUSION

The functions of the Research Center continue to be needed to ensure that objective information on the workers' compensation insurance system in Texas will be available to policymakers. Although the Research Center's direction and role should be adjusted, the need for independent research on the system remains.

## RECOMMENDATION

- ▼ **Change the statute to continue the Texas Workers' Compensation Research Center for 12 years.**

The Research Center should be continued to provide needed information on the workers' compensation insurance system in Texas. However, the direction and focus of the Research Center should be changed to reflect the changing needs of policymakers. Recommendations to improve the Research Center's oversight and work products are included in this report.

## FISCAL IMPACT

If the Legislature continues the current functions of the Research Center using the existing organizational structure, the Research Center's annual appropriation of \$705,937 would continue to be required. The Research Center is funded by the insurance maintenance tax on workers' compensation insurance carriers and certified self-insurers. Revenues from the tax are deposited in the general revenue fund and appropriated to the Research Center. Any fiscal impact that would occur as a result of this recommendation or other recommendations, would not have an effect on the state's general revenue fund as the maintenance tax is set to cover the Research Center's appropriations.



<b>Texas Workers' Compensation Research Center</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Apply	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Update	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Apply	7. Require the agency to establish career ladders.
Apply	8. Require a system of merit pay based on documented employee performance.
Apply/Modify	9. Provide for notification and information to the public concerning agency activities.
Already in Statute	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Apply	11. Require information to be maintained on complaints.
Apply	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Apply	13. Require development of an E.E.O. policy.
Apply	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	15. Provide for public testimony at meetings of the policymaking body.
Apply	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

<b>Texas Workers' Compensation Research Center</b>	
<b>(cont.)</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Provide an analysis, on request, to individuals failing the examination.
Not Applicable	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	6. Authorize the staggered renewal of licenses.
Not Applicable	7. Authorize agencies to use a full range of penalties.
Not Applicable	8. Specify disciplinary hearing requirements.
Not Applicable	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.



# BACKGROUND

## CREATION AND POWERS

During its review of the workers' compensation system in 1987, the Joint Select Committee on Workers' Compensation Insurance had difficulty obtaining objective and timely information on the workers' compensation system in Texas. Much of the information was either outdated, unavailable, or disputed, making legislative decision-making and oversight very difficult. The 71st Legislature created the Texas Workers' Compensation Research Center (Research Center) in 1989 to ensure that objective information on the workers' compensation insurance system in Texas would be available to policymakers.

While the enabling legislation for the Research Center became effective January 1, 1991, the Board of Directors was not fully appointed until September 1991; the agency became operational with the Board's appointment of an executive director on March 15, 1992.

The Research Center is an advisory body to the Texas Workers' Compensation Commission (TWCC) and is charged with developing factual, fair and

unbiased research and findings in key areas of the workers' compensation system. To conduct research, the Research Center may access the files and records of TWCC, Texas Employment Commission (TEC), Texas Department of Insurance (TDI), Texas Department of Human Services (TDHS), and other state agencies. The Research Center is the only independent, state-operated research entity on workers' compensation in the nation.

## POLICYMAKING STRUCTURE

The Research Center's Board of Directors consists of nine members. Three of the members are ex officio and the remaining six are public members. TWCC selects two ex officio members—one commissioner who represents wage earners and one who represents employers. The third ex officio member is required to be the public counsel of the Office of Public Insurance Counsel. The Governor, Lieutenant Governor, and the Speaker of the House of Representatives each appoint two public members who serve staggered four-year terms. Half of the six public members' terms expire on February 1 of odd-numbered years. Appointments of public

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The Research Center is the only independent state-operated research entity on workers' compensation in the nation.

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members are not subject to Senate confirmation.

The Board must meet at least once each quarter and elects officers every two years. The presiding officer must be one of the six public members. The Board approves the research agenda and operating budget of the Research Center and oversees the agency's operations. The Board also approves all contracts with universities and research institutions. The Board delegates administrative powers to the executive director and contracts with TWCC for personnel and other services.

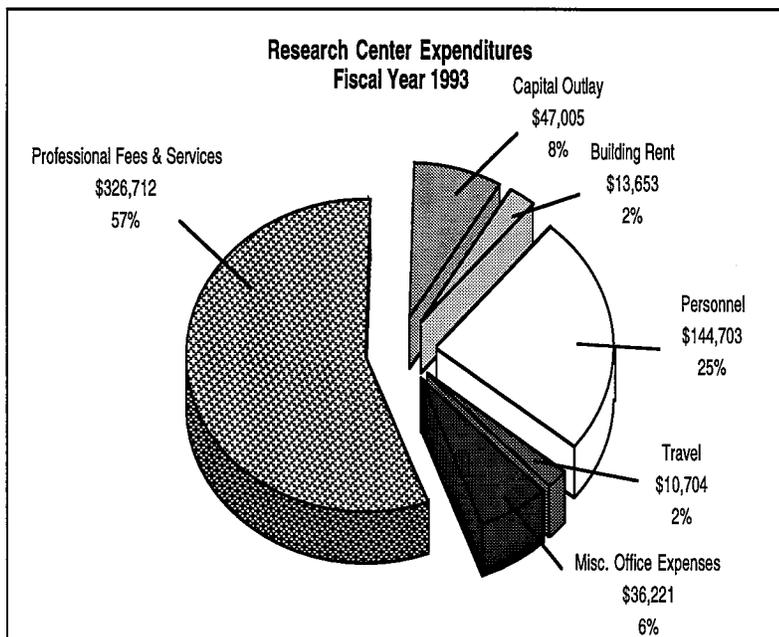
### FUNDING AND ORGANIZATION

The Research Center is funded by a maintenance tax on workers' compensation insurance carriers and certified self-insurers. The

maintenance tax rate is set annually by TWCC based on the Research Center's legislative appropriation. The maximum rate allowed is one-tenth of one percent of the reported gross workers' compensation insurance premiums. For fiscal year 1993, TWCC set the rate at two-one hundredths of one percent, which generated \$588,021 in revenue.

The Research Center's fiscal year 1993 appropriation was \$400,000 in addition to an unexpended balance carried forward of \$314,705. The Research Center was allowed to carry forward all unexpended funds from its first year of operation and in the second year was allowed to rollover 20 percent of the unexpended balance. Rollovers for subsequent years are set each biennium by the appropriations act. In fiscal year 1993, the Research Center's expenditures totaled \$578,998. The chart, *Research Center Expenditures*, shows the agency's expenditures by category for fiscal year 1993.

The Research Center currently employs eight staff located in Austin. The Research Center contracts with TWCC for financial accounting, personnel/payroll, purchasing, and data services, and contracts with the Texas Railroad Commission and the Texas Natural Resource Conservation Commission for printing. The *Research*



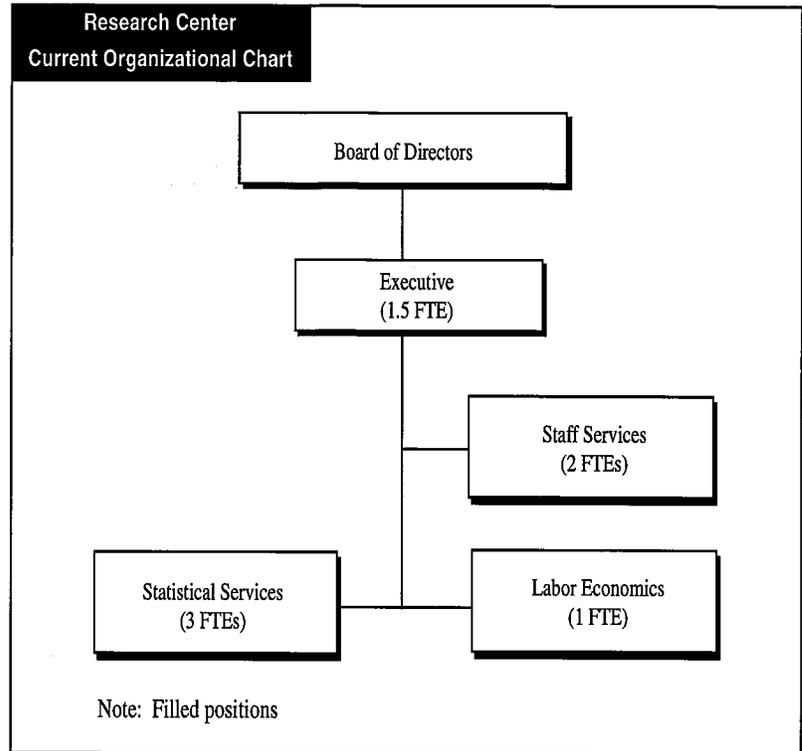
*Center Current Organizational Chart* shows more detail on the current organizational structure. The agency is subject to minority hiring provisions of the General Appropriations Act.

The *Percentage of Minorities in Agency Work Force* chart shows the ethnic composition of the Research Center's work force.

**Strategic Planning**

The Research Center's stated mission is to conduct factual, fair, and unbiased research; to produce information relevant to workers' compensation issues; and to share that information with all concerned persons. The Research Center has identified one goal to support this mission:

"To serve as an effective advisory body to the Legislature, the Texas Workers' Compensation Commission, the Texas Department of Insurance, and other agencies dealing with workers' compensation; and to accomplish objective



research and provide useful information on matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system."

The Research Center has adopted one objective to measure its

Texas Workers' Compensation Research Center Percentage of Minorities in Agency Work Force			
Job Category	Total Work Force: 17 As of June 20, 1994		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	% Minority	
Professionals	6	17%	18%
Administrative Support	2	0%	25%

progress toward meeting this goal: to conduct studies, perform research, and publish findings. To achieve this objective, in fiscal year 1993, the Research Center completed five projects and estimates that five projects will also be completed in fiscal year 1994.

### Major Functions

The Research Center's primary function is to conduct professional studies on workers' compensation issues. The statute specifies that research must be conducted on the following topics:

- the delivery of workers' compensation benefits;
- litigation and controversy related to workers' compensation;
- insurance rates and rate-making procedures;
- rehabilitation and reemployment of injured workers;
- workplace health and safety;
- the cost and quality of medical benefits;
- other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system; and
- drugs in the workplace.

The Research Center develops an annual research agenda to address the research topics set out in statute, which also requires the

Board to give equal emphasis to topics that affect employers and employees. Suggestions for possible research topics come from the workers' compensation agencies, Research Center staff, and the Board of Directors. The Research Center publishes a proposed research agenda in the *Texas Register* and distributes the agenda to state institutions of higher education that have a demonstrated research capacity, interested state agencies, and outside groups for input. The Board accepts public comments and conducts a public hearing on the proposed agenda if asked. After receiving input, the Board considers and approves the research agenda.

After the Board approves the research agenda, the Research Center's staff develops specific research projects and proposes whether to conduct the research itself or contract with other entities. If the research is conducted in-house, the Research Center works with TWCC, TEC, TDI, and other workers' compensation-related agencies to collect data. The Research Center then develops findings and submits the final report to the Board. In accordance with Board policy, and guidance from the Legislative Oversight Committee on Workers' Compensation Insurance, the reports do not include recommendations for changes in workers' compensation policies.

The Research Center completed five projects in fiscal year 1993 and expects to complete another five this year.

If the demands on staff time are too heavy or the scope of the project too broad for Research Center resources, the Research Center contracts, usually with state universities, to conduct the research. The staff develops and issues a request for proposals (RFP) specifying the terms and guidelines for each research project. Interested researchers submit proposals for Board review, and the Board awards contracts for research. The Research Center staff is directly involved in these projects and reports progress to the Board. When each project is complete, the contractor presents the final research report to the Board.

The Research Center completed five projects in fiscal year 1993. Two reports were contracted with state universities—one with the University of Texas and one with Texas A&M University. The University of Texas contract was \$111,897. The Texas A&M contract was \$85,000. The Research Center produced three projects in-house. The appendix includes a detailed explanation of these projects. See box for *Fiscal Year 1993 Projects*. The Research Center currently has nine projects on its fiscal year 1994 research agenda and expects to complete five of them by the end of the fiscal year. See box for *Fiscal Year 1994 Projects*.

In addition to the major reports, the Research Center publishes an informational newsletter, *The Research Review*. This newsletter has included topics such as the effect of insurance deductibles on workers' compensation premiums, an analysis of purchased insurance indemnity claims, and a look at rejected risk premiums. The Research Center has published eleven editions of *The Research Review* since fiscal year 1993.

The Research Center has distributed 10,000 copies of its publications to nearly 1,200 different individuals and entities, including universities, trade associations, government agencies, media, businesses, and law firms. The Research Center also responds to requests for information on workers' compensation from the Governor's Office, members of the Texas Legislature, state agencies, state universities, agencies from other states, interest groups, and individuals.

## APPENDIX

### Research Projects

#### Projects Conducted In-House

##### *The Delivery of Temporary Income Benefits Under the Texas Workers' Compensation System: Receipt of the First Payment*

This study provides an objective analysis of the elapsed time prior to the receipt of the first temporary income benefits (TIBs) payment, with baseline data for comparative purposes in subsequent years. The study compares delivery of benefits under the old and new laws and examines late payments under the new law to identify characteristics and/or behaviors that likely result in late benefits. Findings include: 1) the average time from the date when lost time began to the receipt of TIBs decreased 22.9 percent from 31.4 days in 1989 to 24.2 days in 1991; 2) when controverted claims were excluded from the 1991 data, the average number of days dropped to 20.8; and 3) in 1991, 58.4 percent of all claims were paid within 15 days as compared to only 37 percent in 1989.

The agency calculated the cost of conducting this study to be \$21,400.

##### *A Survey of Workers' Compensation Insurance Deductible Programs*

This study provides information about the availability of workers' compensation insurance

deductibles. The study examines deductible programs or the lack of such programs in each of the 50 states plus Puerto Rico and the District of Columbia. Some findings include: 1) identification of jurisdictions that currently permit or mandate deductibles for workers' compensation insurance; 2) the workers' compensation insurance market is controlled by exclusive insurance funds in five of the nine jurisdictions that do not permit deductibles; and 3) of those 43 jurisdictions with deductible programs, 35 permit or mandate both small and large insurance deductibles, four permit only large deductibles, and four have only small deductible programs in place.

The agency calculated the cost of conducting this study to be \$18,400.

##### *Bibliographical Data Base*

This database is a bibliography of workers' compensation publications available in the Research Center's library.

#### Projects Contracted Out

##### *Return-to-Work Patterns and Programs for Injured Workers Covered by Texas Workers' Compensation Insurance — University of Texas at Austin*

This study conducted exploratory research on return-to-work patterns for injured workers covered by workers' compensation in

Texas. Some of the findings include: 1) based on post-injury quarters of employment, workers injured in 1991 appear to be more likely to return to work sooner and to remain at work longer than workers injured in 1989; 2) based on post-injury median average weekly gross earnings, it seems that workers injured in 1991 are experiencing smaller average gross weekly earnings declines in the first post-injury quarter, and quicker, more nearly complete returns to their pre-injury earnings levels; 3) most injured workers covered under the Texas workers' compensation system are returning to work and recovering their pre-injury earnings levels; 4) under the new law, injured workers with higher-benefit single claims appear to be more likely to return to work sooner and to remain at work longer than under the old law; and 5) workers injured in 1991 experienced smaller average gross weekly earnings declines in the first post-injury quarter, and quicker, more complete returns to their pre-injury earnings levels.

This report was prepared under contract by the Research Center for the Study of Human Resources in the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin at a cost of \$111,897.

*A Study of Nonsubscription to the Texas Workers' Compensation System* — Texas A&M University

This study describes the characteristics of Texas employers who have not obtained workers' compensation insurance coverage (nonsubscribers), gauges the size of this group relative to those employers in the Texas workers' compensation system, and assesses the occupational and nonoccupational benefits available to employees of nonsubscribers. Findings based on data collected in 1993 include: 1) an estimated 44 percent of Texas employers are nonsubscribers, based on the analysis of the Texas Employment Commission, the Texas Workers' Compensation Commission and survey data; 2) 20 percent of Texas employees are employed by nonsubscribing employers; 3) nonsubscription increases as the size of the employer decreases; 4) 40 percent of employers with two to five employees are nonsubscribers compared to 12 percent of employers with more than 1,000 employees; 5) nonsubscription is highest among manufacturing, finance, and wholesale/retail employers, and lowest among transportation, construction and health service employers; 6) the percentages of employees working for nonsubscribing employers are highest in wholesale/retail, agriculture and health services and lowest in construction, transportation and mining; 7) an estimated 38 percent of nonsubscribers were previously in the workers' compensation system; and 8) the most important

reason given by respondents for opting out of the workers' compensation system was the cost of being in the system.

This report was prepared under contract with the Public Policy Research Institute of Texas A&M University at a cost of \$85,000.

**Research Projects Completed in Fiscal Year 1993****In-House Projects:**

*The Delivery of Temporary Income Benefits Under the Texas Workers' Compensation System: Receipt of the First Payment*

*A Survey of Workers' Compensation Insurance Deductible Programs*

**Contracted Projects:**

*Return-to-Work Patterns and Programs for Injured Workers Covered by Texas Workers' Compensation Insurance -- University of Texas at Austin*

*A Study of Nonsubscription to the Texas Workers' Compensation System -- Texas A&M University*

The Research Center currently has nine projects planned for fiscal year 1994. These projects are listed below.

**Research Projects Completed in Fiscal Year 1994****In-House Projects:**

*Texas Workers' Compensation Insurance Deductibles: A Descriptive Analysis of 1992 Policies*

*Safety and Health Achievement Recognition Program Evaluation*

*Texas Injury Rates From 1988 Through 1993*

*Directory of Workers' Compensation Resources - Current Research: 1993 - 1994*

**Contracted Projects:**

*Survey of Workers, Injured Workers and Firms -- Texas A&M University  
(contract amount - \$91,490)*

*Analysis of Claimants Reaching MMI and Return-to-Work Program Design Parameters --  
University of Texas at Austin (contract amount - \$69,674)*

*Drug Use in the Workplace (not finalized)*

**Pending Projects:**

*Medical Cost Comparison*

*Employer Safety Programs*



**TEXAS WORKERS' COMPENSATION SYSTEM**

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