

# SORM

State Office of Risk Management



## BIENNIAL REPORT

85<sup>TH</sup> LEGISLATURE

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### DATES OF TERM

02/01/2021  
02/01/2019  
02/01/2021  
02/01/2017  
02/01/2021

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*Submitted December 2016*

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State Office of Risk Management

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December 30, 2016

The Honorable Greg Abbott  
Governor of Texas

The Honorable Dan Patrick  
Lieutenant Governor

The Honorable Joe Straus  
Speaker of the Texas House of Representatives

Members of the 85<sup>th</sup> Texas Legislature:

On behalf of the Board of Directors, the State Office of Risk Management (Office) respectfully submits this Biennial Report to the 85<sup>th</sup> Legislature. This report is submitted pursuant to the requirements of Texas Labor Code Sections 412.032 and 412.042 and Executive Order GWB 95-8.

The Office appreciates the opportunity to serve state employees and Texas state entities, and we look forward to working with the members of the 85<sup>th</sup> Legislature during the legislative session. If you have any questions or require additional information, please feel free to contact me at (512) 936-1508 or Paul Harris, the Office's Government Relations Liaison, at (512) 936-1452. We are available at your convenience to discuss any of the issues contained in the report and to provide all necessary assistance.

Respectfully,

Stephen S. Vollbrecht,  
J.D., M.A., AINS, AIS, PCP  
State Risk Manager for Texas  
Executive Director, State Office of Risk Management



## ***GENERAL OVERVIEW***

The State Office of Risk Management is administratively attached to the Office of the Attorney General and is governed by a five-member Board. The Office is charged by law to administer the enterprise risk and insurance management programs, continuity of government operations program, and self-insured workers' compensation program for the State of Texas. Its mission is to enable State of Texas agencies to protect their employees, the general public, and the State's physical and financial assets by reducing and controlling risk in the most efficient and cost-effective manner.

The Office is financed wholly through interagency contracts with other state agencies. The funding program allocates an assessment, similar to a premium, to all participating agencies based on risk profile and other relevant factors identified by the Board. To date, this methodology has substantially reduced the total cost of the Office's programs to the taxpayers of the State.





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## **I. METHODS TO REDUCE EXPOSURE OF STATE ENTITIES TO THE RISKS OF PROPERTY AND LIABILITY LOSSES, INCLUDING WORKERS' COMPENSATION LOSSES**

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### **A. Risk Management**

The Executive Director of the Office serves as the state risk manager and is responsible for supervising the development and administration of a system of risk management for the state. The Office's risk management program provides services to state agencies, institutions of higher education, and other entities identified by statute. The Office assists state entities in establishing and maintaining comprehensive risk management programs designed to control, reduce, and finance risk. The Office utilizes multiple approaches, including, but not limited to: comprehensive guidelines; oversight in the development and maintenance of risk management and continuity of operations programs; administration of property and casualty insurance programs; specialized assistance and training; data collection, monitoring, and analysis; and the self-insured workers' compensation program.

#### **1. Guidelines**

The Office assists state entities with the development of robust risk management programs that protect state employees, state assets, and the public served. The Office maintains guidelines called *Risk Management for Texas State Agencies* that provide essential information state entities may reference to develop and implement a comprehensive risk management program to reduce property and liability losses, including workers' compensation losses. The guidelines are intended to provide both general and specific direction to state entities to assist them in establishing and maintaining an entity-specific enterprise risk management program. The guidelines are accessible to state entities and the public on the Office's website.

#### **2. Oversight and Development**

The Office responds to the risks or needs of client entities and cooperates with other oversight entities to implement viable loss control, risk financing, continuity of operations, and workers' compensation administration programs for state entities. The Office continues its memorandum of understanding with the State Fire Marshal's Office and the Texas Facilities Commission, creating a cooperative framework to communicate and address risks

from identified fire hazards or losses and report any actions taken to mitigate risks to state property.

The Office performs oversight to evaluate whether state risk management programs are meeting their objectives. The Office conducts 229 scheduled on-site consultations (OSC) to state entities' physical locations and facilities each fiscal year. On-site consultations may also be scheduled by the Office's risk managers or at the request of a client entity. Requested on-site consultations are generally issue or need specific. After each OSC, the Office prepares a written report with detailed information on identified risk exposures and suggestions for risk prevention and control measures or techniques that may be implemented by the covered entity to prevent or reduce claims and losses.

The Office's insurance staff may schedule an OSC with participants in the state sponsored insurance programs or to assist a property loss control specialist with an inspection of an insured building. On-site visits may also be scheduled to assist a non-participant entity with preparing a risk transfer feasibility analysis.

A risk management program review is a review and evaluation of a covered state entity's written risk management plan and program compared against the Office's risk management guidelines. Approximately every four years, each state agency's risk management program is formally reviewed. The Office conducts 29 risk management program reviews each fiscal year.

Before an on-site assessment of the risk management program, the Office requests, reviews, and assesses the entity's risk management program, manuals, financial statements, employee handbooks, and additional supporting documentation. The Office analyzes risk management expenditures and loss data submitted by the entity through an online, interactive risk evaluation and planning system tool that leads client entities through the identification, analysis, and mitigation of identified risks. The Office also performs baseline trend analysis to monitor emerging exposures and losses. After evaluating documentation and data, risk management staff conduct walk-through inspections of facilities. A formal written report of findings and recommendations is submitted to the entity head and entity risk manager, who are asked to prepare and submit an action plan to address the findings and recommendations. If monitoring determines a program is not meeting its objectives, the Office will assist the state entity with identifying and implementing changes necessary to get the program back on target.

### **3. Education and Outreach**

The Office is committed to educating risk management staff, claims coordinators, supervisory staff, and employees of client state entities. The Office provides a number of training resources including classroom health and safety training, seminars, workshops, as

well educational YouTube videos. During the end of FY16, the Office began work on a new learning management system (LMS) to provide future online training and certification.

Classroom training has continued to increase each year, with the most significant increase during this biennium. In FY15 193 classes were taught with 3837 attendees. Training increased to 253 classes with 4396 attendees in FY16. The increase in training is attributed to a greater demand for driving safety training, and an increased awareness of the training classes the Office provides.

The Office received over 150,255 views on the SORM YouTube channel during the biennium with the Office's two active shooter videos being amongst the top viewed. Trends in the YouTube analytics reveal that many of the hits on the active shooter videos occur after an actual active shooter event such as the Pulse Nightclub shooting in Orlando in June 2016.

## **B. Risk Transfer**

Under the current statutory insurance program, each state agency makes an individual decision to transfer or retain risk. Except for workers' compensation, there are no other statutory retention programs. The Office procures and negotiates insurance programs tailored for the unique exposures and liabilities of the State, and encourages continuing competition to ensure that the State of Texas obtains the best value.

### **1. Insurance Purchases**

One of the Office's key statutory missions is to operate as a full-service insurance manager for state entities and institutions of higher education. The Texas Department of Transportation (TXDOT), University of Texas System (UT), Texas A&M University System (A&M),<sup>1</sup> Texas Tech University System (Texas Tech)<sup>2</sup>, and Texas State University System (TSUS)<sup>3</sup> are exempted from the Office's insurance programs. The remaining state entities may not purchase property, casualty, or liability insurance coverage without the approval of the Office. The Office will authorize the purchase of insurance if, after review of a SORM-201 and supporting documentation, the Office finds that the state entity has unique exposures; the purchase is necessary because of substantial or unusual risk of loss; or the coverage is necessary to protect the interests of the state.

To ensure the Office is informed of state insurance purchases, the Insurance Code requires insurers that intend to sell property, casualty, or liability insurance coverage to a state entity to report the intended purchase of insurance coverage at least 30 days before the insurance sale occurs.

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<sup>1</sup> Labor Code Section 501.024(5), (6), and (7).

<sup>2</sup> Labor Code Section 412.011(c)(2)(A).

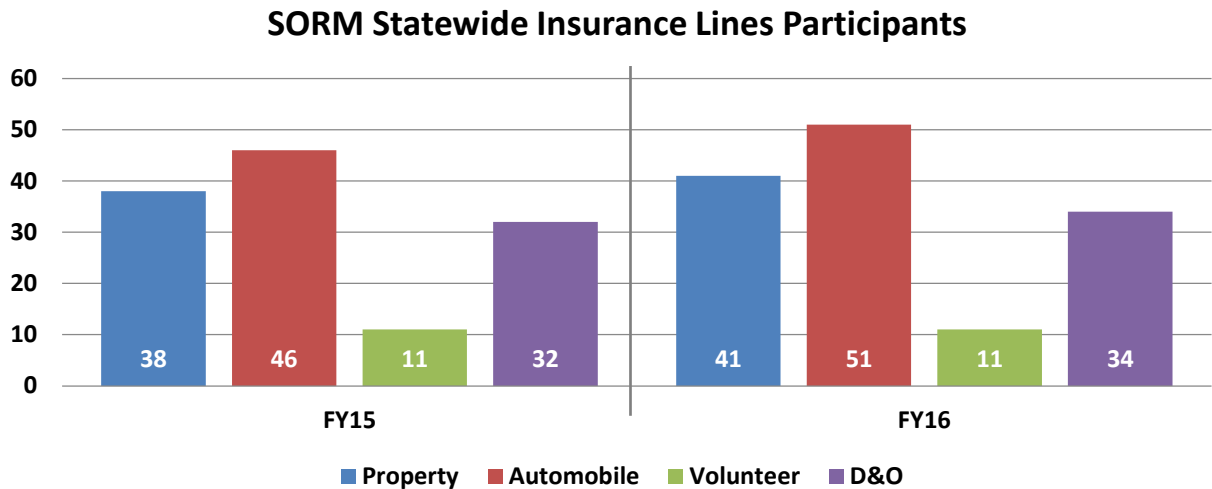
<sup>3</sup> Labor Code Section 412.011(c)(2)(B) and (j).



## 2. State Sponsored Insurance Programs

The Office currently sponsors four lines of insurance: property; directors' and officers'; automobile; and volunteer. The Office intends to launch a builder's risk insurance program and a fine arts insurance program in 2017. The Office plans to launch crime, extraterritorial workers' compensation, and cyber insurance programs in subsequent years.

The following chart shows the number of participants in state sponsored insurance programs during FY15 and FY16:



The statewide property insurance program is designed to provide state entities the ability to transfer the financial burden resulting from property damage and loss. The program allows each entity to customize its policy to fully insure currently uninsured and underinsured real and personal property, including boiler and machinery. This program provides elective terrorism coverage for state owned property and contents. Through the purchasing power of the state, the state sponsored property insurance policy premiums are significantly lower than premiums in the private sector. In addition, the participants receive value added services such as jurisdictional boiler inspections, infrared thermography services, transformer oil and gas analysis, and plan reviews.

The statewide automobile insurance program is designed to provide automobile liability and physical damage coverage to state entities that own vehicles. The program also offers liability coverage for hired and non-owned automobiles to state entities with employees who drive their personally-owned, leased, or rented vehicles in the course and scope of employment.

State entities can transfer risk through the state sponsored directors' and officers' insurance program. This program provides protection for financial losses associated with alleged wrongful acts and errors or omissions at the executive/management levels of a state entity. The program also provides coverage for employment practices liability for claims brought by employees or potential employees alleging wrongful employment practices and/or harassment or discrimination.

After the Office sponsors a line of insurance, state entities must purchase that type of coverage only through the Office. In certain circumstances, a state entity can obtain a written exception to purchase a sponsored line of insurance under a non-sponsored policy.

### **3. Non-Sponsored Insurance Purchases**

State entities and institutions of higher education that intend to purchase insurance in a manner other than through the services provided by the Office must provide notice of the intended purchase not later than the 30th day before the date on which the insurance purchase is scheduled to occur. The Office may require a state entity to submit copies of insurance forms, policies, and other relevant information.

### **C. Risk Retention**

The State of Texas self-insures for the purposes of workers' compensation. The Office processes workers' compensation claims for state entities and other entities identified in Chapter 501 of the Texas Labor Code. The state employee workers' compensation program covers 148 state entities, which includes courts and institutions of higher education, and 122 community supervision and corrections departments, encompassing approximately 188,000 individual employees. TXDOT, the UT System, and the A&M System are exempted from the Office's program by law and operate their own individual workers' compensation programs.

## **II. OPERATION, FINANCING, AND MANAGEMENT OF RISKS**

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Risk exists in every facet of governmental operations. In the normal course of business, the State is exposed to risks that may result in monetary loss, decreased efficiency, interruption or cessation of service, loss of resources, and loss of public confidence. Causes of loss include, but are not limited to, employee injuries, fire damage, automobile accidents, lawsuits, and natural and man-made disasters, including terrorism.

## A. Operation and Management of Risk

### 1. Risk Management Costs

Responsibility for the operation, financing, and management of risks is shared between the Office and its client entities. Client entities are required to designate a risk manager and a claims coordinator, who are responsible for oversight and reporting on agency risk management efforts, injuries, and losses.

The Office's performance measures include the goal to manage costs for covered state entities arising from the risk of loss through the delivery of professional risk management and claims administration services that are customized to specific entity needs. Each year, state entities<sup>4</sup> self-report information to the Office regarding expenditures associated with risk management activities. The reports are due 60 days after the close of the fiscal year (October 30). Comptroller categories and object codes are used to assist entities with gathering the necessary data on direct risk management cost.

The following chart shows the FY15 and FY16 risk management costs reported by state entities:

Statewide Risk Management Costs <sup>5</sup>	FY15	FY16
Category F - Salary and Wages	\$36,214,488	\$35,239,747
Category G - Benefits	\$10,394,722	\$11,591,832
Category H - Travel	\$234,448	\$401,385
Category I - Training Education	\$160,657	\$130,095
Category J - Office Supplies & Consumables	\$267,571	\$261,117
Category K - Capital Outlay	\$1,537,152	\$759,391
Category L - Rentals and Leases	\$571,219	\$513,804
Category M - Telephone (Communication) and Utilities	\$1,153,549	\$1,460,086
Category N - Other Operating Costs	\$612,479	\$640,443
Category O - Safety Supplies & Loss Control Equipment	\$8,278,824	\$3,650,958
Category P - Consultant Services and Fees	\$301,435	\$408,335
Category Q - Other Services	\$14,246,113	\$27,787,738
Category R - Other Fees, Taxes, Expenses	\$116,133	\$119,111
Total <sup>6</sup>	\$74,088,790	\$82,964,042

<sup>4</sup> Institutions of higher education are exempt pursuant to Labor Code Section 412.053(c).

<sup>5</sup> Some courts assert an exemption from the annual report requirement pursuant to Labor Code Section 412.001(4). However, the totals in this chart include voluntary reporting by five courts and one institution of higher education.

<sup>6</sup> The Office's risk management costs are included in each category.

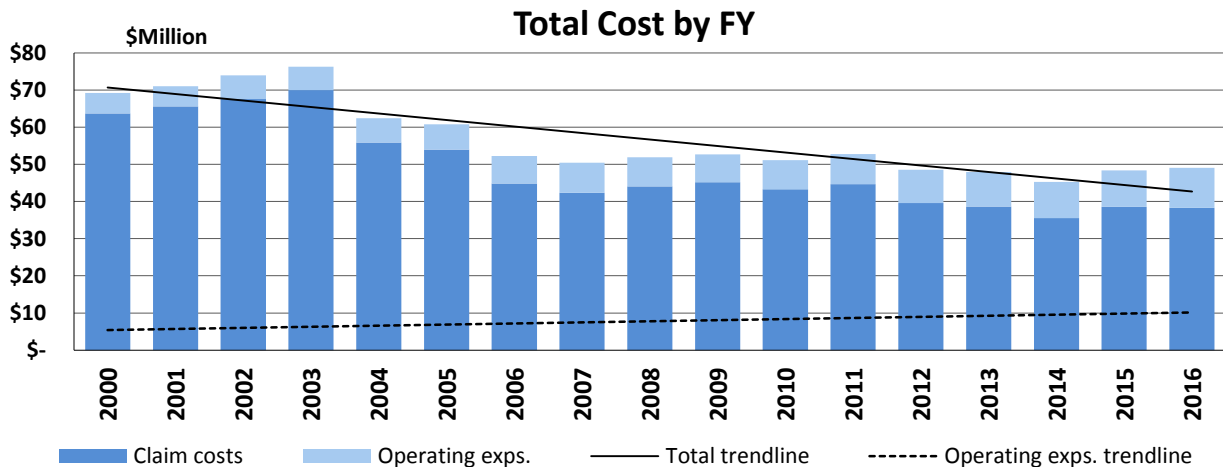
State agencies can take steps to minimize and mitigate risk but it is impossible to eliminate risk. Litigation related costs and insurance expenditures associated with identified risks and claim activity are also reported annually:

Statewide Litigation and Insurance Expenditures	FY15	FY16
Object Code 7204 - Insurance Premiums and Deductibles	\$2,966,874	\$2,809,851
Object Code 7205 - Employee Bonds	\$1,536	\$1,411
Object Code 7216 - Insurance Premiums Approved by Texas Department of Insurance & Attorney General	\$120,860	\$138,426
Object Code 7220 - Court Ordered Notification Expenses - Texas Department of Health Only	\$312,556	\$317,648
Object Code 7225 - Settlements & Judgments for Attorney's Fee	\$438,234	\$4,771,072
Object Code 7226 - Settlements & Judgments for Claimant or other Legal Expenses	\$2,555,708	\$2,953,176
Object Code 7229 - Settlements & Judgments for Claimant and Attorney	\$179,000	\$1,138,555
<b>Total</b>	<b>\$6,574,768</b>	<b>\$12,130,139</b>

## 2. Workers' Compensation Costs

One of the Office's core statutory missions is to provide covered injured employees with access to prompt, high-quality medical care within the framework established by the Workers' Compensation Act. The Office must also ensure it provides appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

The chart below shows the effectiveness of the Office's efforts to decrease costs in the state employee workers' compensation program:



Detailed information on the effectiveness of the Office’s cost containment measures and additional measures to reduce workers' compensation costs is provided in the Annual Cost Containment Report.<sup>7</sup>

## B. Financing Risk

The Office’s risk management program and state employee workers’ compensation program are both funded through annual assessments to state agencies pursuant to Labor Code Chapter 412. The assessments, similar to an annual premium, are determined by a formula based on historic FTE, payroll, claims, and claims cost data. The funding is collected through interagency contracts. This funding is used for medical cost containment services and other costs directly related to reducing claim payments and risk.

The following chart shows the Office’s FY16 expenditures by goal and strategy and the method of finance:

Goal/Strategy	GR	IAC	Total
Goal 1.1.1/Risk Management Program	0	\$2,947,486	\$2,947,486
Goal 1.2.1/Pay Workers’ Compensation	0	\$6,870,091	\$6,870,091
<b>SUBTOTAL:</b>	<b>0</b>	<b>\$9,817,577</b>	<b>\$9,817,577</b>
Goal 2. Workers’ Compensation Payments		\$35,500,399	\$35,500,399
<b>GRAND TOTAL:</b>	<b>0</b>	<b>\$48,426,283</b>	<b>\$48,426,283</b>

## III. HANDLING OF CLAIMS BROUGHT AGAINST THE STATE

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### A. Workers’ Compensation Claims Handling

The Office is consistently designated as a High Performer by the Division of Workers’ Compensation. The Office works to reduce overall medical and indemnity costs through improved claim handling practices, education, and training. The Office continuously evaluates its policies and processes and implements change as needed to meet internal and external needs.

Each state entity designates at least one claims coordinator who provides information about workers’ compensation to injured employees and reports workers’ compensation claims to the Office. The Office trains claims coordinators on handling claims and provides access to the Office’s electronic claims management system. The Office’s system automatically creates a claim when an entity reports information electronically. Office staff may also enter information to the system manually.

The Office employs licensed adjusters to manage all workers’ compensation claims, assess compensability, and authorize payment of wage replacement (indemnity) and medical benefits.

<sup>7</sup> <https://www.sorm.state.tx.us/sorm-cms/uploads/2016/10/annualcostcontainmentfy16.pdf>

## **B. Workers' Compensation Dispute Resolution**

A worker's compensation claim is a claim against the state. Disputes regarding compensability or eligibility for benefits can occur throughout the life of a workers' compensation claim. Multiple levels of review exist when an issue is disputed. In a Benefit Review Conference (BRC), the parties attempt to resolve issues informally. A dispute may be resolved in whole or part at a BRC. If the dispute is not resolved entirely, either party can request a Contested Case Hearing (CCH). If a party is not satisfied with the CCH Decision and Order (D&O), the issue can be appealed to the Appeals Panel. Depending on the issue, an Appeals Panel Decision and Order (APD) can be appealed to the State Office of Administrative Hearings or District Court. Appeals to district court are handled by the Office of the Attorney General.

## **C. Losses Covered by State Sponsored Insurance Programs**

The Office offers access to the statewide insurance program to reduce the cost of risk associated with general liability, employment practices, professional liability, and other non-tort related exposures. Claims against the state that are covered by insurance through the state sponsored insurance programs are handled by the insurance carrier with the Office acting as a liaison between the carrier and state entity, as appropriate. If an insurance claim results in litigation, the Office of the Attorney General typically handles the litigation process.

# **IV. FREQUENCY, SEVERITY, AND AGGREGATE AMOUNT OF OPEN AND CLOSED CLAIMS**

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## **A. State Employee Workers' Compensation Program**

State law provides that employees injured in the course and scope of their employment are entitled to receive benefits for reasonable and necessary medical care and indemnification of wages for time lost from work due to the effects of their compensable injuries.

### **1. Number of Claims Received, Accepted, and Inactivated**

Workers' compensation claims are opened and entered in the Office's claims management system as reports of injuries are filed by covered state entities. These reported claims are investigated and either accepted or denied. If the Office determines a state employee has sustained a compensable injury, the claim is accepted and the injured employee is entitled to medical and indemnity benefits. If the Office determines the injury is not compensable, the Office must deny the claim within 60 days. However, denial does not mean the claim is closed because the injured employee has the ability to dispute the denial.

The Office inactivates workers' compensation claims when the claimant is not actively receiving medical and indemnity benefits. Because workers' compensation claims are based on a compensable bodily injury, it is possible a claimant may have future medical needs

and/or lost time from work due to the compensable injury. If medical and/or indemnity benefits start again, the Office will reactivate the claim to ensure the claim is being actively monitored by an adjuster.

The figures in the following chart show claims activity in the state employees' workers' compensation program in FY15 and FY16:

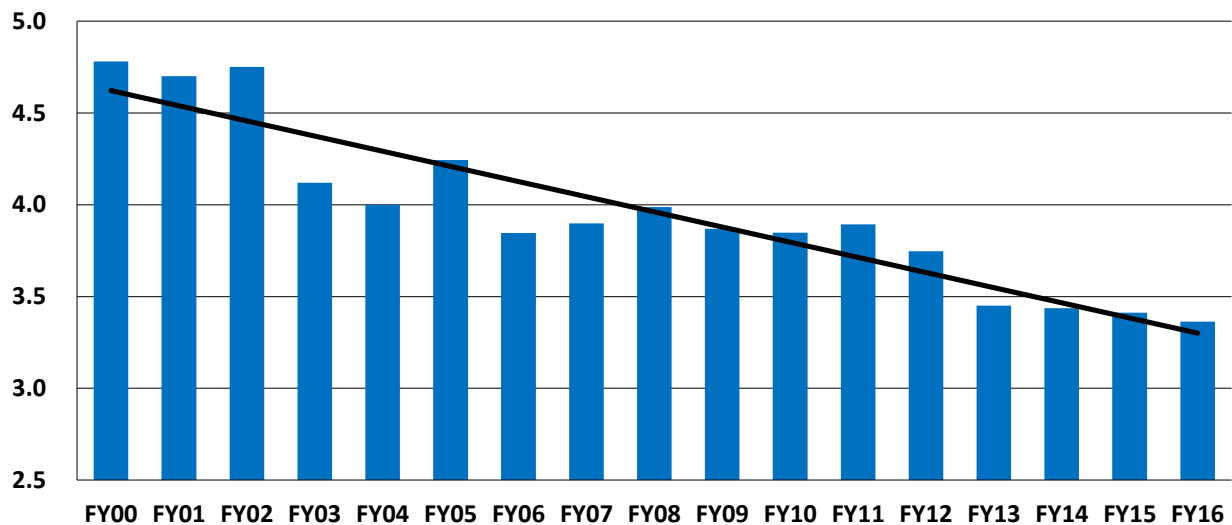
	FY15	FY16
<b>Received</b>	7541	7530
<b>Accepted</b>	6435	6421
<b>Inactivated</b>	7113	7335
<b>Reactivated</b>	231	170

## 2. Injury Frequency Rate

The injury frequency rate is calculated using the number of accepted on-job injuries and illnesses divided by the total number of state employees (measured by full-time equivalents) multiplied by 100. The State Auditor's Office Classification Division collects full-time employee data from covered state entities, which is shared with the Office.

This key performance measure provides an objective means to gauge the results of implementation of covered state agencies risk management plans and the results of the Office's risk management program. The injury frequency rate reflects not only the effectiveness of the Office's risk management program but also covered state entities' actions in regards to the Office's recommendations to control and correct the conditions that lead to injured state employees.

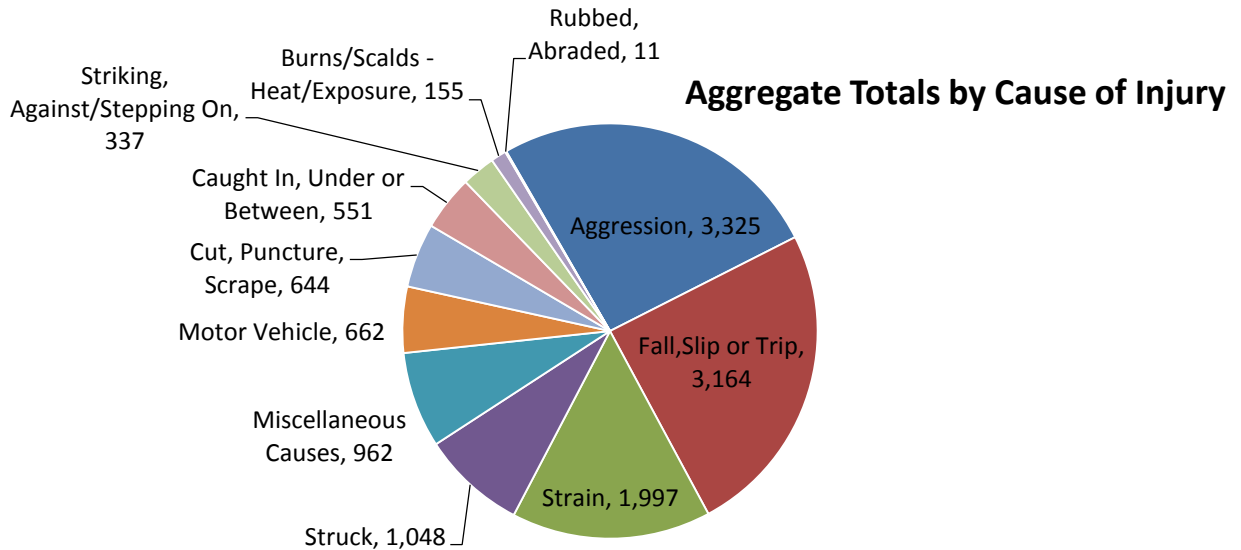
The following chart shows the historical injury frequency rate for the state employees' workers' compensation program:



### 3. Severity and Major Causes of Injury

Standardized codes are used in workers' compensation claims to describe the cause of injury. Identifying perils, risk exposures, and hazards are important aspects of risk management.

During FY15 and FY16, the following conditions or situations were identified as the cause of the injuries to covered injured employees:



Because the statutory program is a cash basis program without typical reserve authorization, workers' compensation payments are typically paid out over several years. The following chart shows the gross amounts of medical and indemnity benefits paid on behalf of claimants, including those injured in preceding fiscal years.



### B. State Entity Insurance Claims

#### 1. Frequency and Severity

All state entities are encouraged to report claims as they occur to the Office through the Online Property & Casualty Claims Reporting System, even if the claim is not covered by insurance.



The claim frequency and severity data in the chart below is based on self-reported information in the Property & Casualty Claims Reporting System and the loss runs from the universities and court systems that participate in the state sponsored insurance programs:

Type of Claim <sup>8</sup>	FY15 Number of Claims	FY 15 Loss or Paid Amount	FY16 Number of Claims	FY 16 Loss or Paid Amount
<b>Motorized Vehicles and Equipment</b>	464	\$320,474	445	\$439,809
<b>Third Party and General Liability</b>	39	\$396	16	\$0
<b>Directors' &amp; Officers', Employment Practices and Civil Liability</b>	26	\$0	48	\$0
<b>Property</b>	20	\$101,661	21	\$211,732
<b>Financial</b>	3	\$62,455	1	\$0
<b>Volunteer</b>	3	\$201	1	\$0
<b>Totals:</b>	555	\$485,187	532	\$651,541

## V. INSURANCE COVERAGE PURCHASED FOR STATE ENTITIES AND PREMIUM DOLLARS SPENT

The Office maintains data on state entity purchases of sponsored and non-sponsored lines of insurance. The chart below provides detailed information on state entity insurance purchases:

Line of Insurance	FY15 Total Premiums Paid	FY16 Total Premiums Paid
<b>Automobile</b>	\$1,012,142	\$873,623
<b>Aviation Liability</b>	\$193,363	\$276,256
<b>Bonds</b>	\$695	\$9,041
<b>Builder's Risk</b>	\$0	\$15,929
<b>Commercial Crime</b>	\$19,404	\$37,087
<b>Commercial Package Policy</b>	\$3,088	\$14,178
<b>Contractual Bonus Insurance – NCAA Athletic</b>	\$0	\$70,000
<b>Cyber Liability (monoline policy)</b>	\$83,649.99	\$79,718
<b>Directors' &amp; Officer's Employment Practices<sup>9</sup></b>	\$1,389,322	\$1,496,176
<b>Excess Accident and Medical</b>	\$533,892	\$533,659
<b>Fine Arts</b>	\$30,025	\$22,684
<b>Flood</b>	\$81,170	\$103,647
<b>Foreign Accident</b>	\$59,802	\$42,891
<b>Foreign Liability</b>	\$16,177	\$11,000

<sup>8</sup> Excluding workers' compensation claims.

<sup>9</sup> D&O figures are limited to designated claims with assigned claim numbers.

Line of Insurance	FY15 Total Premiums Paid	FY16 Total Premiums Paid
<b>General Liability</b>	\$201,366	\$370,945
<b>Inland Marine</b>	\$64,343	\$100,834
<b>Kidnap &amp; Ransom</b>	\$16,920	\$6,750
<b>Professional Liability</b>	\$128,284	\$133,287
<b>Property<sup>10</sup></b>	\$11,589,964	\$7,467,146
<b>Umbrella</b>	\$65,998	\$28,712
<b>Volunteer</b>	\$29,179	\$26,622
<b>Watercraft - Hull</b>	\$51,250	\$35,511
<b>Workers Compensation – Extraterritorial</b>	\$6,840	\$31,032
<b>Total Premium Paid</b>	<b>\$15,576,874</b>	<b>\$11,786,731</b>

## VI. CONTINUITY OF OPERATIONS PLANNING

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Continuity planning ensures that the most critical government services continue to be available to the people of Texas under any conditions. In cooperation with the Office of Homeland Security, Texas Division of Emergency Management, and Department of Information Resources, the Office has implemented a statutory comprehensive continuity planning program for Texas state entities. Policies and standards to ensure expansive continuity planning, testing, training, and exercising across the state enterprise are set forth the October 24, 2013, *Texas State Agency Continuity Planning Policy Guidance Letter*.

The Office’s recommended standards for the minimum content in Texas state entity continuity plans correspond to FEMA standards, and are available at no cost to government entities. To assist state entities in the development of actionable continuity plans, the Office provides numerous free resources and provides one-on-one electronic or in-person assistance. Up-to-date state, national, and global recommendations for continuity plans and best practices are communicated through the Office’s internet site and training, including links to external continuity planning resources, templates, and training opportunities.

In 2015, the 84<sup>th</sup> Legislature passed HB1832, officially establishing the state standard as Continuity of Operations Planning (COOP) and formally excepting continuity of operations plans and any records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plans from disclosure under Government Code Chapter 552.

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<sup>10</sup> The reduced premium in FY16 is due to the statutory exemption of TSUS.

## **VII. COMPLIANCE WITH CHAPTER 412 RISK MANAGEMENT GUIDELINES AND REPORTING REQUIREMENTS**

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### **A. Annual Report by State Entities**

Full compliance. All state entities subject to Labor Code Section 412.053 have filed the required annual report.<sup>11</sup>

### **B. Insurance Purchases**

Full compliance. The Office does not have any evidence of non-compliance with Labor Code Sections 412.011(e) or 412.051(b).<sup>12</sup>

### **C. Risk Management Programs**

Full compliance. All state entities that are required to develop, implement, and maintain a risk management program have complied with statutory requirements.

### **D. Continuity of Operations Planning**

Substantial Compliance. Since the last Biennial Report the list of certifiable non-complaint state entities has vastly improved. COOP plans that meet the requirements of Labor Code Section 412.054 must be submitted by each state agency that is (1) involved in the delivery of emergency services as a member of the governor's Emergency Management Council (EMC); (2) part of the State Data Center Services program (DCS); or (3) subject to Labor Code Chapter 412 or Chapter 501.

All state entities have not submitted, or may not be required to submit, COOP plans to the Office. The following entities have not submitted plans for review: Texas Southern University, State Board of Podiatric Medical Examiners, Texas A&M University, and the University of Texas. The Office specifically notes that these may not be technical non-compliance. The definition of state agency in Labor Code Section 501.001<sup>13</sup> and Labor Code Section 412.001<sup>14</sup> introduces some initial uncertainty regarding the state entities that are subject to COOP reporting requirements.

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<sup>11</sup> Sections 2A.1 and 4B.1 provide greater detail on the information reported by state entities.

<sup>12</sup> Section 5 provides detailed information on state entity insurance purchases.

<sup>13</sup> Labor Code Section 501.001(6) "State agency" includes a department, board, commission, or institution of this state.

<sup>14</sup> Labor Code Section 412.001(4) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state.

Additional uncertainty occurs since entities that are subject to Chapter 501<sup>15</sup> are otherwise excluded from Chapter 412 risk management and/or insurance services. To address these matters, the Legislature may wish to review the relevant recommendations included in Section IX. The entities named are included for the purposes of full disclosure only.

## **VIII. IMPLEMENTATION OF SECTION 412.0125**

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The Office has Return to Work Guidelines published in Volume III, Section One, Chapter 5, of the *Risk Management Guidelines for Texas State Agencies*. The Office's website has steps for creating a successful Return to Work Program and publicizing the goals, objectives, and benefits of Return to Work Programs. The Office works with its health care network to enhance Return to Work outcomes through use of the Official Disability Guidelines and Medical Disability Advisor (treatment and return to work guidelines adopted by the Division of Workers' Compensation), medical profiling of claims information, and treatment planning.

The Office is currently evaluating the coordination of a Return to Work Program with its health care network. The Office is in the initial phase of utilizing lagging indicators and predictive analytics to evaluate the success of work coordination efforts. The Office is reviewing appropriate administrative rule revisions in an effort to provide greater incentives for agencies to return employees to work as soon as they are medically able, even if in a limited capacity.

## **IX. RECOMMENDATIONS FOR COORDINATION AND ADMINISTRATION OF COMPREHENSIVE RISK MANAGEMENT PROGRAM**

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### **A. Recommendations**

1. The Office recognizes the need for and value of an enterprise-level retention to absorb attritional losses. Expected attritional losses can be identified through inventories, such as HB3750, 84<sup>th</sup> R.S., which required the collection of statewide real property data. Maintaining a centralized, consistent, and comprehensive database of state-owned property would provide detailed and up-to-date information on state-owned property supporting informed decision-making and long-term planning. Complete and accurate data is foundational to the design of any comprehensive asset protection strategy and enterprise maintenance. Once data is collected, the data must be continually maintained and updated to ensure accuracy and completeness.
2. In each of its legislatively directed assets studies in 2011, 2013, and 2016, the Office recommended a hybridized system that incorporates multiple approaches to manage the State's risk. The recommended model should incorporate a centralized, mandatory state

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<sup>15</sup> Texas Tech and TSUS participate in the state employee workers' compensation program administered by the Office.

property insurance program with a pooling and reserve approach, in concert with a self-insured retention limit and reinsurance for larger, catastrophic losses. The actual mechanism(s) chosen for a statewide strategy to ensure that State assets are adequately insured should be determined after the State has a thorough understanding of its risks. From an insurance perspective, accurate and current data is necessary to calculate the maximum probable and maximum possible losses per state-owned building and across the entire State enterprise. Additional relevant considerations are the impact of the selected options on overall state operations, the costs associated with retaining the risk versus transferring the risk through reinsurance, and should provide clear procedures for identifying when and how funding will be made available in emergencies.

3. Pursuant to HB1832, 84<sup>th</sup> R.S., continuity of operations plans and any records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plans pursuant to Section 412.054, Texas Labor Code, are confidential and exempt from disclosure under Chapter 552, Texas Government Code. Government entities developing continuity plans outside of the Chapter 412 requirements or review are not currently protected from such disclosure. With appropriate controls and oversight, the Legislature may wish to consider expanding the confidentiality of continuity of operations plans to entities that are not subject to Labor Code Chapters 412 and 501.

## **B. Statutory Changes**

1. The bifurcation of the Office's authority and duties in two chapters of the Labor Code is a remnant from when the state's risk management resided within the Texas Department of Insurance and workers' compensation claims management resided within the Office of the Attorney General. Clarification of the scope of Chapters 412 and 501 may be warranted to avoid future confusion regarding access to the Office's services, the reporting responsibilities of client entities, and the Office's reporting obligations with respect to non-compliance with Chapter 412 reporting requirements.

## **X. DIRECTOR'S SECTION 412.042 REPORT**

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The administrative operations for the Office, as well as claims costs, are funded exclusively through interagency contracts. Any collected funding not required for administrative operations or claim expenditures remains in the pool and is used to lower the cash assessment to pool members the following fiscal year.

The Office is administratively attached to the Office of the Attorney General, which provides significant administrative support and functions. The following data addresses the appropriations for administrative operations of the Office.

**A. Summary of Administrative Expenses**

Category	FY 16 Est.	FY 17 Budgeted	Biennium Total	Percent of Total
Salaries	\$6,329,606	\$6,878,705	\$13,208,611	60.01%
Other Personnel	\$441,000	\$450,000	\$891,000	4.05%
Contracted Services	\$1,750,891	\$2,030,000	\$3,780,891	17.18%
Consumable Supplies	\$27,584	\$28,500	\$56,084	0.25%
Utilities	\$7,984	\$9,500	\$17,484	0.08%
Travel	\$186,755	\$190,000	\$376,755	1.71%
Rent – Building	\$720	\$720	\$1,440	0.01%
Rent – Other	\$21,964	\$22,000	\$43,964	0.20%
Other Operating	\$1,991,390	\$1,642,480	\$3,633,870	16.51%
Capital	\$0	\$0	\$0	0.00%
<b>Total</b>	<b>\$10,757,894</b>	<b>\$11,251,905</b>	<b>\$22,009,799</b>	<b>100.00%</b>

**B. Unexpended Appropriations**

Of the \$11.3 million appropriated for FY 17 administrative purposes, cash basis payments as of December 19, 2016 total \$3,036,454 and an additional \$2,014,864 has been encumbered due to contractual or other obligations.

The Office’s Board of Directors exercised \$40 million in preliminary collection authority for workers’ compensation claim payments, based on recent costs. Approximately \$1.4 million was carried forward from FY16 assessments with the remaining amount collected by new assessments to client agencies.

As required by Article IX, Section 15.02, collection of 25% of the total assessments has been deferred until mid-third quarter of the fiscal year and will be adjusted as necessary. As of December 19, 2016, the cash balance remaining was \$12,270,483, with \$5,645,331 still outstanding from client entities.

**C. Estimated Balance Necessary to Administer Chapter 501 for Remainder of FY17**

The Office estimates that the full unexpended, unencumbered balance of \$6.61 million for the administrative appropriation will be necessary for operations for the remainder of the fiscal year.

The Office estimates that roughly \$27.3 million will be necessary for workers’ compensation claim payments for the remainder of the fiscal year. The remainder of the final adjusted collected balance will be applied toward the necessary amount for FY 18 or will be returned to agencies as directed by Article IX, Section 15.02.

**D. Estimated Amount Needed for Chapter 501 Compensation and Services During Next Succeeding Biennium**

The Office estimates that \$11,004,900 each year for FY18 and FY19, a biennial total of \$22,009,800, will be required to administer the workers' compensation program and provide risk management and insurance services for the succeeding biennium. The Office is requesting no General Revenue.

The single exceptional item the Board of Directors is requesting is an increase in the maximum authorized salary for the Executive Director, to \$155,091. This request does not include any additional funding.

The Office requested estimated authority of \$39.8 million each year of the next biennium for workers' compensation payments, funded by assessments. The Board of Directors determines the actual amounts to be collected each year based on the most current information available. Authority will be exercised only as necessary to pay statutorily mandated workers' compensation claim costs.

There are several factors which could result in potential increased costs. Decreases in administrative oversight and claims scrutiny due to resource reductions, and the inability to retain trained, experienced staff will likely have the effect of increasing overall costs. Increases to indemnity rates by DWC rule or medical costs due to market forces will increase costs moderately in the short term, with a larger effect in subsequent years.