

# SORM

State Office of Risk Management



## BIENNIAL REPORT 86<sup>TH</sup> LEGISLATURE

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Tomas Gonzalez	02/01/2017	El Paso
Gerald Ladner	02/01/2021	Austin

*Submitted January 1, 2019*

**SIGNED:**

**EXECUTIVE DIRECTOR**

**APPROVED:**

**BOARD CHAIR**

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State Office of Risk Management

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January 1, 2019

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EXECUTIVE DIRECTOR:

STEPHEN S. VOLLBRECHT,  
J.D.

On behalf of the Board of Directors, the State Office of Risk Management (Office) respectfully submits this Biennial Report to the 86<sup>th</sup> Legislature. This report is submitted pursuant to the requirements of the 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. We look forward to working with the members of the 86<sup>th</sup> Legislature during the legislative session. If you have any questions or require additional information, please feel free to contact me by phone at (512) 936-1508 or by email at [stephen.vollbrecht@sorm.texas.gov](mailto:stephen.vollbrecht@sorm.texas.gov). You may also contact Thomas Meehan, the Office's Liaison Officer by phone at (512) 936-1538, or by email at [thomas.meehan@sorm.texas.gov](mailto:thomas.meehan@sorm.texas.gov). 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, JD, MA, AINS, AIS, MCP, MEMS  
State Risk Manager, Executive Director, State Office of Risk Management



## **GENERAL OVERVIEW**

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The State Office of Risk Management (the Office, or SORM) is administratively attached to the Office of the Attorney General (OAG) and is governed by a five-member Board. The Office is charged by law to administer the enterprise risk management and insurance programs, continuity of government operations program, and self-insured workers' compensation program for the State of Texas.

The Executive Director of SORM 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 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 SORM's programs to the taxpayers of the State.

## **MISSION**

The State Office of Risk Management will provide active leadership to enable State of Texas entities 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.

## **PHILOSOPHY**

The State Office of Risk Management will act in accordance with the highest standards of ethics, fairness, accountability and humanity for both our customers and our employees. Customer service is a cornerstone of our mission.



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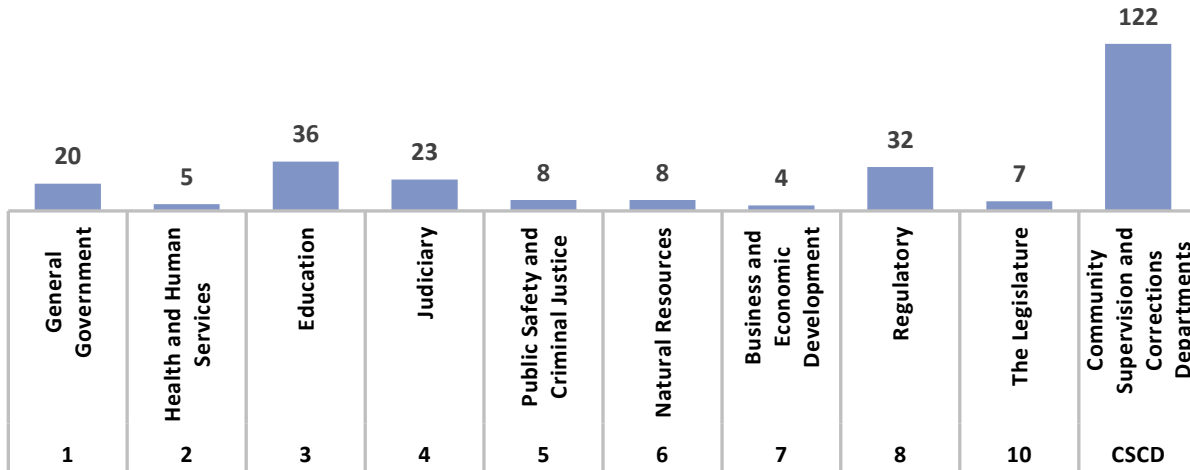
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**I. METHODS TO REDUCE EXPOSURE OF STATE ENTITIES TO THE RISKS OF PROPERTY AND LIABILITY LOSSES, INCLUDING WORKERS' COMPENSATION LOSSES**

The Office's enterprise risk management services create an awareness within state government of risk and the need to continually adapt to external and internal risks, including hazard, operational, financial, and strategic risks. Open communication ensures risk information and strategies are shared within and across the state enterprise, which creates consistency in how the state views risk and approaches risk management. The following is a statistical breakdown of the entities to whom SORM provides risk management and insurance services.

**Total Served by Article of Government**



**A. Enterprise Risk Management**

The Office provides services, guidance, resources, and expertise that are designed to help state entities make well-informed, proactive decisions on how to identify, manage, transfer, and retain risk. Administered programs help state entities identify potential risks to people, resources, and mission critical functions before a loss event occurs, providing entities with a greater understanding of the likelihood and severity of identified risks. Risk identification increases an entity's options for preventing loss and addressing potential risks. The Office assists with prioritization of risk so an entity can focus on prevention and mitigation of risks. Risk management planning allows a state entity to make meaningful quality improvements to avoid preventable losses and thereby reduce the number, frequency, type, and severity of losses.

Risk managers, insurance specialists, and continuity coordinators have implemented a cross-disciplinary approach to enterprise risk management. This integrative approach expands client entities' understanding of the relationship between different aspects of enterprise risk management – identification, prevention, mitigation, transfer mechanisms, and recovery. A better understanding of the risks and options to address the risks allows an entity to design strategic goals and initiatives with the risks in mind.



The Office utilizes data to help identify high-risk customers and prioritize site visits by risk level and/or demonstrated need. This new approach and the use of injury frequency rates helps to identify and focus on entities with above average on-the-job injuries. State entities may still request an on-site consultation with SORM to help with a specific issue regardless of risk profile.

Nationally recognized standards, guidelines, rules, and regulations are utilized where feasible and appropriate. This practice recognizes and emphasizes the authority, responsibility, and expertise of other entities or organizations and avoids duplication of programs, reporting, and compliance with separate sets of guidelines, standards, rules, and regulations.

Industry specific checklists and guidelines from a nationally recognized source are utilized to guide risk managers during site visits. A.M. Best's Underwriting and Loss Control Center offers resources to accurately assess risk. The center provides access to an underwriting guide to evaluate risks by business and/or service type and a loss control manual with checklists of things to look for during on-site inspections.

The Office continues to implement the ISO-31000 enterprise risk management framework and techniques for governance, risk management, compliance, and general agency decision-making based on risk-informed data. This effort will include infusing the risk management principles and techniques into all areas of SORM's business operations. Once fully implemented, SORM will be able to advise other state entities on the advantages of implementing the framework and techniques within their organizations, while sharing data on how the processes can enable state entities to efficiently achieve organizational objectives.

The State Fire Marshal's Office and the Texas Facilities Commission utilize partnership under a memorandum of understanding with SORM, 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.

## **B. Risk Transfer – Insurance Purchasing Program**

One of SORM's key statutory missions is to operate as a full-service insurance manager for state entities and institutions of higher education that are subject to Texas Labor Code Chapter 412. The Office's insurance purchasing program provides opportunities for risk transfer and fiscal responsibility with taxpayer funds. In cooperation with client entities, SORM procures and negotiates insurance coverage tailored for the unique exposures and liabilities of the state. By consolidating the insurance needs of different entities seeking the same line of insurance, SORM can obtain higher limits of insurance for a lower premium than the state entities would receive if the insurance was purchased independently.

Leveraging the state's buying power to provide insurance coverage helps state entities protect against potential losses. The Office has five established lines of insurance that provide coverage for state exposures. The Board has authorized SORM to phase in four additional lines of insurance – fine arts, extraterritorial workers' compensation, crime, and cybersecurity.

The Office's insurance purchasing program provides an opportunity for state entities to prepare for unpreventable and unexpected losses and lessen the budgetary impact when such a loss occurs. Services within the insurance purchasing program include: determining the appropriate type and level of insurance coverage, ensuring the terms and conditions of the insurance policy provide adequate coverage, explaining coverage exclusions, and participating in the claim process when a loss occurs. The Office also provides insurance expertise to ensure state entities do not purchase unnecessary or questionable coverage.

Reviewing state entities' proposed insurance purchases helps ensure the coverage is necessary and adequate to protect the interests of the State. After SORM sponsors a line of insurance, state entities must purchase that type of coverage only through SORM. In certain circumstances, a state entity can obtain a written exception to purchase a sponsored line of insurance from a source outside SORM, which is characterized as a waiver. The Office's approval is also required for the purchase of a non-sponsored type of insurance. The Office will authorize the purchase of insurance if: after review of a SORM-201 and supporting documentation, SORM 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.

### **C. Risk Retention – Workers' Compensation Insurance**

The State of Texas self-insures for the purposes of workers' compensation. The Office administers the workers' compensation program for the entities identified in Chapter 501 of the Texas Labor Code. The Office's workers' compensation program covers 143 state entities, which includes courts and institutions of higher education as well as Windham School District within the Department of Criminal Justice, and 123 community supervision and corrections departments, encompassing approximately 190,000 individual employees. The Texas Department of Transportation, University of Texas System, and Texas A&M University System are exempted from SORM's program by law and operate their own individual workers' compensation programs.

When a compensable work injury occurs, SORM ensures that the injured state employee receives the same level of service and benefits as a private individual. The Office's workers' compensation program provides individual state entities with a dedicated claims administration team and comprehensive claims handling services. The Office analyzes claims data to identify trends that should be addressed through risk management strategies. The Office also provides protection from possible fraudulent claims. The costs of workers' compensation program are funded through risk pooling, which safeguards individual state entities from catastrophic losses that could exceed budgetary capabilities.

There are situations in which certain non-state individuals are covered by workers' compensation through SORM. When a compensable work injury occurs, SORM ensures that the covered individual receives the same level of service and benefits as a covered state employee. Most of these compensable injuries can be directly linked to natural and/or man-made disasters and events.

## **II. 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, SORM 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 in the October 24, 2013, *Texas State Agency Continuity Planning Policy Guidance Letter*.

The Office assists state entities with the implementation of a Continuity of Operations Plan (COOP) that outlines the procedures an entity will follow to stay operational, or resume operations, if a business disruption occurs. The plan includes detailed information on the essential functions of the entity, critical personnel, procedures, needed equipment, alternative business locations, and other essential information. Training, testing, and exercises help an entity ensure it has an actionable continuity of operations plan.

A Continuity Council has been formed to consolidate knowledge and expertise, and streamline the effectiveness of three previous state continuity groups. This council brings together practitioners from all sectors of government and private sector within the state to share questions, ideas, problems, best practices, and lessons learned. The general membership is open to anyone with a professional interest in continuity. A leadership group was formed to lead decision making and represent the views of the general membership.

Members of the Continuity Council have volunteered to assist with an update to the October 24, 2013, *Texas State Agency Continuity Planning Policy Guidance Letter*. The proposed update will encourage ongoing development of continuity plans, programs, and exercises to pinpoint and address plan fallibilities. The proposed update will include implementation of several key plan advancements in the new FEMA Continuity Guidance Circular.

## **III. 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 Risks**

Responsibility for the operation, financing, and management of risks is shared between SORM and its client entities. Client entities are required to designate a risk manager and a claims coordinator, who are responsible for oversight and reporting agency risk management efforts, injuries, and losses. The Office's performance measures include the goal to manage costs for covered 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 self-report information to SORM regarding expenditures associated with risk management programs. They are asked to provide information on staffing and expenses typically identified with staffing a risk management department and include funds expended for risk control. See Section VII regarding submission issues. Comptroller categories and object codes are used to assist entities with gathering the necessary data on direct risk management costs.

Significant caution should be taken for any conclusions drawn from, or reliance upon, the consolidated data on direct risk management costs. It is also important to note that the consolidated data is known to be incomplete due to a number of factors. In addition, not all state entities are required to file an annual report with SORM.

The following chart shows the FY17 and FY18 risk management costs reported by state entities:

<b>Statewide Risk Management Costs</b>	<b>FY17</b>	<b>FY18</b>
Category F - Salary and Wages	\$32,628,387	\$36,061,427
Category G - Benefits	\$12,580,331	\$6,198,327
Category H - Travel	\$619,856	\$462,015
Category I - Training Education	\$229,649	\$168,343
Category J - Office Supplies & Consumables	\$2,146,327	\$244,058
Category K - Capital Outlay & Controlled Assets	\$3,960,088	\$5,215,201
Category L - Rentals and Leases	\$1,339,161	\$1,277,748
Category M - Telephone (Communication) and Utilities	\$12,706,311	\$984,400
Category N - Other Operating Costs	\$1,568,755	\$932,678
Category O - Safety Supplies & Loss Control Equipment	\$9,113,147	\$5,134,832
Category P - Consultant Services and Fees	\$1,770,218	\$363,821
Category Q - Other Services	\$23,187,835	\$11,053,341
Category R - Other Fees, Taxes, Expenses	\$229,477	\$120,855
<b>Total<sup>1</sup></b>	<b>\$102,079,542</b>	<b>\$68,217,046</b>

## **B. Financing Risks**

The Office's risk management program and state employee workers' compensation program are both funded through annual assessments to state agencies pursuant to Texas Labor Code Chapter 412. The assessments are determined by a formula based on historic full-time employee, payroll, claims, and claims cost data. The funding is collected through interagency contracts. This funding is used to pay medical and income benefits, medical cost containment services, and other costs directly related to reducing claim payments and risk.

The following chart shows SORM's FY2018 expenditures by goal and strategy and the method of finance:

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<sup>1</sup> The Office's risk management costs are included in each category.

Goal/Strategy	General Revenue	Subrogation Recoveries	Interagency Contract	Total
Goal 1.1.1/Manage Risk and Administer Claims	\$0	\$0	\$9,512,314	\$9,512,314
Goal 2.1.1/Workers' Compensation Payments	\$0	\$695,340	\$39,051,415	\$39,746,755
<b>Total</b>	<b>\$0</b>	<b>\$695,340</b>	<b>\$48,563,729</b>	<b>\$49,259,069</b>

#### IV. INSURANCE PURCHASES, PREMIUM DOLLARS SPENT, AND LOSSES INCURRED

Each year, state entities also self-report information to SORM regarding insurance expenditures and litigation related costs. The same data integrity and completeness concerns apply to this consolidated information.

The following chart shows the FY17 and FY18 litigation and insurance expenditures that were reported to SORM:

Statewide Insurance and Litigation Expenditures	FY17	FY18
Object Code 7204 - Insurance Premiums and Deductibles	\$3,208,521	\$3,104,188
Object Code 7205 - Employee Bonds	\$1018	\$2190
Object Code 7216 - Insurance Premiums Approved by Texas Department of Insurance & Attorney General	\$88,030	\$154,748
Object Code 7220 - Court Ordered Notification Expenses - Texas Department of Health Only	\$385,656	\$461,555
Object Code 7225 - Settlements & Judgments for Attorney's Fee	\$451,227	\$640,695
Object Code 7226 - Settlements & Judgments for Claimant or other Legal Expenses	\$2,524,137	\$6,031,301
Object Code 7227 – Miscellaneous Claims Act Payments	\$600	\$0
Object Code 7228 – Legislative Claims	\$0	\$0
Object Code 7229 - Settlements & Judgments for Claimant and Attorney	\$219,743	\$2,572,895
<b>Total</b>	<b>\$6,878,932</b>	<b>\$12,967,572</b>

##### A. Sponsored Lines of Insurance

The Office has five established lines of insurance that provide coverage for state exposures. Property insurance and automobile insurance provide coverage in the event of liability under the Texas Tort Claims Act as well as a mechanism to control expenditures to replace tangible state-owned property that is damaged or destroyed. Builder's risk insurance provides coverage for the materials, fixtures, and equipment used in the construction or renovation of state-owned buildings. Directors' & Officers' liability insurance provides coverage for alleged wrongful acts occurring in the management of the entity. Employment practices liability insurance provides coverage for claims brought by employees (past, present, and prospective) alleging an employment related wrongful act, as well as claims by third parties (students, vendors, etc.)

alleging discrimination or harassment. Volunteer insurance protects volunteers in the performance of volunteer services.

The charts below provide detailed information on each sponsored line of insurance:

<b>Auto</b>							
	<b>Number of Participants</b>	<b>Number Vehicles</b>	<b>Premium Paid</b>	<b># Claims</b>	<b>Loss Total</b>	<b>Deductible Expenditures</b>	<b>Insurance Payments</b>
<b>FY14</b>	30	2141	\$652,896	52	\$50,700	\$8,035	\$42,665
<b>FY15</b>	46	3837	\$1,012,142	156	\$484,932	\$130,078	\$354,854
<b>FY16</b>	51	2013	\$873,623	160	\$547,709	\$41,004	\$506,705
<b>FY17</b>	53	2289	\$1,000,953	198	\$328,835	\$63,981	\$264,854
<b>FY18</b>	55	1974	\$1,071,528	172	\$392,239	\$31,096	\$361,143
<b>Total</b>	235	12,254	\$4,611,142	738	\$1,804,415	\$274,194	\$1,530,221

<b>Directors' &amp; Officers'</b>						
	<b>Number of Participants</b>	<b>Premium Paid</b>	<b># Claims</b>	<b>Loss Total</b>	<b>Deductible Expenditures</b>	<b>Insurance Payments</b>
<b>FY14</b>	30	\$1,353,421	0	\$15,583	\$0	\$15,583
<b>FY15</b>	33	\$1,389,382	0	\$25,000	\$0	\$25,000
<b>FY16</b>	34	\$1,354,253	1	\$404	\$0	\$404
<b>FY17</b>	35	\$1,458,253	1	\$728	\$0	\$728
<b>FY18</b>	36	\$1,457,835	1	\$25,000	\$0	\$25,000
<b>Total</b>	168	\$7,013,144	3	\$66,715	\$0	\$66,715

<b>Property</b>							
	<b>Number of Participants</b>	<b>Total Insurable Value</b>	<b>Premium Paid</b>	<b># Claims</b>	<b>Loss Total</b>	<b>Deductible Expenditures</b>	<b>Insurance Payments</b>
<b>FY14</b>	30	\$9,159,861,650	\$7,444,122	3	\$1,211,359	\$200,000	\$1,011,359
<b>FY15</b>	38	\$10,929,605,009	\$8,066,561	4	\$1,775,873	\$349,538	\$1,426,335
<b>FY16</b>	39	\$11,290,032,682	\$7,436,368	10	\$1,298,894	\$710,000	\$588,894
<b>FY17</b>	43	\$11,890,485,262	\$8,675,288	9	\$68,349,256	\$17,994,342	\$50,454,914
<b>FY18</b>	47	\$11,632,823,148	\$8,030,854	3	**\$5,825,000	\$510,000	**\$5,315,000
<b>Total</b>	197	\$54,902,807,751	\$39,653,193	29	\$72,635,382	\$19,763,880	\$53,481,502

\*\* Loss amount is approximate and subject to change.

The state-sponsored volunteer insurance is a pooled risk plan. Individual losses are not calculated, rather the performance of the entire pool determines the premium for the participants.

<b>Volunteer</b>			
	<b>Number of Participants</b>	<b>Premium Paid</b>	<b># Claims</b>
<b>FY14</b>	11	\$39,049	1
<b>FY15</b>	11	\$29,179	4
<b>FY16</b>	11	\$26,622	3
<b>FY17</b>	11	\$25,335	8
<b>FY18</b>	13	\$52,185	0
<b>Total</b>	57	\$172,370	16

## **B. Non-Sponsored Lines of Insurance**

The Office does not have comprehensive information on losses or deductibles for non-sponsored lines of insurance. All state entities are encouraged to report claims to SORM as they occur, even if the claim is not covered by insurance. If an application for approval of an insurance purchase contains loss information, SORM will review that information.

The data in the chart below is based on information provided by state entities requesting approval for the purchase of insurance:

<b>Line of Insurance</b>	<b>FY17 Purchases</b>	<b>FY17 Premium</b>	<b>FY18 Purchases</b>	<b>FY18 Premium</b>
<b>Aviation Liability</b>	1	\$225,380	1	\$274,452
<b>Commercial Crime</b>	4	\$25,778	5	\$14,738
<b>Commercial Package Policy</b>	3	\$3,488	0	\$0
<b>Contractual Bonus Insurance – NCAA Athletic</b>	1	\$399,550	1	\$43,267
<b>Cyber Liability (monoline policy)</b>	0	\$0	1	\$31,256
<b>Excess Accident and Medical</b>	4	\$78,270	2	\$38,500
<b>Fine Arts</b>	5	\$12,948	5	\$23,493
<b>Flood</b>	2	\$74,285	1	\$1,590
<b>Foreign Accident</b>	2	\$10,810	2	\$3,384
<b>General Liability</b>	15	\$177,053	13	\$236,089
<b>Inland Marine</b>	11	\$113,919	3	\$15,606
<b>Kidnap &amp; Ransom</b>	1	\$7487	0	\$0
<b>Professional Liability</b>	9	\$381,855	6	\$326,489
<b>Umbrella</b>	1	\$3,125	0	\$0
<b>Watercraft - Hull</b>	2	\$34,020	1	\$22,500
<b>Workers' Compensation – Extraterritorial</b>	5	\$13,639	6	\$15,696
<b>Total</b>	66	\$1,561,607	47	\$1,407,060

## **V. HANDLING WORKERS' COMPENSATION CLAIMS BROUGHT AGAINST THE STATE**

One of SORM's core statutory missions is to provide covered injured employees with access to prompt, high-quality medical care within the framework established by the Texas 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 Office is liable for compensation for an employee's injury without regard to fault or negligence if at the time of the injury, the employee is subject to the Texas Workers'

Compensation Act and the injury arises out of and in the course and scope of employment. An employee is entitled to timely and accurate income benefits, weekly and without an order from the Texas Department of Insurance-Division of Workers' Compensation (TDI-DWC, or the Division) Commissioner. An employee who sustains a compensable injury is also entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

Because the statutory workers' compensation program is operated on a cash basis 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 in FY17 and FY18 on behalf of claimants, including open/active claims with dates of injury from preceding fiscal years.

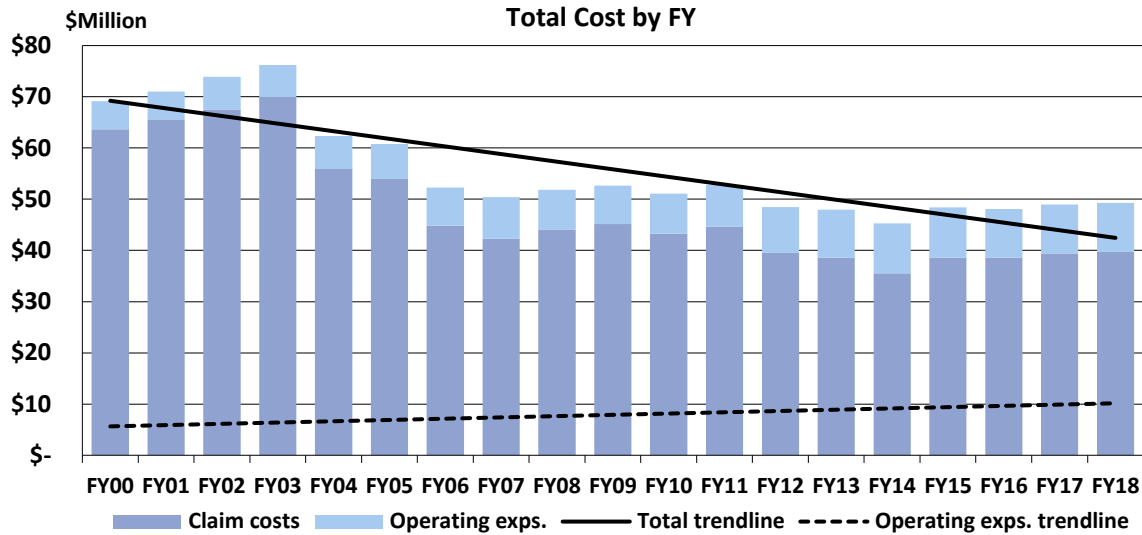
<b>FY17</b>	<b>FY18</b>
\$39,383,259	\$39,746,755

The Office works to reduce overall medical and indemnity costs through improved claim handling practices, education, and training, and continuously evaluates its policies and processes and implements change as needed to meet internal and external needs. Texas Labor Code Section 402.075 requires TDI-DWC to assess the performance of insurance carriers during Performance Based Oversight (PBO) assessments at least biennially. The Division has consistently identified SORM as a high performer during each one of SORM's PBO assessments in 2009, 2010, 2011, 2012, 2014, 2016, and 2018.

Each state entity designates at least one claims coordinator who provides information about workers' compensation to injured employees and reports workers' compensation claims to SORM. The Office trains claims coordinators on handling claims and provides access to SORM's electronic claims management system. This system automatically creates a claim when an entity reports information electronically. SORM staff may also enter information into 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. The following chart shows the effectiveness of SORM's efforts to decrease costs in the state employee workers' compensation program:





**VI. FREQUENCY, SEVERITY, AND AGGREGATE AMOUNT FOR OPEN AND CLOSED WORKERS’ COMPENSATION CLAIMS**

**A. Number of Claims Received, Accepted, and Inactivated**

Workers’ compensation claims are opened and entered in SORM’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 SORM 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 SORM determines the injury is not compensable, the statute requires the filing of a denial within 60 days. Filing a denial does not automatically close a claim as all claimants have the right to dispute the denial.

The Office generally 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, SORM 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 FY17 and FY18:

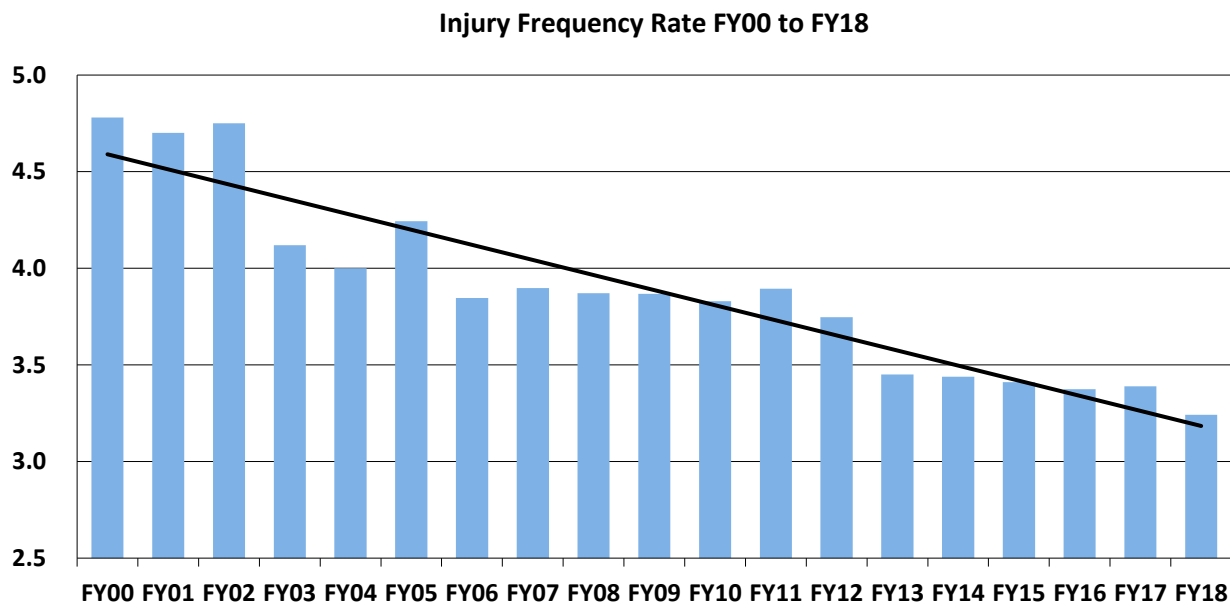
	FY17	FY18
Received	7644	7583
Accepted	6505	6056
Inactivated	6935	7864
Reactivated	22	51

## B. 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 SORM.

Injury frequency rates provide an objective means to gauge the results of implementation of covered state agencies' risk management plans and the results of SORM's risk management program. The injury frequency rate reflects not only the effectiveness of the risk management program but also covered state entities' actions in regards to 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:

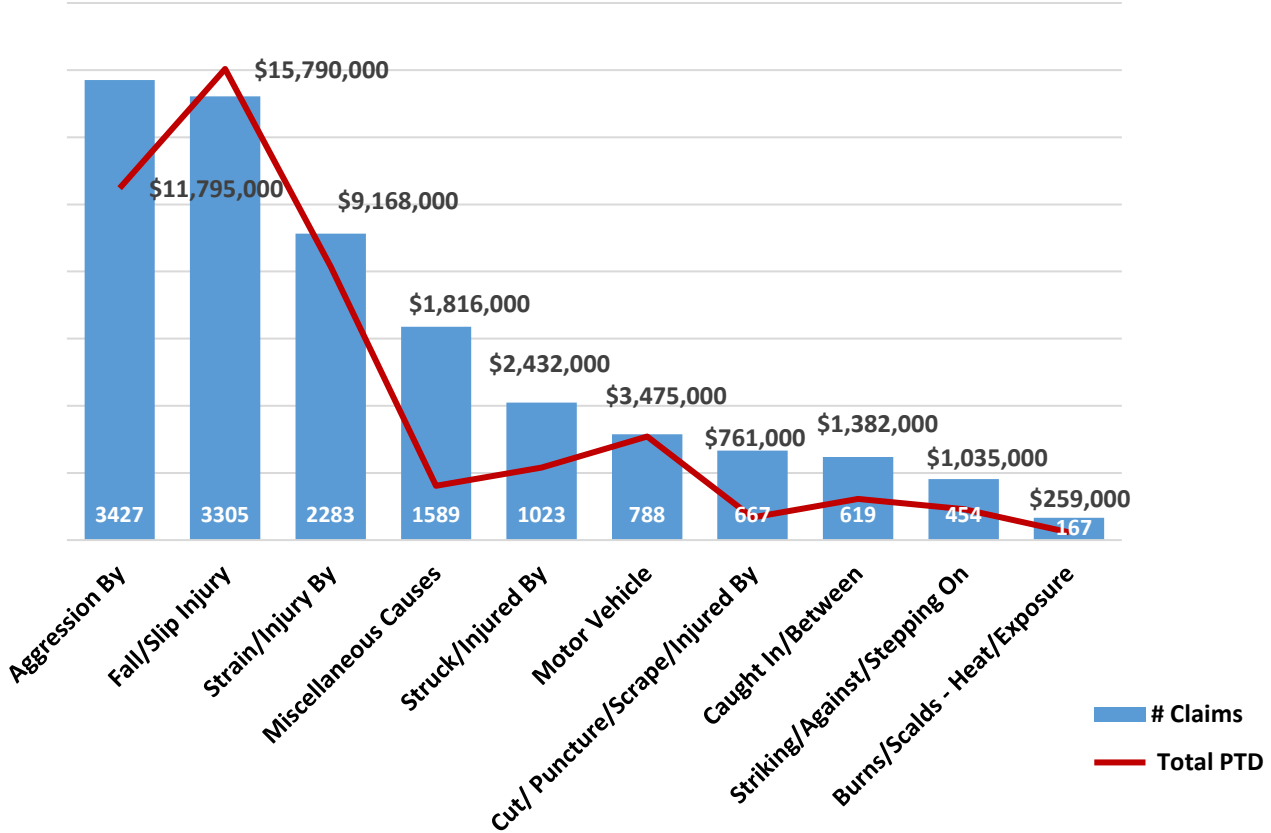


## C. Severity and Major Causes of Injury

Standardized codes are used in workers' compensation claims to describe the cause of injury. Cause codes can be used to analyze trends. Identifying perils, risk exposures, and hazards are the first step in addressing workplace health and safety.

The following chart shows the consolidated data on the conditions or situations that were identified as the cause of the injuries reported to SORM in FY17 and FY18. The total medical and indemnity benefits that have been paid since the date of injury are also included.

### Injury Cause and Cost FY17 & FY18



### VII. RETURN-TO-WORK COORDINATION SERVICES AND DATA ANALYSIS

The Division establishes return-to-work goals and reports on return-to-work outcomes pursuant to Labor Code Section 405.0025(a)(4). State entities are required to develop, implement, and maintain a return-to-work program. Pursuant to Labor Code Section 412.0125, SORM provides return-to-work coordination services to state entities.

The Office’s current case management system contains data on lost time and return-to-work. However, the limitations of this legacy system adversely impact SORM’s ability to aggregate lost time and return-to-work data for analysis. The Office provided information to the Legislative Budget Board during the 2018 Strategic Fiscal Review regarding full implementation of a comprehensive, configurable, and cloud-enabled Risk Management Information System (RMIS) that would integrate SORM’s statutory programs. For workers' compensation claims administration, a RMIS would integrate with the Official Disability Guidelines (ODG) on medical treatment and return to work to benchmark outcomes in workers' compensation claims. ODG also offers guidance on medical treatment, average costs, and return-to-work standards based on the injury type.

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

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One of the primary purposes of Labor Code Chapter 412 is to ensure state entities are taking steps to identify, control, and prepare for loss events. The Office is aware that non-compliance with the risk management program, insurance program, and continuity of operations planning requirements increases the state's vulnerability.

The following information is provided pursuant to Labor Code Section 412.032(b)(2):

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

All state entities subject to Labor Code Section 412.053 have filed the required annual report.

### **B. Insurance Purchases**

The Office does not have any evidence of non-compliance with Labor Code Sections 412.011(e) or 412.051(b).

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

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**

All state entities that are required to develop, implement, and maintain a continuity of operations plan have complied with statutory requirements.

The *October 24, 2013, Policy Guidance Letter* instructs state agencies, by August 31 of each year, to conduct an annual review and update plans to ensure contact lists, responsibilities, Memorandums of Agreement/Memorandums of Understanding, and procedures remain current and valid. The Office aids this process through annual reviews of continuity of operation plans, and supports the finding in the *Sunset Advisory Commission Staff Report* to seek feedback from the Continuity Council, advisory calls, and individual and group meetings regarding the frequency of SORM's review.

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

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As discussed above related to workers' compensation, a fully integrated system where relational data is continuously updated can provide additional real-time information for preparedness, mitigation, response, and recovery. The data in a risk management information system (RMIS) would be more refined, insightful, and contemporary to address statewide issues as they arise. Uniform, consolidated data could be used by individual state entities and the state enterprise to conduct analytics, identify risk trends, develop strategies, and inform decision-making and long-term planning. Access to detailed, up-to-date, comprehensive data on losses will increase the ability to proactively address risk and allow staff to spend more time on tasks that will advance enterprise risk initiatives. Additional recommendations are included, as follows.

## **A. Self-Insured Retention**

A common assumption is that the State self-insures its real and personal property. The State does retain the risk of loss; however, a significant portion of the State's real and personal property is, in practice, uninsured. The Office has recommended and continues to recommend the adoption of an enterprise-level retention commensurate with the size and scope of enterprise operations and the reliance upon (re)insurance for catastrophic events only.

A self-insured retention limit could lead to a significant reduction in premiums. The State would assume an amount of the primary risk and transfer the remaining risk to an excess coverage policy for larger, catastrophic losses, which is consistent with other state jurisdictions. In addition, a mandatory program could expand the population served and increase demand for insurance services.

## **B. Statutory Changes**

### **1. State Entity Definition in Texas Labor Code Chapter 501 and Chapter 412**

The inconsistency in the definition of state entity in Texas Labor Code Section 501.001<sup>2</sup> and Labor Code Section 412.001<sup>3</sup> has created some confusion regarding which state entities are subject to the requirements to develop a risk management program and submit a COOP plan to SORM. A similar uncertainty exists regarding SORM's obligation to review a state entity's insurance purchase before the purchase occurs. The limitations in Texas Labor Code Section 412.001(4) may serve to unintentionally exacerbate these issues.

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

Currently, Texas Labor Code Section 412.053(b) requires state entities to report the information required by Section 412.053 "not later than the 60th day before the last day of each fiscal year." State entities do not have complete data prior to the close of the fiscal year, therefore, SORM has modified this process to request that state entities report the data between September 1 and October 30 each year. To ensure SORM receives accurate and timely reports, SORM recommends amending Texas Labor Code Section 412.053(b) to require annual reporting "not later than the 60th day after the last day of each fiscal year."

### **3. Indoor Air Quality Seminar**

In December 2002, the Department of State Health Services (DSHS) developed guidelines on indoor air quality pursuant to Health & Safety Code Chapter 385. In 2015, SB 202 (84R) transferred a number of functions from DSHS to other entities. Section 3.030 of the bill repealed Health & Safety Code Chapter 385, thereby removing all references to a state entity voluntarily establishing guidelines for indoor air quality in government buildings. However,

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<sup>2</sup> Labor Code Section 501.001(6) "State agency" includes a department, board, commission, or institution of this state.

<sup>3</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.

Government Code Section 2165.305 still requires SORM to conduct an annual, one-day educational seminar on indoor air quality. Similarly, the indoor air quality rules (guidelines) adopted by DSHS in 25 Texas Administrative Code Chapter 297 have not been repealed.

**4. State Employee Waiver of Workers’ Compensation**

The Texas Tort Claims Act (TTCA) creates a specific waiver of sovereign immunity for state employee workers’ compensation claims. Workers’ compensation for state employees was created through Labor Code Chapter 501. Texas Labor Code Section 501.002(d) is clear that neither Chapter 501 nor the general workers’ compensation provisions authorize a cause of action or damages against the state, a state entity, or an employee of the state beyond the actions and damages authorized by the TTCA. However, Texas Labor Code Section 406.034 states that an employee can agree, in writing to waive workers’ compensation during the first few days of employment. The Office interprets this provision as being inconsistent with Texas Labor Code Chapter 501. It is prudent to clarify that state employees cannot waive workers’ compensation coverage.

**X. DIRECTOR’S SECTION 412.042 REPORT**

The administrative operations for SORM, 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 OAG, which provides significant administrative support and functions. The following data addresses the appropriations for administrative operations of SORM as of the 2018 Legislative Appropriations Request submission.

**A. Summary of Administrative Expenses**

Category	FY18 Est.	FY19 Budgeted	Biennium Total	Percent of Total
Salaries	\$6,357,238	\$7,011,149	\$13,368,387	62.44%
Other Personnel	\$450,000	\$450,000	\$900,000	4.20%
Contracted	\$1,818,254	\$1,818,254	\$3,636,508	16.98%
Consumable	\$38,434	\$38,434	\$76,868	0.36%
Utilities	\$6,058	\$6,058	\$12,116	0.06%
Travel	\$135,000	\$135,000	\$270,000	1.26%
Rent – Building	\$720	\$720	\$1,440	0.01%
Rent – Other	\$21,863	\$21,863	\$43,726	0.20%
Other Operating	\$1,529,232	\$1,474,422	\$3,003,654	14.03%
Capital	\$0	\$98,000	\$98,000	0.46%
<b>Total</b>	<b>\$10,356,799</b>	<b>\$11,053,900</b>	<b>\$21,410,699</b>	<b>100%</b>

## **B. Unexpended Appropriations**

Of the \$11.05 million appropriated for FY19 administrative purposes, cash basis payments as of December 18, 2018, total \$2,654,767 and an additional \$1,851,307 has been encumbered due to contractual or other obligations.

The Office's Board of Directors exercised \$42 million in preliminary collection authority for workers' compensation claim payments, based on recent costs. Approximately \$2 million was carried forward from FY18 assessments with the remaining amount collected by new assessments to client entities.

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 18, 2018, the cash balance remaining was \$26,709,901, with \$0 still outstanding from client entities.

## **C. Estimated Balance Necessary to Administer Chapter 501 for Remainder of FY19**

The Office estimates that the full unexpended, unencumbered balance of \$6.55 million for the administrative appropriation will be necessary for operations for the remainder of the fiscal year.

The Office estimates that roughly \$26.3 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 FY20 or will be returned to entities 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 approximately \$10,705,350 each year for FY20 and FY21, a biennial total of \$21,410,699, will be required to administer the workers' compensation program and provide risk management and insurance services for the succeeding biennium. The Office is not requesting General Revenue.

The single exceptional item SORM requested in the submitted LAR is an increase in the maximum authorized salary for the Board to compensate an Executive Director, to \$171,688. This request does not require any additional funding. Subsequent to participating in the Strategic Fiscal Review and based on direction received during its first Sunset hearing, SORM is in the process of amending its exceptional requests to include a request for a cloud-based, full-service, commercial risk management information system (RMIS) to replace the antiquated claim management system mainframe application. Recurring annual costs are estimated at \$771,000, including two additional FTEs, with estimated one-time implementation costs of approximately \$255,000.

The Office requested estimated authority of \$42.8 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. The requested authority does not take into account expected reductions in claim

costs related to full implementation of a RMIS. Claim expenditures are anticipated to be reduced by a minimum amount equal to the operational costs of the implemented RMIS.

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.





SORM's Biennial Report to the 86<sup>th</sup> Legislature is available on-line at:  
[www.sorm.state.tx.us/about-us/legislative-reports/biennial-reports](http://www.sorm.state.tx.us/about-us/legislative-reports/biennial-reports)

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