SORM
State Office of Risk Management

# BIENNIAL REPORT
## 87TH LEGISLATURE

| BOARD MEMBERS | DATES OF TERM | HOMETOWN |
|---|---|---|
| Lloyd Garland, M.D., Chair | 02/01/2025 | Lubbock |
| Honorable Ricardo Galindo, III | 02/01/2025 | San Antonio |
| Rosemary Gammon, PAHM | 02/01/2021 | Plano |
| Tomas Gonzalez | 02/01/2023 | El Paso |
| Gerald Ladner | 02/01/2021 | Austin |

*Submitted January 2021*

**SIGNED:** ______________________
**EXECUTIVE DIRECTOR**

**APPROVED:** Lloyd Garland, MD
**BOARD CHAIR**

State Office of Risk Management
300 W. 15TH, AUSTIN, TEXAS 78701 / P.O. BOX 13777, AUSTIN, TEXAS 78711-3777
(512) 475-1440, FAX (512) 370-9025 / WWW.SORM.STATE.TX.US



January 12, 2021

The Honorable Greg Abbott
Governor of Texas

The Honorable Dan Patrick
Lieutenant Governor

The Honorable Dade Phelan
Speaker of the Texas House of Representatives

Members of the 87th Texas Legislature:

On behalf of the Board of Directors, the State Office of Risk Management (Office) respectfully submits this Biennial Report to the 87th Legislature. This report is submitted pursuant to the requirements of the Texas Labor Code Sections 412.032 and 412.042.

The Office appreciates the opportunity to serve state employees and Texas state entities. We look forward to working with the members of the 87th 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. You may also contact Janice McCoy, the Office's Public Relations Liaison by phone at (512) 936-1452, or by email at janice.mccoy@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, ARM, AINS, AIS, MCP, MEMS
State Risk Manager, Executive Director, State Office of Risk Management

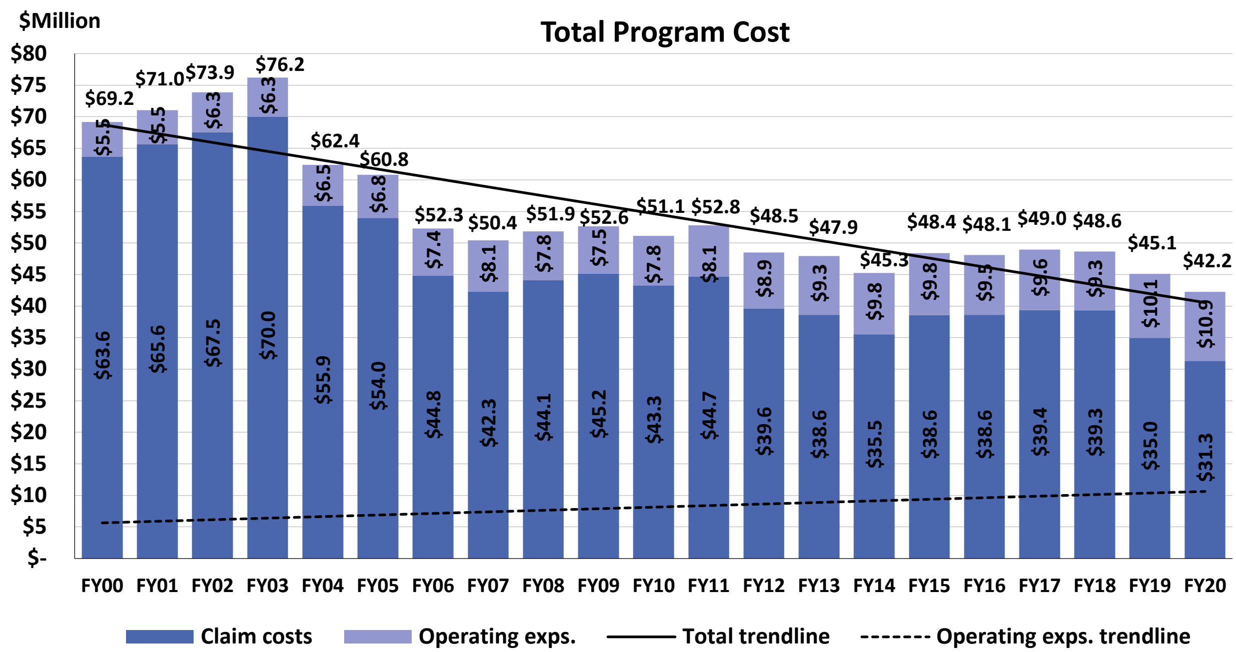
## GENERAL OVERVIEW

The State Office of Risk Management (Office) is administratively attached to the Office of the Attorney General and is governed by a five-member Board of Directors (Board). The Office is charged by law to administer the enterprise risk and insurance management programs, self-insured workers' compensation program for the state of Texas, and continuity of government operations program. 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 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 enterprise risk management program provides risk management services to state agencies, institutions of higher education, and other entities identified by statute.

The Office is wholly funded through an assessment allocation to all participating agencies based on risk profile and other relevant factors identified by the Board in 28 Texas Administrative Code Chapter 251.

The following chart shows the assessment allocation methodology has substantially reduced workers' compensation costs and operating expenses have stabilized:



THIS PAGE INTENTIONALLY LEFT BLANK

## TABLE OF CONTENTS

## 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 program provides risk management services to state agencies, institutions of higher education, and other entities identified by statute. 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.

### A. Enterprise Risk Management Program

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. The Office helps state entities identify potential risks to people, resources, and mission critical functions before a loss event occurs. This provides an entity with a greater understanding of the likelihood and severity of identified risks. Risk identification also increases an entity's options for preventing loss and addressing potential risks and may reveal risks that are an opportunity for growth.

### B. Enterprise Risk Management Guidelines

By statute, the Office is required to develop guidelines that can be used by state entities to develop and implement a comprehensive risk management program to reduce property, liability, and workers' compensation losses. Senate Bill 612, 86th R.S., requires the Office to review and update the Risk Management for State Agencies (RMSTA) guidelines and then review the guidelines on a biennial basis.

The missions and day-to-day business operations of state governmental entities are diverse and wide-ranging. One of the goals for the RMTSA guidelines is to direct state entities to nationally recognized standards and resources that facilitate a consistent approach to potential internal and external risks, including hazard, operational, financial, and strategic risks. Nationally recognized standards for products, services, systems, and personnel respond to industry-specific needs and ensure organizations and people use the same definitions, terms, and best practices. Standards can also keep state entities up to date on changes in industry and technology.

### C. ISO 31000 Enterprise Risk Management Framework

The Office continues to implement the ISO 31000 enterprise risk management principles, framework, and processes for risk management, compliance, and general agency decision-making. ISO 31000 can be used to identify and address risk in any aspect of a state entity's operations.

### D. Risk Transfer – Insurance Purchasing

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 that are subject to Texas Labor Code Chapter 412. In cooperation with client entities, SORM procures and negotiates insurance policies that are available for statewide use. Coverage is tailored for the unique exposures and liabilities of the state.

Insurance provides an opportunity to prepare for unpreventable and unexpected losses and lessen the budgetary impact when a loss occurs. Reviewing state entities' proposed insurance purchases helps ensure the coverage is necessary and adequate to protect the interests of the State.

### E. 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 state entities identified in Chapter 501 of the Texas Labor Code.

There are also situations in which certain non-state individuals are covered by workers' compensation through the Office. Most of those compensable injuries can be directly linked to natural and/or man-made disasters and events.

### F. Memorandum of Understanding (MOU)

The State Fire Marshal's Office (SFMO) is responsible for protecting a public building under the charge and control of a state agency and the building's occupants, and the occupants of a building leased for the use of a state agency, against an existing or threatened fire hazard. Through an MOU, the Office partners with the SFMO and the Texas Facilities Commission to communicate and address fire hazard risks.

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

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. Responsibility for the operation, financing, and management of risks is shared between SORM and its client entities.

### A. Operation and Management of Risks

Client entities are required to designate a risk manager, who is responsible for oversight and reporting on the agency's risk management efforts. 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.

Texas workers' compensation insurance companies typically set the workers' compensation premium rate per $100 of payroll using industry classifications that are based on the type of business. In the private industry, high-risk businesses such as construction, will pay a higher premium per $100 of payroll than low risk businesses with office workers. However, the Office does not use classifications in its assessment allocation program.

The effectiveness of the Office's risk management program can be seen in the low cost per $100 of state payroll and the low cost per covered employee:

| | Cost Per $100 of State Payroll | Cost Per Covered Employee |
|---|---|---|
| **FY20** | $0.45 | $211.12 |
| **FY19** | $0.50 | $225.11 |
| **FY18** | $0.57 | $252.42 |
| **FY17** | $0.55 | $239.29 |

### 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 Texas Labor Code Chapter 412 as well as authority for collected subrogation recoveries. In the allocation program, each state entity must enter into an interagency contract with the Office to pay an allocated share of the Office's administrative costs, workers' compensation claims expenditures, and funding for employee benefits.

The assessments are determined by a formula based on historic full-time employee, payroll, claims, and claims cost data. Limits are placed on the total allocation an entity will be assessed. The difference between the formula-based assessment amount and cap is allocated among all other entities in the same manner and within the same factors as the initial assessment calculation.

GAA Article IX, Rider 15.02 staggers the assessment allocation payments. Participating entities pay seventy-five percent of their assessment at the beginning of the fiscal year. The remaining amount due from each entity, if any, is calculated and collected during the final four months of the fiscal year.

The following charts show the Office's expenditures by goal and strategy and the method of finance:

**FY 2019**

| Goal/Strategy | General Revenue | Subrogation Recoveries | Interagency Contract | Total |
|---|---|---|---|---|
| Goal 1.1.1/Manage Risk and Administer Claims | $0 | $0 | $10,017,199 | $10,017,199 |
| Goal 2.1.1/Workers' Compensation Payments | $0 | $523,058 | $34,583,329 | $35,106,387 |
| Total | $0 | $523,058 | $44,600,528 | $45,123,586 |

**FY 2020**

| Goal/Strategy | General Revenue | Subrogation Recoveries | Interagency Contract | Total |
|---|---|---|---|---|
| Goal 1.1.1/Manage Risk and Administer Claims | $0 | $0 | $10,858,634 | $10,858,634 |
| Goal 2.1.1/Workers' Compensation Payments | $0 | $813,850 | $30,496,266 | $31,310,116 |
| Total | $0 | $813,850 | $41,354,900 | $42,168,750 |

## C. Risk Management Expenditures

Each year, state entities self-report information to the Office regarding expenditures associated with risk management programs. They are asked to provide information on personnel and expenses typically associated with staffing a risk management department and include funds expended for risk control. 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 the Office.

The chart below shows the FY19 and FY20 risk management costs self-reported by state entities:

| Statewide Risk Management Costs | FY19 | FY20 |
|---|---|---|
| Category F - Salary and Wages | $37,199,998 | $48,113,011 |
| Category G – Benefits | $12,946,125 | $15,446,907 |
| Category H – Travel | $494,074 | $190,778 |
| Category I - Training Education | $234,667 | $143,032 |
| Category J - Office Supplies & Consumables | $283,470 | $1,607,695 |
| Category K - Capital Outlay & Controlled Assets | $1,082,654 | $4,729,128 |
| Category L - Rentals and Leases | $1,325,702 | $1,831,801 |

| Statewide Risk Management Costs | FY19 | FY20 |
|---|---|---|
| Category M - Telephone (Communication) and Utilities | $1,821,648 | $5,124,060 |
| Category N - Other Operating Costs | $3,223,226 | $9,344,574 |
| Category O - Safety Supplies & Loss Control Equipment | $6,019,429 | $13,519,064 |
| Category P - Consultant Services and Fees | $548,512 | $684,460 |
| Category Q - Other Services | $6,839,063 | $13,616,005 |
| Category R - Other Fees, Taxes, Expenses | $3,039,602 | $14,200,344 |
| **Total** | $75,058,170 | $128,550,859 |

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

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

### A. Insurance and Litigation Expenditures

The following chart shows the FY19 and FY20 insurance and litigation expenditures that were reported to the Office:

| Statewide Litigation and Insurance Expenditures | FY19 | FY20 |
|---|---|---|
| Object Code 7204 - Insurance Premiums and Deductibles | $3,019,591 | $3,520,887 |
| Object Code 7205 - Employee Bonds | $1,269 | $1,119 |
| Object Code 7216 - Insurance Premiums Approved by Texas Department of Insurance & Attorney General | $50,780 | $52,197 |
| Object Code 7220 - Court Ordered Notification Expenses - Texas Department of Health Only | $339,791 | $398,393 |
| Object Code 7225 - Settlements & Judgments for Attorney's Fee | $432,344 | $1,123,791 |
| Object Code 7226 - Settlements & Judgments for Claimant or other Legal Expenses | $2,584,926 | $3,510,139 |
| Object Code 7227 – Miscellaneous Claims Act Payments | $0 | $0 |
| Object Code 7228 – Legislative Claims | $0 | $0 |
| Object Code 7229 - Settlements & Judgments for Claimant and Attorney | $55,570 | $293,212 |
| **Total** | $6,484,271 | $8,899,738 |

### B. Purchases of Sponsored Lines of Insurance

Participation in the statewide insurance program administered by the Office is voluntary. Individual state entities make decisions regarding insurance purchases. The Office has insurance policies available for statewide use that provide coverage for the following state exposures:

- **Property and Automobile Insurance**
  - Provides 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.
- **Directors' and Officers' Liability Insurance**
  - Provides coverage for alleged wrongful acts occurring in the management of an 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**
    - Provides coverage for volunteers in the performance of services for a state entity.
- **Fine Art Insurance**
    - Provides coverage for paintings, etchings, drawings, rare books, manuscripts, antique furniture, rugs, tapestries, statuary, musical instruments, fine art, bona fide works of art, specialized collections of historical, cultural, or technological significance, and items of rarity, historic value, or artistic merit.
- **Builder's Risk Insurance**
    - Provides coverage for the materials, fixtures, and equipment used in the construction or renovation of state-owned buildings.

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

| AUTO | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Number of Participants** | **Number Vehicles** | **Premium Paid** | **# Claims** | **Loss Total** | **Deductible Expenditures** | **Insurance Payments** |
| **FY14** | 30 | 2141 | $652,896 | 52 | $50,700 | $8,035 | $42,665 |
| **FY15** | 46 | 3837 | $1,012,142 | 156 | $484,932 | $130,078 | $354,854 |
| **FY16** | 51 | 2013 | $873,623 | 160 | $547,709 | $41,004 | $506,705 |
| **FY17** | 53 | 2289 | $1,000,953 | 198 | $328,835 | $63,981 | $264,854 |
| **FY18** | 55 | 1992 | $1,079,485 | 100 | $853,867 | $21,607 | $832,280 |
| **FY19** | 55 | 1974 | $1,071,528 | 81 | $541,964 | $161,366 | $380,598 |
| **FY20** | 60 | 2010 | $1,208,008 | 15 | $58,699 | $0 | $0 |

| DIRECTORS' & OFFICERS' | | | | | | |
|---|---|---|---|---|---|---|
| | **Number of Participants** | **Premium Paid** | **# Claims** | **Loss Total** | **Deductible Expenditures** | **Insurance Payments** |
| **FY14** | 30 | $1,353,421 | 0 | $15,583 | $0 | $15,583 |
| **FY15** | 33 | $1,389,382 | 0 | $25,000 | $0 | $25,000 |
| **FY16** | 34 | $1,354,253 | 1 | $404 | $0 | $404 |
| **FY17** | 35 | $1,458,253 | 1 | $728 | $0 | $728 |
| **FY18** | 36 | $1,457,835 | 1 | $25,000 | $0 | $25,000 |
| **FY19** | 37 | $1,497,749 | 1 | $150,000 | $0 | $150,000 |
| **FY20** | 37 | $1,846,066 | 0 | $0 | $0 | $0 |

| PROPERTY | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Participants | Total Insurable Value | Premium Paid | # Claims | Loss Total | Deductible Expenditures | Insurance Payments |
| **FY14** | 30 | $9,159,861,650 | $7,444,122 | 3 | $1,211,359 | $200,000 | $1,011,359 |
| **FY15** | 38 | $10,929,605,009 | $8,066,561 | 4 | $1,775,873 | $349,538 | $1,426,335 |
| **FY16** | 39 | $11,290,032,682 | $7,436,368 | 10 | $1,298,894 | $710,000 | $588,894 |
| **FY17** | 43 | $11,890,485,262 | $8,675,288 | 11 | $23,183,720 | $8,757,626 | $17,055,259 |
| **FY18** | 47 | $11,632,823,148 | $8,030,854 | 1 | $666,064 | $250,000 | $416,064 |
| **FY19** | 47 | $13,877,454,450 | $8,762,600 | 2 | $2,009,455 | $260,000 | $2,774,908 |
| **FY20** | 47 | $13,925,312,383 | $12,652,636 | 5 | *$3,650,000 | $1,100,000 | *$2,200,000 |

* Loss amount is approximately 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.

| VOLUNTEER | | | |
|---|---|---|---|
| | Number of Participants | Premium Paid | # Claims |
| **FY14** | 11 | $39,049 | 1 |
| **FY15** | 11 | $29,179 | 4 |
| **FY16** | 11 | $26,622 | 3 |
| **FY17** | 11 | $25,335 | 8 |
| **FY18** | 13 | $52,185 | 0 |
| **FY19** | 13 | $39,794 | 0 |
| **FY20** | 12 | $38,464 | 0 |

## C. Purchases of 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 the Office as they occur, even if the claim is not covered by insurance. If an application for approval of an insurance purchase contains loss information, the Office 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:

| Line of Insurance | FY19 Purchases | FY19 Premium | FY20 Purchases | FY20 Premium |
|---|---|---|---|---|
| **Athletic Accident** | 4 | $1,176,313 | 2 | $137,000 |
| **Aviation** | 1 | $301,202 | 2 | $366,903 |
| **Crime** | 5 | $45,539 | 4 | $65,587 |
| **Cyber** | 3 | $152,343 | 3 | $44,949 |
| **Directors and Officers** | 1 | $6,306 | 1 | $6,958 |
| **Disability** | 0 | $0 | 1 | $5,844 |
| **Extra Territorial Workers' Compensation** | 6 | $14,196 | 4 | $19,691 |
| **Fine Arts** | 1 | $100 | 1 | $3,840 |

| Line of Insurance | FY19 Purchases | FY19 Premium | FY20 Purchases | FY20 Premium |
|---|---|---|---|---|
| **Flood** | 1 | $17,442 | 1 | $17,934 |
| **Forced Placed** | 1 | $8,067 | 1 | $5,250 |
| **Foreign Liability** | 3 | $68,724 | 1 | $4,176 |
| **General Liability** | 11 | $260,700 | 9 | $54,474 |
| **Inland Marine** | 6 | $34,493 | 4 | $34,128 |
| **Long Term Disability** | 0 | $0 | 1 | $0 |
| **Master Policy** | 1 | $227,529 | 0 | $0 |
| **Medical Malpractice** | 3 | $14,492 | 0 | $0 |
| **Professional Liability** | 4 | $101,639 | 3 | $157,693 |
| **Property** | 2 | $8,588 | 0 | $0 |
| **Renters** | 1 | $788 | 0 | $0 |
| **Special Risk - Blanket** | 3 | $19,761 | 1 | $9,492 |
| **Umbrella** | 5 | $137,255 | 0 | $0 |
| **Volunteer** | 1 | $3,519 | 1 | $4,704 |
| **Watercraft - Hull** | 2 | $14,154 | 3 | $37,790 |
| **Total** | 65 | $2,613,150 | 43 | $976,413 |

## IV. 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.

The Office provides service benefits both to the injured state employee and the state entity employer. Each state entity designates at least one claims coordinator who provides information about workers' compensation to injured employees and reports workers' compensation injuries and claims to the Office. The Office trains claims coordinators on handling claims and provides access to SORM's electronic claims management system.

The Office's workers' compensation program provides individual state entities with claims administration and comprehensive claims handling services. The Office employs licensed adjusters to manage all aspects of a workers' compensation claim. Adjusters facilitate medical treatment and ensure wage replacement (income) benefits are paid to the claimant. 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.

The following chart shows the gross amounts of medical and indemnity benefits paid in FY19 and FY20 on behalf of claimants, including those injured in preceding fiscal years.

| FY19 | FY20 |
|---|---|
| $35,106,387 | $31,310,116 |

Labor Code Section 402.075 requires TDI-DWC to assess the performance of insurance carriers during Performance Based Oversight (PBO) assessments at least biennially. PBO measures the timely payment of indemnity benefits and medical billing and the transmission of electronic data to TDI-DWC.

***The Office has been identified as a high performer during PBO assessments in 2009, 2010, 2011, 2012, 2014, 2016, 2018, and 2019.***

## V. 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 FY19 and FY20:

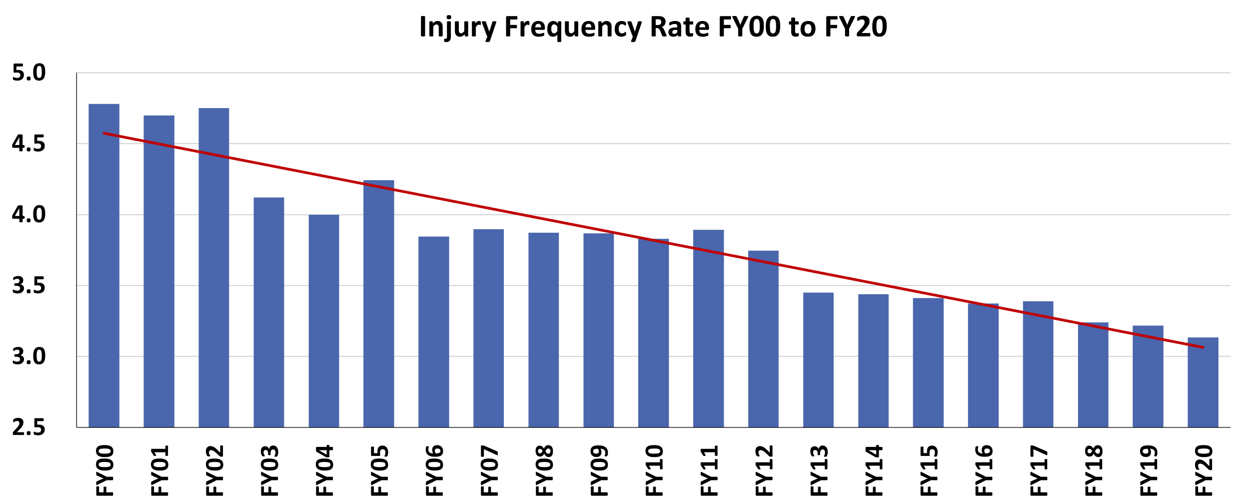
| | FY19 | FY20 |
|---|---|---|
| **Received** | 7,577 | 12,730 |
| **Accepted** | 6,273 | 7,667 |
| **Inactivated** | 135 | 114 |
| **Reactivated** | 7,006 | 9,023 |

### B. Injury Frequency Rate

The *Incident Rate of Injuries and Illnesses per 100 Covered Full-Time State Employees* provides an objective measure of the results of implementation of covered state entities risk management plans and the results of the Office's risk management program, related specifically to occupational injuries. The injury frequency rate is important as it reflects not only the effectiveness of the Office's risk management program in identifying risks to covered state entities, but also reflects covered state entities actions regarding implementation of recommendations to control and correct the conditions that lead to injured state employees.

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.

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

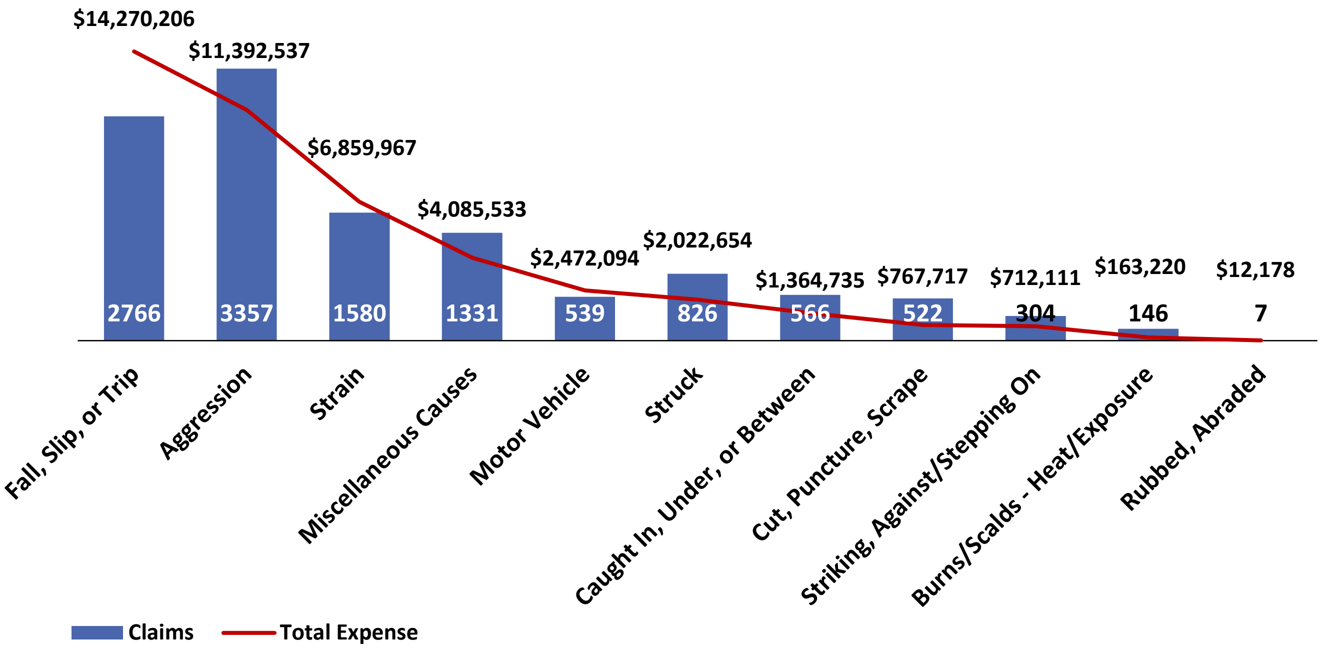



## C. Severity and Major Causes of Injury

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 is 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 the Office in FY19 and FY20. The total medical and indemnity benefits that have been paid since the date of injury are also included.

## Injury Cause and Cost FY19 & FY20




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

The Texas Department of Insurance, Division of Worker' Compensation 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. In the 86$^{th}$ R.S., the Office received authorization to implement a comprehensive, configurable, and cloud-enabled risk management information system (RMIS) to modernize its technological infrastructure and integrate its statutory programs. The Office contracted with Origami Risk, LLC, on September 16, 2020, for a RMIS that will, among other features, 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.

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

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.

## VIII. CONTINUITY OF OPERATIONS PLANNING

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.[1] The recommended standards for the minimum content in state entities' continuity plans correspond to FEMA standards, and are available at no cost to state entities.

The Office receives and reviews a Continuity of Operations Plan (COOP) from each state entity that is (1) involved in the delivery of emergency services as a member of the governor's Emergency Management Council; (2) part of the State Data Center Services program; or (3) subject to Labor Code Chapter 412 or Chapter 501. SORM assists state entities with the implementation of COOP plans that outline 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.

State entities are responsible for designating and retaining a FEMA certified and trained continuity coordinator. The state entity's continuity coordinator is responsible for implementing the Office's recommendations and ensuring the COOP plan is reviewed and updated annually.

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

### A. Self-Insured Retention

It is a common assumption that the state of Texas self-insures its real and personal property or is adequately protected from other casualty liabilities through sovereign immunity. The State does retain the risk of loss; however, absent a dedicated methodology or funding mechanism, a significant portion of

[1] Continuity Planning Policy Guidance Letter

the State's potential liabilities are uninsured[2] or simply not insured by a third-party insurance policy. This means that in the event of a loss, the agency, or the state of Texas if requested from the Legislature, must pay from its internal unallocated resources for any resulting loss.

The Office, with the implementation of its RMIS, will be able to collect, consolidate, and analyze historical data, including insurance claims, to assess risk and insurability. In addition to the above analysis, the Office could evaluate the State's risks and determine the retention limits (maximum amount) the State could sustain and retain for a single loss. This amount is a self-insured retention (SIR).

An SIR is a commonly used insurance tool utilized (and expected) in many types of commercial insurance policies. An SIR is similar to an insurance deductible, but instead of a state entity paying the deductible or portion of the loss to an insurer prior to insurance disbursement, a state entity would pay for a loss up to a certain retention limit, with the insurer covering amounts in excess of the retention limit. The Office has recommended the creation of a centralized, mandatory state property insurance program to normalize the effect of ordinary losses on individual state entities' budgets.[2]

The implementation of an enterprise SIR would likely require legislative action, but would allow the state to pay for losses up to a pre-determined amount or exposure without the costs associated with traditional insurance. The funds are collected for and dedicated to paying claims up to the amount of the SIR, with reinsurance or excess insurance coverage purchased only to assist with losses that exceed the SIR or pooled[3] resources.

Anticipated insurance costs would be reduced since the State would already reserve or retain funds for anticipated losses or attritional losses (non-catastrophic) within the SIR amount and only purchase insurance for larger, catastrophic losses. Cost savings is achieved through reducing the number and cost of claims that are reported to a third-party carrier. An SIR would serve a public purpose, utilize economies of scale and incentivize state entities to purchase property insurance. Doing so would reduce overall insurance costs and minimize (or lessen the impact of) dramatic fluctuations caused by an unpredictable market. Reducing the ramifications of market fluctuations will stabilize insurance premiums for the insurance purchasing program. This tool is not reliant on insurance market trends, providing more consistency for state entities annual budgeting process.

In the interim, the agency is partnering with all constituencies in active consideration of program infrastructure response to market pressures resulting from multiple exposures in the property, liability, and cyber sectors, exacerbated substantially by the COVID-19 pandemic. Options under active advisory council decision-making include program structure, coverage terms and conditions, scope of service, and financing options for conditional insured reserves.

---

[2] See the "Insurable Assets Interim Study" for additional information.
https://www.sorm.state.tx.us/wp-content/uploads/2017/06/state_insurable_assets_study.pdf
https://www.sorm.state.tx.us/wp-content/uploads/2017/06/state_insurable_assets_study_2013.pdf
https://www.sorm.state.tx.us/wp-content/uploads/2017/06/state_insurable_assets_study_2016.pdf

[3] Pooling is the process of combining resources to finance losses. State pools can be created based upon various criteria, including common exposure, geography, or a mutually supporting combination.

### B. Statutory Change – 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, 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.

## X. DIRECTOR'S SECTION 412.042 REPORT

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 SORM as of the 2020 Legislative Appropriations Request submission.

### A. Summary of Administrative Expenses

| Category | FY20 Est. | FY21 Budgeted | Biennium Total | Percent of Total |
|---|---|---|---|---|
| **Salaries** | $7,060,637 | $7,557,391 | $14,618,028 | 63.81% |
| **Other Personnel Costs** | $460,102 | $250,000 | $710,102 | 3.10% |
| **Contracted Services** | $1,664,895 | $1,750,000 | $3,414,895 | 14.91% |
| **Consumable Supplies** | $42,072 | $38,434 | $80,506 | 0.35% |
| **Utilities** | $7,233 | $6,058 | $13,291 | 0.06% |
| **Travel** | $99,028 | $125,000 | $224,028 | 0.98% |
| **Rent – Building** | $720 | $720 | $1,440 | 0.01% |
| **Rent – Other** | $28,517 | $24,000 | $52,517 | 0.23% |
| **Other Operating** | $1,567,339 | $1,977,341 | $3,544,680 | 15.47% |
| **Capital** | $0 | $250,000 | $250,000 | 1.09% |
| **Total** | **$10,930,543** | **$11,978,944** | **$22,909,487** | **100%** |

### B. Unexpended Appropriations

Of the $11.98 million appropriated for FY21 administrative purposes, cash basis payments as of December 18, 2020 total $3,212,619 and an additional $1,547,883 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 $2 million was carried forward from FY18 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 18, 2020, the cash balance remaining was $24,984,024, 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 $7.2 million for the administrative appropriation will be necessary for operations for the remainder of the fiscal year.

The Office estimates that roughly $23.9 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 FY21 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 approximately $11,454,743 each year for FY22 and FY23, a biennial total of $22,909,487, 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 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. 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. The largest variable with the potential to impact costs may be COVID-19 claims; with the volume, amount of expenditures, and possible legislation all largely unknown