

## **BILL ANALYSIS**

Senate Research Center

H.B. 2133  
By: Jackson (Ratliff)  
Economic Development  
5-11-97  
Engrossed

### **DIGEST**

Currently, Chapter 412, Labor Code, sets forth the guidelines for the division of risk management. The Legislative Oversight Committee on Workers' Compensation in its Biennial Report to the 74th Legislature and the House Business and Industry Committee in its Interim Report to the 74th Legislature studied the methods by which the state provides workers' compensation insurance coverage to its employees and risk management programs to reduce costs. Both reports concluded that changes in the organization and management of the state risks and claims payments would reduce injuries, improve loss control and claims handling, and otherwise enhance the quality and effectiveness of the state's risk management and claims processing programs. Such changes included the providing of total responsibility to state agencies for risk and claims cost; and providing a more equitable funding mechanism for payment of workers' compensation claim costs. This bill would delete existing Chapter 412, Labor Code, and add a new Chapter 412, Labor Code, relating to the creation, powers, and duties of the State Office of Risk Management, to implement these suggested changes.

### **PURPOSE**

As proposed, H.B. 2133 replaces Chapter 412, Labor Code, relating to the division of risk management, with a new Chapter 412, Labor Code, relating to the creation, powers, and duties of the State Office of Risk Management.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the risk management board in SECTION 1 (Section 412.031, Labor Code), and to the executive director of the State Office of Risk Management in SECTION 1 (Sections 412.041(h)(1) and (3), Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 412, Labor Code, as follows:

#### **CHAPTER 412. STATE OFFICE OF RISK MANAGEMENT SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 412.001. DEFINITIONS. Defines "board," "director," "office," and "state agency."

#### **SUBCHAPTER B. OFFICE**

Sec. 412.011. OFFICE. Provides that the State Office of Risk Management (office) is created to administer the government employees workers' compensation insurance and the state risk management programs. Sets forth the duties of the office. Provides that the office is administratively attached to the Texas Workers' Compensation Commission (commission) and the commission shall provide the facilities for the office, but the office shall be independent of the commission's direction.

Sec. 412.012. FUNDING. (a) Requires the office to be administered through money appropriated by the legislature and through interagency contracts for the risk management program and the allocation program for the financing of state workers' compensation benefits.

(b) Requires each state agency to enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency. Sets forth the costs payable under the contract. Provides that the amount of the costs to be paid by a state agency under the interagency contract is based on certain factors.

(c) Provides that the state is self-insuring with respect to an employee's compensable injury. Requires the legislature to appropriate the amount designated by the appropriation structure for the payment of state worker' compensation claims costs to the office. Provides that this section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act. Requires the office to establish an allocation program for the payment of workers' compensation claims paid from the general revenue fund that are incurred by state agencies subject to Chapter 501. Requires the money appropriated by the legislature for workers' compensation for state employees to be allocated under that program as provided herein. Requires the office, at the beginning of each state fiscal biennium, to determine which state agencies accounted for 90 percent of the state's general revenue claims for workers' compensation claims for the preceding state fiscal biennium. Provides that those state agencies are required to participate in the allocation program for the next state fiscal biennium. Requires the office to establish a formula for allocating the state's workers' compensation costs amount those agencies, based on the claims experience of the agencies and the related costs incurred by administering the claims. Requires a state agency that is required to participate in the allocation program to be rewarded or penalized for its actual performance against expected workers' compensation losses as provided by Subsection (c). Requires the office to receive the amount appropriated for workers' compensation claims. Requires the office to perform certain actions in regard to the workers' compensation expenses. Provides that if the office determines that an agency's performance resulted in workers' compensation claims costs that were higher than the amount allocated to that agency, the agency is not entitled to additional state funds for those costs beyond the initial allocation and shall pay the additional costs from the agency's regular appropriated funds. Requires the agency to reimburse the office for the additional costs through interagency contracts, from the agency's regular appropriated funds. Provides that if the office determines that an agency's performance resulted in workers' compensation claims costs that were lower than the amount allocated to that agency, the agency is entitled to retain a portion of the savings. Requires the office to determine the amount of the savings that the agency may retain. Requires a state agency that is determined by the office to be exempt from participation in the allocation program to receive full coverage for workers' compensation costs incurred by that agency from the office.

(d) Requires all money recovered by the director from a third party through subrogation to be deposited into the state workers' compensation account in general revenue. Authorizes funds deposited under this section to be used for the payment of compensation and other benefits to state employees.

#### SUBCHAPTER C. BOARD

Sec. 412.021. RISK MANAGEMENT BOARD. Provides that the office is governed by the risk management board (board). Requires the members of the board to have demonstrated experience in the field of workers' compensation and risk management administration. Sets forth the composition of the board. Sets forth the terms of the members of the board. Requires the lieutenant governor or speaker of the house of representatives to designate one member of the board as presiding officer on an alternating basis. Requires the presiding officer to serve in that capacity for a two-year term. Provides that the board is subject to Chapters 552 and 2001, Government Code. Provides that the board is subject to Chapter 325, Government Code, regarding the Texas Sunset Act. Provides that the board is abolished and this section expires September 1, 2009.

Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. Requires a person

appointed to the board to complete at least one course of a training program that complies with this section to be eligible to take office as a member of the board. Provides that the training course is to be completed within six months from the date of appointment, failure of which constitutes grounds for removal from the board. Requires a training program established under this section to provide certain information to the member.

Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. Prohibits a person from serving as a member of the board or acting as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession that is regulated by or that has fees regulated by the board.

Sec. 412.024. GROUNDS FOR REMOVAL FROM BOARD. Sets forth the grounds for removal of a member from the board. Requires the executive director (director) of the office, if the director knows that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer to then notify the lieutenant governor, the speaker of the house of representatives, and the attorney general that a potential ground for removal exists. Requires the director, if the potential ground for removal involves the presiding officer, to notify the next highest officer of the board, who shall notify the lieutenant governor, the speaker of the house of representatives, and the attorney general that a potential ground for removal exists.

#### SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD

Sec. 412.031. RULEMAKING AUTHORITY. Requires the board to adopt rules as necessary to implement this chapter and Chapter 501.

Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. Requires the board to report to each legislature relating to methods to reduce the exposure of state agencies to the risks of property and liability losses; the operation, financing, and management of those risks; and the handling of claims brought against the state. Sets forth the required contents of the report.

Sec. 412.033. Requires the board to hire a qualified person to serve as director of the office. Provides that the director serves at the pleasure of the board.

#### SUBCHAPTER E. DIRECTOR

Sec. 412.041. DUTIES; RESPONSIBILITIES. (a) Requires the director to serve as the state risk manager.

(b) Requires the director to supervise the development and administration of systems to identify the property and liability losses; to identify the administrative costs of risk management incurred by each state agency; to identify and evaluate the exposure of each state agency to claims for property and liability losses; and to reduce the property and liability losses.

(c) Sets forth additional duties of the director.

(d) Authorizes the director, with the approval of the board, to secure and provide for services that are necessary and to employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(e) Provides that the director also serves as the administrator of the government employee workers' compensation insurance program.

(f) Authorizes the director, in administering and enforcing Chapter 501, to act in the capacity of employer and insurer. Provides that this subsection is effective for dates of

injury before September 1, 1995. Requires the director to act as an adversary before the commission and courts and present the legal defenses and positions of the state as an employer and insurer. Entitles the director to the legal counsel of the attorney general. Provides that the director is subject to the rules, orders, and decisions of the commission in the same manner as a private employer, insurer, or association.

(g) Requires the director, in administering and enforcing Chapter 501, to act in the capacity of insurer. Provides that this subsection is effective for dates of injury on or after September 1, 1995. Requires the director to act as an adversary before the commission and courts and present the legal defenses and positions of the state as an insurer. Entitles the director to legal counsel of the attorney general. Provides that the director is subject to the rules, orders, and decisions of the commission in the same manner as an insurer or association.

(h) Requires the director to prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501, effective for dates of injury before September 1, 1995; to prepare for adoption by the board and enforce reasonable rules for the prevention of accidents and injuries; and to prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501, effective for dates of injury on or after September 1, 1995.

(i) Requires the director to hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this chapter and Chapter 501.

(j) Requires the director to furnish copies of all rules to the commission and to the administrative heads of all state agencies affected by this chapter and Chapter 501.

Sec. 412.042. REPORTS TO THE LEGISLATURE. Requires the director to report to the legislature at the beginning of each regular session. Requires the report to be dated January 1 of the year in which the regular session is held. Sets forth the required contents of the report. Requires the director to report to the legislature a state agency that fails to meet its obligation regarding the prevention of accidents and injuries to state employees.

#### SUBCHAPTER F. STATE AGENCIES

Sec. 412.051. DUTIES OF STATE AGENCIES. Require each state agency subject to this chapter to actively manage the risks of that agency by developing, implementing, and maintaining programs designed to assist employees who sustain compensable injuries to return to work.

Sec. 412.052. EXEMPTION OF CERTAIN STATE AGENCIES. Provides that this chapter does not apply to a state agency that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989.

Sec. 412.053. ANNUAL REPORT BY STATE AGENCY. Requires each state agency to report to the director for each fiscal year certain information. Requires the information to be reported on or before 60 days after the close of each fiscal year. Deletes existing Chapter 412, relating to division of risk management.

SECTION 2. Amends Section 501.001, Labor Code, by amending Subdivisions (3) and (4) and by adding Subdivision (7), to redefine "director" and "office" and to define "board."

SECTION 3. Amends Section 501.002(c), Labor Code, by providing that for the purpose of applying the provisions listed by Subsection (a) to this chapter, "insurer" or "employer" means, among other items, "office" or "state agency."

SECTION 4. Amends Section 501.003(a), to provide that the provisions of this chapter and the rules of the board, rather than the director of the workers' compensation division of the attorney general's office, affecting an employee also apply to the legal beneficiary of a deceased employee.

SECTION 5. Amends Section 501.046, Labor Code, to require the director of the State Office of Risk Management, in addition to other reports required by the board, rather than the commission, to file a subsequent report no later than the 10th day of the termination of the injured employee's incapacity.

SECTION 6. Repealers: Sections 501.023, 501.041, 501.042, 501.043, 501.047, and 501.049, Labor Code (State Self-Insuring; Workers' Compensation Division, Director; Director as Insurer; Director's Powers and Duties; Reports to Legislature; and State Workers' Compensation Account).

SECTION 7. Amends Section 402.021(a), Labor Code, to delete text requiring the commission to have, among other divisions, a division of risk management. Makes conforming changes.

SECTION 8. Amends Section 403.003(b), Labor Code, to prohibit the commission, in setting the rate of assessment, from considering revenue or expenditures related to the State Office of Risk Management, rather than the division of risk management; the research and oversight council on workers' compensation, rather than the research center; or any other revenue or expenditure excluded from consideration by law.

SECTION 9. Makes application of this Act prospective.

SECTION 10. (a) Provides that the division of workers' compensation in the office of the attorney general and the division of risk management in the Texas Workers' Compensation Commission are abolished on the effective date of this Act. Requires all employees, records, equipment, and supplies in the custody of those divisions, as those divisions existed on August 31, 1997, to be transferred to the State Office of Risk Management no later than December 31, 1997.

(b) Requires the lieutenant governor and the speaker of the house of representatives, in making the initial appointments to the risk management board, to each appoint one member for a term expiring February 1, 1999; one member for a term expiring February 1, 2001; and one member for a term expiring February 1, 2003.

(c) Requires the lieutenant governor to appoint the first presiding officer to serve in that capacity for a term expiring February 1, 1999.

SECTION 11. Effective date: September 1, 1997.

SECTION 12. Emergency clause.