HOUSE
RESEARCH
ORGANIZATION bill analysis 4/15/97

HB 2133
Jackson, Brimer

SUBJECT: Creating State Office of Risk Management for workers' compensation

COMMITTEE: Business and Industry — favorable, with amendments

VOTE: 6 ayes —Brimer, Corte, Dukes, Elkins, Giddings, Woolley

0 nays

3 absent — Rhodes, Janek, Solomons

WITNESSES: For — None

Against — None

On — Ben Delgado, Texas Workers Compensation Commission; June L. Karp, Research and Oversight Council on Workers Compensation; Bill Kramer, Legislative Budget Board

BACKGROUND: Oversight and administration of state workers' compensation benefits and claims is handled by the workers' compensation division of the Office of the Attorney General. Risk management programs are handled by the division of risk management in the Texas Workers' Compensation Commission (TWCC).

The TWCC risk management division is responsible for collecting data, assisting state agencies in developing risk management programs, writing risk management guidelines and reporting the status of the state's risk management efforts to the Legislature.

State agencies with five or more employees must comply with TWCC risk management requirements and oversight, except for the University of Texas System, the Texas A&M System, Texas Tech and the Texas Department of Transportation, which were exempted from the law in 1989 because they had their own programs in place.

The Office of the Attorney General Workers' Compensation Division handles workers' compensation claims for all state employees except those employed by A&M University and University of Texas systems and the Texas Department of Transportation, which are governed under separate chapters of the Labor Code. Since the state is self-insured for workers compensation risks and does not buy insurance to cover potential claims, the Office of the Attorney General files with TWCC the workers' compensation reports otherwise required from employers and insurers.

Currently, the Legislature appropriates 75 percent of expected claims costs to the Division of Workers' Compensation in the Attorney General's Office and agencies reimburse the attorney general for the other 25 percent from their budgets.

DIGEST: HB 2137, as amended, would create a State Office of Risk Management to administer the state workers' compensation and risk management programs. The division of workers' compensation in the attorney general's office and the division of risk management in TWCC would also be abolished on September 1, 1997. Employees of those divisions would be transferred to the new office not later than December 31, 1997.

The act would take effect September 1, 1997, and would apply to workers' compensation claims made on or after that date.

The board and board duties

The office would be governed by a six-member board with three members appointed by the lieutenant governor and three members appointed by the speaker. Members of the board would hold staggered terms of six years; the lieutenant governor and the speaker would designate on an alternating basis a president to serve for two years. The board would be subject to standard training, conflict of interest, grounds for removal and rulemaking provisions as most other state agency boards.

The office would use the staff and facilities of the TWCC. The board would appoint a director and could employ professional consultants, technical assistants and other employees. TWCC could not adopt rules relating to the State Office of Risk Management.

The office would be required to review, verify, monitor and approve state agency risk management programs in addition to TWCC risk management duties under existing law.

Reporting

All state agencies would be required to comply with annual reporting requirements. State agencies with medical malpractice, workers' compensation or self-insurance coverage before January 1, 1989, would be exempt from the other requirements in the act.

State agencies would be required to actively manage risks by developing, implementing and maintaining return-to-work programs for injured employees.

Funding allocations

The office would be required to establish an allocation program for the payment of state agency workers' compensation claims based on the claims experience of the agency and the related administration costs.

Agencies would be required to participate in the allocation program if they accounted for 90 percent of the state's workers' compensation claims costs. Other state agencies exempt from the program would receive full coverage for workers' compensation costs.

The Legislature would be required to appropriate to the state office the total amount designated for the payment of state workers' compensation claims costs, and funds would be allocated according to the allocation program. The office also would be required to monitor state agency workers' compensation claims experience and compare and report to each agency the difference between the allocated amount and the agency's actual expenses. An agency with workers' compensation costs higher than the amount allocated to the agency would be required to pay for the additional costs from regular appropriated funds or would be required to reimburse the office for payment of the additional costs. An agency with lower than expected workers' claims costs would be entitled to retain a portion of the savings.

Miscellaneous

HB 2133 would also make adjustments to conform the state office activities with current requirements and provisions such as allowing state agencies to enter into interagency contracts with the office, specifying the director serves as the state risk manager, and reporting to the Legislature.

The bill would take effect September 1, 1997.

SUPPORTERS SAY:

HB 2133 would help reduce state workers' compensation costs by improving state oversight and accountability and by increasing state agency responsibilities and incentives for reducing on-the-job injuries. HB 2133 is based on recommendations from the Legislative Oversight Committee on Workers' Compensation, the Sunset Commission, the House Business and Industry Committee interim study and the Texas Performance Review.

HB 2133 would combine risk management and claims processing in a way similar to private and other state workers' compensation systems. With mandatory reporting requirements for all state agencies and new authority to review and approve state agency risk management programs, the new state office would help the state monitor the effectiveness of agencies' risk management programs. Currently, the workers' compensation division in the Attorney General's Office does not have the loss control tools used by employers and carriers in the private sector, such as safety promotion and return-to-work policies.

A freestanding board would help keep the program independent and objective. It would also solve the potential conflict of interest of one state agency ruling over the actions of other state agencies.

The biggest step the state can take in cutting state workers' compensation costs is reducing the number of on-the-job injuries. Agencies are not statutorily required to implement health and safety programs or return-to-work programs; as of May 1994, the Sunset Commission found about 80 percent of 137 agencies reviewed for risk management did not have a formal return-to-work program. HB 2133 would help make state agencies statutorily responsible for maintaining a healthy workplace.

The allocation program as proposed in HB 2133 would create a financial incentive to reduce the incidence of workplace injuries by requiring certain agencies to absorb exorbitant workers' compensation costs and allowing them to keep a portion of any savings. Reimbursement to the state office for claims costs over expected levels would be expected to come first from administration funding and not program services funding.

The allocation program would include only those agencies with the highest workers compensation problem; about 10 state agencies account for about 90 percent of workers' compensation claims (Texas Department of Mental Health and Mental Retardation, Texas Department of Criminal Justice, Department of Human Services, Department of Protective and Regulatory Services, Texas Tech, Texas Youth Commission, Department of Public Safety, Parks and Wildlife, University of Houston and Texas Workforce Commission).

Requiring state agencies to keep injured employees on the payroll for 30 days would increase agency incentives to return the employee to work as soon as possible and save the state money in claims processing efforts. Currently, an injured employee receiving workers' compensation benefits is taken off the payroll, and the money appropriated for the employee's salary is usually used for other agency activities. The vast majority of state workers have relatively minor injuries and want to get back to work as soon as possible. Anticipated savings from this measure would far exceed any costs of employees abusing the system.

HB 2133 is expected to save $90,000 in general revenue in fiscal 1998-99 and approximately $720,000 per year thereafter. TWCC assumes that the creation of this office would result in a savings of more than $1 million in workers compensation claims due to better-focused risk management efforts, better coordination between loss control specialists and claims adjusters in the return-to-work programs, and the implementation of the cost allocation program.

OPPONENTS SAY:

HB 2133's savings may not be as high as anticipated, and state agencies may need more help in adjusting to new responsibilities. Financial incentives alone may not be enough for some agencies — they may need the assistance of experts to take on new workers' compensation responsibilities. For example, the Texas Performance Review recommended on-site adjusters for Texas MHMR, the agency with the highest number of workers' compensation claims, to help the agency manage cases more effectively and provide better service to employees.

The allocation program could penalize Texans relying on the services of a state agency if that agency's funds must be used to reimburse the state office for claim levels that exceed allocation program funding levels.

NOTES:

A committee amendment would provide that state agencies that have their own risk management programs would not be subject to review by the Office of Risk Management. Another amendment would require that the office is allocated the same amount for claims costs that is currently allocated to the Attorney General's Office.

A similar bill, HB 1589 by Jackson, passed the House during the 74th Legislature in 1995 but died in the Senate Economic Development Committee.