SUBJECT: Exempting Texas State University from buying insurance through SORM

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Clardy

WITNESSES: For — None

Against — None

On — Stephen Vollbrecht, State Office of Risk Management; Brian McCall, The Texas State University System

BACKGROUND: The State Office of Risk Management (SORM) was established by the Legislature and is directed by Labor Code, ch. 412 to provide risk management and insurance services to certain state entities and to provide workers' compensation benefits to injured state employees. State law requires state entities, with the exception of the University of Texas System, the Texas A&M University System, the Texas Tech University System, and the Texas Department of Transportation to purchase certain lines of insurance through SORM.

Under 28 Texas Administrative Code, part 4, subch. C, sec. 252.303(d), SORM must grant an exception to the requirement that it procure insurance policies and allow state entities to purchase insurance policies outside the SORM program if it finds that an agency has unique exposures, that the purchase is necessary because of substantial or unusual risk of loss, or that the coverage is necessary to protect the interests of the state.

In November 2013, SORM asked the Texas attorney general for an opinion on whether state agencies and institutions of higher education are permitted to purchase property insurance without the approval of SORM. In a May 2014 opinion (GA-1061), the attorney general said state agencies except those excluded by statute, must have SORM approval to purchase property, casualty, or liability insurance.

DIGEST:

CSHB 796 would remove the Texas State University System and component institutions from requirements in Labor Code, sec. 412.011 that they obtain risk management services and certain lines of insurance, including property and liability insurance, through the State Office of Risk Management (SORM).

The bill would require the Texas State University System and its component institutions to perform risk management services related to insurance coverage purchased by the system or institution without approval from the SORM board.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 796 appropriately would allow the Texas State University System and its board of regents to make decisions regarding property insurance, which would result in better, cost-effective coverage. The system already has saved about $1 million annually by purchasing its own insurance through a competitive bidding process instead of through the SORM risk pool. These savings help the system reduce operating expenses and avoid higher tuition rates. At a time when the state is asking public universities to operate more efficiently, the Legislature should not restrict the system's access to the private insurance market, which has demonstrated its ability to offer a similar – if not better – product at a lower price.

A number of other university systems, including the University of Texas System, the Texas A&M University System, and the Texas Tech University System, are not required to purchase property insurance through SORM. This bill would give the Texas State University System the same opportunity to find the insurance coverage that best suits its institutions.

The system has demonstrated that insurance coverage can be obtained outside the SORM program for better coverage at a lower price. After being presented with a $1.2 million premium increase for property insurance through SORM for the 2012-13 year, the system informed SORM it would seek alternative coverage options in the future. The system subsequently secured a bid that was $1.1 million less than the pricing of SORM's preferred broker. SORM denied the system’s request to purchase property insurance outside of SORM and threatened legal action if the system purchased its own insurance. SORM sought an opinion from the Texas attorney general regarding the dispute.

The university system said in a brief to the AG that SORM was requiring it to procure excessively costly insurance that does not meet its particular needs. A footnote to the opinion said that the dispute between SORM and the university cannot be resolved in an attorney general opinion. The footnote said SORM's rules require it to select lines of insurance based on several factors, including whether the insurance is "necessary to protect the interests of the state" and whether the insurance is "economically advantageous to the state." The footnote said that if the university is correct that it has been prohibited from obtaining insurance that better protects the state's interest at a lower cost, SORM may have a duty to allow the university to obtain such insurance. CSHB 796 would resolve the dispute and remove the university from the SORM risk pool.

There is no evidence that the system's withdrawal from the SORM program would harm other participants. In fact, the removal of the system's four campuses located along the Gulf coast should lower the overall level of risk to the SORM insurance pool. SORM's role to provide insurance for state entities also involves assisting those entities in procuring the lowest-cost coverage possible.

OPPONENTS

CSHB 796, by removing the Texas State University System as a member

SAY:

of SORM's insurance portfolio, could have a negative impact on the agency's ability to negotiate property insurance rates for other members of the risk pool. It also could prompt other state entities to seek authorization to leave the SORM program.

The global market for property coverage can vary widely depending on events such as natural disasters and terrorism. If the Texas State University System leaves SORM, it would not be protected from changing market conditions and insurance cost spikes in the future.

When the university rejected SORM's coverage several years ago, it removed about $3 billion in assets from a total pool of about $13 billion in assets. This required SORM to renegotiate insurance coverage, resulting in less overall coverage for state properties and higher premiums. The university system currently is not in legal compliance with state law requiring it to obtain SORM approval to purchase its own property insurance, according to a 2014 AG's opinion.

The university's decision to purchase its own insurance did not provide better coverage at a lower price. SORM followed its administrative procedures and conducted a side-by-side comparison of the system's proposed insurance policy and the one offered by SORM before denying the university's request to purchase outside coverage.

It was precisely because of volatility in the property insurance market that the Legislature created SORM. In fact, it was damage to a component of the Texas State University System – Lamar University in Beaumont – by Hurricane Rita in 2005 that led to SORM's establishment. Three years later, when Hurricane Ike struck Lamar, the institution was better insured through negotiations and advice from SORM and was able to quickly receive insurance payment and resume classes.

NOTES:

The companion bill, SB 781 by Eltife, was referred to the Senate Business and Commerce Committee on March 2.