

BILL ANALYSIS

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S.B. 651
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Senate Bill 651 is the Sunset bill for the Office of Injured Employee Counsel.

The Office of Injured Employee Counsel (OIEC) was created in 2005, when the legislature abolished the Texas Workers' Compensation Commission, transferred its regulatory duties to the Texas Department of Insurance (TDI), and moved its employee assistance functions to OIEC.

OIEC represents the interests of workers' compensation claimants by assisting unrepresented injured employees in navigating the division of workers' compensation of the Texas Department of Insurance (division) dispute resolution process; advocating on behalf of injured employees as a class in rulemaking and judicial proceedings; and informing injured employees and beneficiaries of deceased employees about the compensation system and assisting them in obtaining benefits by publishing information about employee's rights and responsibilities in the system. OIEC also files amicus curiae briefs before courts on issues of importance to injured employees as a class.

The OIEC is headed by a public counsel who is appointed for a two-year term by the governor and approved by the senate. OIEC operates on an annual budget of approximately \$7.8 million, funded through a dedicated General Revenue account. OIEC is administratively attached to TDI, which provides the OIEC budget, human resources, and technical support, as well as office space. OIEC has 169 full-time equivalent employees (FTEs), most of whom assist injured employees in the 24 field offices that OIEC shares with the division.

The Texas Sunset Advisory Commission (SAC) determined that Texas has a continuing need for OIEC, and this bill reflects the recommendations that were considered and adopted by SAC.

S.B. 651 continues the OIEC for six years, to coincide with the next SAC review of the division. S.B. 651 limits OIEC's authority to access claim files for injured employees OIEC is not directly assisting. S.B. 651 also adds standard SAC language requiring OIEC to maintain complaint information and to encourage the use of its alternative dispute resolution process.

SAC also adopted two management recommendations, not included in the bill, that are already being implemented by OIEC. Specifically, SAC directed OIEC to ensure injured employees are fully prepared by ombudsmen before attending a division benefit review conference, and directed OIEC to work with the division to complete firewalls in their new database system.

As proposed, S.B. 651 amends current law relating to the continuation and functions of the office of injured employee counsel under the workers' compensation program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 404.003, Labor Code, as follows:

Sec. 404.003. SUNSET PROVISION. Provides that the office of injured employee counsel (OIEC) is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, OIEC is abolished and this chapter expires September 1, 2017, rather than September 1, 2011.

SECTION 2. Amends Subchapter A, Chapter 404, Labor Code, by adding Sections 404.007 and 404.008, as follows:

Sec. 404.007. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires OIEC to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of OIEC rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution For Use By Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under OIEC's jurisdiction.

(b) Requires that OIEC's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires OIEC to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) Provides that OIEC's alternative dispute resolution policy does not affect the manner in which OIEC participates in the division of workers' compensation (division) of the Texas Department of Insurance's (TDI) administrative dispute resolution process or TDI's alternative dispute resolution process through OIEC's administrative attachment to TDI.

Sec. 404.008. COMPLAINTS. (a) Requires OIEC to maintain a system to promptly and efficiently act on complaints filed with OIEC. Requires OIEC to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Requires OIEC to make information available describing its procedures for complaint investigation and resolution.

(c) Requires OIEC to periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 3. Amends Section 404.111(a), Labor Code, as follows:

(a) Entitles OIEC, when assisting an injured employee, to the same access to information related to the employee's injury and workers' compensation claim as the employee or any other party to the claim. Deletes existing text authorizing OIEC, except as otherwise provided by this section, to access information from an executive agency that is otherwise confidential under a law of this state if that information is necessary for the performance

of the duties of OIEC, including information made confidential under Section 402.091 (Failure To Maintain Confidentiality; Offense; Penalty).

SECTION 4. Amends Section 402.082(b), Labor Code, as follows:

(b) Requires the division to provide the identity and contact information of claimants, rather than information maintained under Subsection (a) (relating to requiring the division to maintain certain information on every compensable injury), to OIEC. Deletes existing text providing that the confidentiality requirements imposed under Section 402.083 (Confidentiality of Injury Information) apply to injury information maintained by the division.

SECTION 5. Amends Section 402.085(a), Labor Code, to delete existing text requiring the division to release information on a claim to OIEC for any statutory or regulatory purpose that relates to a duty of that office. Makes a nonsubstantive change.

SECTION 6. Repealer: Section 404.111(d) (relating to requiring the division or TDI to provide any information or data requested by the public counsel in furtherance of the duties of OIEC under this chapter, except as provided by this section), Labor Code.

SECTION 7. Provides that the changes in law made by this Act to Sections 402.082(b), 402.085(a), and 404.111, Labor Code, apply only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act.

SECTION 8. Effective date: September 1, 2011.