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Justification Review

July 2004 Report No. 04-49

The State's Risk Management Program Could Be Authorized to Do More to Protect Florida's Assets

at a glance

The State of Florida delivers a broad range of services and has a large workforce, which exposes it to the risk of financial loss through property damage, employee injuries, and alleged negligent or improper acts of state employees.

Given the high cost of settling property, workers' compensation and liability claims, which approached $140 million in Fiscal Year 2002-03 in addition to an unfunded long-term liability of over $1 billion, the state needs to make every effort to control losses.

Florida's Division of Risk Management is performing well in its primary function of processing claims. However, a risk management program, by definition, involves more than processing claims once losses have occurred. Florida could be more proactive in protecting its assets by helping high risk agencies take adequate steps to prevent losses and contain costs.

Scope

This is the second of two reports presenting the results of our Program Evaluation and Justification Review of the Risk Management Program. The program is administered by the Division of Risk Management within the Department of Financial Services. State law directs the Office of Program Policy Analysis and Government Accountability to complete a justification review of each state agency program operating under a performance-based program budget. [1] In December 2003 we published a report addressing the program's property insurance component. [2] This report reviews the Risk Management Program's performance and identifies policy alternatives. Appendix A summarizes our overall conclusions.

Background

The State of Florida delivers a broad range of services and has a large workforce, which exposes it to the risk of financial loss through employee injuries, injuries to the public served by state programs, alleged negligent or improper acts of state employees, and property damage. Some state employee occupations, such as public safety and corrections, experience high employee injury rates, which affect workers' compensation expenses. Some state programs, such as child protective services, correctional services, and long-term care for the mentally ill, are vulnerable to claims related to civil rights violations. Florida is also at high risk for property damage due to perils such as windstorm and hurricanes. To address the financial consequences of these risks, the state has established a risk management program.

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[1] Section 11.513, *F.S.*

[2] *Information Brief: State's Property Insurance Program Balances Risk and Cost of Insurance*, Report No. 03-65, December 2003.

Risk management programs exist in the public sector and in private industry to avoid human loss and suffering, protect assets, and develop systems for managing risks and losses when they inevitably occur. Risk management strategies include establishing loss prevention programs, and sharing or transferring risk by purchasing commercial insurance.

Program description

As described in Exhibit 1, Florida's Risk Management Program handles claims for damage to state property, injuries to state employees, and incidents that result in liability including alleged negligent or improper acts of state employees.[3] Losses are primarily self-insured, with the Legislature appropriating funds annually to cover projected losses. The state's self-insurance is supplemented by the purchase of excess commercial insurance for property and workers' compensation to protect the state against catastrophic losses.

Florida uses a decentralized approach to risk management, with responsibilities divided between the Division of Risk Management and state agencies.

Division of Risk Management. The Division of Risk Management is responsible for the state's Risk Management Program, which includes central claims processing, purchasing excess insurance, and training agency safety coordinators. It also arranges for legal representation for the state by coordinating with the Attorney General's office or contracting for private legal services, and oversees a contract for workers' compensation managed care with a private vendor. The managed care vendor handles workers' compensation claims processing and the medical aspects of claims, and contracts with a network of medical care providers. It also reviews and adjusts medical billings. The division handles claim investigations, processes payments, and retains the authority to settle cases.

State agencies. While the Division of Risk Management provides some support, Florida decentralizes responsibility for loss prevention. Each agency is required to designate a safety coordinator, who represents the agency on the state's Interagency Advisory Council. The council meets quarterly to discuss safety problems, find solutions to problems, and assist in the implementation of the solutions. In addition, agencies conduct facility inspections, investigate job-related employee accidents, and establish safety awareness and other loss prevention programs.[4]

[3] In some cases, the state is required to provide workers' compensation or liability coverage for individuals that have a relationship with the state, yet are not state employees. Examples include volunteers and persons on work release programs through the Departments of Corrections and Juvenile Justice.

[4] Chapter 284.50, *F.S.*

Exhibit 1
The Division of Risk Management Handles State Property, Workers' Compensation, and Liability Claims

State Property Claims

Property claims are filed by state agencies that experience loss or damage to state-owned buildings and contents, when the loss is due to certain perils, i.e., fire, windstorm or flood. Agencies must meet a deductible of $2,500 before filing a claim.

State Employee Workers' Compensation Claims

State employee workers' compensation claims are filed by state employees that experience job-related injuries. Benefits include reimbursement of medical costs and lost wages, as well as death benefits.

State Liability Claims

Liability claims may address one of three areas related to alleged negligent or improper acts of state employees:

- *general liability* coverage includes premises and operations, personal injury, and professional liability;
- *auto liability* coverage is for claims arising from the ownership, maintenance, or use of automobiles by state employees (and agents or volunteers) while acting within the scope of their office or employment; and
- *federal civil rights and employment* includes coverage for federal civil rights action, plaintiff attorney fees and awards, and employment discrimination actions filed under either federal or state law.

Source: Department of Financial Services, Division of Risk Management.

Agencies are also responsible for developing loss control initiatives in the liability area, such as grievance procedures and employee training programs. In addition, when they contract with third party providers to provide state-supported services, agencies are responsible for ensuring that contractual terms protect the state from lawsuits arising from alleged contractor negligence. [5]

Funding

In Fiscal Year 2004-05, the Division of Risk Management was appropriated $22.7 million for program operations, including salaries for its 100 positions, and expenses related to purchasing insurance and contracting with the managed care vendor. Agency assessments paid to the division cover these costs, as well as the projected cost of settling claims during the year. [6] The Legislature appropriates specific funds to cover risk management assessments for workers' compensation and liability, but property assessments are paid with agency operating funds.

Projected program costs are rising, and the state assessed agencies $153.3 million for the total program budget in Fiscal Year 2003-04 (see Exhibit 2). [7] Projected costs are based on actuarial studies of the division's cash flow needs for claims and program expenses during the upcoming year. Total agency assessments are reduced when the division has funds carried over from the prior year, as was the case for Fiscal Year 2003-04.

Annual agency assessments for program costs are prorated based on each agency's experience and exposure. [8] Experience represents an agency's prior claims history, while exposure for workers' compensation and liability is based on the number of employees in the state agency and for property is based on the value of an agency's property holdings. Appendix B shows the Fiscal Year 2003-04 risk management assessments for each state agency.

Exhibit 2
Agency Assessments Cover Risk Management Program Costs

Type of Loss	Funding for Fiscal Year 2001-02	Funding for Fiscal Year 2002-03	Funding for Fiscal Year 2003-04
Property	$ 10,642,145	$ 13,594,805	13,413,544
Workers' Compensation	96,024,964	96,097,104	82,776,024
Liability			
General liability	12,591,432	14,400,719	12,078,402
Automobile	4,830,177	5,400,276	4,096,940
Federal civil rights / employment claims	18,453,427	34,063,233	40,938,762[1]
TOTAL	**$142,542,145**	**$163,556,137**	**$153,303,672[2]**

[1] The amount invoiced for Fiscal Year 2002-03 is based on actuarially estimated cash flow needs. Actual expenditures varied from the estimate due to contingent liabilities expected to be paid in Fiscal Year 2002-03 that were deferred to later fiscal years.
[2] For Fiscal Year 2003-04, the division was able to reduce the total agency assessments by $10 million, due to a cash balance carried over from the prior year.
Source: Department of Financial Services, Division of Risk Management Property and Casualty Premium Summaries showing the amounts listed billed to state agencies for each coverage type.

Because the state uses a cash flow approach to funding, an unfunded liability exists each year for obligations that have been established but will be paid in future years. For example, the state may need to make payments over several years to a state worker who is disabled as a result of a workplace injury. As of June 2003, the estimated state unfunded liability for risk management claims was approximately $1.07 billion.

[5] Agencies have three avenues for receiving assistance with incorporating risk management components into vendor contracts. They can receive technical assistance from the Division of Risk Management, the Division of Purchasing within the Department of Management Services, or the Insurance Regulation Division within the Department of Financial Services.

[6] The following expenses are included in the cost of claims: medical and death benefits, salary indemnity payments, legal costs, claims and judgments to injured parties, and payments to agencies for property losses.

[7] Agency assessments finance the State Risk Management Trust Fund, which is the source of the division's funding.

[8] The division presents cash flow projections based on actuarial analyses to the Revenue Estimating Conference, which recommends amounts to be appropriated to each agency in each budget year to cover risk management assessments. Needs are uncertain and difficult to project, and can be affected by the timing of trial dates and the final resolution of settlement amounts.

Program Benefit

The Risk Management Program is of benefit to the state and should be continued. The program

- administers a pooled risk property insurance program that results in lower insurance costs for agencies than if they were to purchase insurance in the market;
- provides centralized expertise and experience in handling claims; and
- performs a coordinating and educational role to help state agencies implement risk management programs.

Organizational Placement

The administrative function performed by the Division of Risk Management is an autonomous activity that could be placed in different areas of state government. However, the program's placement within the Department of Financial Services, the department responsible for other aspects of insurance, is logical. While the program could be consolidated with programs operated by the Department of Management Services (DMS) such as state group insurance, human resources, or purchasing, we see no compelling reason for a different organizational structure. [9]

Findings

The Division of Risk Management is performing well in its primary function of processing claims. However, a risk management program, by definition, involves more than processing claims once losses have occurred. Florida could be more proactive in protecting its assets by helping high-risk agencies take adequate steps to prevent losses and contain costs.

[9] One staff person within the DMS Division of Purchasing works with agencies to provide for their additional insurance needs. For example, DMS provides coverage for boilers and machinery, and for contents of state-owned buildings that are damaged due to perils such as vandalism or theft.

The division is efficient in processing claims, but state claims costs continue to rise

The division's performance measures indicate that it is performing reasonably well at processing claims. Measures also address state claims trends, and show that while the number of liability claims has been relatively stable over time, property and workers' compensation claims are decreasing. At the same time, the average cost of claims paid is increasing.

Performance Measures. The program's legislatively approved performance measures show that the Division of Risk Management is performing well at its primary responsibility of processing claims (see Appendix C). [10] It paid 98% of workers' compensation claims during Fiscal Year 2002-03 within the timeframes required by workers' compensation rules, exceeding its performance standard of 95%. It also closed 49% of the liability claims it worked in Fiscal Year 2002-03, which was slightly higher than the prior year's performance. [11, 12]

The program's performance measures also identify the level of claims activity in the state and the cost of settling claims. As shown in Appendix C, the number of claims worked in the property and workers' compensation areas is decreasing, while the number of claims worked in the liability area has been relatively stable over the last two years.

[10] As required by Ch. 20.055, *F.S.*, the Department of Financial Services' Inspector General's Office verified data reported through the division's performance-based program budgeting system, and found it sufficiently accurate to be used by decision makers.

[11] Although a 49% closure rate may appear to be low, the division needs to be cautious about trying to achieve specified closure rates within particular timeframes and also does not fully influence when claims are settled. For example, closing a liability case expeditiously may not be in the state's best interest if it leads to paying more for a claim than is justified. Also, civil rights cases are settled in federal courts, rather than at the state level, so measures of timeliness and closing rates are not reflective of program performance.

[12] Although the division did not meet most of its performance standards, this was largely due to it not having control over the outputs and outcomes related to its performance measures. For example, although the division did not meet its standard for the number of workers' compensation claims processed, it did process 100% of the claims received.

Internal division data on the number of new claims per year shows similar trends.[13] As shown in Exhibit 3, the total number of new claims received by the program has decreased over the past three years. The decline in the number of new property claims can be attributed to raising the agency deductible from $500 to $2,500, which also increased the average cost per claim by eliminating small claims from the average. The decline in the number of new workers' compensation claims can be attributed, at least in part, to a smaller state workforce.[14] Nevertheless, these claims are the largest portion of the division's workload, representing 85% of the new claims filed in Fiscal Year 2002-03 (see Exhibit 3).

[13] The "number of claims worked" is different from the number of new claims filed per year (presented in Exhibit 3), because claims can remain in the system for several years before being settled.

[14] As shown in *Annual Workforce Report* published by the Department of Management Services, Florida state government was reduced by 9,485 positions from 1999 to 2002.

Exhibit 3
The Number of New Claims Per Year Has Decreased Over Time

Type of Claim	2000-01	2001-02	2002-03
Property	178	198	111
State Employees Workers' Compensation	16,502	15,076	14,859
Liability			
General liability	1,656	1,632	1,445
Automobile	726	644	668
Civil rights / employment	450	438	468
TOTAL	19,512	17,988	17,551

Source: Analysis of information contained in Division of Risk Management annual reports.

Program Costs. Workers' compensation claims are the program's primary expense, at $97.5 million and 70% of total program expenditures for 2002-03 (see Exhibit 4).

Exhibit 4
Workers' Compensation Is the Largest State Risk Management Expenditure

Type of Loss		Expenditures for Fiscal Year 2000-01	2001-02	2002-03
Property	Claim costs	$ 687,000	$ 779,000	$ 1,061,000
	Expenditures [1]	7,498,027	11,068,695	7,435,806
	Total Property	$ 8,185,027	$ 11,847,695	$ 8,496,806
State Employee Workers' Compensation	Claim costs	$ 62,508,000	$ 66,232,000	$ 72,140,000
	Expenditures [2]	26,477,108	30,832,030	25,360,918
	Total Workers' Compensation	$ 88,985,108	$ 97,064,030	$ 97,500,918
Liability	General liability claim costs	$ 10,870,000	$ 9,788,000	$ 10,821,000
	Expenditures	640,321	532,907	628,882
	Total General Liability	$ 11,510,321	$ 10,320,907	$ 11,449,882
	Automobile claim costs	$ 3,068,000	$ 3,351,000	$ 3,410,000
	Expenditures	284,587	236,848	209,627
	Total Automobile	$ 3,352,587	$ 3,587,848	$ 3,619,627
	Federal civil rights and employment claim costs	$ 19,439,000	$ 19,901,000	$ 16,749,000
	Expenditures	996,055	710,543	1,467,392
	Total Federal Civil Rights and Employment [3]	$ 20,435,055	$ 20,611,543	$ 18,216,392
TOTAL RISK MANAGEMENT EXPENDITURES		$132,468,098	$143,432,023	$139,283,625

[1] The primary property expenditures are for excess property insurance premiums ($6.9 million in Fiscal Year 2002-03, $10.6 million in Fiscal Year 2001-02 and $7 million in 2000-01), and staff salaries.

[2] The primary workers' compensation expenditures are the managed care contract ($20.8 million in 2000-01, $21.6 million in 2001-02, and $17.2 million in 2002-03); a workers' compensation high deductible insurance policy (approximately $2 million per year); an annual assessment of $2 million to $3 million to the state Workers' Compensation Program, required by s. 440.51, *F.S.*; and staff salaries.

[3] Expenditures for Federal Civil Rights and Employment differ significantly from assessment amounts presented in Exhibit 2, because contingent liabilities expected to be paid in Fiscal Year 2002-03 were deferred to later fiscal years.

Source: Department of Financial Services, Division of Risk Management.

The cost to the state of settling these claims continues to rise, despite the decline in the overall number of claims. Several factors affect the costs. Medical costs are increasing over time, which division administrators attribute to national trends in medical costs. Salary indemnification costs also are rising, but at a slower rate than medical costs. [15]

Appendix D shows that the state agencies with the highest number of workers' compensation claims for Fiscal Year 2002-03 were the Departments of Corrections and Children and Families. The agencies with the highest ratio of claims per covered person were the Department of Veterans' Affairs, the Florida Wildlife and Fish Commission, and the Department of Agriculture and Consumer Services.

Federal civil rights and employment claims represent the second largest program expenditure area, with costs totaling $18.2 million in Fiscal Year 2002-03, which is 13% of program expenditures (see Exhibit 4). The division receives fewer civil rights and employment claims than workers' compensation claims, and costs for these claims are more volatile, averaging $13,339 in Fiscal Year 2000-01 and $47,646 in 2002-03. The timing of claim settlements has a significant impact on the average cost of claims. For example, the payment of a $5-million settlement on a single liability claim resulted in the reported increase in average claim cost for Fiscal Year 2002-03.

Several factors affect the cost of federal civil rights and employment claims. Legal costs can be significant, and represented 49% of total costs for these liabilities in Fiscal Year 2001-02 and 35% in Fiscal Year 2002-03. Also, settlement amounts for these claims are not subject to state sovereign immunity limits. [16]

Appendix E shows trend data for federal civil rights and employment discrimination claims. The agencies with the highest number of claims for Fiscal Year 2002-03 were the Department of Corrections and the Department of Children and Families.

While Florida's decentralized approach to risk management is appropriate, the Division of Risk Management should be more proactive in helping agencies minimize claims

Although the Division of Risk Management is performing well in its primary function of processing claims, it could be more proactive in managing state risks. By definition, a risk management program involves more than processing claims once losses have occurred; the purpose of risk management is to minimize losses or their financial consequences. Compensable incidents can impact employees' and the public's health and well being, and can reflect poorly on the states' ability to deliver services within federal civil rights guidelines. Incidents also can have major cost implications. For example, one case (Costello v. Wainwright) challenged prison living conditions, and the settlement required the department to spend millions of dollars over a 20-year period to address claims raised in the suit. [17]

The Division of Risk Management could be more proactive in protecting state employees, the general public, and the state's assets. Florida's approach to risk management rightfully places primary responsibility at the agency level. However, with additional authority, the division could do more to monitor and support agency efforts by assessing the adequacy of agency risk management programs, and providing assistance in improving programs that are identified as high risk.

Florida's decentralized approach to risk management is appropriate

State agencies have the primary responsibility for establishing loss prevention programs and some responsibility for controlling claims costs, while the Division of Risk Management largely

[15] Chapter 284.44(3), *F.S.,* defines "salary indemnification" as benefits paid to employees for temporary total disability. The purpose of indemnification payments is to return individuals to the same financial status as prior to a loss or injury.

[16] The other liability lines are subject to state limits. Section 768.28, *F.S.,* caps general liability and automobile claims at $100,000 per person's claims and $200,000 per occurrence for all claims.

[17] Service and program changes required by settlements are funded through agency appropriations, as are defense costs. When the plaintiff is entitled to attorney fees and costs, the Division of Risk Management covers them.

has an administrative role. Agencies are responsible for establishing safety programs designed to prevent injuries and losses. They also are responsible for helping injured employees return to work as soon as possible, thus minimizing costs for salary reimbursement and reducing the likelihood of long-term disability. [18] In addition, agencies can establish procedures to help avoid potential liability claims.

The division provides agency safety coordinators with training and also provides a web-based safety manual that includes information about best practices. The division also offers guidance for return-to-work programs that can reduce salary indemnity payments as well as the so called "hidden" costs in a workers' compensation system, i.e., costs such as overtime for other employees, which are incurred by agencies when injured workers do not return to work.

Placing primary responsibility at the agency level is practical and reasonable. A culture of concern with safety and loss prevention needs to exist at the level at which losses occur, and it is reasonable to investigate causes of incidents at the agency, rather than at the state level. For example, an outside inspector unfamiliar with an agency's facilities may not notice patterns of injuries that point to a specific hazardous condition that could be corrected. One such example cited by an agency we spoke with involved a pattern of falls caused by potholes that were not visible when filled by rainwater.

It also would take significantly more employees, funds, and expertise to centralize primary responsibility for risk management at the state level. Agency risk factors differ based on their missions, so their risk management needs vary. Some agencies centralize risk management, while others decentralize responsibility to regional or work site levels. Some agencies, especially those with public safety missions, have separate units devoted to safety functions, while others incorporate oversight into the job description of non-safety professionals.

[18] Florida's Workers' Compensation law places a limitation on the amount of salary reimbursement for employees with workplace injuries. To maintain a 100% salary level, employees may choose to use accrued sick and annual leave.

Some agencies may need additional support to control their losses and reduce costs

Although a decentralized system is practical for Florida, some agencies do not have the expertise to develop effective risk management systems. Agencies would benefit from additional assistance in identifying ways to better prevent losses and control costs. They also may need assistance in designing more effective return to work programs, as returning injured employees to work has a direct impact on state costs and on the economic status of the employees. However, such assistance would not be cost-effective for agencies with few exposures and losses.

Several agency administrators we interviewed would like more assistance in managing risk, especially the risk of worker injury, in which case costs can be significant. To address this need, Florida could use a private industry model, with trained risk management professionals helping to identify exposures, and develop comprehensive programs that help reduce potential losses related to those exposures.

The benefits of a comprehensive approach to loss prevention and cost control can be demonstrated by successes of those agencies that have focused on improving their risk management systems. For example, the Florida State Hospital risk management program developed a system to categorize the cause of accidents, and tracks actions taken in response to incidents such as removing hazards or providing training. As a result of this effort, the hospital has reduced injuries for 14 consecutive years. From Fiscal Years 2000-01 to 2001-02, it experienced a 24% reduction in the overall number of claims.

Similarly, the Department of Agriculture and Consumer Services' Division of Plant Industry has achieved a 62% decrease in claims over a two-year period (from 516 claims in 2000 to 198 in 2002). The department attributes the reduction in claims to adding a fulltime safety and loss employee; careful internal tracking of injuries and their causes; extensive safety training programs; and regular communication through web pages and newsletters focusing on problem areas.

Identifying and monitoring high-risk agencies would be a cost-effective way to avoid claims and reduce state costs

The Division of Risk Management could be more proactive by focusing on two interrelated areas: (1) helping agencies put systems in place to help prevent accidents and civil rights and employment discrimination violations from occurring; and (2) helping mitigate the impact of incidents when they inevitably occur. Implementing a system to address these areas would involve

- using data to identify agencies with patterns of high incident rates,
- taking action when patterns of high incident rates are identified, and
- helping high risk agencies design satisfactory loss prevention and cost control systems that incorporate the use of best practices.

The Division of Risk Management should use available data to assess the agencies' effectiveness in managing risk. As part of its claims processing function, the Division of Risk Management collects data on agency losses. However, it does not currently use this data to assess the state's overall effectiveness in controlling risk and identify agencies that need to improve their efforts to prevent losses and control costs. For example, the division does not determine the extent to which state agencies meet the intent of Florida's workers' compensation law by providing quick and efficient delivery of services to injured workers, and facilitating injured worker's return to gainful reemployment. [19] These actions are critical in serving injured workers and controlling workers' compensation costs. The Division of Risk Management could evaluate the extent to which injured employees reach maximum medical improvement and return to work within expected timeframes for the type of injury, or evaluate the effectiveness of service delivery. [20]

The division also could provide loss data to agencies in a format that could be used to help them better focus their risk management efforts. [21] The division currently provides individual claim information to agencies for confirmation, but does not provide additional summary information or interpretation of the data, such as settlement and indemnity trends, or growth in particular types of claims. Agencies, especially large ones with field offices and work sites in many locations across the state, need this type of information to be able to identify and correct unsafe conditions.

The division lacks authority and resources to take action when agencies experience high incident rates. The division's current authority is limited to training a safety coordinator within each agency, which may not be sufficient to provide agencies with the information, skills and support they need to develop effective risk management programs. With a staff of four, the division's risk services section is also limited in the amount of consultative assistance it can provide.

The division believes that loss prevention is the key to containing the state's risk management costs. However, it lacks the authority to conduct risk assessments of high incidence agencies or to compel these agencies to improve the effectiveness of their safety programs. While conducting risk assessments would add to program costs, a more comprehensive risk management program would reduce the number of claims, and thereby reduce state costs associated with processing and settling claims.

Within the current system, agencies are responsible for developing their own loss prevention and return to work programs and maintaining any additional data they may need to manage risk. Absent a centralized mechanism for analyzing data about incidents and a focus on system outcomes, there is little incentive for agencies to concentrate on important goals for risk management systems, such as preventing injuries, and avoiding unnecessary costs by returning injured employees to full or transitional employment in a timely manner.

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[19] Section 440.015, *F.S.*

[20] Agencies are not responsible for services provided by the managed care vendor. However, agency-level data about outcomes for injured workers, such as time out of work and salary indemnification costs, could be used to pinpoint service delivery challenges.

[21] The division makes limited use of a "targeting" system, whereby claims adjusters observe a pattern of losses, and notify agencies regarding their concerns.

Some agencies need help to design risk management systems that incorporate the use of best practices. In the private sector, insurance companies often provide risk management services and monitoring to the entities they insure. [22] These services include safety training, accident and hazard analysis, and reviewing risk management plans. As a self-insurer, Florida needs to develop its own internal mechanisms for managing risk.

The division could assist high-risk agencies develop effective risk management systems by educating them about needed components of an effective system, and sharing best practices and models of successful approaches. The division also could help agencies analyze data to pinpoint areas needing improvement and to address the areas of need.

While risk management efforts often focus largely on workplace safety, agencies also need to assure that policies and procedures related to liability are in place and enforced. Clear employment guidelines, grievance procedures and contractual indemnification are all tools that can help agencies manage risk. The division also could assist agencies identified as having high incidence rates in developing such comprehensive approaches.

This is particularly important because Florida is increasingly outsourcing services it provides to the public. For example, the Department of Children and Families outsources child protective services and the Departments of Juvenile Justice and Corrections contract with providers to operate detention and correctional facilities. Although outsourcing may help agencies reduce the cost of service delivery or meet an increased demand for services without increasing state infrastructure, the state needs to protect itself against the potential that poor vendor performance could result in lawsuits against the state.

[22] In the private sector, evidence of a risk management program can be a condition of providing insurance.

The division may need additional resources to effectively identify and monitor the risk management systems of agencies experiencing high incidence rates. This cost would be paid by increasing the state agencies' annual risk management assessments. However, this investment would likely be more than offset by savings to the state from avoiding claim costs.

The division has explored hiring a private firm that offers risk management consulting services to assist agencies. However, it abandoned the idea when it concluded that it lacked the authority to compel agency cooperation. The division estimated that the cost of providing these services would total $500,000 to $600,000 per year. If the state had been able to reduce the number of new workers' compensation claims in Fiscal Year 2003-04 by 5% the cost savings related to these claims would have been an estimated $1.5 million in the first year alone. Reducing the number of claims and their related costs would more than cover the cost of providing the services. [23] Agencies that have been proactive in controlling risk have achieved far greater reductions. For example, the Fish and Wildlife Commission's year-long safety campaign reduced the number of workers' compensation claims by 57% for the Fiscal Years 1999-00 through 2001-02.

Recommendations

Given the high and continually growing cost of workers' compensation and liability claims, the effects of workplace injuries and state employee negligence on the lives of individuals, and the increase in outsourcing of state services, the state needs to work to reduce losses. While the current approach of handling risk management at the agency level is practical, Florida could be more proactive by providing state-level oversight of agency risk management initiatives.

[23] As shown in Exhibit 3, the state experienced 14,859 new workers' compensation claims in Fiscal Year 2002-03. During the first year, 9,095 claims incurred a payment. A 5% reduction in claims would have resulted in approximately 455 fewer claims with a payment. Given that the average payment on an individual claim during the fiscal year was $3,374, the first year savings resulting from reducing the number of claims by 5% would have been an estimated $ 1.5 million.

Towards this end, we recommend that the Legislature

- revise Chapter 284, *Florida Statutes*, to provide the Division of Risk Management with the authority to assess the overall performance of the state's risk management system;
- direct the Division of Risk Management to develop a proposal for providing more risk management services to state agencies. The plan should include the division's proposed approach to targeting agencies needing assistance, specific services to be provided, and an analysis of net cost savings to be derived from reducing claims costs, which would enable the Legislature to consider the potential return on investment of this alternative; and
- direct the Division of Risk Management, in consultation with the Department of Management Services, to develop a formal process for ensuring agencies are knowledgeable of the issues related to insurance, loss prevention, and risk management that should be addressed in bid processes and contracts, to include the issue of liability in case of contractor negligence.

Agency Response

In accordance with the provisions of s. 11.513, *Florida Statutes,* a draft of our report was submitted to the Secretaries of the Department of Financial Services and the Department of Management Services for each to review and respond.

A written response was received from the secretary of the Department of Financial Services and is reprinted herein (see Appendix F, pages 17 and 18).

Appendix A

OPPAGA Conclusions for Program Evaluation and Justification Review

Section 11.513(3), *Florida Statutes,* provides that OPPAGA program evaluation and justification reviews shall address nine issue areas. Our conclusions on these issues as they relate to the Department of Financial Services, Division of Risk Management, are summarized below.

Issue	OPPAGA Conclusions and Policy Options
The identifiable cost of the program	Program expenditures for Fiscal Year 2002-03 were $139.2 million, which includes $6.9 million for operations, $28.1 million for contracted managed care, excess insurance premiums and its assessment to the Division of Workers Compensation, and $104.1 million for claims. (See page 5.)
The specific purpose of the program, as well as the specific public benefit derived therefrom	The Risk Management program ensures that participating state agencies are provided quality worker's compensation, liability, federal civil rights, auto liability and property insurance coverage at reasonable rates by providing self-insurance, purchasing insurance, handling claims and providing technical assistance in handling risk. (See page 2.)
The consequences of discontinuing the program	If the program were discontinued, each state agency would be responsible for covering the cost of losses incurred, and may need to return to the legislature for additional appropriations to cover the losses. Another consequence would be a duplication of effort in claims resolution; agencies would need to acquire the knowledge to litigate multiple types of insurance claims including property, workers' compensation, and federal civil rights and employment discrimination. It would also be necessary for each agency to purchase individual property and casualty insurance policies, which is more costly than the state's system of pooling resources to cover losses. (See page 4.)
Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part	The division's activities should be continued. It minimizes the unexpected use of state operating capital, and provides centralized expertise in handling claims. (See page 4.)
Progress towards achieving the outputs and outcomes associated with the program	The division's performance-based program budgeting measures and other available data show that the division is effective at accomplishing its primary responsibility of processing claims. (See pages 4-6 for a discussion of performance and program costs, and Appendix C for agency performance data.)
An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, *F.S.*, associated with the program	The division is charged with processing and settling claims, and does not have control over outputs and outcomes related to most of its performance measures. The number of claims filed is a function of agency-level processes, and is not within the control of the program, as it is currently defined. Average costs for workers' compensation claims are affected by the salary level of the injured employee and rising medical costs. The settlement of civil rights claims is subject to federal, rather than state processes.
Whether the information reported as part of the state's performance-based program budgeting system has relevance and utility for the evaluation of each program	Performance measures provide information about the Division of Risk Management's workload and the state's costs for settling claims.
Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports	The department's inspector general verified that data reported through the division's performance-based program budgeting system is sufficiently accurate to be used by decision makers.
Alternative courses of action that would result in administering the program more efficiently and effectively	A risk management program should involve more than processing claims once losses have occurred. Florida could be more proactive in protecting state employees, the general public, and the state's assets. Florida's approach to risk management rightfully places primary responsibility at the agency level. However, with additional authority, the Division of Risk Management could do more to monitor and support agency efforts by providing assistance in improving programs that are identified as high risk. (See pages–6-9.)

Source: OPPAGA analysis.

Appendix B

Assessments to Fund Risk Management Programs Totaled $153.3 Million for Fiscal Year 2003-04

Annual agency assessments to fund Risk Management Program costs are prorated based on each agency's experience and exposure. The table below shows the Fiscal Year 2003-04 risk management assessments for each state agency.

Agency	Property Premium Due	Workers' Compensation and Liability Premium Due
Advocacy Center for Persons with Disabilities	$ 336	$ 8,218
Agency for Workforce Innovation	39,368	1,200,005
Agriculture and Consumer Services	437,996	4,699,024
Business and Professional Regulation	3,937	2,784,023
Children and Families	555,462	27,039,609
Citrus	5,877	107,129
Commission on Ethics	441	
Community Affairs	4,218	138,986
Corrections	2,260,968	31,302,033
Developmental Disabilities Council		741
Division of Administrative Hearings		101,425
Education	165,467	1,907,620
University System	5,332,338	19,045,855
Elder Affairs	1,586	80,982
Environmental Protection	601,629	2,893,619
Financial Services	31,769	2,311,566
Fish and Wildlife Conservation Commission	172,427	1,643,411

Agency	Property Premium Due	Workers' Compensation and Liability Premium Due
Governor	$ 1,665	$ 130,496
Health	232,439	7,912,377
Healthcare Administration	10,999	963,913
Highway Safety	209,096	4,688,916
Judicial [1]	74,741	4,367,702
Justice [2]	0	22,236
Juvenile Justice	661,208	9,482,994
Law Enforcement	106,883	843,163
Legal Affairs	7,527	672,309
Legislature	14,615	589,810
Lottery	20,662	272,925
Management Services	593,105	567,045
Military Affairs	214,750	97,377
Parole Commission	1,344	120,819
Pride Enterprises		108,458
Public Service Commission	1,749	85,894
Revenue	72,967	2,266,534
State	52,830	204,084
State Board of Administration	3,782	61,981
Transportation	1,486,585	10,700,825
Veterans Affairs	32,778	466,024
Total	$13,413,544	$139,890,128

[1] Judicial includes state attorney's, public defenders and state courts.

[2] Justice includes the Justice Administration System, and the Capital Collateral northern, middle and southern regions.

Source: Florida Department of Financial Services, Division of Risk Management.

Appendix C

Division Performance-Based Program Budgeting Measures

The table below presents the Division of Risk Management's legislatively approved performance measures. Program data shows that the division is performing well in carrying out its primary responsibility of processing claims.

Measure	2000-01 Performance Standard	2000-01 Actual Performance	2001-02 Performance Standard	2001-02 Actual Performance	2002-03 Performance Standard	2002-03 Actual Performance
All Lines						
Average operational cost per claim worked	$177.92	$187.11	$151.22	175.28	$151.22	$179.40
Property Claims						
Average cost of property claims paid	$3,497	$6,243	N/A	$2,816	TBD	$5,644
Number of state property loss/damage claims worked	522	378	549	600	550	297
State Employees Workers' Compensation Claims						
Number of workers' compensation claims worked	28,500	27,998	28,500	26,413	28,500	25,393
Number of workers' compensation claims requiring some payment per 100 FTE employees	5.70	4.97	5.70	4.33	5.70	4.46
Number of workers' compensation claims litigated	780	698	722	597	720	618
Average cost of workers' compensation claims paid	$3,250	$3,734	$3,643	$3,525	$3,643	$4,385
State employees' workers' compensation benefit cost rate, as defined by indemnity and medical benefits, per $100 of state employees' payroll as compared to prior years	$1.16	$1.18	$1.16	$1.16	$1.16	$1.24
Percentage of indemnity and medical payments made in a timely manner in compliance with DFS Rule 69L-24.021.	95%	94%	95%	98%	95%	98%
Liability Claims						
Number of liability claims worked	8,784	6,727	7,331	6,280	7,070	6,375
Number/percentage of liability claims closed in relation to liability claims worked during the fiscal year	4,226/ 51%	3,392/ 50.4%	3,633 / 51%	2,990 / 47.6%	3,633 / 51%	3,122/ 49%
Average number of tort liability claims paid			N/A	N/A	TBD	TBD
Average cost of federal civil rights liability claims paid	$13,046	$13,339	N/A	$19,213	TBD	$47,646
Training						
Number/ percentage of responses indicating the risk services training they received was useful in developing and implementing risk management plans in their agencies	80 / 90%	80 / 90%	80 / 90%	606 / 97%	80 / 90%	138 / 100%
Number of training units (1 unit=8 hours) provided by the property program	40	34	N/A	N/A	N/A	N/A
Risk services training and consultation as measured by the number of training units (1 unit = 8 hours) provided and consultation contacts made	265	186	165	235	180	226

Source: Department of Financial Services, Division of Risk Management.

Appendix D

Workers' Compensation Claims by State Agency

The following tables present information about state agency workers' compensation claims. Table D-1 shows the number of claims filed at each agency, and Table D-2 shows the claims rate for the regular workforce of each agency.[1]

Table D-1
Number of Workers' Compensation Claims per Agency [2]

Entity	2000-01	2001-02	2002-03	Grand Total
Corrections	3,605	3,166	3,246	10,017
Children and Families	2,947	2,777	2,630	8,354
University System	2,634	2,638	2,595	7,867
Health	1,332	1,310	1,390	4,032
Juvenile Justice	1,061	901	817	2,779
Agriculture and Consumer Services	1,153	772	693	2,618
Transportation	848	725	559	2,132
Highway Safety and Motor Vehicles	547	512	520	1,579
Environmental Protection	507	491	542	1,540
Wildlife and Fish Commission	277	270	334	881
Education	262	235	234	731
Revenue	254	223	234	711
State Attorneys	176	138	172	486
Law Enforcement	93	83	142	318
Insurance	122	70	90	282
Workforce Innovation	53	84	125	262
Veterans' Affairs	88	87	80	255
Health Care Administration	84	70	74	228
Management Services	91	64	73	228
Business and Professional Regulation	73	54	64	191

Entity	2000-01	2001-02	2002-03	Grand Total
Public Defenders	53	73	56	182
State Courts	48	56	70	174
Lottery	51	58	40	149
Labor and Employment Security [3]	106	37	2	145
Legislature	41	37	30	108
State	26	30	24	80
Legal Affairs	26	22	29	77
Banking and Finance	17	33	26	76
Military Affairs	25	21	20	66
Community Affairs	21	24	10	55
Elder Affairs	14	13	18	45
Administrative Hearings	4	12	16	32
Public Service Commission	16	6	10	32
Parole Commission	6	14	7	27
Governor	13	6	7	26
Citrus	7	10	4	21
Justice	4	3	3	10
State Board of Administration	3	2	5	10
Advocacy Center for Persons with Disabilities	1	2	2	5
Grand Total	16,689	15,129	14,993	46,811

[1] The regular workforce of each agency is the number of appropriated full-time equivalent (FTE) positions, while statutory employees include prisoners on community work release, OPS (temporary) employees, and volunteers. Statutory employees are included in Table D-1, but excluded from Table D-2.

[2] The number of claims presented in the above table does not agree with the number of claims presented in Exhibit 3 and footnote 23 because of slight differences in source data.

[3] The Department of Labor and Employment Security was abolished effective June 30, 2002.

Source: Department of Financial Services, Division of Risk Management.

Table D-2
Agency Workers Compensation Claims Rate per 100 Employees for Fiscal Year 2002-03

Entity	Claims per 100 Employees	Entity	Claims per 100 Employees
Veterans' Affairs	18.72	Parole Commission	5.34
Wildlife and Fish Commission	17.59	Insurance	5.21
Agriculture and Consumer Services	17.58	Health Care Administration	4.97
Juvenile Justice	16.66	Elder Affairs	4.87
Environmental Protection	13.81	Business and Professional Regulation	4.54
Corrections	13.45	Revenue	4.32
Children and Families	11.73	Citrus	4.08
Highway Safety and Motor Vehicles	11.43	Advocacy Center for Persons with Disabilities	3.70
Health	9.78	State	3.44
Education	9.38	State Attorneys	3.09
Military Affairs	9.30	Banking and Finance	3.01
Governor	9.09	Community Affairs	2.79
Lottery	8.97	Public Service Commission	2.72
Law Enforcement	7.69	Legal Affairs	2.71
Administrative Hearings	7.62	State Board of Administration	2.46
Workforce Innovation	7.32	State Courts	2.30
Transportation	6.83	Justice	2.19
Management Services	5.56	Public Defenders	2.08
University System	5.47	Legislature	1.63
		Florida's Rate of Claims per State Entity	8.71

Note: Total claims number does not include claims by "statutory" employees including prisoners under community control, juvenile offenders under community control, OPS (temporary) employees and volunteers.
Source: OPPAGA Analysis, Division of Risk Management Data, Department of Management Services Workforce Report, Legislative Budget Office, State University System Annual Report, Appropriations Act.

Appendix E

Federal Civil Rights Claims and Employment Claims

The table below shows the number of federal civil rights and employment claims for entities over the last three years. The Departments of Corrections and Children and Families, had the highest number of claims for Fiscal Year 2002-03.

Agency	Federal Civil Rights			Employment		
	Fiscal Year 2000-01	Fiscal Year 2001-02	Fiscal Year 2002-03	Fiscal Year 2000-01	Fiscal Year 2001-01	Fiscal Year 2002-03
Administrative Hearings	0	1	2	0	2	0
Advocacy Center for Persons with Disabilities	0	0	0	0	0	0
Agriculture and Consumer Services	1	2	1	1	5	8
Banking and Finance	0	0	0	0	0	0
Business and Professional Regulation	0	2	5	3	1	1
Children and Families	22	37	76	26	21	24
Citrus	0	0	1	0	0	0
Community Affairs	0	0	0	2	0	0
Corrections	130	130	107	28	67	19
Education	0	1	3	39	2	6
Elder Affairs	0	0	0	0	0	0
Environmental Protection	0	0	7	5	0	4
Florida Developmental Disabilities	0	0	0	0	0	0
Governor	1	0	1	0	0	1
Health	2	10	1	11	9	13
Health Care Administration	10	3	0	3	3	1
Highway Safety and Motor Vehicles	5	2	10	11	2	2
Insurance	5	8	6	3	5	9
Justice	1	2	2	0	0	0
Juvenile Justice	0	1	3	7	4	12
Law Enforcement	7	1	8	2	2	3
Legal Affairs	1	7	3	0	0	3
Legislature	0	0	0	3	1	2
Lottery	0	2	0	1	0	2
Management Services	4	1	1	2	1	2
Military Affairs	0	0	0	0	0	0
Parole Commission	3	0	4	0	1	1
Pride Enterprises	0	0	0	0	0	0
Pride for Fire Fund	0	0	0	0	0	0
Public Defenders	4	0	3	1	0	1
Public Service Commission	0	0	1	0	0	1
Revenue	0	2	1	6	4	6
State	4	4	0	0	1	0
State Attorney	25	17	14	0	2	0
State Board of Administration	0	0	0	0	0	1
State Courts System	15	30	30	3	1	5
Transportation	5	0	1	13	9	9
University System	18	10	6	19	16	31
Veterans' Affairs	0	0	0	1	0	0
Wildlife and Fish Commission	0	0	2	3	2	0
Workforce Innovation	0	0	0	0	1	1
Total	263	273	299	193	162	168

Source: Department of Financial Services, Division of Risk Management.

Appendix F

CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

TOM GALLAGHER

July 23, 2004

Mr. Gary VanLandingham
Interim Director
Office of Program Policy Analysis and
Government Accountability
Claude Pepper Building, Room 312
111 West Madison Street
Tallahassee, FL 32199-1475

Dear Mr. VanLandingham:

Pursuant to Section 11.513, Florida Statutes, this is our response to the recommendations included in your report dated July, 2004; <u>The Risk Management Program Could Be Authorized to Do More to Protect the State's Assets.</u> Overall, we concur with your recommendations. Our responses to each of your recommendations correspond with the order of your recommendations.

Recommendation: That the Legislature revise Chapter 284, *Florida Statutes,* to provide the Division of Risk Management with the authority to assess the overall performance of the state's risk management system.

The Division of Risk Management will provide support and assistance to the Legislature should the determination be made to pursue the above recommended revisions to Chapter 284, Florida Statutes.

Recommendation: That the Legislature direct the Division of Risk Management to develop a proposal for providing more risk management services to state agencies. The plan should include the division's proposed approach to targeting agencies needing assistance, specific activities to be provided, and an analysis of the net cost savings to be derived from reducing claims costs, which would enable the Legislature to consider the potential return on investment of this alternative.

The Division of Risk Management is currently developing a conceptual outline that will culminate in a proposal to provide more risk management services to state agencies. The form and content of this proposal may change depending on any additional direction that may be given to the Division by the Legislature to assess the state's overall risk management system.

DEPARTMENT OF FINANCIAL SERVICES
THE CAPITOL. TALLAHASSEE. FLORIDA 32399-0301 • (85M 413-2850 • TELECOPIER (85M 413-2950

Mr. Gary VanLandingham
July 23, 2004
Page 2

Recommendation: That the Legislature direct the Division of Risk Management, in consultation with the Department of Management Services, to develop a formal process for ensuring agencies are knowledgeable of the issues related to insurance, loss prevention, and risk management that should be addressed in bid processes and contracts, to include the issue of liability in case of contractor negligence.

The Division of Risk Management has previously assisted the Department of Management Services with training for state agencies regarding insurance, loss prevention, and risk management issues relating to state contracts. The Division will continue to assist the Department of Management Services in this process as directed.

We appreciate the professionalism displayed by your staff during this review. If further information regarding our response is needed, please contact Mr. Dave Harlan, Inspector General, at 413-4960.

Sincerely

/s/
Tom Gallagher

TG/Hc

cc: Dave Harlan, Inspector General
Mary M. "Trilly" Lester, Division Director
Division of Risk Management

The Florida Legislature

Office of Program Policy Analysis and Government Accountability

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