

**Representative Gordon E. Snow** proposes the following substitute bill:

**WORKERS' COMPENSATION FOR THE STATE**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gordon E. Snow**

Senate Sponsor: Thomas V. Hatch

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**LONG TITLE**

**General Description:**

This bill amends the Insurance Code, the Utah Labor Code, and the Utah Administrative Services Code to address workers' compensation coverage for the state.

**Highlighted Provisions:**

This bill:

- ▶ addresses the makeup of the Workers' Compensation Fund's board of directors;
- ▶ beginning July 1, 2007, deletes the requirement that state entities pay the Workers' Compensation Fund for workers' compensation coverage;
- ▶ beginning July 1, 2007, establishes requirements for the state to secure the payment of workers' compensation benefits for its employees;
- ▶ addresses the application to the state of certain statutes applicable to self-insured employers; and
- ▶ makes conforming amendments and technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **31A-33-106**, as last amended by Chapters 176 and 186, Laws of Utah 2002

28 **34A-2-202**, as last amended by Chapter 289, Laws of Utah 2005

29 **34A-2-203**, as last amended by Chapter 222, Laws of Utah 2000

30 **63A-4-101**, as last amended by Chapter 135, Laws of Utah 1997

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **31A-33-106** is amended to read:

34 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

35 (1) There is created a board of directors of the Workers' Compensation Fund.

36 (2) The board shall consist of seven directors.

37 (3) ~~One~~ Subject to Subsection (8), one director:

38 (a) (i) shall be the executive director of the Department of Administrative Services or  
39 the executive director's designee; and

40 ~~(b)~~ (ii) acts as the representative of the state as a policyholder of the Workers'  
41 Compensation Fund~~[-]; or~~

42 (b) is a public director appointed in accordance with Subsection (8)(b).

43 (4) One director shall be the chief executive officer of the fund.

44 (5) (a) In accordance with a plan that meets the requirements of this section, the  
45 governor, with the consent of the Senate, shall appoint five public directors as follows:

46 (i) three directors who are owners, officers, or employees of policyholders other than  
47 the state, each of whom is an owner, officer, or employee of a policyholder that has been  
48 insured by the Workers' Compensation Fund for at least one year before the appointment of the  
49 director representing the policyholder; and

50 (ii) two directors from the public in general.

51 (b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the  
52 extent that Section 31A-5-409 does not conflict with this section.

53 (6) No two directors may represent the same policyholder.

54 (7) At least four directors appointed by the governor shall have had previous  
55 experience in:

56 (a) the actuarial profession;

- 57 (b) accounting;  
58 (c) investments;  
59 (d) risk management;  
60 (e) occupational safety;  
61 (f) casualty insurance; or  
62 (g) the legal profession.

63 (8) (a) Any director who represents a policyholder that fails to maintain workers'  
64 compensation insurance through the Workers' Compensation Fund shall immediately resign  
65 from the board, including the executive director of the Department of Administrative Services  
66 or the executive director's designee if no state entity is insured by the Workers' Compensation  
67 Fund pursuant to Section 34A-2-203.

68 (b) (i) If no state entity is insured by the Workers' Compensation Fund pursuant to  
69 Section 34A-2-203, the governor with the consent of the Senate, shall appoint a public director  
70 to replace the executive director of the Department of Administrative Services or the executive  
71 director's designee.

72 (ii) The public director appointed under this Subsection (8)(b) shall:

73 (A) be an owner, officer, or employee of a policyholder that has been insured by the  
74 Workers' Compensation Fund for at least one year before the appointment of the director  
75 representing the policyholder;

76 (B) have previous experience described in Subsection (7); or

77 (C) be the director of the Governor's Office of Economic Development.

78 (c) Once the executive director of the Department of Administrative Services or the  
79 executive director's designee is not a member of the board under Subsection (3), the state shall  
80 have a member on the board to represent the state as a policyholder only if the member is  
81 appointed in accordance with Subsection (5) or (8)(b).

82 (9) A person may not be a director if that person:

83 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing  
84 insurance carrier providing workers' compensation insurance in Utah;

85 (b) fails to meet or comply with the conflict of interest policies established by the  
86 board; or

87 (c) is not bondable.

88 (10) After notice and a hearing, the governor may remove any director for cause which  
89 includes:

- 90 (a) neglect of duty; or
- 91 (b) malfeasance.

92 (11) (a) Except as required by Subsection (11)(b), the term of office of the directors  
93 appointed by the governor shall be four years, beginning July 1 of the year of appointment.

94 (b) Notwithstanding the requirements of Subsection (11)(a), the governor shall, at the  
95 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
96 directors are staggered so that approximately half of the board is appointed every two years.

97 (12) Each director shall hold office until the director's successor is appointed and  
98 qualified.

99 (13) When a vacancy occurs in the membership of the board for any reason, the  
100 replacement shall be appointed for the unexpired term.

101 (14) The board shall annually elect a chair and other officers as needed from its  
102 membership.

103 (15) (a) The board shall meet at least quarterly at a time and place designated by the  
104 chair.

105 (b) The chair:

- 106 (i) may call board meetings more frequently than quarterly; and
- 107 (ii) shall call additional board meetings if requested to do so by a majority of the board.

108 (16) Four directors are a quorum for the purpose of transacting all business of the  
109 board.

110 (17) Each decision of the board requires the affirmative vote of at least four directors  
111 for approval.

112 (18) (a) Directors shall receive no compensation or benefits for their services, but may  
113 receive per diem and expenses incurred in the performance of the director's official duties at the  
114 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

115 (b) Directors may decline to receive per diem and expenses for their service.

116 (c) The fund shall pay the per diem allowance and expenses from the Injury Fund upon  
117 vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal  
118 operating expenses.

119 (d) [~~The executive director of the Department of Administrative Services, or the~~  
120 ~~executive director's designee, and the chief executive officer of the Workers' Compensation~~  
121 ~~Fund]~~ The following shall serve on the board without a per diem allowance[-]:

122 (i) the executive director of the Department of Administrative Services, or the  
123 executive director's designee;

124 (ii) the chief executive officer of the Workers' Compensation Fund; and

125 (iii) the director of the Governor's Office of Economic Development if appointed under  
126 Subsection (8).

127 (19) The requirement that the governor, with the consent of the Senate, appoint the  
128 directors of the Workers' Compensation Fund specified in Subsection (5) or (8), does not:

129 (a) remove from the board of directors the managerial, financial, or operational control  
130 of the Workers' Compensation Fund;

131 (b) give to the state or the governor managerial, financial, or operational control of the  
132 Workers' Compensation Fund;

133 (c) consistent with Section 31A-33-105, cause the state to be liable for any:

134 (i) obligation of the Workers' Compensation Fund; or

135 (ii) expense, liability, or debt described in Section 31A-33-105;

136 (d) alter the legal status of the Workers' Compensation Fund as:

137 (i) a nonprofit, self-supporting, quasi-public corporation; and

138 (ii) an insurer:

139 (A) regulated under this title;

140 (B) that is structured to operate in perpetuity; and

141 (C) domiciled in the state; or

142 (e) alter the requirement that the Workers' Compensation Fund provide workers'  
143 compensation:

144 (i) for the purposes set forth in Section 31A-33-102;

145 (ii) consistent with Section 34A-2-201; and

146 (iii) as provided in Section 31A-22-1001.

147 Section 2. Section **34A-2-202** is amended to read:

148 **34A-2-202. Assessment on self-insured employers including the state, counties,**  
149 **cities, towns, or school districts paying compensation direct.**

150 (1) (a) (i) A self-insured employer, including a county, city, town, or school district,  
151 [~~who by authority of the division under Sections 34A-2-201 and 34A-2-201.5 is authorized to~~  
152 ~~pay compensation direct~~] shall pay annually, on or before March 31, an assessment in  
153 accordance with this section and rules made by the commission under this section.

154 (ii) For purposes of this section, "self-insured employer" is as defined in Section  
155 34A-2-201.5, except it includes the state if the state self-insures under Section 34A-2-203.

156 (b) The assessment required by Subsection (1)(a) is:

157 (i) to be collected by the State Tax Commission;

158 (ii) paid by the State Tax Commission into the state treasury as provided in Subsection  
159 59-9-101(2); and

160 (iii) subject to the offset provided in Section 34A-2-202.5.

161 (c) The assessment under Subsection (1)(a) shall be based on a total calculated  
162 premium multiplied by the premium assessment rate established pursuant to Subsection  
163 59-9-101(2).

164 (d) The total calculated premium, for purposes of calculating the assessment under  
165 Subsection (1)(a), shall be calculated by:

166 (i) multiplying the total of the standard premium for each class code calculated in  
167 Subsection (1)(e) by the self-insured employer's experience modification factor; and

168 (ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under  
169 Subsection (1)(g).

170 (e) A standard premium shall be calculated by:

171 (i) multiplying the prospective loss cost for the year being considered, as filed with the  
172 insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10  
173 to determine the manual rate for each class code; and

174 (ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each  
175 \$100 of the self-insured employer's covered payroll for each class code.

176 (f) (i) Each self-insured employer paying compensation direct shall annually obtain the  
177 experience modification factor required in Subsection (1)(d)(i) by using:

178 (A) the rate service organization designated by the insurance commissioner in Section  
179 31A-19a-404; or

180 (B) for a self-insured employer that is a public agency insurance mutual, an actuary

181 approved by the commission.

182 (ii) If a self-insured employer's experience modification factor under Subsection  
183 (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor  
184 of 0.50 in determining the total calculated premium.

185 (g) To provide incentive for improved safety, the safety factor required in Subsection  
186 (1)(d)(ii) shall be determined based on the self-insured employer's experience modification  
187 factor as follows:

EXPERIENCE	
MODIFICATION FACTOR	SAFETY FACTOR
Less than or equal to 0.90	0.56
Greater than 0.90 but less than or equal to 1.00	0.78
Greater than 1.00 but less than or equal to 1.10	1.00
Greater than 1.10 but less than or equal to 1.20	1.22
Greater than 1.20	1.44

185 (h) (i) A premium or premium assessment modification other than a premium or  
186 premium assessment modification under this section may not be allowed.

187 (ii) If a self-insured employer paying compensation direct fails to obtain an experience  
188 modification factor as required in Subsection (1)(f)(i) within the reasonable time period  
189 established by rule by the State Tax Commission, the State Tax Commission shall use an  
190 experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total  
191 calculated premium for purposes of determining the assessment.

192 (iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the  
193 State Tax Commission shall provide the self-insured employer with written notice that failure  
194 to obtain an experience modification factor within a reasonable time period, as established by  
195 rule by the State Tax Commission:

196 (A) shall result in the State Tax Commission using an experience modification factor  
197 of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of  
198 determining the assessment; and

199 (B) may result in the division revoking the self-insured employer's right to pay  
200 compensation direct.

201 (i) The division may immediately revoke a self-insured employer's certificate issued  
202

212 under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay  
213 compensation direct if the State Tax Commission assigns an experience modification factor  
214 and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain  
215 an experience modification factor.

216 (2) Notwithstanding the annual payment requirement in Subsection (1)(a), a  
217 self-insured employer whose total assessment obligation under Subsection (1)(a) for the  
218 preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the  
219 same manner provided in Section 59-9-104 and subject to the same penalty provided in Section  
220 59-9-104 for not paying or underpaying an installment.

221 (3) (a) The State Tax Commission shall have access to all the records of the division  
222 for the purpose of auditing and collecting any amounts described in this section.

223 (b) Time periods for the State Tax Commission to allow a refund or make an  
224 assessment shall be determined in accordance with Section 59-9-106.

225 (4) (a) A review of appropriate use of job class assignment and calculation  
226 methodology may be conducted as directed by the division at any reasonable time as a  
227 condition of the self-insured employer's certification of paying compensation direct.

228 (b) The State Tax Commission shall make any records necessary for the review  
229 available to the commission.

230 (c) The commission shall make the results of any review available to the State Tax  
231 Commission.

232 Section 3. Section **34A-2-203** is amended to read:

233 **34A-2-203. Payment of premiums by state department, commission, board, or**  
234 **other agency.**

235 [Each] (1) Until June 30, 2007, a department, commission, board, or other agency of  
236 the state shall pay the insurance premium on its employees direct to the Workers'  
237 Compensation Fund.

238 (2) Beginning July 1, 2007, the state shall secure the payment of workers'  
239 compensation benefits for its employees:

240 (a) by:

241 (i) insuring, and keeping insured, the payment of this compensation with the Workers'  
242 Compensation Fund;

243 (ii) insuring, and keeping insured, the payment of this compensation with any stock  
 244 corporation or mutual association authorized to transact the business of workers' compensation  
 245 insurance in this state; or

246 (iii) paying direct compensation as a self-insured employer in the amount, in the  
 247 manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease  
 248 Act;

249 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

250 (c) subject to Subsection (3).

251 (3) (a) If the state determines to secure the payment of workers' compensation benefits  
 252 for its employees by paying direct compensation as a self-insured employer in the amount, in  
 253 the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease  
 254 Act, the state is:

255 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

256 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

257 (b) If the state chooses to pay workers' compensation benefits for its employees  
 258 through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in  
 259 accordance with Title 63, Chapter 56, Utah Procurement Code.

260 Section 4. Section **63A-4-101** is amended to read:

261 **63A-4-101. Risk manager -- Appointment -- Duties.**

262 (1) The executive director shall appoint a risk manager, who shall be qualified by  
 263 education and experience in the management of general property and casualty insurance.

264 (2) The risk manager shall:

265 (a) acquire and administer the following purchased by the state:

266 (i) all property, casualty insurance[;]; and

267 (ii) subject to Section 34A-2-203, workers' compensation insurance [purchased by the  
 268 state];

269 (b) recommend that the executive director make rules:

270 (i) prescribing reasonable and objective underwriting and risk control standards for  
 271 state agencies;

272 (ii) prescribing the risks to be covered by the Risk Management Fund and the extent to  
 273 which these risks will be covered;

274 (iii) prescribing the properties, risks, deductibles, and amount limits eligible for  
275 payment out of the fund;

276 (iv) prescribing procedures for making claims and proof of loss; and  
277 (v) establishing procedures for the resolution of disputes relating to coverage or claims,  
278 which may include binding arbitration;

279 (c) implement a risk management and loss prevention program for state agencies for  
280 the purpose of reducing risks, accidents, and losses to assist state officers and employees in  
281 fulfilling their responsibilities for risk control and safety;

282 (d) coordinate and cooperate with any state agency having responsibility to manage and  
283 protect state properties, including:

284 (i) the state fire marshal[;];  
285 (ii) the director of the Division of Facilities Construction and Management[;];  
286 (iii) the Department of Public Safety[;]; and  
287 (iv) institutions of higher education;

288 (e) maintain records necessary to fulfill the requirements of this section;

289 (f) manage the fund in accordance with economically and actuarially sound principles  
290 to produce adequate reserves for the payment of contingencies, including unpaid and  
291 unreported claims, and may purchase any insurance or reinsurance considered necessary to  
292 accomplish this objective; and

293 (g) inform the agency's governing body and the governor when any agency fails or  
294 refuses to comply with reasonable risk control recommendations made by the risk manager.

295 (3) Before the effective date of any rule, the risk manager shall provide a copy of the  
296 rule to each agency affected by it.

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**Fiscal Note**  
**Bill Number HB0072S01**

**Workers' Compensation for the State**

*09-Feb-06*

*8:17 AM*

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**State Impact**

This bill can be implemented within existing budgets. Competitive bidding for workers compensation insurance has the potential to impact the state's premiums, but these cannot be estimated at this time.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**