

Sunset Public Hearing Questions for
BOARD OF CLAIMS
Created by Section 9-8-101, *Tennessee Code Annotated*
(Sunset termination June 2015)

1. Provide a brief introduction to the Board of Claims, including information about its purpose, statutory duties, staff, and administrative attachment.

Purpose

The purpose of the Board is to provide general oversight of the state's programs for compensating persons damaged by the State or its employees. The Board also reviews and authorizes the purchase of insurance for the State property insurance program and the State aviation insurance program.

Statutory Duties

- **The Board of Claims has authority to hear and determine claims based on the acts or omissions of state officers or employees where the claim does not fall within the jurisdiction of the Tennessee Claims Commission.**
- **The Board is authorized to pay final judgments in civil lawsuits against state employees.**
- **The Board reviews and makes recommendations to the Commissioner of Finance and Administration and the General Assembly as to the required funding level of the risk management fund, the contribution required of each state agency, department and institution to achieve the required funding, the required funding for administrative costs, and appropriate levels of self-insurance. The Risk Management Fund (for state and higher education agencies) pays workers compensation claims for state employees, tort claims against the state, general, auto, medical malpractice, and property damage to state buildings.**
- **The Board reviews and approves purchase of insurance policies designed to pay claims against the state or its employees arising from contract or tort.**
- **The Board hears disputes between the various departments and agencies of the state involving the assignment of losses to individual departments, as well as the general responsibility to establish policies governing the administration of the state's contract and tort insurance program.**
- **The Board has the authority to hear claims for compensation by persons wrongfully imprisoned and granted an exoneration pursuant to Tenn. Code Ann. §40-27-109.**
- **The Board has the authority to hear claims for property damage caused by an escapee from a state correctional facility.**

- **The Board also reviews the costs of defending actions brought against state employees, reported annually by the Attorney General and Reporter.**

Funding, Staff, and Administrative Attachment

The Division of Claims Administration in the Treasury Department provides administrative support to the Board. No staff is dedicated full time to Board activities.

2. Provide a list of current board members, or their designees, and describe how membership complies with Section 9-8-101, *Tennessee Code Annotated*.

Pursuant to Tenn. Code Ann. §9-8-101, the Board of Claims membership is composed of the Commissioner of Human Resources, the Commissioner of Finance and Administration, the State Treasurer, the Comptroller of the Treasury, and the Secretary of State. Each member may appoint a designee.

Below are the current members and designees that comply with that statutory authority:

**David H. Lillard, Jr., State Treasurer, Chairman
Designee- Steve Curry**

**Larry Martin, Commissioner of Finance and Administration
Designee – Martha Nichols**

**Tre Hargett, Secretary of State
Designee – Matt Bailey**

**Rebecca R. Hunter, Commissioner of Human Resources
Designee – Danielle Barnes**

**Justin Wilson, Comptroller of the Treasury
Designee - Terry Mason**

3. What were the board's revenues (by source) and expenditures (by object) for fiscal year 2013 and to date for fiscal year 2014?

The Board of Claims does not have any direct revenues or expenditures. The Board members do not receive any compensation for Board duties.

4. How many times did the board meet during fiscal year 2013 and to date for fiscal year 2014, and how many members were present at each meeting?

The Board of Claims met (3) times during the fiscal year 2013 and (4) times to date in fiscal year 2014. Below are the dates of the meetings and the number of members or voting designees present:

<u>Meeting Dates</u>	<u>Members Present</u>
<i>Fiscal Year 2012-2013</i>	
December 14, 2012	5
May 8, 2013	4
June 19, 2013	5
<i>Fiscal Year 2013-2014</i>	
July 26, 2013	4
September 6, 2013	4
October 22, 2013	5
December 16, 2013	5

5. What reports does the board prepare on its operations, activities, and accomplishments, and who receives these reports?

Activities of the Board are summarized within the annual Treasurer’s Report. This report is distributed to all members of the General Assembly, the Governor, and members of the cabinet. Below is an excerpt from page 46 of the 2012 Treasurer’s report:

“The Board of Claims has the authority to hear claims which do not fall within the jurisdiction of the Tennessee Claims Commission. During the 2012 fiscal year, the Board took action on one claim. The Board also reviews and approves the purchase of insurance policies by the state and makes recommendations to the Commissioner of Finance and Administration and the General Assembly regarding the required funding for the Risk Management Fund.”

Below is an excerpt from page 46 of the 2011 Treasurer’s report:

“The Board of Claims has the authority to hear claims which do not fall within the jurisdiction of the Tennessee Claims Commission. During the 2011 fiscal year, the Board took action on a total of one claim. The Board also reviews and approves the purchase of insurance policies by the state and makes recommendations to the Commissioner of Finance and Administration and the General Assembly regarding the required funding for the Risk Management Fund.”

The Board also reviews and approves an annual report prepared by the State Treasurer to the Fiscal Review Committee and the State Building Commission concerning the operation of the property insurance program.

6. In addition to the disclosure requirements placed on individual members of the board at Section 8-50-501, *Tennessee Code Annotated*, how does the board ensure that its members and staff are operating in an impartial manner and there are no conflicts of interest? If the board operates under a formal conflict of interest policy, please attach a copy of that policy.

Board staff has developed a conflict of interest policy for the Board of Claims members, which will be presented to the Board members at its June 2, 2014 meeting for approval and execution. A copy of the policy is attached hereto.

7. Does the board have a web site? If so, please provide its web address. What kind of public information is provided on the site?

The Board of Claims does not have a web site; however, as stated in Question #5, the Board's activities are reported in the annual Treasurer's Report, which is provided at www.tn.gov/treasury.

8. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedure does the board have for informing the public of its meetings and making its minutes available to the public?

The Board is subject to the Sunshine Law requirements. Public notices of the meetings are physically posted prior to the meeting in the Legislative Plaza. Also, prior to each meeting, public notices are posted on the State's Public Participation Calendar, the Department's main webpage and the main webpage for the Division of Claims Administration. Minutes of the Board meetings are kept by the Executive Secretary and copies of the minutes are available to the public upon request.

9. What is the balance in the Risk Management Fund as of the end of fiscal year 2013? What were the revenues (by source) and expenditures (by object) for the fund during fiscal years 2013 and to date for 2014?

See Attachment A, the June 30, 2013 financial statements for the Risk Management Fund.

10. What types of claims fall within the board's jurisdiction? How many claims of each type were filed with the board during the last two fiscal years (2013 and to date 2014)? How many of those claims required a formal hearing before the board? What was the total dollar value of judgments awarded and the total by type of claim during the two year period? What was the average judgment per claim?

Pursuant to Tenn. Code Ann. §9-8-108, the Board of Claims has the jurisdiction to determine the following: (1). Any claim alleging the acts or omissions of state employees or officers that do not fall within the jurisdiction of the Claims Commission; (2). Any claim for compensation by persons wrongfully imprisoned and granted exoneration pursuant to Tenn. Code Ann. §40-27-109; and (3) Any claim alleging property damage caused by an escapee from a state correctional facility. The Board also has the authority to pay final judgments in civil lawsuits against state employees as provided in Tenn. Code Ann. §9-8-112.

Claims filed with or heard by the Board during the last two fiscal years are as follows:

<u>Type</u>	<u>Number filed</u>	<u>Number Closed</u>	<u>Disposition</u>	<u>Paid</u>
Reimbursement of judgment/settlement	0	na	na	na
Failure to record lien or other title information	3	2	dismissed(2) pending (1)	na
Wrongful Imprisonment	5	5	dismissed (5)	na
Property Damage by firefighters	1	1	dismissed (1)	na
Misrepresentation	0	na	na	na
Property damage by foster child	0	na	na	na

11. Have there been any noticeable changes or trends concerning claims during the last few years? For example, has there been an increase or decrease in the total number of claims or specific types of claims, or a significant change in the size of claims or judgments?

No significant trend in claims filed with the Board has been seen.

12. What are the most recent recommendations made by the board concerning the funding of the risk management fund, the funding of the claims commission administrative costs, and the appropriate levels of self- or purchased insurance as authorized by Section 9-8-108(a)(3)(A), (B), and (C), *Tennessee Code Annotated*?

On an annual basis, the Board's actuary prepares a funding study for the Risk Management Fund. In this study, the actuary provides two basic pieces of information. First, the actuary develops an estimate of liabilities created under the State's waiver of sovereign immunity existing at June 30 (i.e. general liability, automobile liability, workers' compensation liability, and medical malpractice liabilities). These liability estimates are incorporated within the financial statements for the risk management fund. Second, the actuary estimates the losses occurring in the ensuing fiscal year. These estimated losses are then distributed to each department based upon the department's exposure to losses. These amounts are then billed to each department and credited to the risk management fund. As part of the development of these premiums, the Board collects budget information from all agencies that provide services to the risk management fund. Examples include the cost incurred by the Attorney General in defending the State, the cost of adjusting claims within the Division of Claims Administration, and the cost of the Tennessee Claims Commission. These budget amounts are included within the premiums that are billed to each department.

Historically, the Board has recommended the State self-insure liabilities created under the State's immunity waiver, rather than purchase commercial insurance.

The Board's recommended 2013-2014 budget for the Risk Management Fund is shown as Attachment B.

13. Has the board retained consultants as authorized by Section 9-8-108(a)(6), *Tennessee Code Annotated*? If so, please explain.

Yes, the Board retains three consultants: an actuary, a property insurance broker and an aviation insurance broker.

The actuary, Select Actuarial Services, annually performs a self-insured funding study of the expected liability of the risk management fund. The study, which is presented each year to the Board, contains information about fund performance, recommended funding levels for the lines of coverage, expected loss costs and premium allocations to departments by allotment codes. The actuary may perform other risk management services as requested by the Treasury Department. The current term of the actuarial contract with Select Actuarial Services is from July 1, 2012 to June 30, 2017. Select Actuarial Services was chosen through a competitive procurement process.

The property insurance broker, AON Risk Solutions, is responsible for monitoring the property and casualty insurance markets and negotiating acceptable terms, conditions, and pricing for the State's property insurance, builders' risk insurance; boiler and machinery insurance; fine arts insurance; cyber insurance; and fidelity and crime insurance. The broker presents an annual report that provides insurance procurement options and makes recommendations for consideration by the Board. The current term of the Broker contract with AON Risk Solutions is from April 15, 2011 to June 30, 2016. AON Risk Solutions was selected through a competitive procurement process.

The aviation insurance broker, Willis Inc. is responsible for monitoring the aviation insurance markets and negotiating acceptable terms, conditions, and pricing for the State's fleet of approximately 55 aircraft currently maintained by the Department of Agriculture; Middle Tennessee State University; Department of Safety; Tennessee Bureau of Investigation; Department of Transportation; Tennessee Wildlife Resources Agency and the University of Tennessee. The broker presents an annual report that provides insurance procurement options and makes recommendations for consideration by the Board. The current term of the Aviation Broker contract with Willis Inc. is from October 1, 2011 to October 31, 2016. Willis Inc. was selected through a competitive procurement process.

14. Has the board promulgated rules as authorized in Section 9-8-108(a)(10), *Tennessee Code Annotated*? If so, please cite the reference.

The Board has promulgated rules that are codified in Chapter 0300-01 of the *Official Compilation of the Rules and Regulations of the State of Tennessee*. The rules set forth the manner by which claims are filed and considered by the Board.

15. Section 9-8-110, *Tennessee Code Annotated* requires the State Treasurer to establish a risk management section to compile information and administer risk management programs. Please describe the section's activities.

Risk Management has created loss prevention and control initiatives as the result of reviewing historical workers' compensation claims data. The Division's initial focus has been on the eight agencies that account for approximately 80% of the State's total workers' compensation loss costs. Site visits have been made to these agencies to determine the extent of safety program implementation (if any). Risk Management conducts safety surveys to determine weaknesses. Strategies are then developed to address any problem areas. An early return to work (ERTW) program using transitional duty has been implemented as a strategy to reduce lost workdays and associated costs. The Division currently offers a number of loss prevention consulting services including, but not limited to job hazard analyses, workstation reviews, workers' compensation safety reviews, and fire/life safety inspections.

Risk Management also identified other cost savings opportunities in the Workers Compensation Program by implementing a pharmacy network. The concept of implementing a pharmacy network is to generate savings relative to pharmacy expenses in the following manner: (1) using economy of scale to obtain discounts beyond the State's fee schedule, (2) performing utilization review, (3) encouraging equivalent lower cost generic drugs, (4) encouraging lower cost delivery (i.e. home delivery), and (5) monitoring for abuse/misuse (both employee and medical prescribers). Healthcare Solutions, Inc. is the third party that manages the pharmacy network, which is often referred to as a PBM (Pharmacy Benefit Manager). Since the implementation of the PBM in May, 2013 through March 31, 2014, the program has generated \$962,292 in pharmacy savings.

Currently, the Division of Risk Management and Claims Administration is pursuing additional cost savings in the workers compensation program by bundling other external vendor services rather than the current practice of obtaining them from multiple providers. Treasury staff is currently evaluating a Request for Proposals (RFP) to obtain third party services for administration of claims-adjusting, managed care program, bill review, utilization review, and a medical provider network.

The Risk Management web page at www.tn.gov/treasury/risk offers a variety of interactive loss prevention training modules, which may be accessed at the user's convenience.

16. Describe any items related to the board that require legislative attention and your proposed legislative changes.

The Board is not aware of any items that require legislative changes.

17. Should this board be continued? To what extent and in what ways would the absence of the board affect the public health, safety, or welfare?

We believe the Board of Claims, or some similar body, should be in place to fulfill certain key responsibilities. First, when the legislature created the State's limited waiver of immunity, it elected to continue the Board to ensure that an aggrieved party would always have a forum in which to present a claim for damages. While few claims have been filed with the Board, we believe it still serves a vital purpose as a "safety valve" for persons with claims falling outside the State's immunity waiver. Second, while the State's immunity waiver has served one of its intended purposes (protecting state employees from individual suits and liability by permitting actions directly against the State); we still experience a number of suits against State employees, particularly in the federal courts. We believe an entity with the authority to review and, when appropriate, reimburse judgments rendered against state employees needs to be in place. Third, the current Board serves a general financial management oversight role in terms of ensuring the appropriate funding and operation of the Risk Management Fund. The composition of the Board provides an opportunity for a group of state officials to review the funding and operation of the State's program of funding its liabilities in this area.

Budget Request for the 2013-14 Fiscal Year Property Risk Portion of the Risk Management Fund

Introduction

The Risk Management Fund is an Internal Service Fund that was established by Public Chapter 212, Acts of 2003, to pay all expenses of the state's property and casualty risk programs.

Casualty Risk

The premiums used in the budgeting process for the casualty risk portion of the Risk Management Fund are determined by an actuarial valuation of the program. Casualty risk includes making payments for claims (tort, workers' compensation, and employee property damage), legal defense costs, administrative costs, and judgments against state employees. These costs are allocated to state agencies based on loss experience and exposure.

Property Risk

There are three costs associated with property risk in the Risk Management Fund. First, the board approves property insurance coverage each year, usually in June. The annual premium is paid from the risk management fund. Second, the broker's fee associated with obtaining the insurance coverage is paid from the fund. The broker's services were secured by an RFP. Third, there are deductibles as shown in the table below that are covered by the Risk Management Fund.

<u>COVERAGE</u>	<u>DEDUCTIBLE</u>
Basic Property	\$10.0 million annual aggregate
Flood	10.0 million per occurrence
Earthquake	10.0 million per occurrence
Builders Risk-basic	1.0 million annual aggregate
Builders Risk-flood and quake	2.5 million annual aggregate

The three costs (insurance premiums, broker's fee, and deductibles) are allocated to state agencies based on risk exposure (building values). The Fiscal Year 2013-14 will be the final year in which Builders' Risk will be covered by the Risk Management Fund. The Board of Claims authorized that this coverage be provided by the building contractor for all new projects. There will be a run out time period for those projects previously covered by Builders' Risk in the Risk Management Fund.

Budget Request for Property Risk

The following table represents the department’s recommended 2013-14 budget for insurance premiums, broker fees, and property losses and for the risk management fund.

Budget Item	2012-13	Recommended	Difference	Percentage
	Budget Amount	2013-14 Budget Amount		Difference
Property Premium	4,803,200	5,900,000	1,096,800	22.8%
Builders Risk Premium	250,000	40,000	(210,000)	-84.0%
Boiler Premium	112,900	-	(112,900)	-100.0%
Fidelity Bond	62,500	182,000	119,500	191.2%
Fine Arts	33,700	35,000	1,300	3.9%
Cyber Liability	-	500,000	500,000	--
Appraisal Fee	65,000	65,000	-	0.0%
Aviation Premium	-	275,000	275,000	--
Aviation Broker Fee	22,000	22,000	-	0.0%
Insurance Broker Fee	30,000	30,000	-	0.0%
Deductible Losses	4,888,200	1,882,100	(3,006,100)	-61.5%
Total	10,267,500	8,931,100	(1,336,400)	-13.0%

- Boiler Premium is included with property premium.
- Fidelity bond premium is increased if the Board desires to increase coverage from \$3 million to \$5 or \$ 10 million
- Cyber liability is included if the Board wants to consider coverage
- Aviation insurance is included so that the Risk Management fund can make the payment. Each state agency will reimburse for the premium.

The 2013-14 budget recommendation represents a decrease of \$1,336,400 versus the budget for fiscal year 2012-13 which largely was the result of the decrease for property deductible losses and secondarily from decreases to Builders’ Risk and Boiler insurance premiums.

Property insurance premiums continue to rise because of large losses that the state has experienced (May 2010 flood, Spring 2011 major hail storm, UT engineering building fire, and tornados losses) in the last seven years.

The annual amount in the budget request for deductibles is calculated on a three-year average of deductibles paid reduced by estimated recoveries from FEMA and adjusted for any revised losses. For the 2013-14 fiscal year budget, \$1,882,100 is requested which was calculated as follows:

<i>FISCAL YEAR</i>	<i>NET LOSSES</i>
2011-12	\$ 797,754
2010-11	4,098,664
2009-10	<u>750,000</u>
3 Year Total	5,646,418
	<u>Divided by 3</u>
Amount Requested	\$ 1,882,100 * rounded

Pursuant to TCA 9-8-108(a)(3), the Board is responsible for reviewing and recommending to the Commissioner of Finance and Administration and the General Assembly the required funding of the Risk Management Fund. It is recommended that the Board of Claims request the amount as set above be included in the 2013-14 fiscal year budget for property insurance coverage and for losses associated with property losses.

Future Expectations

Budgeting for the cost related to property is expected to continue to increase due to a number of factors. First, Tennessee's loss history is unfavorable as shown in the table below. This history will put upward pressure on the premiums to be paid. Second, the insurance coverage is less favorable. The deductible for flood and earthquake coverage moved to a \$5 million combined annual aggregate to a \$10 million per occurrence. The deductible for other perils (fire, hail, wind, tornados) moved from a \$5 annual aggregate to a \$10 million annual aggregate. Third, Tennessee has been designated as a tornado zone by the latest insurance models. Fourth, building values continue to increase. Fifth, the insurance industry continues to reel from major catastrophic losses such as Hurricane Sandy in 2012. Accordingly, the state will be responsible for financing more losses going forward because of the higher deductible.

Insurance Premiums and Estimated Claims Paid			
Fiscal Year	Premiums Paid to	Claims Paid by	Difference
	Insurance Company	Insurance Company	
2012-13	5,366,668	-	5,366,668
2011-12	4,813,658		4,813,658
2010-11	3,387,209	13,392,358	(10,005,149)
2009-10	2,392,999	9,004,871	(6,611,872)
2008-09	1,954,831	-	1,954,831
2007-08	1,714,351	51,089	1,663,262
Total	19,629,716	22,448,318	(2,816,602)

Actuarial Report and Budget for the 2014-15 Fiscal Year Casualty Risk for the Risk Management Fund

Introduction

An actuarial report of the casualty risk financed through the Risk Management Fund is performed each year. There is a two-fold purpose for the actuarial valuation. First, the actuarial report determines the appropriate level of required reserves necessary to meet the estimated accrued obligations at fiscal year-end. Second, the actuarial report establishes the appropriate level of premiums to be included in the upcoming budget cycle.

For example, this year's actuarial report determined the required reserves at June 30, 2013 and establishes the premiums to be included in the budget for fiscal year 2014-15.

The actuarial report is an evaluation of the state's casualty obligations related to workers' compensation liabilities and tort liabilities. Workers' compensation includes such items as medical, lost time, permanent disability and death. Torts include such items as auto liability, general liability, and medical malpractice.

Background

The Treasury Department provides various pieces of data to the actuary. This data is used to perform the annual actuarial report. Data collected and transmitted to the actuary includes:

- Employee population and salary data by agency
- Property square footage data by agency
- Watercraft data by agency
- Vehicle data by agency
- Medical professional population by agency
- Hospital data by agency
- Workers' Compensation loss data
- Workers' Compensation reserve data
- Tort liability reserve data

Actuarial Firm

Select Actuarial Services is the actuarial firm that prepares the actuarial report. *Select Actuarial Service* was selected by a competitive process (RFP). The current contract with *Select Actuarial Services* is for five years which began July 1, 2012 and ends June 30, 2017.

Actuarial Report

The actuarial report was prepared by the following personnel at Select Actuarial Service:

Mary Frances Miller, Partner and Consulting Actuary
Cheryl White, Partner and Consulting Actuary
Jack Pipa, Actuarial Analyst

Recommended Budget Request for Fiscal Year 2013-14 for Casualty Risk

Coverage	2013-14 Premium	2014-15 Premium	Difference	% Change
Workers' Compensation	30,585,000	31,014,000	429,000	1.4%
Automobile	2,463,000	2,319,000	(144,000)	-5.8%
General Liability	4,173,000	4,215,000	42,000	1.0%
Medical Professional	1,370,000	1,288,000	(82,000)	-6.0%
Subtotal	38,591,000	38,836,000	245,000	0.6%
Administrative Cost				
Third Party Vendors	2,700,000	2,700,000	-	0.0%
Risk Management	625,000	625,000	-	0.0%
Claims Administration	650,000	650,000	-	0.0%
Claims Commission	1,400,000	1,400,000	-	0.0%
Defense Counsel	2,725,000	2,725,000	-	0.0%
Attorney General's Office	2,700,000	2,700,000	-	0.0%
UT Legal Expenses	150,000	150,000	-	0.0%
Subtotal	10,950,000	10,950,000	-	0.0%
Grand Total	49,541,000	49,786,000	245,000	0.5%

This budget request for fiscal year 2014-15 is \$245,000 or 0.5% higher than the budget request for fiscal year 2013-14.