



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

2010 APR -7 AM 11: 22

Department Name: General Services
Department No.: 063
For Agenda Of: April 13, 2010
Placement: Set Hearing
For April 20, 2010
Estimated Time: 30 Minutes
Continued Item:
If Yes, date from:
Vote Required: Majority

COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

TO: Board of Supervisors

FROM: Department Bob Nisbet, General Services Director, ext 1011
Director(s)
Contact Info: Luci Rogers, Asst General Services Director, ext 6866

Robert Nisbet

SUBJECT: Selection of CSAC-EIA Primary Workers' Compensation Coverage

County Counsel Concurrence

As to form:

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

Set hearing for April 20, 2010 to:

- a) Approve the change for Workers' Compensation to move from the CSAC-EIA Excess Workers' Compensation program to the CSAC-EIA Primary Workers' Compensation (PWC) program, at a savings of \$1,329,000 the first year and similar savings expected in 2 subsequent years.
- b) Adopt a resolution authorizing the application to the Director of Industrial Relations, State of California, for a Certificate of Consent to self-insure workers' compensation liabilities.
- c) Direct staff to return to the BOS annually with an update on the PWC Program; the 3rd annual update of which will include a recommendation as to whether we should continue in the program.

Summary Text:

For over 30 years, the County of Santa Barbara has been a member the California State Association of Counties Excess Insurance Authority (CSAC-EIA), a member-directed risk sharing pool of counties and public entities committed to providing risk coverage programs and risk management services which are competitive, available, responsive, equitable and stable. The Assistant Director of General Services represents Santa Barbara County as director on the CSAC-EIA Board of Directors.

The CSAC-EIA currently offers two Workers' Compensation Programs:

1. Excess Workers' Compensation (EWC) – under this program, a member entity must have a Certificate of Consent to Self Insure from the Department of Industrial Relations (the County has had such a certificate since January 1, 1979). Each member selects from among the available self insured retention (SIR) levels, currently at \$125,000 to \$5,000,000. There are approximately 178 members, including 49 counties. Members must bear the cost and provide the administration and defense of claims themselves, which may be in-house or outsourced. The costs to administer the claim, regardless of whether claims administration is done in-house or by an outside Third Party Administrator (TPA) are never reimbursed, not even when the costs exceed the SIR. Likewise, in-house defense costs are never reimbursed. Outsourced defense costs are reimbursed only when total reimbursable costs exceed the SIR. Members must also adhere to CSAC guidelines, obtain an actuarial study every 3 years, a claims audit every 2 years, and file appropriately for claims reimbursement on a claim by claim basis.
2. Primary Workers' Compensation (PWC) – under this program, a member entity is an affiliate of CSAC-EIA PWC which holds the Certificate of Consent to Self Insure. Upon the initial selection of this option, the County is required to file a resolution with the Department of Industrial Relations to obtain a separate affiliate Certificate of Consent to Self Insure effective July 1, 2010. All members in PWC are simultaneously members in EWC. There are 40 members of PWC, 11 of which are counties. The PWC program provides "first dollar coverage" in that it includes a self-funded pool from \$0 to \$10,000 per occurrence with excess insurance for \$10,000 to \$125,000 and protected by aggregate stop loss reinsurance beyond \$125,000.

Under this program, CSAC-EIA must bear the cost, from the first dollar spent, for the administration and defense of claims, neither of which is permitted to be provided by the member's staff. The member entity is permitted to choose from among third party administrators (TPA) with whom CSAC-EIA has negotiated contracts, and must adhere to the same CSAC guidelines and be subject to claims audits as under EWC. The member also has the right to later change to a different TPA on the approved list if it is not satisfied with the service level. Due to recent mergers of several TPA firms, there are just 3 TPA's from which to choose: CorVel, TriStar, and York. Staff has visited each TPA and has selected CorVel which seems to not only be the best fit, but its Camarillo office is the closest in proximity. A member must make a three-year commitment to the PWC program but may freely leave the program and return to EWC (or make another choice) at the end of the three-year period, or may continue with PWC on a year-by-year decision basis (as members do under the EWC).

Background:

Board of Supervisors' Resolution 73-462 established the Workers' Compensation Self-Insurance Fund on July 9, 1973. Board Resolution No. 82-336 established an initial reserve of \$2,000,000 for payment of future claims. On September 24, 1979, the Board of Supervisors, along with 28 other counties, signed the original Joint Powers Agreement that created CSAC-EIA, which has since grown to 278 members, 54 of which are counties. Since November 1, 1979, the County has been covered by CSAC-EIA EWC for any loss exceeding our chosen self-insured retention (SIR) amount which has ranged between \$250,000 to its current level of \$500,000 for each individual claim.

Under the EWC program, costs for the administration of the claims are not covered even above the \$500,000 SIR, whether such services are provided by county employees or contracted to an outside TPA. From March 2002 through November 2008, approximately one-third of the county's claims were managed by a TPA. Since November 2008, the TPA contract was not renewed and the administration of all claims has been done in-house by county employees in Risk Management.

The legal defense of litigated claims is covered for claims above \$500,000 SIR only if such services are provided by outside counsel. Approximately 25 years ago, the defense of litigated claims was brought in-house, and as such is not allowable as a reimbursement by the EWC. However, in May 2008, County Counsel began to outsource those claims that were approaching the SIR to Tobin-Lucks, a local firm specializing in the defense of workers' compensation claims such that defense costs could be reimbursed.

On July 1, 1997, the CSAC-EIA Primary Workers' Compensation (PWC) program was created, with 18 initial members. It has grown to 40 members, including 11 counties. The PWC program differs from the EWC program in that the EIA assumes all administrative responsibilities, and it includes a self-funded pool, from a pool of up to \$10,000 per occurrence with excess insurance for \$10,000 to \$125,000 and protected by aggregate stop loss reinsurance beyond \$125,000. This program has returned dividends to its members for the past 3 years. The PWC Committee has approved the admission of Santa Barbara County into the program effective July 1, 2010, should the BOS decide to adopt staff's recommendation.

Discussion / Analysis:

Unlike group health insurance which provides coverage of an employee's overall nonindustrial health care (meaning a new carrier or program selected by the employer would assume all care of the employee regardless of when the condition began), workers' compensation covers medical treatment for a specific work-related injury or illness (even if they are not yet reported) based upon the date of such injury or illness, for as long as that treatment is necessary, which could be many years. Therefore, all claims for industrial illnesses or injuries incurred prior to July 1, 2010 would be covered under the applicable EWC SIR level for date of injury. Such claims are commonly referred to as "tail claims" and would continue to be self-administered and self-defended by the County. Because the County has taken great strides in streamlining operation to reduce staffing levels to the bare minimum, the recommended change results in no anticipated layoffs in either Risk Management or County Counsel. The County has over 500 open claims that will keep existing staff busy for the initial three-year period. Relieved of the burden involved in opening and managing new claims, in-house claims adjusters would have a finite caseload, subject to change only by the re-opening of administratively closed claims. This would provide the claims adjusters and County Counsel staff attorneys with the opportunity to focus on the goal of permanently resolving as many claims as possible. At the conclusion of the three-year period, a report will be made to the Board, and assuming it is determined that involvement in the PWC was successful and the County will continue its membership, it may be possible to eliminate one or two positions in the Risk Management Division and in County Counsel.

Overall injury trend and cost analysis would continue to be important functions of risk management under both EWC and PWC, since such efforts are not confined to the self-administration of claims. In addition,

Risk Management and County Counsel would continue under both EWC and PWC to be responsible for the disability management and return to work efforts for all employees, regardless of date or whether the disability is industrial or not. Furthermore, under either program, Risk Management would continue to manage the County's overall safety program to help prevent future injuries. Under PWC, Risk Management would gain the additional responsibility of managing the TPA contract and acting as the liaison between departments and the TPA for any issues that may arise. Meetings would continue with departments to discuss the status of all open claims with the TPA representative present, either in person or via telephone or video conference.

The potential risk of joining the PMC is loss of control of administering and litigating claims and the potential for rate increases in out years that may offset the savings experienced in Fiscal Year 2010-11. However, over the past three years, this program has returned dividends to its members.

Fiscal and Facilities Impacts:

At the time of the budget workshops in March 2010, departments had included \$10,956,000 in premiums from the Workers' Compensation Fund, based on the most recent actuarial study and a reduced confidence level of 60%. The PWC program will increase that confidence level to well over 95% funding at a cost of \$9,627,000, an aggregate savings of \$1,329,000, \$911,631 of which is saved by the General Fund. This premium will cover the costs for all industrial injuries and illnesses incurred from July 1, 2010 to June 30, 2011. The cash reserves on hand as of June 30, 2010 will be the source of funding for all injuries and illnesses incurred on or before June 30, 2010.

Special Instructions:

Send approved minute order and 2 copies of the certified resolution to Luci Rogers, General Services Department.

Attachments:

Resolution for Self Insurance

Authored by: Luci Rogers, Assistant General Services Director

RESOLUTION NO. _____

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
SANTA BARBARA AUTHORIZING APPLICATION TO THE STATE OF
CALIFORNIA INDUSTRIAL RELATIONS DEPARTMENT FOR A
CERTIFICATE OF CONSENT TO SELF INSURE WORKERS'
COMPENSATION LIABILITIES**

WHEREAS, the County of Santa Barbara wishes to implement cost-effective policies and procedures;

WHEREAS, a self-insured worker's compensation program has been determined to be a cost-effective program for the County of Santa Barbara;

NOW, THEREFORE, BE IT RESOLVED by the Santa Barbara County Board of Supervisors as follows:

Section 1. The Board of Supervisors authorizes the Assistant Director of General Services to make application to the Director of Industrial Relations, State of California, for a Certificate of Consent to Self Insure worker's compensation liabilities on behalf of the County of Santa Barbara and to execute any and all documents required for such application.

Section 2. That the Clerk of the Board shall cause a certified copy of this Resolution to be sent to the Director of Industrial Relations of the State of California.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 20th day of April 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By _____
Deputy Clerk

Chair, Board of Supervisors
County of Santa Barbara

Approved as to Form:
DENNIS MARSHAL
COUNTY COUNSEL
BY: _____
Deputy County Counsel

Approved as to Form:
ROBERT W. GEIS
Auditor-Controller
BY: _____
Deputy Auditor Controller

