

**TEXAS STATE TECHNICAL COLLEGE  
STATEWIDE OPERATING STANDARD**

<b>No. FA 1.20</b>	<b>Page 1 of 8</b>	<b>Effective Date: 08/31/15</b>
<b>DIVISION:</b>	<b>Fiscal Affairs</b>	
<b>SUBJECT:</b>	<b>Insurance</b>	
<b>AUTHORITY:</b>	<b>Minute Order# 63-08</b>	
<b>PROPOSED BY:</b>	<i>Original Signed by Tom Hooker</i>	
<b>TITLE:</b>	<b>Executive Director, Governance, Risk, and Compliance</b>	<b>Date: 08/31/15</b>
<b>RECOMMENDED BY:</b>	<i>Original Signed by Jonathan Hoekstra</i>	
<b>TITLE:</b>	<b>Vice Chancellor &amp; Chief Financial Officer</b>	<b>Date: 08/31/15</b>
<b>APPROVED BY:</b>	<i>Original Signed by Mike Reeser</i>	
<b>TITLE:</b>	<b>Chancellor</b>	<b>Date: 08/31/15</b>

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**POLICY**

It is the policy of Texas State Technical College (TSTC) to utilize insurance to mitigate the risk of loss of property and certain potential liabilities relating to the college's fixed assets and operations. The Board of Regents delegates to the Chancellor or his/her designee the authority to purchase property and liability insurance in accordance with the State's purchasing policies and procedures.

## GENERAL LIABILITY INSURANCE

It is the stated policy of the State of Texas, and therefore TSTC as a state agency, not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the scope of their employment. Rather, third parties must look to the *Texas Tort Claims Act (Tex.Civ.Prac. & Rem. Code §101)*, for relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. One exception to the above stated policy of the State authorizes agencies and institutions of the State to acquire commercial automobile insurance for the use and benefit of their employees who operate state owned, motorized vehicles and special equipment. TSTC possesses insurance applicable to this exception [see Business Automobile Liability below].

## PROPERTY/FACILITIES INSURANCE

TSTC purchases property/facilities insurance to cover physical loss or damage by covered perils to buildings and property to the extent that the College deems economically advantageous. Included in the insurance policy is coverage for boiler & machinery equipment breakdown, property damage, hazardous substances, service interruption, demolition, etc.

## AVIATION PHYSICAL DAMAGE & LIABILITY INSURANCE

TSTC purchases aviation physical damage and liability Insurance through the Texas Department of Transportation.

## COMMERCIAL CRIME POLICY

TSTC purchases a commercial crime policy that covers employee theft and forgery.

## DIRECTORS AND OFFICERS LIABILITY

TSTC purchases directors and officers liability insurance. Coverage under this policy includes discrimination, sexual harassment, wrongful termination, and failure to promote among other allegations including third party allegations.

## BUSINESS AUTOMOBILE LIABILITY

TSTC purchases auto liability insurance for legal liability arising out of the use of owned, leased, hired, and non-owned autos. This policy is subject to the statutory caps applied by the Texas Legislature.

## WORKERS' COMPENSATION

TSTC purchases workers' compensation insurance through the State Office of Risk Management (SORM).

## **PERTINENT INFORMATION**

### **SOVEREIGN IMMUNITY**

The State of Texas is immune from liability and from suit with respect to most causes of action against it under the doctrine of sovereign immunity. This means that the State of Texas cannot be sued in its own courts without its legislature's consent (*Director of Dep't of Agric. & Env't v. Printing Indus. Ass'n*, 600 S.W. 2d 264, 265-66 (Tex.1980)). The Texas Constitution provides that the State cannot give, lend or pledge the credit of the State to any person, association or corporation, or make any grant of public monies to any person, association or corporation without express authority (Article 3, Sections 50-52, Texas Constitution). Unless the Texas Legislature by resolution permits a suit against the State, the State is not authorized to pay claimants and likewise is unable to indemnify a third party for the expenses associated with defending against such a claim since such an indemnity would be an unauthorized grant of public monies.

The Texas Tort Claims Act (Chapter 101, Texas Civil Practice and Remedies Code) provides a waiver of the State of Texas' sovereign immunity with respect to liability and suits against governmental units like Texas State Technical College, for property damage and personal injury (including death) proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of his or her employment. But, the property damage, injury, or death must have arisen out of the operation or use of a motor vehicle or motor-driven equipment or the condition or use of other personal or real property (Section 101.021). In cases falling within the parameters of the Texas Tort Claims Act, Texas has in effect consented to be liable and to be sued for the negligence of its employees and thus, TSTC can indemnify third parties against costs they may incur proximately caused by such negligence in the operation, condition or use of property. The limits of this liability are: (i) \$250,000 per person for personal injury or death, up to \$500,000 per occurrence, and (ii) \$100,000 per occurrence for injury to or destruction of property (Section 101.023).

Public servants also have the limited right to indemnification by the State. Under Chapter 104 of the Civil Practice and Remedies Code, governmental employees, board members, and other public officials are entitled to this protection without regard to whether they perform their services for compensation. Indemnity protection is afforded eligible persons for acts and omissions taken in the course and scope of their service in cases based on constitutional, statutory, and even negligence grounds, or when the Attorney General determines that it would be in the interest of the State. The only claims excepted are those based on acts taken in bad faith, conscious indifference, or reckless disregard. Generally, the State will indemnify eligible persons for damages awarded against them in amounts up to \$100,000 each, \$300,000 per occurrence involving personal injury, death, or deprivation of a right, privilege, or immunity. The State will also indemnify eligible persons for damages awarded against them, up to \$10,000 per single occurrence of damage to property. The State will not, however, indemnify persons for amounts covered by insurance, except for damages that exceed statutory indemnification limits.

Public servants may be personally liable for punitive or exemplary damages awarded against them, or for damages that exceed the indemnification limits listed above. Punitive or exemplary damages must be based on a finding that the employee has acted maliciously or in bad faith. In cases based on state law, public servants who are entitled to state indemnification, or who are covered by insurance, are not liable for damages in excess of \$100,000. This limitation on personal liability does not apply to damages based on the U.S. Constitution or federal laws.

The Attorney General represents persons who are eligible for state indemnification. When public servants are sued and want representation from the Attorney General, they must notify the Office of the Attorney General within 10 days of service. Persons eligible for state indemnification also have the right to be co-represented by a private attorney of their choice, at their own expense. State defendants who choose to retain private co-counsel should inform the Office of the Attorney General of this decision as soon as possible.

#### PROPERTY/FACILITIES INSURANCE

Texas State Technical College's Property/Facilities insurance covers interest against physical loss or damage by covered perils to named property that is owned by TSTC. Pursuant to Section 51.966 of the Texas Education Code which was passed by the Acts of the 77<sup>th</sup> Legislature in 2001, TSTC has the specific authority to purchase insurance insuring the institution and its employees against any liability, risk, or exposure and covering the losses of any institutional property and may pay the cost of any insurance from any funds of the institution.

#### DIRECTORS AND OFFICERS LIABILITY

State agencies may buy liability insurance for its officers and executive staff to cover (1) conduct described in *Texas Civil Practice & Remedies Code* (§104.002) relating to negligence, civil rights violations, hazardous waste manifest and records, or if the Attorney General otherwise approves of indemnification, and (2) other conduct customarily covered under directors' and officers' liability insurance. This policy may be bought with state funds to cover all TSTC employees and members of the governing board against claims alleging wrongful acts, errors or omissions related to TSTC's management and operations by current, former, and potential employees. The policy must be limited to providing coverage only for liability in excess of the State's liability under *Texas Civil Practice & Remedies Code* (§104.003).

#### WORKERS' COMPENSATION

Pursuant to §135.58 of the Education code, TSTC purchases Workers' Compensation insurance for its employees. An employee may notify their employer within five days of beginning work that they do not want to be covered by Workers' Compensation insurance and prefer to keep the common-law right to recover damages for personal injury or death. If the employee does not choose this option, then Workers' Compensation insurance is that employee's exclusive remedy for an on-the-job injury. This means that the employee may not sue the employer or co-workers for damages.

A state employee who has not opted out of the coverage, as discussed above, and who sustains an injury in the course of employment is entitled to receive compensation under this system. In the case of a fatality, the deceased employee's legal beneficiaries are entitled to benefits. The term "injury" includes occupational diseases. A state employee is a person who is in the service of the state, whether that person is elected, appointed, or hired by oral or written contract, whose duties require that the person work in a political subdivision of the state, but who is paid from state funds. Certain peace officers, as identified in Chapter 501 of the Act, are also considered state employees for purposes of workers' compensation.

However, the following people are not considered employees of the state for purposes of workers' compensation:

- Independent contractors;
- Volunteers, except during a Governor-declared State of Emergency;
- Members of the state military forces, except while on active duty;
- Persons covered by federal workers' compensation;
- Offenders; and
- Consumers or patients of a state institution or agency.

Workers' compensation claims of state employees are filed with and determined by SORM, but income and medical benefit disputes are adjudicated by the Texas Department of Insurance, Division of Workers' Compensation (DWC). The SORM executive director acts in the capacity of the insurer as an adversary before DWC and the courts and presents the legal defenses and positions of the state as the insurer. The SORM executive director is authorized to make rules and prescribe forms.

## **OPERATING REQUIREMENTS**

The insurance policies to cover property/facilities losses, business automobile liability, director's and officer's liability, commercial crime, and workers' compensation are required to be purchased through SORM and/or approved by SORM if purchased elsewhere. The TSTC Financial Services division coordinates the purchase of these insurance policies as follows:

1. Property/Facilities Insurance – Approximately six months prior to the expiration of the annual policy, the TSTC Financial Services division submits to the campuses a list of facilities currently insured which includes the replacement values. The campuses are requested to review the lists, make any additions or deletions to the list of facilities to be insured, and make any changes to the replacement values. The revised list of facilities to be insured, along with a completed application, is then submitted to SORM who solicits quotes for the requested amounts of insurance coverage. During the policy period, the campuses

may make additions or deletions to the covered facilities, as necessary, which could result in a pro-rata increase or decrease to the insurance premium.

## 2. Auto Liability Insurance

TSTC purchases auto liability insurance to protect against potential losses under the Texas Tort Claim Act (described above) related to the operation of motor vehicles and motorized equipment. TSTC provides an annual list of vehicles to SORM to be covered by TSTC's automobile insurance policy. TSTC automobile liability insurance is the primary coverage for all TSTC-owned vehicles, while it is a secondary coverage for non-owned rental and employee-owned vehicles used in the conduct of official TSTC business. Under no circumstances does TSTC automobile liability insurance provide property damage coverage for TSTC-owned, rental non-owned, or TSTC employee personal-owned motor vehicles.

Employees who operate a personal-owned motor vehicle in the course of their employment MUST maintain minimum personal automobile liability insurance coverage as defined within the Texas Transportation Code §601.072.

Non-owned rental vehicles (from State-approved vendors) used in the conduct of TSTC business receive primary liability coverage from annual automobile liability insurance contracts maintained by the Texas Office of Attorney General.

NOTE: Under no circumstances are students (who are not also employees of the College) or volunteers eligible to drive any TSTC-owned motor vehicles. Students MAY operate a non-TSTC owned or non-TSTC-provided motor vehicle for college-sponsored student travel when the requirements of SOS ES.3.22 (Student Travel) have been met.

### **Driver Authorization Form**

All employees, including student employees, are required to complete, at least once and then when circumstances change, form TSTC-0-FA-028 which is titled "*Texas State Technical College (TSTC) Driver Authorization Form for Employee/Student Employee.*" This form requires each employee to acknowledge their understanding of the conditions required for operating a motor vehicle on TSTC business. A current completed form TSTC-0-FA-028 is to be sent to the local Human and Organization Development department and retained in each employee's personnel file.

### **Annual Auto Liability Insurance Renewal Procedures**

Approximately two to three months prior to the expiration of the annual auto insurance policy, the TSTC Financial Services division submits to the campuses a list of vehicles currently covered by the policy. The campuses are requested to review the list and make any additions or deletions to the list of vehicles to be covered under the policy. The revised list of vehicles to be covered under this policy, along with a completed application, is then submitted to SORM who uses

this information to solicit quotes. The TSTC Financial Services division will offer campuses an opportunity during the policy period to make additions or deletions to the covered vehicles as necessary.

3. Director's and Officer's Liability Insurance – Approximately two to three months prior to the expiration of the annual policy, the TSTC Financial Services division begins the process of submitting an application to SORM. Assistance may be requested from the campuses and the Office of the Chancellor in obtaining the information necessary to complete the application. The completed application is submitted to SORM who uses this application to solicit quotes.
4. Commercial Crime Policy – Approximately two to three months prior to the expiration of the annual policy, the TSTC Financial Services division begins the process of soliciting a bid(s) on a new policy. Assistance may be requested from the campuses in obtaining the information necessary to complete the application(s) required by the insurance carrier(s). Once the quote(s) are received and the insurance carrier is selected, the purchase of this crime policy must receive approval by SORM if payment is to be made from state appropriated funds.
5. Workers' Compensation - At the beginning of each fiscal year, SORM sends each state agency and institution of higher education participating in the cost allocation plan (1) an interagency contract for risk management and workers' compensation coverage which is to be signed by the agency head, and (2) a statement reflecting the assessment due for the fiscal year which is to be paid from funding in the same proportion as the colleges' expected payroll funding. Seventy-five percent (75%) of the assessed allocation is to be paid or transferred to SORM within 30 days from receipt of the statement. Not later than May 1 of each fiscal year, SORM sends a statement to each agency reflecting the remaining assessment due from each agency based upon actual costs since the beginning of the fiscal year and other estimated costs. Payments and transfers for this remaining assessment are required to be made to SORM within 30 days from receipt of the statement.

The Chancellor signs the interagency contract and submits the original to SORM. A copy of the signed contract is retained by the Director of Human Resources.

The TSTC Financial Services division allocates the TSTC's assessment to the applicable campuses and funds in a manner similar to the method used by SORM in allocating the costs statewide. A copy of this allocation is provided to the campuses. The TSTC Financial Services division prepares the necessary accounting entries to TSTC's general ledger and the Uniform Statewide Accounting System (USAS) for each campus for the portion of the allocation which is to be paid from funds in the State Treasury. For the portion of the allocation which is to be paid from local funds, the campuses are responsible for processing a check payable to SORM and mailing it to the TSTC Financial Services division. The individual checks are then mailed in one package to SORM, and the report of funding sources and amounts is transmitted.

The applicable colleges and/or departments are responsible for handling the purchase of other types of insurance for which TSTC has specific authority. This includes the aviation physical damage and liability insurance obtained through the Texas Department of Transportation and general liability insurance purchased for specific events and instructional or training courses.

#### **PERFORMANCE STANDARDS**

Appropriate insurance coverage is maintained at all times.