STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 554 By: Gumm of the Senate

and

Balkman of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public finance and workers' compensation; creating the Multiple Injury Trust Fund Bond Act; providing short title; authorizing issuance of bonds by the Oklahoma Development Finance Authority; limiting amount; pledging certain assessment for payment of principal and interest; providing for characteristics of bonds; requiring certain schedule; requiring payment into sinking fund of certain monies; creating the Multiple Injury Bond Revolving Fund; providing for corpus of fund and authorizing expenditures from fund; requiring certain advertisement; providing for issuance of bonds upon certain occurrence; imposing certain requirements on buyers of bonds; providing for disposition of certain deposits; authorizing waiver of certain requirement; making sale of bonds subject to certain statutory requirements; restricting selling price and fees; amending 85 O.S. 2001, Section 173, as amended by Section 4, Chapter 31, O.S.L. 2002, 174 and 175, as amended by Section 1, Chapter 145, O.S.L. 2002 (85 O.S. Supp. 2004, Sections 173 and 175), which relate to the Multiple Injury Trust Fund; shifting certain authorities and responsibilities from the Board of Managers of CompSource Oklahoma to the State Treasurer; requiring consideration of certain factor when computing certain workers' compensation assessment; prohibiting consideration of certain factor; providing priority for certain payments; redirecting deposit of certain funds; requiring State Treasurer to appoint administrator for certain fund; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 57.400 of Title 62, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Multiple Injury Trust Fund Bond Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 57.401 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Development Finance Authority, at the request of and acting for and on behalf of the Workers' Compensation Court Administrator, is authorized to issue, sell and deliver as hereinafter provided "Multiple Injury Trust Fund Bonds" in a total principal amount requested by the Administrator but not to exceed Two Hundred Million Dollars ($200,000,000.00). It is hereby expressly provided and pledged for the benefit of the purchasers, owners and holders of said bonds that the assessment authorized pursuant to Section 173 of Title 85 of the Oklahoma Statutes not already committed to other obligations of the State of Oklahoma, or so much as may be necessary, shall be devoted irrevocably to the payment and discharge of the interest on, and the principal of, the bonds issued hereunder as the same become due, and to create an adequate reserve to assure such payments when due; and such revenues shall be and hereby are irrevocably pledged for such purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 57.402 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Multiple Injury Trust Fund Bonds may be issued in one or more series and shall be in the form designated by the Oklahoma Development Finance Authority. Such bonds and the interest thereon shall be payable at such place or places as may be designated by the Authority. The bonds shall mature on such dates as designated by the Authority. A schedule of maturity dates showing the years and amounts shall be designated by the Authority for each series issued.

B. The bonds may bear interest, may be sold in such manner and at such price or prices, may bear such date or dates, may mature at

such time or times, not to exceed thirty (30) years from their date, may be in such denomination or denominations, may carry such registration or conversion privileges, may be executed in such manner, may be payable in such medium of payments, at such place or places, and may bear such rate or rates of interest, and shall be subject to such call for redemption, with or without premium, as may be provided by resolution or indenture of the Authority. Until such time as the funds available in the Multiple Injury Trust Fund Bond Account shall be sufficient to retire all outstanding bonds and interest thereon, there shall be paid into such sinking fund during each fiscal year, from the sources hereinabove pledged, such amounts as may be necessary to pay the interest and principal payable during the next succeeding fiscal year, and an amount sufficient to satisfy the reserve requirements as fixed and approved by the Authority in its resolution or indenture authorizing the issuance of such bonds.

SECTION 4. There is hereby created in the State Treasury a revolving fund for the Office of the State Treasurer to be designated the "Multiple Injury Bond Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received from the proceeds of the sale of Multiple Injury Trust Fund Bonds pursuant to the Multiple Injury Trust Fund Bond Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the State Treasurer for the purpose of transferring funds to the Multiple Injury Trust Fund to fulfill the obligations of the Multiple Injury Trust Fund and for the payment of the interest on, and the principal of, the bonds issued pursuant to the Multiple Injury Trust Fund Bond Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 57.404 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. In the event the Oklahoma Development Finance Authority determines that it is advantageous to sell the bonds competitively, the Oklahoma Development Finance Authority shall advertise Multiple Injury Trust Fund Bonds for sale in the manner hereinafter provided. Notice of such sale shall be published at least ten (10) days prior to the date fixed for such sale. Such notice shall be published in a newspaper having general circulation in the State of Oklahoma and in a financial periodical or newspaper known to have general circulation among bond dealers and bond purchasers. Such notice shall state the time and place when and where the Authority will receive written bids for the purchase of the bonds so offered for sale and shall also state that the bonds will be sold to the bidder offering the lowest net interest cost or lowest true interest cost to the State of Oklahoma, stating also, however, that the Authority may, in its discretion, reject all nonconforming bids or all bids submitted. Such notice may contain such other conditions, information and details as the Authority deems appropriate and desirable to provide a thorough understanding of the offer and to assure maximum competition among bidders. Upon acceptance of the lowest and best bid, the bonds shall be issued in accordance therewith and shall be delivered to the purchaser upon payment of the purchase price thereof, which shall be not less than par plus accrued interest to date of delivery except as otherwise provided herein. Provided, however, no tender of the bonds shall be valid until after the expiration of the period of contestability provided for herein. All bidders shall be required to submit with their bids such good faith deposit as the Authority deems appropriate. Upon the acceptance of a bid, the Authority shall return to all of the unsuccessful bidders the deposits so made by them. All such

deposits by the successful bidder shall become the property of the State of Oklahoma, and shall be credited against the purchase price of the bonds so sold or returned upon payment in full of such bonds. If the purchaser shall fail for five (5) days after the tender of the bonds to pay the balance of the purchase price, the sale shall be thereby annulled and the deposit shall in such event be retained by the State of Oklahoma and credited to the General Revenue Fund of the state.

B. Competitive bidding may be waived upon an affirmative vote of three-fourths (3/4) of the Board of Directors of the Oklahoma Development Finance Authority. The Authority thereupon may negotiate for the private sale of the obligations to an underwriter or other purchaser or purchasers. Regardless of the method of sale, the Authority shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act as set forth in Section 695.1 et seq. of Title 62 of the Oklahoma Statutes.

C. No bonds shall be sold for less than par value except upon approval of three-fourths (3/4) of the Board of Directors of the Authority, and no bonds shall be sold for less than sixty-five percent (65%) of par value. In no event shall the original purchaser of any bonds issued by the Authority receive directly or indirectly any fees, compensation or other remuneration in excess of four percent (4%) of the price paid for such bonds by the purchaser of such bonds from the Commission.

SECTION 6. AMENDATORY 85 O.S. 2001, Section 173, as amended by Section 4, Chapter 31, O.S.L. 2002 (85 O.S. Supp. 2004, Section 173), is amended to read as follows:

Section 173. There is hereby created, for the purposes herein declared, a Multiple Injury Trust Fund, formerly known as the Special Indemnity Fund, to be derived from the following sources:

A. 1. a. As soon as practicable after January 1 of each year and until such time as the ~~Board of Managers of~~

~~CompSource Oklahoma~~ State Treasurer, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, the Workers' Compensation Court Administrator shall establish an assessment rate applicable to each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, each employer carrying its own risk, and each group self-insurance association, for amounts for purposes of computing the assessment authorized by this section necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on or before December 31 of each year by the ~~Board of Managers of CompSource Oklahoma~~ State Treasurer to be outstanding for the next calendar year, and to pay the allocations provided for in subsection I of this section. The rate shall be equal for all parties required to pay the assessment. The repayment obligations of any loan or bond issue for the Multiple Injury Trust Fund shall be considered when determining the outstanding obligations of the Multiple Injury Trust Fund for computing the assessments authorized by this section. The proceeds of any loan or bond issue for the Multiple Injury Trust Fund shall not be considered in or reduce the outstanding obligations of the Multiple Injury Trust Fund for computing the assessments authorized by this section.

b. Until such time as the ~~Board of Managers of CompSource Oklahoma~~ State Treasurer, pursuant to an independent actuarial audit, has certified that there are

sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, the Oklahoma Tax Commission shall assess and collect from any uninsured employer a temporary assessment at the rate of five percent (5%) of the total compensation for permanent total disability awards, permanent partial disability awards, and death benefits paid out during each quarter of the calendar year by the employers.

2. The assessments shall be paid to the ~~Oklahoma~~ Tax Commission. Insurance carriers, self-insurers, group self-insurance associations and CompSource Oklahoma shall pay the assessment ~~in four equal installments~~ not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. Assessments shall be determined based upon gross direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to carry workers' compensation insurance but who has failed or neglected to do so. Only one-third (1/3) of assessments against insurance carriers and CompSource Oklahoma may be charged to policyholders and shall not be considered in determining whether any rate is excessive. The remaining two-thirds (2/3) of assessments against insurance carriers and CompSource Oklahoma may not be included in any rate, premium, charge, fee, assessment or other amount to be collected from a policyholder. Insurance carriers and CompSource Oklahoma shall not separately state the amount of the assessment on any invoice or billing assessment.

3. a. The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection and the allocations provided for in subsection I of this section bear to the combined gross direct written premiums of all such insurers; all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from January 1 to December 31 preceding the assessment. Notwithstanding any law to the contrary, the rate for the first two calendar quarters of 2002 shall equal six percent (6%).

b. No employer or insurer shall be liable for payment of the January 15, 2002, assessment. Payments made pursuant to the January 15, 2002, assessment shall be credited to any assessment obligation of the payor pursuant to this section. Any payment made pursuant to the January 15, 2002, assessment by a payor having no assessment obligation pursuant to this section during the 2002 calendar year shall be refunded in its entirety to the payor upon application by the payor in the same time and manner as provided for the payment of rebates in Section 2 of this act.

c. For purposes of this subsection:

(1) "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves, and

(2) "normal premium" means a standard premium less any discounts.

4. By April 15 of each year, the Insurance Commissioner, Board of Managers of CompSource Oklahoma and each individual and group self-insured shall provide the Administrator with such information as the Administrator may determine is necessary to effectuate the purposes of this section.

5. Each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association, shall be notified by the Administrator in writing of the rate for the assessment on or before May 1 of each year in which a rate is determined. The rate determined by the Administrator shall be in effect for four calendar quarters beginning July 1 following determination by the Administrator.

6. a. No mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, may be assessed in any year an amount greater than six percent (6%) of the gross direct written premiums of that insurer.

b. No employer carrying its own risk may be assessed in any year an amount greater than six percent (6%) of the total actual paid losses of that individual self-insured.

c. No group self-insurance association may be assessed in any year an amount greater than six percent (6%) of the normal premium of that group self-insurance association.

d. If the maximum assessment does not provide in any one (1) year an amount sufficient to make all necessary

payments for obligations of the Multiple Injury Trust Fund and for the allocations provided for in subsection I of this section, the unpaid portion shall be paid as soon thereafter as funds become available.

Provided, obligations for repayment of principal and interest of Multiple Injury Trust Fund Bonds, shall be paid prior to payment of any other obligations of the Multiple Injury Trust Fund.

B. The Multiple Injury Trust Fund is hereby authorized to receive and expend monies appropriated by the Legislature.

C. It shall be the duty of the ~~Oklahoma~~ Tax Commission to collect the payments provided for herein. The ~~Oklahoma~~ Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The ~~Oklahoma~~ Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of this title.

D. Any mutual or interinsurance association, stock company, or other insurance company, which is subject to regulation by the Insurance Commissioner, or CompSource Oklahoma, failing to make payments required herein promptly and correctly, and failing to report payment of the same to the Insurance ~~Commission~~ Commissioner within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to, a fine in the amount of Five Hundred Dollars ($500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Insurance Commissioner.

E. Any employer carrying its own risk, or group self-insurance association failing to make payments required herein promptly and correctly, and failing to report payment of the same to the Administrator within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars ($500.00) or

an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Administrator.

F. On or before the first day of April of each year, the State Treasurer shall advise the Court Administrator~~, the Board of Managers of CompSource Oklahoma~~ and the ~~Oklahoma~~ Tax Commission of the amount of money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund. On or before the first day of November of each year, the State Treasurer shall advise the Court Administrator~~, the Board of Managers of CompSource Oklahoma~~ and the ~~Oklahoma~~ Tax Commission of the amount of money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

G. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may ~~by order of the Commissioner of CompSource Oklahoma, with the approval of the Board of Managers of CompSource Oklahoma,~~ be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, ~~when signed by the Commissioner and approved by the Board of Managers of CompSource Oklahoma,~~ upon delivery of such securities or evidence of indebtedness to the State Treasurer. The ~~Commissioner~~ State Treasurer may~~, upon like approval of the Board of Managers of~~

~~CompSource Oklahoma,~~ sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund. The State Treasurer shall transfer, as needed, sufficient monies from the Multiple Injury Trust Fund to the Multiple Injury Bond Revolving Fund to make necessary debt service payments on Multiple Injury Trust Fund Bonds issued pursuant to the Multiple Injury Trust Fund Bond Act.

H. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Multiple Injury Trust Fund. Refunds shall be paid from and out of the Multiple Injury Trust Fund.

I. Beginning January 1, 2002, the ~~Oklahoma~~ Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section, less the annual sum of One Million Seven Hundred Thousand Dollars ($1,700,000.00), of which Eight Hundred Fifty Thousand Dollars ($850,000.00) shall be payable by the ~~Oklahoma~~ Tax Commission to the State Treasurer in equal monthly installments to the credit of the Department of Labor, Four Hundred Twenty-five Thousand Dollars ($425,000.00) shall be payable in equal monthly installments to the credit of the Office of the Attorney General, and Four Hundred Twenty-five Thousand Dollars ($425,000.00) shall be payable in equal monthly installments to the credit of the Oklahoma Department of Career and Technology Education. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the Oklahoma Department of Career and Technology Education shall supplement other funding to

the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Court of this state acting under the provisions hereof.

J. The Administrator of the Workers' Compensation Court shall promulgate rules as the Administrator deems necessary to effectuate the provisions of this section ~~and~~, Section 174 of this title and the Multiple Injury Trust Fund Bond Act.

K. The Insurance Commissioner shall promulgate rules relating to insurers as defined in Title 36 of the Oklahoma Statutes, as the Insurance Commissioner deems necessary to effectuate the provisions of this section.

SECTION 7. AMENDATORY 85 O.S. 2001, Section 174, is amended to read as follows:

Section 174. Until such time as the ~~Board of Managers of CompSource Oklahoma~~ State Treasurer, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, including all court orders for material increases and the accrued interest thereon, and all orders for interest on previously paid awards, every political or municipal subdivision of the state, covered by the provisions of the Workers' Compensation Act, including counties, cities, and towns, shall provide sufficient funds in its annual estimate of the needs based on the total compensation paid out or benefits or payments in lieu thereof by such political or municipal subdivision during the prior fiscal year, to pay the amount due under the Workers' Compensation Act for the use and purpose of the Multiple Injury Trust Fund and the allocations provided for in subsection ~~H~~ I of Section 173 of this title, an amount equal to the assessment applicable to the political or municipal subdivision of the state as provided in Section 173 of

this title. It shall be the duty of the excise board of each county to approve an appropriation in an amount necessary to pay such sum.

SECTION 8. AMENDATORY 85 O.S. 2001, Section 175, as amended by Section 3, Chapter 145, O.S.L. 2002 (85 O.S. Supp. 2004, Section 175), is amended to read as follows:

Section 175. A. ~~CompSource Oklahoma~~ The State Treasurer shall appoint an Administrator for the Multiple Injury Trust Fund who shall be charged with the administration and protection of the Multiple Injury Trust Fund ~~and shall~~ as its chief administrative officer. The fund Administrator shall be notified by the Workers' Compensation Court Administrator of all proceedings which may affect such fund.

B. Any party interested shall have a right to bring a proceeding in the Supreme Court of the State of Oklahoma to review an award of the Court affecting such Multiple Injury Trust Fund, in the same manner as is now provided by law with reference to other awards by the Court.

C. The State Treasurer shall allocate to ~~CompSource Oklahoma~~ the Administrator for the Multiple Injury Trust Fund out of the Multiple Injury Trust Fund, sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Administrator for the Multiple Injury Trust Fund, unless rejected by the Governor and Attorney General.

SECTION 9. This act shall become effective September 1, 2005.

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