

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2041

6 By: Sullivan

7 COMMITTEE SUBSTITUTE

8 An Act relating to workers' compensation; amending 85
9 O.S. 2001, Section 61, as amended by Section 78,
10 Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2010, Section
11 61), which relates to the securing of compensation by
12 employers; modifying requirements; requiring
13 participation by self-insurers in certain Fund;
14 creating the Workers' Compensation Self-Insurance
15 Guaranty Fund; providing for the administration of
16 Fund; requiring self-insurers to participate in Fund;
17 amending 85 O.S. 2001, Sections 66.1 and 66.2, which
18 relate to certain Guaranty Funds; providing for the
19 dissolution of Funds and Boards; creating Workers'
20 Compensation Self-Insurance Guaranty Fund Board;
21 providing for the appointment of members of Board;
22 providing for terms of initial members of Board;
23 providing for subsequent terms; providing for the
24 filling of vacancies; providing for the selection of
chair and vice-chair of Board; specifying Board
members shall not receive compensation; providing for
travel reimbursement; requiring certain meetings of
the Board; directing Attorney General to provide
legal counsel for Board; stating purpose of Board;
authorizing certain expenditures from Fund; providing
procedure for certain expenditures; providing funding
sources for the Fund; requiring certain assessments
of self-insurers in certain circumstances;
authorizing revocation of certain permit for failures
of self-insurers to meet obligations; authorizing
Oklahoma Tax Commission to bring certain recovery
actions; establishing procedure for the release of
certain deposits of impaired self-insurers; providing
for rights and defenses available to Board in certain
circumstances; providing for the dissolution of the

1 Individual Self-Insured Guaranty Fund and Board and
2 the Group Self-Insurance Association Guaranty Fund
3 and Board; providing for the transfer of assets and
4 obligations to the Workers' Compensation Self-
5 Insurance Guaranty Fund Board; providing for the
6 continuation of claims or actions upon the
7 dissolution of certain Boards and Funds; prohibiting
8 the imposition of liability on certain employees
9 acting in good faith; defining terms; providing for
10 codification; and providing an effective date.

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

12 SECTION 1. AMENDATORY 85 O.S. 2001, Section 61, as
13 amended by Section 78, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2010,
14 Section 61), is amended to read as follows:

15 Section 61. A. An employer shall secure compensation to ~~his~~
16 employees in one of the following ways:

17 1. By insuring and keeping insured the payment of such
18 compensation with any stock corporation, mutual association, or
19 other concerns authorized to transact the business of workers'
20 compensation insurance in this state, or by exchanging contracts of
21 indemnity or interinsurance, pursuant to reasonable rules prescribed
22 by the Administrator providing for and securing the payment of the
23 compensation provided for in the Workers' Compensation Act. When an
24 insurer issues a policy to provide workers' compensation benefits
pursuant to the provisions of the Workers' Compensation Act, the
insurer shall file, or cause to be filed, with the Administrator a
notice in such form and detail as the Administrator may prescribe by

1 rule. The notice shall contain the name, address, and principal
2 occupation of the employer, the number, effective date, and
3 expiration date of the policy, and such other information as may be
4 required by the Administrator. The notice shall be filed by the
5 insurer within thirty (30) days after the effective date of the
6 policy. Any insurer who fails to file the notice required by this
7 subsection shall be liable for an administrative violation and
8 subject to a fine by the Administrator of not more than One Thousand
9 Dollars (\$1,000.00);

10 2. By obtaining and keeping in force guaranty insurance with
11 any company authorized to do guaranty business in this state. Each
12 company that issues such guaranty insurance shall file a copy of the
13 contract with the Administrator within thirty (30) days after the
14 effective date of the contract. Any company that fails to file a
15 copy of the contract as required by this subsection shall be liable
16 for an administrative violation and subject to a fine by the
17 Administrator of not more than One Thousand Dollars (\$1,000.00);

18 3. By obtaining and keeping in force a workers' compensation
19 equivalent insurance product approved by the Insurance Commissioner
20 pursuant to Section 65 of this title; or

21 4. a. By furnishing satisfactory proof to the Administrator
22 of the employer's financial ability to pay such
23 compensation. The Administrator, pursuant to rules
24 adopted by the Court or the Administrator for an

1 individual self-insured or a group self-insurance
2 association, shall require an employer that has:

3 ~~a.~~ (1) less than one hundred employees or less than One
4 Million Dollars (\$1,000,000.00) in net assets to:

5 ~~(1)~~ (a) deposit with the Administrator securities,
6 an irrevocable letter of credit or a surety
7 bond payable to the state, in an amount
8 determined by the Administrator which shall
9 be at least an average of the yearly claims
10 for the last three (3) years~~+~~+ or

11 ~~(2)~~ (b) provide proof of excess coverage with such
12 terms and conditions as is commensurate with
13 their ability to pay the benefits required
14 by the provisions of the Workers'
15 Compensation Act~~+~~+, and

16 ~~b.~~ (2) one hundred or more employees and One Million Dollars
17 (\$1,000,000.00) or more in net assets to:

18 ~~(1)~~ (a) secure a surety bond payable to the state,
19 or an irrevocable letter of credit, in an
20 amount determined by the Administrator which
21 shall be at least an average of the yearly
22 claims for the last three (3) years~~+~~+ or

23 ~~(2)~~ (b) provide proof of excess coverage with such
24 terms and conditions as is commensurate with

1 their ability to pay the benefits required
2 by the provisions of the Workers'
3 Compensation Act.

4 b. The Administrator may waive the requirements of this
5 paragraph in an amount which is commensurate with the
6 ability of the individual self-insured or group self-
7 insurance association to pay the benefits required by
8 the provisions of the Workers' Compensation Act.
9 Irrevocable letters of credit required by this
10 paragraph shall contain such terms as may be
11 prescribed by the Administrator and shall be issued
12 for the benefit of the Workers' Compensation Court by
13 a financial institution whose deposits are insured by
14 the Federal Deposit Insurance Corporation.

15 ~~B-~~ c. An employer, upon application to become a member of a
16 group self-insurance association, shall file with the
17 Administrator of the Workers' Compensation Court a
18 notice, in such form as prescribed by the
19 Administrator of the Court, acknowledging that the
20 employer, by entering into a group self-insurance
21 association, accepts joint and several liability.
22 Such notice shall be submitted to the Workers'
23 Compensation Court with the application for
24 membership.

1 ~~C.~~ d. All self-insurers under this title shall participate
2 in the Workers' Compensation Self-Insurance Guaranty
3 Fund created pursuant to Section 2 of this act, as a
4 condition of authority to self-insure in this state,
5 except public employers that self-insure pursuant to
6 Section 2b of this title.

7 e. A self-insurer whose permit to self-insure is revoked,
8 denied for renewal or surrendered is not relieved of
9 the obligation for compensation to an employee for a
10 compensable injury that occurred during the period of
11 self-insurance. The security required under this
12 section shall be maintained by the Administrator as
13 provided in this act until each claim for workers'
14 compensation benefits is paid, settled, or lapses
15 under this title.

16 B. 1. An employer who fails to comply with the provisions of
17 this section shall be subject to the ~~penalty~~ penalties provided for
18 in ~~Section~~ Sections 12, 63.1, 63.2, and 63.3 of this title.

19 ~~D.~~ 2. Any employer that knowingly provides false information to
20 the Administrator for purposes of ~~becoming self insured or a group~~
21 ~~self-insurance association~~ securing or maintaining a self-insurance
22 permit shall be subject to the perjury laws of this state.

23 ~~E.~~ ~~The provisions of this title shall not be construed to limit~~
24 ~~or restrict the ability of political subdivisions of this state or~~

1 ~~employers subject to the provisions of the Workers' Compensation Act~~
2 ~~from joining together to form group self insurance associations~~
3 ~~pursuant to law or rules promulgated by the Court or the~~
4 ~~Administrator.~~

5 SECTION 2. AMENDATORY 85 O.S. 2001, Section 66.1, is
6 amended to read as follows:

7 Section 66.1 A. There is hereby created the "Individual
8 Self-Insured Guaranty Fund Board". The Board shall have supervision
9 over the administration and operation of the Individual Self-Insured
10 Guaranty Fund.

11 B. The Board shall consist of not less than three ~~(3)~~ nor more
12 than nine ~~(9)~~ members. Each member shall be from an employer who
13 has been approved by the Workers' Compensation Court as an own_risk
14 carrier or self-insured risk. The Board shall be appointed by the
15 Administrator.

16 The initial members of the Board shall be appointed to terms of
17 office as follows:

- 18 1. One member shall be appointed for one (1) year;
- 19 2. One member shall be appointed for two (2) years; and
- 20 3. One member shall be appointed for three (3) years.

21 If more than three members are appointed, the fourth member shall be
22 appointed for four (4) years and each of the others appointed shall
23 be for terms of office in the order of their appointment of one (1),
24 two (2), three (3) or four (4) years with the ninth member also

1 serving four (4) years. Thereafter, each person appointed shall
2 serve for four (4) years.

3 C. The State Treasurer shall establish the Individual
4 Self-Insured Guaranty Fund in the State Treasury.

5 D. The monies paid into the Fund, together with the interest
6 thereon, shall constitute the Individual ~~Self-Insured's~~ Self-Insured
7 Guaranty Fund.

8 E. Until the Individual Self-Insured Guaranty Fund contains One
9 Million Dollars (\$1,000,000.00), the Oklahoma Tax Commission shall
10 assess and collect from the employers carrying their own risk a tax
11 at the rate of one percent (1%) of the total compensation for
12 permanent partial disability awards paid out during each quarter of
13 the calendar year by the employers. The Oklahoma Tax Commission
14 shall forward to the State Treasurer the proceeds of the tax for
15 deposit in the Fund. When the amount in the Fund falls below Seven
16 Hundred Fifty Thousand Dollars (\$750,000.00), the tax made pursuant
17 to this section shall be assessed until the Fund contains One
18 Million Dollars (\$1,000,000.00). The State Treasurer shall place
19 monies in the Fund in interest-bearing accounts.

20 F. 1. If an employer, who is currently approved by the
21 Workers' Compensation Court as a self-insured or own_risk carrier,
22 is unable to make payment of an award and judgment is rendered
23 against such employer and execution is levied and returned
24

1 | unsatisfied in whole or in part, payments for such liabilities shall
2 | be made from the Individual Self-Insured Guaranty Fund.

3 | The Administrator shall proceed to recover such payments from
4 | the employer, or the employer's receiver or trustee in bankruptcy,
5 | and may commence an action or proceeding or file a claim therefor.

6 | The Attorney General shall appear on behalf of the Administrator
7 | in any such action or proceeding. All monies recovered in such
8 | action shall be paid into the Fund.

9 | 2. Each employer approved as an individual self-insurer or own
10 | risk carrier shall pay into the Fund a sum equal to that assessed
11 | against such employer as provided for in subsection E of this
12 | section. When the award becomes final, the sum shall be payable
13 | regardless of whether or not the award made to the claimant is paid.

14 | 3. In making and entering awards for compensation for permanent
15 | partial disability, the Court shall determine and fix the amounts
16 | that shall be paid to the Tax Commission pursuant to the provisions
17 | of subsection E of this section. The amount so determined and fixed
18 | shall have the same force and effect as an award of the Court for
19 | compensation and all provisions relating to the collection of awards
20 | of the Court shall apply to such judgments.

21 | 4. It shall be the duty of the Oklahoma Tax Commission to
22 | collect the payments provided for in this section. The Oklahoma Tax
23 | Commission is hereby authorized to bring an action for the recovery
24 | of any delinquent or unpaid payments required in this section. The

1 Oklahoma Tax Commission may also enforce payments by proceeding in
2 accordance with the provisions of Section 42 of ~~Title 85 of the~~
3 ~~Oklahoma Statutes~~ this title.

4 The Oklahoma Tax Commission shall on or before the first day of
5 April of each year find and determine the amount of money held as of
6 March 1 of that year by the State Treasurer for the benefit of the
7 Individual Self-Insured Guaranty Fund and shall on or before the
8 first day of October of each year find and determine the amount of
9 money held as of September 1 of that year by the State Treasurer for
10 the benefit of the Individual Self-Insured Guaranty Fund. Promptly
11 after making each such determination, the Oklahoma Tax Commission
12 shall advise the Administrator in writing of its findings.

13 5. Eighty percent (80%) of all sums held by the State Treasurer
14 to the credit of the Individual Self-Insured Guaranty Fund by order
15 of the Administrator, with the approval of the Individual
16 Self-Insured Guaranty Fund Board, may be invested in or loaned on
17 the pledge of any of the securities in which a state bank may invest
18 the moneys deposited therein by the State Treasurer; or may be
19 deposited in state or national banks or trust companies upon insured
20 time deposit bearing interest at a rate no less than currently being
21 paid upon insured savings accounts in said institutions. "Insured"
22 as used in this section shall mean insurance as provided by an
23 agency of the federal government. All such securities or evidence
24 of indebtedness shall be placed in the hands of the State Treasurer,

1 who shall be the custodian thereof, who shall collect the principal
2 and interest when due, and pay the same into said Fund. The State
3 Treasurer shall pay by vouchers drawn on the Individual Self-Insured
4 Guaranty Fund for the making of such investments, when signed by the
5 Administrator and approved by the Individual Self-Insured Guaranty
6 Board, upon delivery of such securities or evidence of indebtedness
7 to him. The Administrator, upon approval of the individual
8 Self-Insured Guaranty Board, may sell any of such securities, the
9 proceeds thereof to be paid over to the State Treasurer for deposit
10 in the Fund.

11 6. The refund provisions of Sections 227 through 229 of Title
12 68 of the Oklahoma Statutes shall be applicable to any payment of
13 assessments made to the Fund when the Fund has over One Million
14 Dollars (\$1,000,000.00) in it. Refunds shall be paid from the Fund.

15 7. The Oklahoma Tax Commission shall pay, monthly, to the State
16 Treasurer to the credit of the Individual Self-Insured Guaranty Fund
17 all moneys collected under the provisions of this section. The State
18 Treasurer shall pay out of the Individual Self-Insured Guaranty Fund
19 only upon the order and direction of a court of this state acting
20 under the provisions thereof.

21 8. Where an award has been made by the Court or a payment in
22 lieu thereof for compensable injury for a permanent partial
23 disability, the employer shall pay to the Tax Commission such sum as
24 is due of which ninety-eight percent (98%) of said sum shall be paid

1 into the Fund and the remaining two percent (2%) thereof shall be
2 paid to the Oklahoma Tax Commission not later than the fifteenth of
3 the month following the close of the calendar quarter in which the
4 award was made.

5 G. The Board may retain an insurance carrier or approved
6 service organization to process, investigate and pay valid claims.
7 The charge for such service shall be paid from the Fund.

8 H. The provisions of this section shall not apply to any state
9 entity or any political subdivision of the state.

10 I. No claim or award shall be allowed against the Fund unless
11 such claim or award is made within (1) one year of the time provided
12 in paragraph 1 of subsection F of this section.

13 J. Pursuant to the requirements of Section 9 of this act, the
14 Individual Self-Insured Guaranty Fund and Board shall cease to exist
15 once the initial appointments to the Workers' Compensation Self-
16 Insurance Guaranty Fund Board are made as provided in Section 4 of
17 this act.

18 SECTION 3. AMENDATORY 85 O.S. 2001, Section 66.2, is
19 amended to read as follows:

20 Section 66.2 A. There is hereby created the "Group
21 Self-Insurance Association Guaranty Fund Board". The Board shall
22 have supervision over the administration and operation of the Group
23 Self-Insurance Association Guaranty Fund.

24

1 B. The Board shall consist of not less than three ~~(3)~~ nor more
2 than nine ~~(9)~~ members. Each member shall be an administrator of a
3 Group Self-Insurance Association which has been approved by the
4 Workers' Compensation Court as an own_risk carrier or self-insured
5 risk. The Board shall be appointed by the Administrator. The
6 initial members of the Board shall be appointed to terms of office
7 as follows:

- 8 1. One member shall be appointed for one (1) year;
- 9 2. One member shall be appointed for two (2) years; and
- 10 3. One member shall be appointed for three (3) years.

11 If more than three members are appointed, the fourth member shall be
12 appointed for four (4) years and each of the others appointed shall
13 be for terms of office in the order of their appointment of one (1),
14 two (2), three (3) or four (4) years with the ninth member also
15 serving four (4) years. Thereafter, each person appointed shall
16 serve for four (4) years.

17 C. The State Treasurer shall establish the Group Self-Insurance
18 Association Guaranty Fund in the State Treasury.

19 D. The monies paid into the Fund, together with the interest
20 thereon, shall constitute the Group Self-Insurance Association
21 Guaranty Fund.

22 E. Until the Group Self-Insurance Association Guaranty Fund
23 contains One Million Dollars (\$1,000,000.00), the Oklahoma Tax
24 Commission shall assess and collect from each group self-insurance

1 association carrying their own risk, a tax at the rate of one
2 percent (1%) of the total compensation for permanent partial
3 disability awards paid out during each quarter of the calendar year
4 by each group self-insurance association. The Oklahoma Tax
5 Commission shall forward to the State Treasurer the proceeds of the
6 tax for deposit in the Fund. When the amount in the Fund falls
7 below Seven Hundred Fifty Thousand Dollars (\$750,000.00), the tax
8 made pursuant to this section shall be assessed until the Fund
9 contains One Million Dollars (\$1,000,000.00). The State Treasurer
10 shall place monies in the Fund in interest-bearing accounts.

11 F. 1. If a group self-insurance association, that is currently
12 approved by the Workers' Compensation Court as a self-insured or
13 own-risk carrier, is unable to make payment of an award and judgment
14 is rendered against such group self-insurance association and
15 execution is levied and returned unsatisfied in whole or in part,
16 payments for such liabilities shall be made from the Group
17 Self-Insurance Association Guaranty Fund.

18 The Administrator shall proceed to recover such payments from
19 the group self-insurance association, or the group self-insurance
20 association's receiver or trustee in bankruptcy, and may commence an
21 action or proceeding or file a claim therefor.

22 The Attorney General shall appear on behalf of the Administrator
23 in any such action or proceeding. All monies recovered in such
24 action shall be paid into the Fund.

1 2. Each group self-insurance association approved as a
2 self-insurer or own risk carrier shall pay into the Fund a sum equal
3 to that assessed against such group self-insurance association as
4 provided for in subsection E of this section. When the award
5 becomes final, the sum shall be payable regardless of whether or not
6 the award made to the claimant is paid.

7 3. In making and entering awards for compensation for permanent
8 partial disability, the Court shall determine and fix the amounts
9 that shall be paid to the Tax Commission pursuant to the provisions
10 of subsection E of this section. The amount so determined and fixed
11 shall have the same force and effect as an award of the Court for
12 compensation and all provisions relating to the collection of awards
13 of the Court shall apply to such judgments.

14 4. It shall be the duty of the Oklahoma Tax Commission to
15 collect the payments provided for in this section. The Oklahoma Tax
16 Commission is hereby authorized to bring an action for the recovery
17 of any delinquent or unpaid payments required in this section. The
18 Oklahoma Tax Commission may also enforce payments by proceeding in
19 accordance with the provisions of Section 42 of ~~Title 85 of the~~
20 ~~Oklahoma Statutes~~ this title.

21 The Oklahoma Tax Commission shall on or before the first day of
22 April of each year find and determine the amount of money held as of
23 March 1 of that year by the State Treasurer for the benefit of the
24 Group Self-Insurance Association Guaranty Fund and shall on or

1 before the first day of October of each year find and determine the
2 amount of money held as of September 1 of that year by the State
3 Treasurer for the benefit of the Group Self-Insurance Association
4 Guaranty Fund. Promptly after making each such determination, the
5 Oklahoma Tax Commission shall advise the Administrator in writing of
6 its findings.

7 5. Eighty percent (80%) of all sums held by the State Treasurer
8 to the credit of the Group Self-Insurance Association Guaranty Fund
9 by order of the Administrator, with the approval of the Group
10 Self-Insurance Association Guaranty Fund Board, may be invested in
11 or loaned on the pledge of any of the securities in which a state
12 bank may invest the moneys deposited therein by the State Treasurer;
13 or may be deposited in state or national banks or trust companies
14 upon insured time deposit bearing interest at a rate no less than
15 currently being paid upon insured savings accounts in said
16 institutions. "Insured" as used in this section shall mean
17 insurance as provided by an agency of the federal government. All
18 such securities or evidence of indebtedness shall be placed in the
19 hands of the State Treasurer, who shall be the custodian thereof,
20 who shall collect the principal and interest when due, and pay the
21 same into said Fund. The State Treasurer shall pay by vouchers
22 drawn on the Group Self-Insurance Association Guaranty Fund for the
23 making of such investments, when signed by the Administrator and
24 approved by the Group Self-Insurance Association Guaranty Board,

1 upon delivery or evidence of indebtedness to him. The
2 Administrator, upon approval of the Group Self-Insurance Association
3 Guaranty Board, may sell any of such securities, the proceeds
4 thereof to be paid over to the State Treasurer for deposit in the
5 Fund.

6 6. The refund provisions of Sections 227 through 229 of Title
7 68 of the Oklahoma Statutes shall be applicable to any payment of
8 assessments made to the Fund when the Fund has over One Million
9 Dollars (\$1,000,000.00) in it. Refunds shall be paid from the Fund.

10 7. The Oklahoma Tax Commission shall pay, monthly, to the State
11 Treasurer to the credit of the Group Self-Insurance Association
12 Guaranty Fund all moneys collected under the provisions of this
13 section. The State Treasurer shall pay out of the Group
14 Self-Insurance Association Guaranty Fund only upon the order and
15 direction of a court of this state acting under the provisions
16 thereof.

17 8. Where an award has been made by the Court or a payment in
18 lieu thereof for compensable injury for a permanent partial
19 disability, the employer shall pay to the Tax Commission such sum as
20 is due of which ninety-eight percent (98%) of said sum shall be paid
21 into the Fund and the remaining two percent (2%) thereof shall be
22 paid to the Oklahoma Tax Commission not later than the fifteenth of
23 the month following the close of the calendar quarter in which the
24 award was made.

1 G. The Board may retain an insurance carrier or approved
2 service organization to process, investigate and pay valid claims.
3 The charge for such service shall be paid from the Fund.

4 H. The provisions of this section shall not apply to any group
5 self-insurance association consisting of state entities or of any
6 political subdivisions of the state.

7 I. No claim or award shall be allowed against said Fund unless
8 such claim or award is made within one (1) year of the time provided
9 in paragraph 1 of subsection F of this section.

10 J. Pursuant to the requirements of Section 9 of this act, the
11 Group Self-Insurance Guaranty Fund and Board shall cease to exist
12 once the initial appointments to the Workers' Compensation Self-
13 Insurance Guaranty Fund Board are made as provided in Section 4 of
14 this act.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 66.3 of Title 85, unless there
17 is created a duplication in numbering, reads as follows:

18 A. There is hereby created in the State Treasury the "Workers'
19 Compensation Self-Insurance Guaranty Fund" to be administered,
20 supervised and protected by the Workers' Compensation Self-Insurance
21 Guaranty Fund Board. All self-insurers under Title 85 of the
22 Oklahoma Statutes shall participate in the Fund as a condition of
23 authority to self-insure in this state, except public employers that
24

1 self-insure pursuant to Section 2b of Title 85 of the Oklahoma
2 Statutes.

3 B. 1. The Workers' Compensation Self-Insurance Guaranty Fund
4 Board shall consist of five (5) members to be appointed as follows:

5 a. the Governor shall appoint two members, one of whom
6 shall represent an approved group self-insurance
7 association authorized to self-insure pursuant to
8 Sections 61, 149.1 or 149.2 of Title 85 of the
9 Oklahoma Statutes,

10 b. the President Pro Tempore of the Senate shall appoint
11 one member who shall be an attorney licensed in this
12 state who is engaged in the primary practice of
13 workers' compensation law,

14 c. the Speaker of the House of Representatives shall
15 appoint one member who represents a private self-
16 insurer, and

17 d. the Workers' Compensation Court Administrator shall
18 appoint one member who shall be a licensed claims
19 adjuster affiliated with either a private self-insurer
20 or group self-insurance association.

21 2. The term of office for initial appointees shall be as
22 follows:

23 a. the term of office for three positions, one each
24 appointed by the Governor, the President Pro Tempore

1 of the Senate and Speaker of the House of
2 Representatives, shall expire on November 1, 2014, and

3 b. the term of office for two positions one each
4 appointed by the Governor and the Court Administrator
5 shall expire on November 1, 2013.

6 Thereafter, successors in office shall be appointed for a three-year
7 term. Members may succeed themselves in office. Any person
8 appointed to fill a vacancy shall be appointed for the unexpired
9 portion of the term in the same manner as the original appointment.

10 3. The Chairperson and Vice-Chairperson of the Board shall be
11 elected by the Board from among its members.

12 4. Members of the Board shall receive no compensation for
13 serving on the Board but shall be reimbursed from monies in the Fund
14 for their necessary travel expenses incurred in the performance of
15 their duties in accordance with the State Travel and Reimbursement
16 Act.

17 C. Meetings of the Board shall be held at least quarterly. The
18 presence of a simple majority of the members constitutes a quorum.
19 No action shall be taken by the Board without the affirmative vote
20 of at least a simple majority of the members.

21 D. The Office of the Attorney General shall provide legal
22 counsel to assist the Board in the performance of its duties.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 66.4 of Title 85, unless there
3 is created a duplication in numbering, reads as follows:

4 The Workers Compensation Self-Insurance Guaranty Fund shall be
5 for the purpose of continuation of workers' compensation benefits
6 due and unpaid or interrupted due to the inability of an impaired
7 self-insurer as defined in Section 11 of this act to meet its
8 compensation obligations when its financial resources, security
9 deposit, guaranty agreements, surety agreements and excess insurance
10 are either inadequate or not immediately accessible for the payment
11 of benefits. Monies in the Fund, including interest accruing
12 thereon, are not subject to appropriation and shall be expended to
13 compensate employees for eligible benefits for a compensable injury
14 under the Workers' Compensation Act, pay outstanding workers'
15 compensation obligations of the impaired self-insurer, and for all
16 claims for related administrative fees, operating costs of the
17 Workers' Compensation Self-Insurance Guaranty Fund Board, attorney
18 fees, and other costs reasonably incurred by the Board in the
19 performance of its duties. Expenditures from the Fund shall be made
20 upon warrants issued by the State Treasurer against claims as
21 prescribed by law with the Director of the Office of State Finance
22 for approval and payment. The Fund shall be subject to audit the
23 same as state funds and accounts.

24

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 66.5 of Title 85, unless there
3 is created a duplication in numbering, reads as follows:

4 The Workers' Compensation Self-Insurance Guaranty Fund shall be
5 derived from the following sources:

6 1. Any unexpended funds, including interest thereon, held by
7 the State Treasurer in the Individual Self-Insured Guaranty Fund or
8 Group Self-Insurance Association Guaranty Fund transferred to the
9 Workers' Compensation Self-Insurance Guaranty Fund created by
10 Section 4 of this act once the initial appointments to the Workers'
11 Compensation Self-Insurance Guaranty Fund Board are made as provided
12 in Section 4 of this act;

13 2. Until the Workers' Compensation Self-Insurance Guaranty Fund
14 contains Two Million Dollars (\$2,000,000.00) or in the event the
15 amount in the Fund falls below One Million Dollars (\$1,000,000.00),
16 an assessment against each private self-insurer and group self-
17 insurance association in the amount of one percent (1%) of actual
18 paid losses during the preceding calendar year, payable to the
19 Oklahoma Tax Commission for deposit to the Fund. For purposes of
20 this paragraph, "actual paid losses" means all medical and indemnity
21 payments, including temporary disability, permanent disability, and
22 death benefits, and excluding loss adjustment expenses and reserves.
23 The assessment shall be paid within thirty (30) days after the date
24 the Administrator of the Workers' Compensation Court notifies the

1 self-insurer of the assessment. The Tax Commission shall determine
2 the Fund balance as of March 1 and September 1 of each year and
3 shall advise the Administrator thereof in writing within thirty (30)
4 days of each such determination. Failure of a self-insurer to pay,
5 or timely pay, an assessment shall be grounds for revocation by the
6 Administrator of the self-insurer's permit to self-insure in this
7 state, after notice and hearing. A self-insurer which ceases to be
8 a self-insurer shall remain liable for any and all assessments made
9 pursuant to this paragraph during the period following the date its
10 permit to self-insure is withdrawn, revoked or surrendered until
11 such time as it has discharged all obligations to pay compensation
12 which arose during the period of time the former self-insurer was
13 self-insured. The Oklahoma Tax Commission is authorized to bring an
14 action for recovery of any delinquent or unpaid assessments required
15 by this paragraph. An impaired self-insurer shall be exempt from
16 assessments beginning on the date of the Administrator's designation
17 until the Administrator determines the self-insurer is no longer
18 impaired; and

19 3. Any interest accruing on monies paid into the Fund.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 66.7 of Title 85, unless there
22 is created a duplication in numbering, reads as follows:

23 On determination by the Workers' Compensation Court
24 Administrator that a self-insurer has become an impaired self-

1 insurer, the Administrator shall secure release of the security
2 deposit required by Section 61 of Title 85 of the Oklahoma Statutes
3 and advise the Workers' Compensation Self-Insurance Guaranty Fund
4 Board of the impairment. Claims administration for the purpose of
5 paying outstanding obligations of the impaired self-insurer pursuant
6 to the Workers' Compensation Act may include payment by the surety
7 that issued the surety bond or claims administration by an adjusting
8 agency as approved by the Administrator.

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 66.7 of Title 85, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The Workers' Compensation Self-Insurance Guaranty Fund Board
13 shall be a party in interest in all proceedings involving
14 compensation claims against an impaired self-insurer whose
15 compensation claims have been paid or assumed by the Board and shall
16 have all rights of subrogation of the impaired self-insurer. In
17 such proceedings, the Board shall assume and may exercise all rights
18 and defenses of the impaired self-insurer, including, but not
19 limited to, the right to:

- 20 1. Appear, defend and appeal claims;
- 21 2. Receive notice of, investigate, adjust, compromise, settle
22 and pay claims; and
- 23 3. Investigate, handle and contest claims.

24 B. The Board may:

1 1. Retain such persons as are necessary to handle claims and
2 perform other duties of the Board;

3 2. Sue or be sued; and

4 3. Negotiate and become a party to such contracts as are
5 necessary to carry out the purposes of this act.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 66.8 of Title 85, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The Individual Self-Insured Guaranty Fund and its Board
10 provided for in Section 66.1 of Title 85 of the Oklahoma Statutes
11 and the Group Self-Insurance Association Guaranty Fund and its Board
12 provided for in Section 66.2 of Title 85 of the Oklahoma Statutes
13 shall cease to exist and shall be succeeded by the Workers'
14 Compensation Self-Insurance Guaranty Fund and its Board once the
15 initial appointments to the Workers' Compensation Self-Insurance
16 Guaranty Fund Board are made pursuant to Section 4 of this act. At
17 that time, all unexpended funds, including interest thereon, assets,
18 property, records, and any outstanding financial obligations and
19 encumbrances of the Individual Self-Insured Guaranty Fund Board and
20 Group Self-Insurance Association Guaranty Fund Board shall be
21 transferred to the Workers' Compensation Self-Insurance Guaranty
22 Fund Board created by Section 4 of this act. The Director of the
23 Office of State Finance is hereby directed to coordinate the
24

1 transfer of funds, outstanding financial obligations or encumbrances
2 provided for in this subsection.

3 B. Any claim existing or action or proceeding pending by,
4 against or before the Individual Self-Insured Guaranty Fund Board or
5 the Group Self-Insurance Association Guaranty Fund Board when the
6 entities ceased existence may be continued as if the merger into the
7 Workers' Compensation Board did not occur, or the Workers'
8 Compensation Self-Insurance Guaranty Fund Board may be substituted
9 in the matter. The Workers' Compensation Self-Insurance Guaranty
10 Fund Board shall be responsible and liable for all liabilities and
11 obligations of the entities that ceased existence.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 66.9 of Title 85, unless there
14 is created a duplication in numbering, reads as follows:

15 No member or personnel of the Workers' Compensation Self-
16 Insurance Guaranty Fund Board, the Workers' Compensation Court
17 Administrator or any employee of the Workers' Compensation Court
18 shall be liable in a civil proceeding for any act performed in good
19 faith in the execution of that person's powers or duties pursuant to
20 this act.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 66.10 of Title 85, unless there
23 is created a duplication in numbering, reads as follows:

24 As used in this act:

1 1. "Impaired self-insurer" means a private self-insurer or
2 group self-insurance association that fails to pay its workers'
3 compensation obligations, or is financially unable to do so and is
4 the subject of any proceeding under the Federal Bankruptcy Reform
5 Act of 1978, or is the subject of any proceeding in which a
6 receiver, custodian, liquidator, rehabilitator, trustee or similar
7 officer has been appointed by a court of competent jurisdiction to
8 act in lieu of or on behalf of the self-insurer; and

9 2. "Private self-insurer" means a private employer that has
10 been authorized to self-insure its workers' compensation obligations
11 pursuant to Section 61 of Title 85 of the Oklahoma Statutes, but
12 does not include group self-insurance associations authorized under
13 Sections 61, 149.1 or 149.2 of Title 85 of the Oklahoma Statutes, or
14 any public employer that self-insures pursuant to Section 2b of
15 Title 85 of the Oklahoma Statutes.

16 SECTION 12. This act shall become effective November 1, 2011.

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