STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 1948 By: Bingman

COMMITTEE SUBSTITUTE

An Act relating to Self-insurance Guaranty Fund; amending Sections 28, 96, 97, 98, 99, 100 and 167, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Sections 28, 96, 97, 98, 99, 100 and 124), which relate to Self-insurance Guaranty Fund; modifying name of certain fund; providing certain exceptions; updating statutory reference; modifying appointment procedures for certain Board; specifying length of term for certain appointments; updating language; modifying sources of certain funds; authorizing certain enforcement proceedings; updating references; updating references to certain Boards for certain purposes; and providing an effective date.

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

SECTION 1. AMENDATORY Section 28, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 28), is amended to read as follows:

Section 28. A. There are established within the Office of the State Treasurer three separate funds:

1. The "Workers' Compensation Fund";

2. The "Multiple Injury Trust Fund"; and

3. The "~~Self-Insured~~ Self-insurance Guaranty Fund".

B. ~~No~~ Except as provided in Section 97 of this title, no money shall be appropriated from these funds for any purpose except for the use and benefit, or at the direction, of the Oklahoma Workers' Compensation Commission.

C. ~~All~~ Except as provided in Section 96 of this title, all funds established under this section shall be administered, disbursed, and invested under the direction of the Commission and the State Treasurer.

D. All incomes derived through investment of the Workers' Compensation Fund and the Multiple Injury Trust Fund shall be credited as investment income to the fund that participated in the investment.

E. No monies deposited to these funds shall be subject to any deduction, tax, levy, or any other type of assessment.

F. If the balance in the Multiple Injury Trust Fund becomes insufficient to fully compensate those employees to whom it is obligated, payment shall be suspended until such time as the Multiple Injury Trust Fund is capable of meeting its obligations, paying all arrearages, and restoring normal benefit payments.

G. On the effective maturity dates of each investment, the investment shall be transferred to the State Treasurer for deposit into the Multiple Injury Trust Fund created in this section.

H. The Workers' Compensation Fund shall be used to fund the activities of the Commission in administering ~~this act~~ the Administrative Workers' Compensation Act and for any other purposes related to ~~this act~~ the Administrative Workers' Compensation Act that the Commission deems appropriate, subject to the provisions of Section ~~165~~ 122 of this ~~act~~ title.

I. Unless provided otherwise in ~~this act~~ the Administrative Workers' Compensation Act, all fines and penalties assessed under ~~this act~~ the Administrative Workers' Compensation Act shall be deposited into the Workers' Compensation Fund.

SECTION 2. AMENDATORY Section 96, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 96), is amended to read as follows:

Section 96. A. The Self-insurance Guaranty Fund shall be administered, supervised and protected by the Self-insurance Guaranty Fund Board. All self-insurers under ~~this act~~ the Administrative Workers' Compensation Act shall participate in the fund as a condition of authority to self-insure in this state, except public employers that self-insure pursuant to Section 107 of this title.

B. 1. The Self-insurance Guaranty Fund Board shall consist of ~~the commissioners and two additional~~ five (5) members to be appointed ~~by the Governor.~~

~~2. The term of office for the two Governor appointees shall be three (3) years, with the term of the initial appointees expiring on November 1, 2014~~ as follows:

a. the Governor shall appoint two members, one of whom shall represent an approved group self-insurance association authorized to self-insure pursuant to Section 38 or Section 102 of this title,

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

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

d. the Chair of the Oklahoma Workers' Compensation Commission shall appoint one member who shall be a licensed claims adjuster affiliated with either a private self-insurer or an approved group self-insurance association.

2. Members of the Workers' Compensation Self-Insurance Guaranty Fund Board serving on January 31, 2014, shall constitute the initial appointees to the Self-insurance Guaranty Fund Board created pursuant to this section, with terms extended an additional two (2) years beyond their original, respective expiration dates.

3. In the event of a vacancy, the appointing authority for the position shall appoint a qualified successor to serve as the appointee for the unexpired term of the member so replaced. The term of office for the appointees shall be as follows:

a. the term of office for three positions, one each appointed by the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives, shall expire on November 1, 2016, and

b. the term of office for two positions, one each appointed by the Governor and the Chair of the Commission, shall expire on November 1, 2015.

Thereafter, successor members shall be appointed for a three-year term. Members may serve successive terms. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term in the same manner as the original appointment.

~~3.~~ 4. The chair and vice-chair of the Board shall be elected by the Board from among its members.

~~4.~~ 5. Members of the Board shall not receive compensation for serving on the Board but shall be reimbursed from monies in the fund for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

C. Meetings of the Board shall be held at least quarterly. The presence of a majority of the members constitutes a quorum. No

action shall be taken by the Board without the affirmative vote of at least a majority of the members.

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

E. No member or personnel of the Self-insurance Guaranty Fund Board, the Workers' Compensation commissioners or any employee of the Workers' Compensation Commission shall be liable in a civil proceeding for any act performed in good faith in the execution of that person's powers or duties pursuant to Sections ~~97~~ 96 through ~~101~~ 100 of the Administrative Workers' Compensation Act.

SECTION 3. AMENDATORY Section 97, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 97), is amended to read as follows:

Section 97. The Self-insurance Guaranty Fund shall be for the purpose of continuation of workers' compensation benefits due and unpaid or interrupted due to the inability of a self-insurer to meet its compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in the fund, including interest, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under ~~this act~~ the Administrative Workers' Compensation Act, pay outstanding workers' compensation obligations of the impaired self-insurer, and

for all claims for related administrative fees, operating costs of the Self-insurance Guaranty Fund Board, attorney fees, and other costs reasonably incurred by the Board in the performance of its duties. Expenditures from the fund shall be made on warrants issued by the State Treasurer against claims as prescribed by law. The fund shall be subject to audit in the same manner as state funds and accounts, the cost for which shall be paid for from the fund. ~~The Self-insurance Guaranty Fund Board shall be responsible for all liabilities and obligations of the entities that ceased existence.~~

SECTION 4. AMENDATORY Section 98, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 98), is amended to read as follows:

Section 98. The Self-insurance Guaranty Fund shall be derived from the following sources:

1. Any unexpended funds, including interest thereon, held by the State Treasurer in the ~~Individual Self-Insured Guaranty Fund or Group Self-Insurance Association~~ Workers' Compensation Self-insurance Guaranty Fund transferred to the Self-insurance Guaranty Fund as provided in Section 124 of this title;

2. Until the Self-insurance Guaranty Fund contains Two Million Dollars ($2,000,000.00) or in the event the amount in the fund falls below One Million Dollars ($1,000,000.00), an assessment against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not

exceeding one percent (1%) of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

a. The assessment shall be paid within thirty (30) calendar days after the date the commissioners notify the self-insurer of the assessment.

b. A private employer or group self-insurance association which ceases to be a self-insurer shall remain liable for any and all assessments of the self-insurer as provided in this paragraph based on actual paid losses for the calendar year period preceding the assessment.

c. Failure of a self-insurer to pay, or timely pay, an assessment required by this paragraph, or to report payment of the same to the Commission within ten (10) days of payment, shall be grounds for revocation by the Commission of the self-insurer's permit to self-insure in this state, after notice and hearing. A former self-insurer failing to make payments required by this paragraph promptly and correctly, or failing to report payment of the same to the Commission 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 and deposited to the credit of the Workers' Compensation Fund created in Section 28 of this ~~act~~ title. It shall be the duty of the Tax Commission to collect the assessment provided for in this paragraph. The Tax Commission is authorized to

bring an action for recovery of any delinquent or unpaid assessments, and may enforce payment of the assessment by proceeding in accordance with Section 79 of this title.

d. An impaired self-insurer shall be exempt from assessments beginning on the date of the Commission's designation until the Commission determines the self-insurer is no longer impaired.

e. The Tax Commission shall determine the fund balance as of March 1 and September 1 of each year, and when otherwise requested by the Workers' Compensation Commission, and shall advise the Workers' Compensation Commission in writing within thirty (30) days of each such determination; and

3. Any interest accruing on monies paid into the fund.

SECTION 5. AMENDATORY Section 99, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 99), is amended to read as follows:

Section 99. On determination by the Commission that a self-insurer has become an impaired self-insurer, the Commission shall secure release of the security required by Section 38 of this ~~act~~ title and advise the Self-insurance Guaranty Fund Board of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-

insurer under ~~this act~~ the Administrative Workers' Compensation Act, may include payment by the surety that issued the surety bond or be under a contract between the Commission and an insurance carrier, appropriate state governmental entity or an approved service organization, as approved by the Commission.

SECTION 6. AMENDATORY Section 100, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 100), is amended to read as follows:

Section 100. A. The Self-insurance Guaranty Fund Board shall be a party in interest in all proceedings involving compensation claims against an impaired self-insurer whose compensation claims have been paid or assumed by the Commission and shall have all rights of subrogation of the impaired self-insurer. In such proceedings, the Board may assume and exercise all rights and defenses of the impaired self-insurer, including, but not limited to, the right to:

1. Appear, defend and appeal claims;

2. Receive notice of, investigate, adjust, compromise, settle and pay claims; and

3. Investigate, handle and contest claims.

B. The Board may:

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

2. Sue or be sued;

3. Negotiate and become a party to such contracts as are necessary to carry out the purposes of ~~this act~~ the Administrative Workers' Compensation Act; and

4. Exercise any other powers necessary to perform its duties under ~~this act~~ the Administrative Workers' Compensation Act as prescribed by the ~~Commission~~ Board.

SECTION 7. AMENDATORY Section 167, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2013, Section 124), is amended to read as follows:

Section 124. A. 1. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Workers' Compensation Court before ~~the effective date of this section~~ February 1, 2014, are hereby transferred to the Workers' Compensation Commission. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in an interest-bearing division special account maintained by the Workers' Compensation Court before ~~the effective date of this act~~ February 1, 2014, from which a self-insured employer's workers' compensation obligations are paid following

nonpayment by the self-insured employer for any reason, including insolvency, shall be transferred to the Workers' Compensation Commission. Such funds shall be expended by the Commission only for the purpose of paying workers' compensation obligations of the self-insured employer, and costs related to the administration of such obligations, to the extent of the availability of such funds.

B. 1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the ~~Individual Self-Insured~~ Workers' Compensation Self-insurance Guaranty Fund Board before ~~the effective date of this act~~ February 1, 2014, are hereby transferred to the ~~Individual Self-Insured~~ Self-insurance Guaranty Fund Board created in ~~this act~~ the Administrative Workers' Compensation Act.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the ~~Individual Self-Insured~~ Workers' Compensation Self-insurance Guaranty Fund before ~~the effective date of this act~~ February 1, 2014, shall be transferred to the ~~Individual Self-Insured~~ Self-insurance Guaranty Fund Board created by ~~this act~~ the Administrative Workers' Compensation Act. Such funds shall be expended by the Board only as authorized in ~~this act~~ the Administrative Workers' Compensation Act.

3. Any claim existing or action or proceeding pending by, against or before the Workers' Compensation Self-Insurance Guaranty Fund Board when the Board ceased existence may be continued as if

the Self-insurance Guaranty Fund Board was not created, or the Self-insurance Guaranty Fund Board may be substituted in the matter. The Self-insurance Guaranty Fund Board shall be responsible and liable for all liabilities and obligations of the Workers' Compensation Self-insurance Guaranty Fund Board.

C. ~~1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the Group Self-Insurance Association Board before the effective date of this act are hereby transferred to the Group Self-Insurance Association Guaranty Fund Board created in this act.~~

~~2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Group Self-Insurance Association Guaranty Fund before the effective date of this act, shall be transferred to the Group Self-Insurance Association Guaranty Fund Board created by this act. Such funds shall be expended by the Board only as authorized in this act.~~

~~D.~~ All property and records of the Physician Advisory Committee before ~~the effective date of this act~~ February 1, 2014, are hereby transferred to the Physician Advisory Committee created in ~~this act~~ the Administrative Workers' Compensation Act.

~~E.~~ D. All property and records of the Advisory Council on Workers' Compensation before ~~the effective date of this act~~ February 1, 2014, are hereby transferred to the Advisory Council on Workers'

Compensation created in ~~this act~~ the Administrative Workers' Compensation Act.

~~F.~~ E. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Multiple Injury Trust Fund before ~~the effective date of this act~~ February 1, 2014, are hereby transferred to the Multiple Injury Trust Fund created in ~~this act~~ the Administrative Workers' Compensation Act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

~~G.~~ F. The Director of the Office of Management and Enterprise Services is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in subsections A and ~~F~~ E of this section, and the transfer of funds, outstanding financial obligations or encumbrances provided for in ~~subsections~~ subsection B ~~and C~~ of this section.

SECTION 8. This act shall become effective November 1, 2014.

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