

BILL SUMMARY
1st Session of the 54th Legislature

Bill No.:	SB1062
Version:	CS
Request Number:	7978
Author:	Speaker Shannon Senator Bingman
Date:	4/22/2013
Impact:	One-time Cost Increase - \$32,500 Annual Cost Increase - \$1,504,869

Research Analysis

SB1062 repeals Title 85 of the Oklahoma Statutes in its entirety and creates Title 85A, a new workers' compensation (WC) statute that would establish an administrative WC system and allow employers to voluntarily opt out of Administrative WC Act by creating their own defined benefits plan. The proposed changes in SB1062 would only be applicable to claims filed after January 1, 2014. Claims for injuries or death filed prior to January 1, 2014 would continue to be determined by the Workers' Compensation Court, under current law defined in Title 85. After January 1, 2014, the Workers' Compensation Court would be renamed the Workers' Compensation Court of Existing Claims and the new court would hear disputes relating to claims that arise before July 1, 2014.

Section 1: Creates the Administrative Workers' Compensation Act.

Section 2: Defines terms.

Section 3: Provides that the Act only applies to claims that occur after the effective date of the Act (January 1, 2014). Claims files prior to January 1, 2014 would be governed by the Worker's Compensation Code.

Section 4: Provides that any part of the Act deemed unconstitutional by the courts shall not the affect the validity of the act as a whole.

Section 5: Provides that the rights and remedies granted to an employee by the Act will be exclusive of all other rights and remedies of the employee or any other person claiming rights to recovery on behalf of the employee. Provides circumstances where exclusion remedy would not apply and extends immunity to certain intermediate employers.

Section 6: Establishes penalties for fraud and creates the Workers' Compensation Fraud Investigation Unit within the Attorney General's office. The office would be funded by the Workers' Compensation Commission. Sets guidelines for reporting, investigating and prosecuting WC fraud.

Section 7: Prohibits employers from discriminating or retaliating against an employee for filing a claim or participating in WC proceedings. Provides that the Commission has exclusive jurisdiction to hear claims regarding discrimination and may award the employee back pay up to \$100,000. Provides that any case law inconsistent with the provisions in section 7 is hereby annulled.

Section 8: Provides that an agreement by an employee to waive his or her rights to compensation is void. Allows certain individuals to exclude themselves from coverage.

Section 9: Provides that an agreement requiring an employee to pay any portion of WC insurance premiums or an employer-sponsored benefits plan is void.

Section 10: Provides that the right to any claim, benefit or compensation is not assignable, except for child support liens and is not subject to garnishment, attachment, levy execution or any other legal process.

Section 11: Provides that compensation to nonresident dependent will be the same as compensation for resident dependents.

Section 12: Provides that WC benefits will have the same legal preference as unpaid wages.

Section 13: Compensation for Mental Illness: Limits disability benefits for mental illness to 26 weeks. Benefits may be extended, however, not to exceed 52 weeks. Death occurring from mental illness within a period of 1 year of the accident would be compensable. Death directly or indirectly related to mental illness over 1 year from the incident would not be compensable.

Section 14: Compensation of Heart and Lung Diseases: Requires the course and scope of employment to be the major cause for compensation of certain heart and lung diseases. Physical or mental stress may not be considered.

Section 15: Establishes funding for the WC Fraud Investigation Unit. Requires the AG to provide a quarterly funding report to the Commission.

Section 16: Recognizes the Official Disability Guidelines-Treatment in Workers' Compensation as the primary standard of reference for determining medically necessary services. Requires physicians to use the ODG guide when prescribing prescription drugs and over-the-counter alternatives.

Section 17: Recreates the Physician Advisory Committee and allow current committee members to serve the remainder of their term. Sets the duties and responsibilities of the Committee.

Section 18: Prohibits medical provider from billing an employee until the injury is determined to be noncompensable.

Section 19: Creates a three member Workers' Compensation Commission (Commission) appointed by the Governor, with the advice and consent of the House and Senate. 2 of the 3 Commission will be selected from a list of three candidates provided by the Speaker and Pro Temp. Sets the salary, duties, and authority of the Commission. Allows the Governor to appoint special commissioners to determine claims, in cases where a member of the Commission is disqualified for any reason.

Section 20: Allows the Commission to appoint Administrative Law Judges (ALJs). Sets the minimum qualifications to serve as an AJA. Requires the Commission to supply records of personal injury cases to the Oklahoma Department of Labor. Allows the Commission to establish administrative fees to be deposited into the WC Fund.

Section 21: Requires Commissioners to take the state oath of office and develop a seal for authentication of judgments, awards and proceedings issued the Commission. Authorizes the Commission to hear appeals of decisions made by an ALJ or delegate the responsibility to hear an appeal to an ALJ.

Section 22: Sets additional administrative duties and powers of the Commission. Requires the Commission to give 30 days' notice before the adoption or modification of any rule, regulation or form. Allows the Commission to appoint and fix the salary of ALJs and other personnel.

Section 23: Allows for travel reimbursement for the Commissioner and employees of the Commission.

Section 24: Requires the Commission to submit biennial report to the Governor and Legislature on the administration of the Administrative Worker's Compensation Act.

Section 25: Requires the Commission to publish annually information regarding the distribution of WC insurance premium, losses, expenses and net income.

Section 26: Allows the Governor to remove Commissioners with cause sets the procedure to do so.

Section 27: Sets procedures for hearing claims. Sets duties and powers of ALJs.

Section 28: Creates the Workers Compensation Fund, Multiple Injury Trust Fund and the Self-Insured Guaranty Fund within the State Treasury. Sets guidelines for the administering funds and allows the Commission to use funds to carry out the Act.

Section 29: Requires WC insurance carriers and self-insurers to pay a \$1,000 licensing fee. Allows the Commission to assess a \$1,000 fee for third party administrators.

Section 30: Defines physical impaired person and limits adjudication of preexisting disabilities.

Section 31: Outlines administration, funding and disbursement of the Multiple Injury Trust Fund (MITF). Limits assessment rates to 6% of written premiums. Allow the Commission to invest funds. Annual disbursement from the MITF includes:

- \$175,000,000 to the Department of Labor

- \$637,500 to the AG's Office

- \$637,500 to the Oklahoma Department of Career and Technology Education

Section 32: Sets guidelines for determining compensation for combinable injuries resulting in permanent total disability (PTD). The employer is only liable for the degree or percent of disability which would have resulted from the subsequent injury if there had been no preexisting impairment. PTD compensation = PPD compensation rate for 15 years or until the employee reaches 65 years of age, whichever is longer. Attorney fee would be limited to 20% of the benefits awarded and would be paid in periodic installments. Allows surviving spouse to receive disability payment from the MITF for five years or upon remarriage, whichever occurs first.

Section 33: Requires claimants to file a Notice of Claim with the Commission within 2 years of the last order for PPD and request a hearing within 3 years of filing. Those who do not meet the stated timeline would lose the right to claim compensation from the MITF.

Section 34: Charges CompSource Oklahoma with the administration and protection of the MITF.

Section 35: Requires all employers to secure WC compensation for its employees.

Section 36: Addresses liability of prime contractors and subcontractors. If the subcontractor fails to secure compensation, the prime contractor would be liable for compensation. Allows for liens to be placed against the subcontractor to recover payment of compensation. Allows the commission to issue certificates of non-coverage, which would be valid for two years.

Section 37: Requires employers engaging in exempted employment who choose to waive the exemption to post a notice of waiver of exclusion or exemption.

Section 38: Requires employers to secure WC coverage through the following means:

- purchasing a WC insurance policy with an insurance company.
- obtaining guaranty insurance.
- self-insurance by furnishing satisfactory proof of the employer's financial ability to pay for compensation.
- forming a group self-insurance association consisting of two or more employers.
- and any other security approved by the Commission and Insurance Department.

Section 39: Clarifies that an employer's insurer is a representative of the employer and the employer may discharge obligations to the insurer. The Commission would have jurisdiction over the carrier to the same extent it has over the employer.

Section 40: Sets penalties for failure to secure compensation. The Commission may assess a \$1,000 fine per day.

Section 41: Requires employer to post notice of WC coverage in a conspicuous place.

Section 42: Outlines the required contents within a WC insurance policy.

Section 43: Addresses the ability of the employee, employer and insurer to sue a third party for the injury.

Section 44: Requires claimants to disclosed previously paid benefits to the Commission to allow for recovery of already paid benefits received for the same medical services or period of disability.

Section 45: Sets compensation for TTD, TPD, PPD, PTD and Disfigurement:

Temporary Total Disability (TTD)= 70% of the employee's average weekly wage up to 70% of the state's average weekly wage(SAWW) for 104 weeks, provided there would be no payment for the first 3 days. Benefits may be extended for an additional 52 weeks if allowed by an ALJ. Allows employer to terminate benefits if the employee misses 3 consecutive medical treatment appointments without a valid excuse. An ALJ may appoint an independent medical examiner to determine if further medical treatment is necessary.

The current maximum benefits are 100% of the SAWW with a maximum duration of 156 weeks. Current law also allows for an additional 52 if the court makes a finding of a consequential injury.

Temporary Partial Disability (TPD) = 70% of the difference between the injured employee's average weekly wage before the injury and his/her weekly wage for performing the alternative work after the injury, but only if that wage is less than the TTD rate. Compensation may not exceed 52 weeks. Employee may not refuse alternative work and be entitled to TTD benefits.

The current maximum duration for TPD benefits is 156 weeks.

Permanent Partial Disability (PPD) = 70% of the employee's average weekly wage, not to exceed \$323 for 375 weeks. Requires physicians to use the latest (6th) edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Prohibits PPD for body parts that received no medical treatment and prohibits disability rating over 100% for any body part. If the employee reaches maximum medical improvement and returns to his or her pre-injury or equivalent job, the amount of PPD benefits will be reduced for each week the employee works in his or her pre-injury job. If the employer terminates the employee or the position is not equivalent to the pre-injury job, the remaining benefits would be paid in a lump sum. If the employee refuses an offer to return to his or her pre-injury job, benefits would be deferred and reduced for each week the employee refuses to return to work. Attorney fees for PPD awards would be calculated based upon the total PPD awards and paid in full at the time of deferral. This section also provides for reduction of benefits based on pre-existing conditions and previously paid benefits. Allows for up 52 weeks of vocational rehabilitation services.

The current maximum benefits are 70% of the employee's average weekly wage or \$323, whichever is less, for 520 weeks. Minimum cap of \$150 per week for injuries occurring after August 27, 2010.

Permanent Total Disability (PTD) = 70% of the employee's average weekly wage or the SAWW, whichever is less, for 15 years or until the employee reaches the age of maximum Social Security retirement benefits, whichever is longer. Sets distribution of lump sum benefits to dependents if the claimant dies of causes unrelated to illness or injury. Provides that PTD benefits may be awarded to an employee who has exhausted the maximum period of TTD even though the employee has not reached maximum medical improvement. Requires the employee to file an affidavit annually stating that he or she is not and has not been gainfully employed and is not capable of gainful employment. Requires the Commission to annually review the status of employees receiving benefits for PTD. Creates the position of Vocational Rehabilitation Director to help injured workers return to the work force and sets duties and responsibilities of the Director. Provides circumstances where there shall be a presumption in favor of ordering vocational rehabilitation services or training to an injured worker.

PTD benefits available to injured employees under SB1062 (CS version) are the same as current law.

Disfigurement = up \$50,000 for any part of the body. No award will be entered until 12 months after the injury. Cannot double dip with PPD benefits for the same part of the body.

Section 46: Sets formula for determining compensation of amputation or permanent total loss of a scheduled member (70% of employee's average weekly wage or \$323, whichever is less, for specified weeks). Sum of all PPD awards, excluding awards against the MITF, shall not exceed 375 weeks.

1. Arm amputated at the elbow, or between the elbow and shoulder, 275 weeks;
2. Arm amputated between the elbow and wrist, 220 weeks;
3. Leg amputated at the knee, or between the knee and the hip, 275 weeks;
4. Leg amputated between the knee and the ankle, 220 weeks;
5. Hand amputated, 220 weeks;
6. Thumb amputated, 66 weeks;
7. First finger amputated, 39 weeks;
8. Second finger amputated, 33 weeks;
9. Third finger amputated, 22 weeks;
10. Fourth finger amputated, 17 weeks;
11. Foot amputated, 220 weeks;
12. Great toe amputated, 33 weeks;
13. Toe other than great toe amputated, 11 weeks;
14. Eye enucleated, in which there was useful vision, 275 weeks;
15. Loss of hearing of one ear, 110 weeks;
16. Loss of hearing of both ears, 330 weeks;
17. Loss of one testicle, 53 weeks; loss of both testicles, 158 weeks;

Compensation for amputation of the first phalange shall be one-half of the compensation for the amputation of the entire digit; compensation for amputation of more than one phalange of a digit shall be the same as for amputation of the entire digit; compensation for amputation or loss of use of two or more digits or one or more phalanges of two or more digits of a hand or a foot may be proportioned to the total loss of use of the hand or the foot occasioned thereby but shall not exceed the compensation for total loss of a hand or a foot;

Compensation for the permanent loss of 80% or more of the vision of an eye shall be the same as for the loss of an eye; in all cases of permanent loss of vision, the use of corrective lenses may be taken into consideration in evaluating the extent of loss of vision.

Compensation for permanent total loss of use of a member shall be the same as for amputation of the member.

Section 47: Provides that there is rebuttable presumption regarding the cause of death if the time of death occurs within a certain timeframe. This section is also sets death benefits for surviving spouse, dependents and beneficiaries.

Surviving spouse, no children: \$100,000 lump sum payment and weekly income benefits equal to 70% of the lesser of the deceased employee's average weekly wage and the SAWW until remarriage. Upon remarriage, a surviving spouse would be entitled to an additional 2 years of indemnity benefits.

Surviving spouse with child or children: \$25,000 and weekly income benefits equal to 15% of the lesser of the deceased employee's average weekly wage and the SAWW to each child. If there are more than two children, each child receives prorated share of \$50,000 and 30% of the deceased employee's average weekly wage.

Children, but no surviving spouse: \$25,000 lump sum payment and weekly income benefits equal to 50% of the lesser of the deceased employee's average weekly wage and the SAWW to each child. If there are more than two children, each child receives a prorated share of 100% of the lesser of the deceased employee's average weekly wage and the SAWW. If there are more than 6 children, each child receives a prorated share of \$150,000.

No surviving spouse or children: each legal guardian, if financially dependent on the employee at the time of death, would receive weekly income benefits equal to 25% of the lesser of the deceased employee's average weekly wage and the SAWW until the earlier of death, eligibility for social security, obtaining full time employment or 5 years from the date which benefits begin.

Funeral expenses: up to \$10,000 paid by the employer.

Section 48: Doubles disability or death benefits if the injury is sustained by a minor employed in violation of federal or state statutes related to minimum age for employment of minor. Doubled benefits would not apply if the minor represents his or her age to the employer in writing.

Section 49: Prohibits the employee from receiving TTD benefits at the same time he or she receives unemployment benefits unless a claim for TTD is controverted and later determined to be compensable.

Section 50: Requires the employee to promptly provide medical treatment to injured workers. Allow employers to choose the treatment physician. Allows the employee to select his or her own physician if the employer fails to provide medical treatment within 5 days after notice of injury. Allows for reimbursement of travel expenses for medical treatment up to 600 miles roundtrip. Provides that the most current medical fee schedule will be utilized until a new fee schedule is proposed by the Commission and adopted by the Legislature. Sets penalties for delaying payments for medical care.

Section 51: Requires employers to pay 100% of all medical expenses with no cap of dollar or duration for all compensable injuries.

Section 52: Provides that the employer is not liable for any medical services or supplies if the Commission determines that there was not a compensable injury.

Section 53: Allows the Commission to require an injured employee to submit to physical examinations and treatment from time to time if deemed reasonable and necessary.

Section 54: Provides that refusal to submit to a surgical operation, except in the case of a hernia, will be taken into consideration when determining compensation for PPD and PTD.

Section 55: Allows the employer to ask the Commission to review bills for medical services he or she deems unreasonable.

Section 56: Allows employee to apply for a one time change of the treating physician. Employers that contract with a certified workplace medical plan (CWMP) shall select the treating physician and the employee may apply for a change of physician by utilizing the dispute resolution process set out on the CWMP on file with the State Department of Health.

Section 57: Provides that an employee who misses two or more schedule appointments for treatment would no longer be eligible for benefit, unless he or she gave at least 2 hours' notice to the employer and had a valid excuse.

Section 58: Allows for copies of medical records to be provided to the Commission, AG's Fraud Unit, the employer, the employee and a carrier upon request.

Section 59: Sets formula for computing the employee's average weekly wage. $EAWW = \text{employee's gross earnings} \div \text{number of full weeks of employment with the employer}$. Sets additional method for computing fragmented work schedules and overtime earnings.

Section 60: Provides that the Physician Advisory Committee may recommend the adoption of an alternate system to evaluate permanent disability that may deviate from the AMA's Guides to the Evaluation of Permanent Impairment. Requires adoption from the Legislature to take effect.

Section 61: Sets terms for compensation of hernias.

Section 62: Sets terms for compensation of nonsurgical soft tissue injuries. TTD compensation would be limited to 8 weeks. Allows the employee to petition for an extension of benefits.

Section 63: Requires the employer to send a report to the Commission within 10 days of notice or knowledge of injury or death. Establishes penalties for failure to comply with the notice requirements.

Section 64: Sets process to apply for certification of CWMP's by the State Commissioner of Health. Certification fee = \$1,500 and would be valid for 5 years. Grants non experience rated employers a 10% premium reduction for participating in a CWMP. Establishes duties and responsible for the Commissioner of Health and State Department of Health.

Section 65: Sets terms for compensation of occupational diseases.

Section 66: Sets terms for compensation of disability or death from asbestosis and silicosis.

Section 67: Requires the employee to provide notice to an employer of any occupational disease or cumulative trauma within 6 months after the first distinct manifestation of the disease or trauma.

Section 68: Requires employee to give notice of injury or medical treatment within 30 days.

Section 69: Statute of limitations; sets deadlines for filing claims for compensation based on the type of injury or disease.

Any injury other than occupation disease = 1 year

Occupational disease infection = 2 years

Injury on account of silicosis or asbestosis = 1 year

Disease from exposure to x-rays or radioactive substances = 2 years

Death = 2 years.

Additional compensation = 1 year from the date of the last payment of disability compensation or 2 years from the date of injury, whichever is greater.

Deadline to request hearing by claimant = 6 months after filing the claim.

Section 70: Directs the Commission to promulgate rules that encourage legal counsel by Commission staff, an opportunity for settlement, resolution without litigation or attorney fees for both parties and approval of compromise settlements.

Section 71: Requires the Commission to provide notice of a filed claim to all interested parties. Sets process for claims proceedings.

Section 72: Provides additional information detailing the process and nature of proceedings.

Section 73: Establishes the authority of the Commission to issue subpoenas and require evidentiary materials. Authorizes the Commission to issue contempt citations.

Section 74: Establishes certain presumptions in any proceeding concerning the enforcement of a claim for compensation.

Section 75: Provides that the Commission may cause deposition of witnesses to be taken in any directed manner.

Section 76: Provides for witness fees.

Section 77: Authorizes the Commission to employ legal counsel or utilize the services of the AG's office to represent the Commission in legal proceedings.

Section 78: Sets process and fees for appealing decisions made by an ALJ. Authorizes the Commission to modify the decision, if appropriate. Provides that the Commission's ruling is final unless the ruling is amended by the Supreme Court.

Section 79: Allows the Commission to file a lien against an employer who fails to comply with a final judgment or award.

Section 80: Allows the Commission to review and modify awards within 6 months of termination of the compensation period fixed in the original compensation judgment or award. Allow the Commission to fix clerical errors within 1 year.

Section 81: Allows the court to assign court costs to any party that commences a proceeding on unreasonable grounds.

Section 82: Sets limits on legal fees. Fees are not valid unless approved by the Commission. Attorney representing an injured employer =10% of TTD or TPD compensation; 20% of PPD PTD or death compensation; 30% of the difference between the amount of any award and the settlement offer, if the employer make a written settlement offer for PPD, PTD, or death benefit and that offer is rejected; 10% of vocational rehabilitation services. Prohibits attorney fees for recovery on noncontroverted claims or medical benefits.

Section 83: Requires the signature of the claimant or claimant's attorney on all claims and other paper documents.

Section 84: Provides that compensation may be paid by check, electronic funds transfer, debit cards, or state warrant.

Section 85: Requires clean claims for medical services to be paid within 30 days after receipt by the employer.

Section 86: Sets process to controvert an employee's right to compensation.

Section 87: Sets process for filing a joint petition for settlement with the Commission.

Section 88: Assigns responsibility for payment to the insurance carrier and self-insured employer on an equal basis when the proper source of payment of benefits is unknown at the time.

Section 89: Provides for reimbursement of advanced payments for compensation paid by the employer.

Section 90: Allows the Commission to require any employer to make a deposit or post a bond to secure the prompt and convenient payment of compensation.

Section 91: Provides for accrual of post-judgment interest on awarded compensation.

Section 92: Requires employers to provide notice to the Commission when the final payment is made.

Section 93: Allows the Commission to investigate claims on its own initiative.

Section 94: Prohibits incarcerated individuals from receiving medical or disability benefits.

Section 95: Requires WC insurers to offer optional deductibles to policyholders.

Section 96-100: Sets administration of the Self-Insurance Guaranty Fund Board, which will include the Commissioners and two additional members appointed by the Governor. Sets function of the Self-Insurance Guaranty Fund. Outlines funding sources for the Fund and sets process for paying claims against impaired self-insurers. Outlines the duties and responsibilities of the Board.

Section 101: Requires the Commission to submit an annual report to the Governor and Legislature. Requires the Commission, with the assistance of the Insurance Commissioner, to implement an electronic data interchange system that would provide relevant data concerning Oklahoma WC system and the delivery of benefits to injured workers by July 1, 2014. Creates the Oklahoma Workers' Compensation Electronic Data Interchange Advisory Committee, a 5 member committee appointed by the Governor.

Section 102-122: Adopts current law related to CompSource Oklahoma.

Section 123: Directs the Commission to adopt rules that would allow two or more employers to pool together liability as a group self-insurer and sets the minimum qualifications.

Section 124: Directs the Commission to adopt rules that would allow two or more group self-insurance associations to pool their liabilities.

Section 125: Requires CompSource to report to the State Treasurer the total amount of direct written premiums and membership, application, policy and registration fees charges during the preceding calendar year for certain categories. Requires CompSource to pay an annual market equalization assessment equal to 2.25% of all collected fees.

Section 126: Provides liability protection for the Commission and its personnel, the members of the Self-Insurance Guaranty Fund Board, or any ALJ acting in performance of his or her duties under the Act.

Section 127: Prohibits certain conduct by the Commission and its employees, specifically testifying in court, soliciting employment for an attorney or physician, recommending or referring a claimant to an attorney or physician and engaging in ex parte communication with any party on a pending action before the court.

Section 128: Provides that the Administrative Workers' Compensation Act shall be strictly construed by any appellate court reviewing a decision of the Commission.

Section 129: Creates the Oklahoma Employee Injury Benefits Act.

Section 130: Defines terms.

Section 131: Requires employers to meet certain criteria in order to opt out of the Administrative WC Act and become a qualified employer. To obtain qualified-employer status, an employer must complete certain notification requirements, establish a written benefit plan, pay an annual \$1,500 filing fee to the Insurance Commissioner and furnish proof to the Insurance Commissioner of the employer's financial ability to pay for compensation. Requires the Insurance Commissioner to post a list of all qualified employers on the OID website. Sets additional administrative duties for the Insurance Commissioner and Department of Labor.

Section 132: Sets criteria for the written benefits plan. Requires plans to be comparable to the benefits provided under the Administrative WC Act for TTD, TPD, PPD, vocational rehabilitation, PTD, disfigurement, amputation/permanent loss or use of a scheduled member, death and medical benefits as a result of occupational diseases. The plan is required to have the same statutes of limitations and with dollar, percentage and duration limits that are at least equal to or greater than the limits set in the Administrative WC Act.

Section 133: Allows qualified employers to self-insure or contract with an insurer to supply benefits. Sets the minimum coverage amounts if the employer contracts with an insurer to supply benefits. Sets the minimum security amounts required to be deposited with the Insurance Commissioner if the employer self-insures the benefits. Allows the Insurance Commissioner to waive the security requirement under certain circumstances.

Section 134: Creates the Oklahoma Option Self-Insured Guaranty Fund and Oklahoma Option Insured Guaranty Fund for the purpose of paying benefits for covered claims in the event an insurer or sponsor of a self-insured plan fails to meet its compensation obligations. The funds would be administered, disbursed and invested under the direction of the Oklahoma Property and Casual Insurance Guaranty Association. For the Insured Guaranty Fund, each insurer is assessed a fee equal to 2% of the premiums collected until the fund reaches \$2,000,000 or dips below \$1,000,000. For the Self-Insurance Guaranty Fund, each self-insurer is assessed a fee at the rate of 1% of the total compensation for PPI awards paid until the fund contains \$1,000,000 or dips below \$750,000.

Section 135: Requires insurance carriers to pay an annual fee to the Commission at a rate up to 3% of all written premiums resulting from writing WC insurance. The fee is in addition to the premium or surplus lines taxes collected from carriers.

Section 136: Directs the Commission to collect a fee from self-insured employers at a rate up to 3% of the written premium which would have been paid by an insurance carrier if the self-insured employer were insured by a carrier.

Section 137: Requires the Commission to determine the annual assessment rate for collections into the Oklahoma Option Insured Guaranty Fund and the Oklahoma Option Self-Insured Fund.

Section 138: Provides the same exclusive remedy protections to an employer using a defined benefits plan as an employer that complies with the Administrative WC Act.

Section 139: Outlines responsibilities and obligations of a qualified employer. Limits attorneys fees to 20% of any lost earnings awarded.

Section 140: Sets notice requirements for qualified employers. Notice of denied claims must be provided in writing within 15 days of receiving notice of the injury. Outlines minimum appeals rights for the injured employee.

Section 141: Provides that any conflict between the Oklahoma Employee Injury Benefits Act and other law shall be resolved in favor of the operation of the Act.

Section 142: Requires the Supreme Court to consider challenges concerning the constitutionality of the Act on an expedited basis. Provides that any part of the Act deemed unconstitutional shall not affect the validity of the act as a whole. Gives qualified employers 90 days to comply if the Administrative WC Act if constitutionality issues are upheld.

Section 143-171 creates the Worker's Compensation Arbitration Act. Allows agreements to arbitrate claims for injuries covered by the Administrative WC Act be valid and enforceable, provided the employer gave notice of an agreement to both the employee and the employer's WC insurance provider and an alternate dispute resolution program is filed with the Commission.

Section 172: Requires certain public entities to obtain WC coverage through CompSource. Provides exceptions and allows for self-insurance for certain state entities.

Section 173: Allows claimant to dismiss filed claims with or without prejudice. Claim dismissed without prejudice may be reentered within 1 year after the date of initial dismissal.

Section 174: Directs the Commission to establish a WC counselor or ombudsman program to assist injured workers, employers and persons claiming death benefits. Sets duties and responsibilities of the counselors and ombudsmen.

Section 175: Direct the Commission to develop an alternate dispute resolution program to allow an injured employee the opportunity to obtain benefits by request or informal procedure. Sets process for mediation. Sets minimum qualifications to serve as a certified mediator.

Section 176: Sets formal procedure for filing and responding to a claim. The employee is required to file an Employee's First Notice of Claim for Compensation with the Commission. If the employer controverts any issue related to the employee's claim, the employer is required to file a Notice of Contested Issues with the Commission. At the request of either party, a prehearing conference or administrative hearing will be set by the Commission within 7 days of the request.

Section 177: Directs the Commission to create, maintain and review a list of licensed physician who serve as independent medical examiners. Sets minimum requirement and qualifications of an independent medical examiner.

Section 178: Allow the Commission to appoint a case manager to provide case management at the request of either party.

Section 179: Requires the employer to provide lifelong treatment and rehabilitation for the injured worker if a compensable injury results in the loss of one or more eyes, teeth, members of the body, or replacement of a joint.

Section 180: Sets procedure to for completing a Joint Petition to settle by the employer and employee.

Section 181: Sets terms for distribution of benefits either by weekly distribution, lump sum payment, or both. Allows employee to request to have up to 25% of the PPD award amount commuted to a lump-sum payment. Prohibits conversion of PTD award to a lump sum payment.

Section 182: Provide that every employer and insurance carrier who schedules any employee as a person employed by the employer for the purpose of paying or collecting insurance premiums on a workers' compensation insurance policy or who pays, receives or collects any premiums upon any insurance policy covering the liability of such employer under the workers' compensation law by reason of or upon the basis of the employment of any such employee shall be estopped to deny that such employee was employed by the employer.

Section 183: Establishes fees for certain procedures. Directs distribution of the fees to certain funds.

Joint Petition Fee =\$140

Reopen Case Fee =\$130

Section 184: Establishes fees for copied documents at \$1 per page. Provides that all penalties and fines collected by the Commission shall be deposited into the WC Fund.

Section 185: Allows employers to inquire about previous claims paid to an employee while the employee was employed by a previous employer. The employer may discharge the employee for being untruthful about previous PPD awards. There would be a \$1 fee per search request.

Section 186: Creates the Advisory Council on Workers' Compensation consisting of 9 members appointed by the Governor, Speaker and Pro Tempore of the Senate. The Advisory Council would be tasked with analyzing and reviewing the workers' compensation system, the reports of the Commission and trends in the field of workers' compensation. Requires the Committee to submit an annual report the Governor, Chief Justice, Pro Tempore and Speaker.

Section 187: Allows for usage of the Workers' Compensation Fund to administer the Act. Requires all insurance carriers to pay the Tax Commission an assessment rate of 1% of all gross direct premiums written for WC insurance. Self-insurers would be required to pay an assessment rate equal to 3% of the total compensation of PTD, PPD and death benefits paid out during each quarter of the calendar year by the employer.

Section 188: Requires a penalty of perjury clause on any form, claim, answer, or report filed with the Commission.

Section 189: Provides for transfer of funds from the Workers' Compensation Court to the Commission. Transfers all assets and liability of certain entities to their recreated counterparts.

Section 190: Provides that the time within which an act is to be done, as provided for in this Act, shall be computed by excluding the first day and including the last day.

Section 191: Renames the Workers' Compensation Court to the Workers' Compensation Court of Existing Claims, which will hear disputes of claims filed before July 1, 2014. Allows existing judges to serve the remainder of their term.

Section 192: Repeals Section 18m-1 and 18m-2 of Title 74.

Section 193: Repeals Title 85 in its entirety.

Section 194: Sets effective date of specified sections for January 1, 2014.

Prepared By: Quyen Do

Fiscal Analysis

The committee substitute for Engrossed SB1062 will require start-up costs to hire three commissioners, commissioner staff and a vocational rehabilitation director, as well as additional office space, furniture and equipment.

Each commissioner will make a salary equal to that of a district judge, which is \$124,373 plus benefits averaging \$44,000 annually for a total of \$168,373 per commissioner. Each commissioner will require at least three personal staff at an estimated cost of \$290,250 annually per commissioner. One-time costs for furniture and equipment for commissioners and staff is estimated at \$10,000 per commissioner. SB1062 also requires the Commission to hire a vocational rehabilitation director at an estimated cost of \$108,000 annually, including benefits. One-time costs for furniture and equipment for the vocational rehabilitation director are estimated at \$2,500. The office space currently occupied by the Workers' Comp Court is not sufficient for the thirteen additional employees. The cost for additional office space is estimated at \$21,000 annually.

	Salary & Benefits	Furniture & Equip	Total
Commissioners (3)	\$505,119	\$9,000	\$514,119
Staff (9)	\$870,750	\$21,000	\$891,750
Vocational Rehab Director (1)	\$108,000	\$2,500	\$110,500
Office Space			\$21,000
Total	\$1,483,869	\$32,500	\$1,537,369

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Other Considerations

None.