

LEGISLATIVE HISTORY CHECKLIST
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(Creates NJ Self-Insurers
Guarantee Association)

NJSA: 34:14-120.15 thru 34:14-120.30

LAWS OF: 1993 **CHAPTER:** 107

BILL NO: A1127

SPONSOR(S) Impreveduto and Roma

DATE INTRODUCED: March 23, 1992

COMMITTEE: **ASSEMBLY:** Labor
SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** May 18, 1992
SENATE: February 18, 1993

DATE OF APPROVAL: April 16, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1993, CHAPTER 107, *approved April 16, 1993*
1992 Assembly No. 1127 (*Second Reprint*)

1 AN ACT creating the "New Jersey Self-Insurers Guaranty
2 Association" and supplementing chapter 15 of Title 34 of the
3 Revised Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. As used in this act:

8 "Association" means the New Jersey Self-Insurers Guaranty
9 Association created in subsection a. of section 2 of this act.

10 "Board of directors" or "board" means the board of directors
11 of the association established under section 3 of this act.

12 "Commissioner" means the Commissioner of Insurance.

13 "Department" means the Department of Insurance.

14 "Fund" means the Insolvency Fund created pursuant to section
15 5 of this act.

16 ¹"Injured worker" or "employee" means an employee of an
17 employer or a dependent of the employee to whom the employer
18 is obligated to pay compensation pursuant to chapter 15 of Title
19 34 of the Revised Statutes.¹

20 "Insolvent member" means a member employer ²; (1) (a)²
21 which ²[has been determined to be insolvent or for which or for
22 the assets of which] files for relief in bankruptcy under Title 11
23 of the United States Code, 11 U.S.C. §101 et seq.; (b) against
24 which involuntary bankruptcy proceedings are filed under that
25 title; or (c) for which² a receiver has been appointed by a court
26 of competent jurisdiction ²; and (2) which is determined to be
27 insolvent by the board as provided in its plan of operation, based
28 upon the member employer's ability to pay compensation
29 pursuant to R.S.34:15-77².

30 "Member employer" or "member" means a self-insurer which
31 is a member of the association.

32 "Self-insurer" means an employer, other than a ¹[public utility
33 or]¹ governmental entity, ²[or an employer which pools its
34 liabilities under chapter 15 of Title 34 of the Revised Statutes
35 with other employers,]² which self-insures for the purposes of
36 workers' compensation as permitted by R.S.34:15-77.

37 2. a. There is created a nonprofit entity to be known as the
38 "New Jersey Self-Insurers Guaranty Association." All
39 self-insurers shall be members of the association as a condition
40 of their authority to self-insure in this State. The association
41 shall perform its functions under a plan of operation as
42 established and approved under section 6 of this act and shall

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALA committee amendments adopted May 4, 1992.

² Senate floor amendments adopted December 14, 1992.

1 exercise its powers and duties through a board of directors as
2 established under section 3 of this act.

3 b. A member may voluntarily withdraw from the association
4 when the member voluntarily terminates the self-insurance
5 privilege and pays all assessments due to the date of that
6 termination. However, the withdrawing member shall continue to
7 be bound by the provisions of this act relating to the period of its
8 membership and any claims charged pursuant thereto. A
9 withdrawing member shall also be required to provide to the
10 department upon withdrawal, and at 12-month intervals
11 thereafter, satisfactory proof that it continues to meet the
12 standards of R.S.34:15-77 in relation to claims incurred while the
13 withdrawing member exercised the privilege of self-insurance.
14 Such reporting shall continue until the withdrawing member
15 satisfies the department that there is no remaining value to
16 claims incurred while the withdrawing member was self-insured.
17 If during this reporting period the withdrawing member fails to
18 meet the standards of R.S.34:15-77, the withdrawing member
19 shall thereupon, and at six-month intervals thereafter, provide to
20 the department and the association the certified opinion of an
21 independent actuary who is a member of the American Society of
22 Actuaries of the actuarial present value of the determined and
23 estimated future compensation payments of the withdrawing
24 member for claims incurred while it was a self-insurer, using a
25 discount rate of four percent. With each such opinion, the
26 withdrawing member shall deposit with the department security
27 in an amount equal to the value certified by the actuary and of a
28 type that is acceptable for the purposes of R.S.34:15-77. The
29 withdrawing member shall continue to provide such opinions and
30 to provide such security until such time as the latest opinion
31 shows no remaining value of claims. The association has a cause
32 of action against a withdrawing member, and against any
33 successor of a withdrawing member, who fails to timely provide
34 the required opinion or who fails to maintain the required deposit
35 with the department. The association shall be entitled to recover
36 a judgment in the amount of the actuarial present value of the
37 determined and estimated future compensation payments of the
38 withdrawing member for claims incurred during the time that the
39 withdrawing member exercised the privilege of self-insurance,
40 together with reasonable attorney's fees. For purposes of this
41 section, the "successor of a withdrawing member" means any
42 person, business entity, or group of persons or business entities,
43 which holds or acquires legal or beneficial title to the majority of
44 the assets or the majority of the shares of the withdrawing
45 member.

46 3. The board of directors of the association shall consist of
47 ¹[nine] ²[seven¹] five² persons and shall be organized as
48 established in the plan of operation. With respect to initial
49 appointments, the commissioner shall, within 180 days of the
50 effective date of this act, approve and appoint to the board
51 persons who are ²[experienced with self-insurance] employed or
52 who have been employed by a self-insurer² in this State ²required
53 to become a member of the association pursuant to the provisions
54 of section 2 of this act and are, or were, as the case may be,

1 responsible for the administration of workers' compensation for
2 that self-insurer for at least five years² and who are
3 recommended by the self-insurers in this State required to
4 become members of the association pursuant to the provisions of
5 section 2 of this act. If the commissioner finds that any person
6 so recommended does not have the necessary qualifications for
7 service on the board and a majority of the board has been
8 appointed, the commissioner shall request the directors thus far
9 approved and appointed to recommend another person for
10 appointment to the board. Each director shall serve for a
11 four-year term and may be reappointed. Appointments other
12 than initial appointments shall be made by the commissioner upon
13 recommendation of members of the association. Any vacancy on
14 the board shall be filled for the remaining period of the term in
15 the same manner as appointments other than initial appointments
16 are made. Each director may be reimbursed from assets of the
17 association for expenses incurred in carrying out the duties of the
18 board on behalf of the association.

19 4. a. Upon creation of the Insolvency Fund pursuant to the
20 provisions of section 5 of this act, the association is obligated for
21 payment of compensation under chapter 15 of Title 34 of the
22 Revised Statutes to insolvent members' employees resulting
23 from¹: (1)¹ incidents and injuries existing prior to the member
24 becoming an insolvent member¹; ¹ and ¹[from] (2)¹ incidents and
25 injuries occurring ¹[within 30 days]¹ after the member has
26 become an insolvent member, ¹[if the incidents giving rise to
27 claims for compensation occur during the year in which the
28 insolvent member is a member of the association and was
29 assessable pursuant to the plan of operation, and]¹ if the
30 employee makes timely claim for those payments according to
31 procedures set forth by a court of competent jurisdiction over the
32 delinquency or bankruptcy proceedings of the insolvent member.
33 Such obligation includes only that amount due the injured worker
34 or workers of the insolvent member under chapter 15 of Title 34
35 of the Revised Statutes. In no event is the association obligated
36 to a claimant in an amount in excess of the obligation of the
37 insolvent member. The association shall be deemed the insolvent
38 member for purposes of chapter 15 of Title 34 of the Revised
39 Statutes to the extent of its obligation on the covered claims and,
40 to that extent, shall have all rights, duties and obligations of the
41 insolvent member as if the member had not become insolvent.
42 However, in no event shall the association be liable for any
43 penalties or interest ¹or for compensation payments which were
44 due before the member became an insolvent member¹.

45 b. The association may:
46 (1) Employ or retain those persons necessary to handle claims
47 and perform other duties of the association.
48 (2) Borrow funds necessary to effect the purposes of this act in
49 accordance with the plan of operation.
50 (3) Sue or be sued.
51 (4) Negotiate and become a party to those contracts as are
52 necessary to carry out the purposes of this act.
53 (5) Purchase reinsurance as it determines necessary pursuant
54 to the plan of operation.

1 (6) Review all applicants for membership in the association.
2 Prior to a final determination by the department as to whether or
3 not to approve any applicant for membership in the association,
4 the association may issue opinions to the department concerning
5 any applicant, which opinions shall be considered by the
6 department prior to any final determination.

7 (7) Charge fees to any member of the association to cover the
8 actual costs of examining the financial ²[and safety conditions]
9 condition² of that member.

10 (8) Charge an applicant for membership in the association a
11 fee sufficient to cover the actual costs of examining the financial
12 condition of the applicant.

13 c. (1) To the extent necessary to secure funds for the payment
14 of covered claims and also to pay the reasonable costs to
15 administer them, the association shall levy assessments ¹[based
16 on the annual normal premium each member would have paid had
17 it not been self-insured. Every assessment shall be made as a
18 uniform percentage of the figure applicable to all self-insurers,
19 provided that the] on its members. The assessment charged to
20 each member shall be in the proportion that the member's
21 compensation payments during the 12-month period ending on the
22 June 30th immediately preceding the date of the assessment bear
23 to the total compensation payments made by all members during
24 that period. The¹ assessment levied against any ¹[self-insurer]
25 member¹ in any one year shall ¹be in an amount¹ not ¹[exceed
26 one] exceeding 1.5¹ percent of the ¹[annual normal premium]
27 total compensation paid by the member¹ during the ¹[calendar
28 year] 12-month period ending on the June 30th immediately¹
29 preceding the date of the assessment ¹, except that the
30 association shall increase the assessment to not more than two
31 percent each year as needed to establish and sustain a prefunded
32 reserve of ²[\$1 million¹] \$1,000,000². Assessments shall be
33 administered by the board of directors in the manner specified by
34 the plan of operation. Each member so assessed shall have at
35 least 30 days' written notice as to the date the assessment is due
36 and payable. The association shall levy assessments against any
37 newly admitted member of the association so that the basis of
38 contribution of any newly admitted member is the same as
39 previously admitted members, provision for which shall be
40 contained in the plan of operation.

41 (2) If, in any one year, funds available from such assessments,
42 together with funds previously raised, are not sufficient to make
43 all the payments or reimbursements then owing, the funds
44 available shall be prorated, and the unpaid portion shall be paid as
45 soon thereafter as sufficient additional funds become available.

46 (3) No State funds of any kind shall be allocated or paid to the
47 association or any of its accounts.

48 ¹d. The association shall make every reasonable effort and
49 undertake all appropriate actions to obtain from an insolvent
50 member whatever funds are needed to pay compensation due to
51 employees of the insolvent member.¹

52 5. Upon the adoption of a plan of operation or the adoption of
53 rules by the commissioner pursuant to subsection a. of section 6
54 of this act, there shall be created an Insolvency Fund to be

1 managed by the association.

2 a. The Insolvency Fund is created for purposes of meeting the
3 obligations of insolvent members incurred while members of the
4 association and other insolvent self-insurers as provided in
5 section ²[14] ¹⁵² of this act and after the exhaustion of any bond,
6 as required under chapter 15 of Title 34 of the Revised Statutes.
7 However, if the bond, surety, or reinsurance policy is payable to
8 the association, the association shall commence to provide
9 benefits out of the fund and be reimbursed from the bond, surety,
10 or reinsurance policy. The method of operation of the fund shall
11 be defined in the plan of operation pursuant to section 6 of this
12 act.

13 b. The department shall have the authority to audit the
14 financial soundness of the fund annually.

15 c. The commissioner may offer certain amendments to the
16 plan of operation to the board of directors for purposes of
17 assuring the ongoing financial soundness of the fund and its
18 ability to meet the obligations of this act.

19 d. The department actuary may make recommendations to
20 improve the orderly payment of claims.

21 6. a. (1) Within one year of the effective date of this act, the
22 board of directors shall submit to the commissioner a proposed
23 plan of operation for the fair, reasonable and equitable
24 administration of the association and the fund. The plan of
25 operation, and any amendments thereto, shall take effect upon
26 approval in writing by the commissioner.

27 (2) If the board of directors fails to submit a plan within one
28 year of the effective date of this act, or thereafter fails to
29 submit any acceptable amendments to the plan, the commissioner
30 shall promulgate the rules necessary to effectuate the provisions
31 of this section. The rules shall continue in force until modified
32 by the commissioner or superseded by a plan submitted by the
33 board of directors and approved by the commissioner.

34 b. The plan of operation shall establish the programs necessary
35 to protect against the insolvency of a member of the association
36 and shall provide that the members of the association shall be
37 responsible for maintaining an adequate fund to meet the
38 obligations of insolvent members and other insolvent self-insurers
39 provided for under this act and the board of directors is
40 authorized to contract and employ those persons with the
41 necessary expertise to carry out these stated purposes.

42 c. All member employers shall comply with the plan of
43 operation.

44 d. The plan of operation shall:

45 (1) Establish the procedures whereby all the powers and duties
46 of the association under sections 4 and ²[14] ¹⁵² of this act will
47 be performed.

48 (2) Establish procedures for handling assets of the association.

49 (3) Establish the amount and method of reimbursing members
50 of the board of directors under section 3 of this act.

51 ²(4) Establish procedures and standards for determining the
52 insolvency of member employers pursuant to the provisions of
53 this act.²

54 ²[(4)] ⁽⁵⁾² Establish procedures by which claims may be filed

1 with the association and establish acceptable forms of proof of
2 covered claims. Notice of claims to the receiver or liquidator of
3 the insolvent member shall be deemed notice to the association
4 or its agent, and a list of those claims shall be submitted
5 periodically to the association or similar organization in another
6 state by the receiver or liquidator.

7 ²[(5)] (6)² Establish regular places and times for meetings of
8 the board of directors.

9 ²[(6)] (7)² Establish procedures for records to be kept of all
10 financial transactions of the association and its agents and the
11 board of directors.

12 ²[(7)] (8)² Provide that any member employer aggrieved by any
13 final action or decision of the association may appeal to the
14 department within 30 days after the action or decision.

15 ²[(8)] (9)² Establish the procedures whereby recommendations
16 of candidates for the board of directors shall be submitted to the
17 commissioner.

18 ²[(9)] (10)² Contain additional provisions necessary or proper
19 for the execution of the powers and duties of the association.

20 e. The plan of operation may provide that any or all of the
21 powers and duties of the association, except those specified under
22 paragraphs (1) ²[and],² (2) ²and (4)² of subsection d. of this
23 section, be delegated to a corporation, association, or other
24 organization which performs or will perform functions similar to
25 those of this association or its equivalent in two or more states.
26 Such a corporation, association, or organization shall be
27 reimbursed as a servicing facility would be reimbursed and shall
28 be paid for its performance of any other functions of the
29 association. A delegation of powers or duties under this
30 subsection shall take effect only with the approval of both the
31 board of directors and the commissioner and may be made only to
32 a corporation, association, or organization which extends
33 protection which is not substantially less favorable and effective
34 than the protection provided by this act.

35 27. a. A member employer which files for relief in bankruptcy
36 under Title 11 of the United States Code, 11 U.S.C. §101 et seq.;
37 or against which involuntary bankruptcy proceedings are filed
38 under that title; or for which a receiver is appointed by a court of
39 competent jurisdiction, shall file written notice of that fact with
40 the commissioner and the board of directors of the association
41 within 30 days of the occurrence of such an event.

42 b. Upon receipt of the notice required by subsection a. of this
43 section, the board shall review the member employer's ability to
44 pay compensation pursuant to R.S. 34:15-77 and make a
45 determination as to insolvency. If the board determines at any
46 time that the member employer is insolvent, it shall notify the
47 commissioner and the members of the association not later than
48 three business days after the determination of insolvency.²

49 ²[7. a. The department shall]² 1[:

50 (1) Notify] ²[notify]¹ the association of the existence of an
51 insolvent member not later than three business days after it
52 receives notice of the determination of insolvency.]²

53 ¹[(2) Upon request of the board of directors, provide the
54 association with a statement of the annual normal premiums of

1 each member employer.]¹

2 ²[b.] g.² The department may:

3 ²[(1)] a.² Require that the association notify ²[the member
4 employers and any]² other interested parties of the determination
5 of insolvency and of their rights under this act. Notification shall
6 be by mail at the last known address thereof when available; but,
7 if sufficient information for notification by mail is not available,
8 notice by publication in a newspaper of general circulation shall
9 be sufficient.

10 ²[(2)] b.² Suspend or revoke the authority of any member
11 employer failing to pay an assessment when due or failing to
12 comply with the plan of operation to self-insure in this State. As
13 an alternative, the department may levy a fine on any member
14 employer failing to pay an assessment when due. Such fine shall
15 not exceed five percent of the unpaid assessment per month,
16 except that no fine shall be less than \$100 per month.

17 ¹[(3)] Revoke the designation of any servicing facility if the
18 department finds that claims are being handled unsatisfactorily.]¹

19 ²[8.] g.² a. Any person who recovers from the association
20 under this act shall be deemed to have assigned his rights to the
21 association to the extent of that recovery. Every claimant
22 seeking the protection of this act shall cooperate with the
23 association to the same extent as that person would have been
24 required to cooperate with the insolvent member. The
25 association shall have no cause of action against the employee of
26 the insolvent member for any sums the association has paid out,
27 except those causes of action which the insolvent member would
28 have had if the sums had been paid by the insolvent member. In
29 the case of an insolvent member operating with assessment
30 liability, payments of claims by the association shall not operate
31 to reduce the liability of the insolvent member to the receiver,
32 liquidator, or statutory successor for unpaid assessments.

33 b. The receiver, liquidator, or statutory successor of an
34 insolvent member shall be bound by settlements of covered
35 claims by the association or a similar organization in another
36 state. The court having jurisdiction shall grant those claims
37 priority against the assets of the insolvent member equal to that
38 to which the claimant would have been entitled in the absence of
39 this act. The expense of the association or similar organization
40 in handling claims shall be accorded the same priority as the
41 expenses of the liquidator.

42 c. The association shall file periodically with the receiver or
43 liquidator of the insolvent member statements of the covered
44 claims paid by the association and estimates of anticipated
45 claims on the association, which shall preserve the rights of the
46 association against the assets of the insolvent member.

47 ²[9.] 10.² To aid in the detection and prevention of employer
48 insolvencies:

49 a. Upon determination by majority vote of the membership of
50 the board that any member employer may be insolvent or in a
51 financial condition hazardous to the employees thereof or to the
52 public, it shall be the duty of the board of directors to notify the
53 department of any information indicating that condition.

54 b. The board of directors may, upon majority vote of the

1 membership of the board, request that the department determine
2 the condition of any member employer which the board in good
3 faith believes may no longer be qualified to be a member of the
4 association. Within 30 days of the receipt of that request or, for
5 good cause shown, within a reasonable time thereafter, the
6 department shall make such determination and shall forthwith
7 advise the board of its findings. Each request for a determination
8 shall be kept on file by the department, but the request shall not
9 be open to public inspection prior to the release of the
10 determination to the public.

11 c. It shall also be the duty of the department to report to the
12 board of directors when it has reasonable cause to believe that a
13 member employer may be in such a financial condition as to be no
14 longer qualified to be a member of the association.

15 d. The board of directors may, upon majority vote of the
16 membership of the board, make reports and recommendations to
17 the department upon any matter which is germane to the
18 solvency, liquidation, rehabilitation, or conservation of any
19 member employer. Such reports and recommendations shall not
20 be considered public documents.

21 e. The board of directors may, upon majority vote of the
22 membership of the board, make recommendations to the
23 department for the detection and prevention of employer
24 insolvencies.

25 f. The board of directors shall, at the conclusion of any
26 member's insolvency in which the association was obligated to
27 pay covered claims, prepare a report on the history and cause of
28 that insolvency, based on the information available to the
29 association, and shall submit that report to the department.

30 ²[10.] 11.2 The association shall be subject to examination and
31 regulation by the department. No later than March 30 of each
32 year, the board of directors shall submit a financial report for the
33 preceding calendar year in a form approved by the department.

34 ²[11.] 12.2 There shall be no liability on the part of, and no
35 cause of action of any nature shall arise against, any member
36 employer, the association or its agents or employees, the board of
37 directors, or the department or its representatives for any action
38 ²[taken] or omission² by them in the performance of their powers
39 and duties under this act.

40 ²[12.] 13. a.2 All proceedings in which an insolvent member is
41 a party, or is obligated to defend a party, in any court or before
42 any quasi-judicial body or administrative board in this State shall
43 be stayed for up to six months, or for such additional period from
44 the date the member becomes insolvent, as is deemed necessary
45 by a court of competent jurisdiction to permit proper defense by
46 the association of all pending causes of action as to any covered
47 claims arising from a judgment under any decision, verdict, or
48 finding based on the default of the insolvent member. The
49 association, either on its own behalf or on behalf of the insolvent
50 member, may apply to have that judgment, order, decision,
51 verdict or finding set aside by the same court or administrator
52 that made that judgment, order, decision, verdict or finding and
53 shall be permitted to defend against that claim on the merits. If
54 requested by the association, the stay of proceedings may be

1 shortened or waived.

2 ²b. In any proceeding in bankruptcy in which the payment of
3 benefits has been stayed, the association shall appear and move
4 to lift the stay so that the orderly administration of claims can
5 proceed.²

6 ²[13.] 14.² Notwithstanding any other provision of chapter 15
7 of Title 34 of the Revised Statutes, a covered claim, as defined
8 therein, with respect to which settlement is not effected and
9 pursuant to which suit is not instituted against the insured of an
10 insolvent member or the association within one year after the
11 deadline for filing claims with the receiver of the insolvent
12 member, or any extension of the deadline, shall thenceforth be
13 barred as a claim against the association.

14 ²[14.] 15.² In addition to its ¹[other obligations] obligation to
15 pay compensation to the employees of insolvent members¹
16 pursuant to section 4 of this act, the association shall be
17 obligated for payment of compensation under chapter 15 of Title
18 34 of the Revised Statutes to ¹the¹ employees of ¹[a] any¹
19 self-insurer declared to be insolvent by a court of competent
20 jurisdiction on or after October 1, 1990, but prior to the effective
21 date of this act, as ¹[otherwise limited by] if that self-insurer
22 were an insolvent member subject to¹ the provisions of ¹[that
23 section 4 and by]¹ this act.

24 ²[15.] 16.² This act shall not be construed as reducing, to any
25 degree or in any way, the responsibility of the commissioner to
26 exercise caution in authorizing any employer to become a
27 self-insured employer, or the commissioner's responsibility to
28 require guarantees, reserve funds, surety bonds or partial
29 insurance as needed to provide adequate assurance of the
30 employer's ability to pay compensation pursuant to
31 R.S.34:15-77. The purpose of the association is to provide an
32 assurance of the payment of workers' compensation to the
33 employees of insolvent members, not to exempt any employer,
34 even an insolvent employer, from the responsibility to provide
35 workers' compensation to victims of workplace injury or illness,
36 or to reduce, to any degree or in any way, the responsibility of a
37 self-insured employer to provide appropriate guarantees, funds,
38 bonds or other assurances that compensation will be available
39 pursuant to R.S.34:15-77.¹

40 ¹[15.] ²[16.] 17.² This act shall take effect immediately.

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45 Creates "New Jersey Self-Insurers Guaranty Association" to pay
46 claims against insolvent employers who self-insure for workers'
47 compensation.

1 shall be permitted to defend against that claim on the merits. If
2 requested by the association, the stay of proceedings may be
3 shortened or waived.

4 13. Notwithstanding any other provision of chapter 15 of Title
5 34 of the Revised Statutes, a covered claim, as defined therein,
6 with respect to which settlement is not effected and pursuant to
7 which suit is not instituted against the insured of an insolvent
8 member or the association within one year after the deadline for
9 filing claims with the receiver of the insolvent member, or any
10 extension of the deadline, shall thenceforth be barred as a claim
11 against the association.

12 14. In addition to its other obligations pursuant to section 4 of
13 this act, the association shall be obligated for payment of
14 compensation under chapter 15 of Title 34 of the Revised
15 Statutes to employees of a self-insurer declared to be insolvent
16 by a court of competent jurisdiction on or after October 1, 1990,
17 but prior to the effective date of this act, as otherwise limited by
18 the provisions of that section 4 and by this act.

19 15. This act shall take effect immediately.
20
21

22 STATEMENT

23
24 This bill creates the "New Jersey Self-Insurers Guaranty
25 Association" to pay the claims of employees of insolvent
26 employers who were self-insured for the purposes of workers'
27 compensation. All self-insured employers, other than public
28 utilities or governmental entities and those employers which
29 self-insure on a group basis, would be members of the association
30 as a condition of their authority to individually self-insure in this
31 State. The association is authorized to assess its members to
32 secure the payment of covered claims and the reasonable costs to
33 administer them, based on the normal workers' compensation
34 insurance premium each employer would have paid had it not
35 been self-insured. The association and the Insolvency Fund
36 created thereunder would be administered pursuant to a plan of
37 operation adopted by the board of directors and approved by the
38 Commissioner of Insurance.
39
40
41

42
43 Creates "New Jersey Self-insurers Guaranty Association" to pay
44 claims against insolvent employers who self-insure for workers'
45 compensation.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1127

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1992

The Assembly Labor Committee reports favorably Assembly Bill No. 1127, with committee amendments.

This bill, as amended, creates the "New Jersey Self-Insurers Guaranty Association" to pay the workers' compensation claims of employees of insolvent employers who were self-insured. The bill requires all self-insured employers, other than governmental entities and employers who self-insure for workers' compensation on a group basis, to be members of the association. The association is authorized to assess its members to secure the payment of covered claims plus reasonable administrative costs, based on the compensation payments paid during the prior year by each employer. The association and the Insolvency Fund created by this bill would be administered pursuant to a plan of operation adopted by the board of directors and approved by the Commissioner of Insurance.

The bill also provides that the association shall be obligated to pay compensation to the employees of a self-insurer declared to be insolvent by a court on or after October 1, 1990.

The committee amendments do the following:

1. Modify certain restrictions regarding which injured workers are covered by the association. Unamended, the bill obligates the association to cover compensation payments owed by an insolvent member only to those employees who were injured during a year that employer was a member and who were injured not later than 30 days after the member became insolvent. The amendments delete these restrictions. The committee amendments provide, however, that the association is not responsible for workers' compensation payments that were due prior to the insolvency.

2. Change the basis for assessing association members to pay for the compensation of employees of insolvent members. Unamended, the bill distributed the assessments among members in proportion to what each member's premiums would have been, if the member had purchased workers' compensation insurance instead of self-insuring, as a share of total hypothetical premiums for all self-insurers during the previous year. The amendments use actual compensation payments made by each self-insurers during the prior year, rather than hypothetical premiums, as the basis for distributing the assessments.

3. Raise the maximum annual assessment from 1% of total compensation paid to 1.5%, or up to 2% as needed to establish and sustain a \$1 million prefunded reserve.

4. Require the association to take all appropriate actions to obtain from an insolvent member the funds needed to pay compensation to the member's employees.

5. Clarify that the association's obligation to provide coverage for an employee of an employer that became insolvent between October 1, 1990 and the effective date of the bill does not mean that the employee will be paid a second time in cases where the employee has already received compensation from another source. This provision is intended to address concerns that the present bill language may permit "double dipping" by claimants who make a recovery from an insolvent self-insured employer and then recover the same amount a second time from the guaranty fund.

6. States that the bill is not intended to reduce, to any degree, the Insurance Department's responsibility to exercise caution in authorizing employers to be self-insured, or its responsibility to require sufficient guarantees of the employer's ability to pay compensation.

7. Deletes the unamended bill's exemption of public utilities from participating in the guarantee fund. Public utilities represent a major portion of the employment among self-insured employers and the committee finds no justification for excluding their employees from the protections provided by the bill.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1127

STATE OF NEW JERSEY

DATED: NOVEMBER 16, 1992

The Senate Commerce Committee reports favorably Assembly Bill No. 1127 [1R].

This bill creates the "New Jersey Self-Insurers Guaranty Association" to pay the workers' compensation claims of employees of insolvent employers who were self-insured. The bill requires all self-insured employers, other than governmental entities and employers who self-insure for workers' compensation on a group basis, to be members of the association.

The Commissioner of Insurance is required to approve and appoint a board of directors consisting of seven persons who are experienced with self-insurance in this State and who are recommended by the self-insurers which are required to become members of the association. Appointments other than initial appointments are also required to be made by the commissioner upon the recommendation of members of the association. Each director may be reimbursed by the association for expenses in carrying out his duties.

Within one year of the effective date of the bill, the board of directors must submit to the commissioner for his approval a proposed plan of operation. If the board fails to do so, the commissioner must adopt such a plan. The plan of operation, and any amendments thereto, would only take effect upon the written approval of the commissioner.

The bill creates an Insolvency Fund which is administered by the board of the association and funded by member assessments. The association is authorized to assess its members to secure the payment of covered claims plus reasonable administrative costs, based on the compensation payments paid by each member during the 12-month period ending on June 30th preceding the date of assessment. The assessment levied against any member in any one year cannot exceed 1.5% of the total compensation paid by the member during the 12-month period ending on the June 30th immediately preceding the date of assessment, except the association shall increase the assessment to not more than 2% each year to establish and sustain a prefunded reserve in the Insolvency Fund of \$1 million.

The association through the Insolvency Fund is obligated to workers' compensation payments to insolvent members' employees resulting from injuries existing prior to the member becoming an insolvent member and injuries occurring after the member has become an insolvent member. However, the association is not liable for any penalties or interest or for compensation payments which were due before the member became an insolvent member.

The commissioner is authorized to audit the financial soundness of the Insolvency Fund annually and the association has the authority to examine the financial condition of its members.

The commissioner may suspend or revoke the authority of any association member to self-insure in this State if it fails to pay an assessment or comply with the plan of operation. As an alternative, the commissioner may levy a fine of not less than \$100 per month and not more than 5% of the unpaid assessment per month.

The commissioner is required to notify the association of the existence of an insolvent member and vice versa.

Finally, in addition to its obligation to pay compensation to the employees of insolvent association members, the association is obligated for the payment of compensation to the employees of any self-insured employer declared to be insolvent by the court on or after October 1, 1990 but prior to the effective date of this bill.

association, either on its own behalf or on behalf of the insolvent member, may apply to have that judgment, order, decision, verdict or finding set aside by the same court or administrator that made that judgment, order, decision, verdict or finding and shall be permitted to defend against that claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

²b. In any proceeding in bankruptcy in which the payment of benefits has been stayed, the association shall appear and move to lift the stay so that the orderly administration of claims can proceed.²

RENUMBER SECTIONS 13 THROUGH 16 AS SECTIONS 14 THROUGH 17

STATEMENT

These amendments make certain revisions to the bill, which establishes the "New Jersey Self-Insurers Guaranty Association" to pay the workers' compensation claims of employees of insolvent employers who were self-insured.

First, the amendments clarify that an insolvent employer is one who has filed for relief in bankruptcy; against which involuntary bankruptcy proceedings have been filed; or for which a receiver has been appointed by a court of competent jurisdiction; and, in addition, has been determined to be insolvent by the board of directors of the association, based upon the member employer's ability to pay compensation as a self-insurer.

The membership of the board of directors of the association is reduced from seven to five members by the amendments and the qualifications for membership are changed to provide that only persons who are employed or who have been employed for at least five years by a self-insurer and who are or were responsible for the administration of workers' compensation for that self-insurer may be appointed by the commissioner as the first members of the board.

The amendments further provide that a member insurer which files for relief in bankruptcy or against which involuntary bankruptcy proceedings are filed or for which a receiver is appointed shall file written notice of that fact with the commissioner and the board of directors of the association within 30 days of the occurrence of such an event. Based upon that notice, the board will then make a determination as to insolvency for purposes of the bill.

Finally, the amendments provide that in any proceeding in bankruptcy in which the payment of benefits has been stayed, the association shall appear and move to lift the stay so that the orderly administration of claims can proceed.

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

ASSEMBLY, No. 1127

STATE OF NEW JERSEY

DATED: May 20, 1992

Assembly Bill No. 1127 (1R) of 1992 creates the "New Jersey Self-Insurers Guaranty Association" to pay the workers' compensation claims of employees of insolvent employers who were self-insured. The bill requires all self-insured employers, other than governmental entities and employers who self-insure for workers' compensation on a group basis, to be members of the association. The association is authorized to assess its members to secure the payment of covered claims plus reasonable administrative costs, based on the compensation payments paid during the prior year by each employer. The association and the Insolvency Fund created by this bill would be administered pursuant to a plan of operation adopted by the board of directors and approved by the Commissioner of Insurance.

The Department of Insurance and the Office of Management and Budget have not provided cost estimates concerning the fiscal impact of this bill.

The Office of Legislative Services (OLS), however, notes that the bill has no fiscal impact on the State or any other public entity as an employer, because the bill excludes all public employers from participation in the association. No additional administrative costs are anticipated for either the Department of Insurance or the Division of Workers' Compensation in the Department of Labor.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.