

**SOUTH DAKOTA MUNICIPAL LEAGUE  
WORKERS' COMPENSATION FUND  
BY-LAWS  
*an unincorporated association***

**ARTICLE I  
Name & Address**

Section 1.1

The name of this Association shall be the SDML WORKERS' COMPENSATION FUND, hereinafter referred to as the "Fund".

Section 1.2

The principal office of the Fund shall be in the City of Fort Pierre, and the State of South Dakota, or at such other place as may be designated by the Fund's Board of Trustees.

**ARTICLE II  
Purpose**

Section 2.1

The purpose of this Association is to establish a Pool Arrangement as defined by SDCL §1-24-11 to provide workers' compensation coverage for public agencies within the State of South Dakota who are eligible for Membership in accordance with the terms of these By-Laws and Laws of the State of South Dakota.

**ARTICLE III  
Membership**

Section 3.1

To be eligible for membership, applicants must be a public agency as defined by SDCL §1-24-1 (1) or any joint power agreement or separate entities consisting entirely of public agencies which meet that definition, within the State of South Dakota and must:

- (a) File with the Fund the Application required and prescribed by the Board of Trustees.
- (b) Be approved for membership by an affirmative vote of two-thirds (2/3) of the Members of the Board of Trustees.
- (c) Execute an Intergovernmental Contract and Coverage Document conforming with and agreeing to be bound by these By-Laws.
- (d) Execute any and all documents as may be necessary or required by the Fund, it's agents, or any governmental agency for any purpose in the administration and management of the Fund.
- (e) Meet other requirements as they may be found for continued participation in the

Fund to preserve the stability and strength of the Fund including participation in programs or efforts designed to reduce losses or adjust claims, consistent with the provisions of any Intergovernmental Contract and Coverage Document, executed between the Fund and the applicant, and these bylaws.

- (f) Membership in the Fund shall be limited to those municipalities and special districts that are Members in good standing of the South Dakota Municipal League (SDML) and other public agencies as defined by South Dakota Law. However, the Trustees have the authority to extend membership in the Fund to those Members in good standing of the South Dakota Association of County Commissioners (SDACC) and Members of other Public Agency Associations. No entity or Member shall be allowed to participate in or retain their status as a Member of the Fund or retain coverage under the fund if such entity or Member fails to qualify as a public agency as defined by South Dakota Law.

### Section 3.2

Upon the filing of an Application for Membership in the Fund, the Board of Trustees or a duly authorized representative or agent thereof, shall investigate the applicant to assure that only applicants with good loss experience and good financial practices and who demonstrate good safety practices become Members of the Fund.

### Section 3.3

Upon approval of an application for membership in the Fund by the Fund's Board of Trustees, the applicant will be admitted membership in the Fund and shall continue as a Member of the Fund unless and until such membership is terminated as hereinafter provided.

## **ARTICLE IV Board of Trustees**

### Section 4.1

The SDML Workers' Compensation Fund shall have a Board of Trustees. The number of Trustees shall be nine (9) and shall be selected as follows:

- (a) Six (6) Trustees shall be elected for staggered terms of three (3) years by a majority of those Members present and voting at the South Dakota Municipal League Annual Meeting. The Board of Directors of the South Dakota Municipal League (SDML) shall appoint two (2) Trustees for a three (3) year term. The Board of Directors of the South Dakota Association of County Commissioners (SDACC) shall appoint one (1) Trustee for a three (3) year term.
- (b) Of the six (6) elected Trustees, four (4) shall be municipal officers or elected officials and two (2) shall be county officers or elected officials. For purposes contained herein, a special district representative to the board would be considered a municipal officer.

- (c) The trustees appointed by the South Dakota Municipal League and the South Dakota Association of County Commissioners may be elected officials or officers of any public agency as defined by South Dakota Law or employees of either SDML or SDACC.
- (d) Trustees shall be elected at the annual meeting of the Members of the Fund. All nominations for the election must be submitted to the Fund Supervising Director thirty (30) days prior to the Annual Meeting to be considered for the election.

#### Section 4.2

It shall be the responsibility and duty of the Board of Trustees:

- (a) To contract with a Fund Administrator who shall be responsible for general administration of the Fund, and serve as attorney-in fact for the Fund; a Claims Administrator to adjust and pay claims; a Loss Control Administrator to provide surveys, training and ancillary services; and a Fund Supervising Director who shall be responsible for the record keeping of the Fund and other duties as assigned.
- (b) To oversee the contribution amounts collected from the Members of the Fund and any other amounts so paid to and collected by the Fund and or its agents.
- (c) Direct the Fund Administrator in the collection of delinquent accounts resulting from any unpaid contributions, assessments or penalties.
- (d) To cause each Member to execute an Intergovernmental Contract and Coverage Document regarding liability of all Members for claims against the Fund prior to membership in the Fund being granted.
- (e) To obtain excess liability coverage and reinsurance in amounts considered sufficient, as shall be determined in the absolute discretion of the Trustees, to assist in covering the liabilities of the Fund.
- (f) Set requirements for the admission of participants to the fund which shall include such precautions as the Board of Trustees from time to time shall deem appropriate to promote the secure and proper operation of the Fund, with financially stable Members who demonstrate good safety practices.

#### Section 4.3

The Fund's accounting firm shall prepare and forward to the Board of Trustees a financial accounting showing the balance in the Fund at the end of the each year to include current period contributions, the amount and nature of all investments and payments including claims, management, legal and accounting expenses. Any final accounting report prepared and delivered to the Trustees shall be made available to any Member of the Fund upon request by said Member.

#### Section 4.4

Any Trustee may, by majority vote of the Board of Trustees, be removed at any time for failure to attend meetings of the Board of Trustees on a regular basis, or for any other reason, with or without cause.

#### Section 4.5

A vacancy shall be deemed to have occurred when the Chairman of the Board is made aware of a Trustee's death, resignation, removal from office or employment, or other loss of eligibility as defined by Section 4.1(b). A majority of the Trustees remaining in office, though less than a quorum, shall establish the effective date of such vacancy and may fill such vacancy at any meeting, and the person so elected shall be a Trustee until his successor is elected by the membership at an annual meeting, or at any special meeting duly called for that purpose and held prior thereto.

The resignation of a Trustee shall be submitted in writing to the Chairman of the Board and is effective upon its receipt by the Chairman of the board or a subsequent time as set forth in the notice of resignation, not to extend past December 31 of the year in which the resignation is submitted.

#### Section 4.6

Subject to any specific limitation or restriction imposed by law or by these By-Laws, the Board of Trustees is authorized to direct, by appropriate action of the Board, the carrying-out of the purposes of the Fund as set forth in these By-Laws by an agent so appointed by the Board. Said agent shall be limited only as so described by the action of the board and may accordingly exercise all of the powers of the Board as authorized, and any and all third-parties and Members of the Fund dealing with the Fund shall have the right to rely upon any action taken pursuant to authority of the Board of Trustees by said agent.

### **ARTICLE V Officers**

#### Section 5.1

The Trustees shall, from their own duly elected Members, elect by a majority vote a Chairman of the Board of Trustees, a Vice Chairman of the Board, a Secretary of the Board, and such other officers as the Trustees shall deem necessary for the transaction of the business of the Fund. All officers so elected or appointed shall serve at the pleasure of the Board of Trustees.

#### Section 5.2

The Chairman shall preside at all meetings of the Board of Trustees and at all Membership meetings. In his or her absence from any meeting the Vice Chairman shall preside temporarily. The presiding Chairman shall have the normal powers and authority of a duly elected Chairman of a Board of Trustees, and such other duties as the Board of Trustees of the Fund shall determine and shall be the Officer so empowered by action of the Board to enter into contracts and agreement on behalf of the Fund.

### Section 5.3

The Secretary shall attend all meetings of the Members of the Fund and the Board of Trustees, and shall record the minutes of all proceedings and record all votes in a book to be kept for that purpose. He or she shall also perform such other duties as may be delegated and supervised by the Board of Trustees or the Chairman.

## **ARTICLE VI Meetings of the Board of Trustees**

### Section 6.1

The annual meeting of the Board of Trustees shall be held in conjunction with the Annual Meeting of the South Dakota Municipal League for the purpose of electing Trustees (if there are vacancies or terms expiring) and for the transaction of such other business as may properly be brought before the meeting.

### Section 6.2

The Chairman or any two (2) or more Trustees may call a special meeting of the Board of Trustees at any time and for any purpose, to be held at the office of the Fund in South Dakota, or such other place as is agreed to by the majority of Trustees.

### Section 6.3

Written notice of the time, place and purpose of all meetings of the Board of Trustees shall be mailed to each Trustee by the Fund Supervising Director not less than five (5) nor more than thirty (30) days before the meeting. Meetings of the Board may be held on less than five (5) days notice if consented to by any five (5) or more Trustees. Whenever any notice is required by this Section, a waiver thereof in writing signed by the person or persons entitled to such notice before the holding of the meeting, shall be deemed equivalent to the giving of such notice.

### Section 6.4

Five (5) Members of the Board shall constitute a quorum for the transaction of business; and a Member shall be deemed present at a meeting if, upon the taking of the roll, they appear in person or participate in the meeting telephonically. A quorum may be established by any combination of Members present, in person, or participating telephonically. The action of a majority of the Trustees present, at a meeting at which a quorum is present shall be the act of the Board of Trustees, except as actions by a majority or greater number of the Trustees then in office as may be specifically required by other sections of these By-Laws. If there shall be less than a quorum present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time until a quorum is present.

**ARTICLE VII**  
**Membership Meetings**

Section 7.1

The annual meeting of the Members of the Fund shall be held in conjunction with the annual meeting of the Board of Trustees, for the transaction of such business as may be brought before the meeting.

Section 7.2

Those Members present at any duly called meeting of the membership of the Fund shall constitute a quorum.

Section 7.3

Meetings of the membership of the Fund shall be presided over by the duly elected Chairman or by a presiding Chairman as determined by the Board of Trustees. The Secretary of the Board of Trustees shall act as Secretary of the meeting. All questions shall be decided by the vote of a majority of the Members present and voting at the meeting unless otherwise provided by law or these By-Laws.

**ARTICLE VIII**  
**Termination of Membership**

Section 8.1

Any Member of the SDML Workers' Compensation Fund shall cease to be a Member in the event of any of the following:

- (a) Failure to pay contributions or assessment that are due and payable within thirty (30) days after the date notice in writing of such delinquency is delivered personally or mailed to the Member by certified mail.
- (b) Failure to meet requirements for continued participation that may be determined by the Fund to preserve the stability and strength of the Fund and which are consistent with the provisions of the Intergovernmental Contract and Coverage Document and these bylaws, including participation in programs or efforts designed to reduce losses or adjust claims in order to carry out the purposes for which the Fund was established.
- (c) Any Member may resign, at any time, from membership by giving a minimum of sixty (60) days notice, prior to the plan year end, in writing to the Board of Trustees or Fund Administrator. If a Member withdraws without the required sixty (60) day written notice prior to the end of the plan year, a sixty (60) day short rate penalty may be applied.
- (d) As otherwise provided for in these bylaws and any Intergovernmental Contract and Coverage Document executed between the Member and the Fund.

## Section 8.2

The membership of a Member shall terminate thirty (30) days after the date notice of termination herein described has been delivered personally or sent by certified mail unless within such thirty (30) day period the delinquency or failure to comply with the terms of these By-Laws or any Intergovernmental Contract and Coverage Document is cured or resignation withdrawn, as the case may be. Notwithstanding the foregoing, should notice of termination be received by the fund within the time limits described under Section 8.1(c), termination shall not occur until the end of the plan year unless otherwise agreed to in writing by the Fund and the terminating Member.

## Section 8.3

No liability shall accrue to the Fund or its Members for any accident to an employee of a Member that has been terminated from membership or has resigned from membership in the Fund which occurs after the thirty (30) days notice as herein described has expired. Notwithstanding the foregoing, should notice of termination be received by the fund within the time limits described under Section 8.1(c), the provisions of Section 8.3 shall not be effective until the end of the plan year unless otherwise agreed to in writing by the Fund and the terminating Member.

## Section 8.4

Any Member who leaves the Fund by reason of any act set forth in Section 8.1 of these bylaws shall have no right in or interest to any accrued or current excess contributions previously declared to be payable by the Board of Trustees or in any equity amount previously attributable to the Member based on prior contributions received and utilized by the Fund in determining contribution amounts and Member equity position as it relates to contribution amounts.

## Section 8.5

A Member that has been terminated from membership in the Fund or that has resigned may be reinstated only by filing an application and meeting the requirements of a new Member and paying such Member's past due account, including cost of collection, if any.

## **ARTICLE IX Contributions and Finances**

### Section 9.1

All contributions as determined by the Board of Trustees shall be paid by each Member to the Fund as directed. The Trustees shall have custody of and control over the assets of the Fund.

### Section 9.2

Contributions shall be collected by the Fund or its designated agent, and the Fund may apply a late payment penalty.

### Section 9.3

The Trustees shall open and maintain such financial accounts as they deem necessary for the operation of the Fund.

### Section 9.4

Any surplus monies for a fiscal year in excess of the amount necessary to fulfill all obligations of the Fund under the South Dakota Workers' Compensation Law for that year may be refunded by the Board of Trustees, at a time agreed to by the Board. Any surplus monies may also be retained by the Fund for purposes of the Fund and such a determination shall be at the complete discretion of the Board of Trustees.

### Section 9.5

Each participating Member shall pay the amount of its contribution to the Fund when due. The Board is without authority to extend credit to any Member of the Fund, and failure to pay said contribution shall subject said Member to dismissal from the Fund as provided in Article VIII.

## **ARTICLE X Miscellaneous**

### Section 10.1

The Fund shall defend in the name of and on behalf of a Member any suit or proceeding which may at any time be instituted on account of injuries or death resulting in possible liability to the Member under South Dakota Worker's Compensation Law or on the basis of Employers Liability, including suits or other proceedings alleging such injuries and demanding damages or compensation therefore, even though such suits, other proceedings, allegations or demands may be groundless, false, or fraudulent, and to pay all costs assessed against the Member in any legal proceeding defended by the Fund, and all interest accruing after entry of judgment and all expenses incurred for investigation, negotiation or defense of any such suite or proceeding.

### Section 10.2

Should any section, provision or portion of these Bylaws be held or found unenforceable or invalid for any reason, the remaining sections, provisions and portions shall be unaffected by such holding or finding and shall remain in full force and effect.

### Section 10.3

The Fund may indemnify any person who was or is a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or on behalf of the Fund, by reason of the fact that he or she is or was a Trustee, Director, officer, employee, administrator, or agent of the Fund against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonable incurred in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in the best interests of the Fund, and with respect to any criminal action



or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 10.4

Under no circumstances shall the Fund or its Trustees, officers, employees or agents be considered an insurer, insurance company, insurance carrier, insurance agent, insurance broker or an insurance service company.

**ARTICLE XI  
Fiscal Year**

Section 11.1

The fiscal year of the SDML Workers' Compensation Fund shall begin on the 1st of January and shall end on the last day of December of that year.

**ARTICLE XII  
Notices**

Section 12.1

Any notices required by these By-Laws, statute or any rule or regulation of any governmental agency shall be sufficient if delivered personally or given by depositing the same in a United States post office box or receptacle in a sealed, prepaid envelope, addressed to the person to be notified at his last address as the same appears in the records of the Fund, and any mailed notice shall be deemed to have been given on the date of mailing, provided that any notice pursuant to Article VIII of the By-Laws that is mailed shall be sent by certified registered mail.

**ARTICLE XIII  
Amendment of Rules and Regulations**

Section 13.1

These By-Laws may be amended, altered, changed, added to or repealed by an affirmative vote of at least two-thirds (2/3) of the Members of the Fund present and voting at a meeting held for that purpose, or by vote of two-thirds (2/3) of the Board of Trustees at any annual or special meeting of the Board. Any proposed alteration, change, addition, amendment or repeal of these By-Laws shall be mailed to each Member not less than ten (10) days before such meeting.

Section 13.2

Each Member shall be furnished with a copy of these By-Laws and a copy of any change thereof that is made as provided in Section 13.1 of this Article.

**ARTICLE XIV  
Termination**

Section 14.1

The pool shall terminate at such time as two-thirds of the Members vote for such termination at a meeting called for such purpose. After a vote to terminate, the Board of Trustees shall commence

with an orderly settling of the affairs of the Fund and determine in its complete discretion the manner in which the termination shall be accomplished so as to see an equitable division of assets amongst the Members after all current and future liabilities are accounted for in the manner deemed appropriate by the Board of Trustees.

These By-Laws were adopted by the Board of Trustees of the SDML Workers' Compensation Fund on this, the 8th day of April 1988, effective January 1, 1987.

Revisions:

Article VIII Section 8.1 8 revised November 16-17, 1995

Article IV Section 4.1 revised August 22, 1996

Article IV Section 4.1 revised August 13, 1999

Article IV Section 4.1 revised August 15, 2003

Article IV Section 4.2 revised November 20, 2003

Article VIII Section 8.1 revised November 20, 2003

Article IV Section 4.1 revised October 6, 2004

Significant Revisions proposed October, 2005  
Articles II, III, IV, V, VI, VII, VIII, IX, X (removed), XI, XIII, XV

Article VI Section 6.4 revised October 8, 2008

Article III, Section 3.1 revised August 22, 2016

Article IV, Section 4.5 revised August 22, 2016