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*INSERT PART QQ*

A BUDGET BILL submitted by the Governor  
in accordance with Article VII of the Constitution

AN ACT to amend the workers' compensation law, in relation to  
disability payments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph 4 of paragraph (h) of subdivision 8 of section  
2 15 of the workers' compensation law, as amended by chapter 139 of the  
3 laws of 2008, is amended to read as follows:

4 (4) As soon as practicable after May first in the year nineteen  
5 hundred fifty-eight, and annually thereafter as soon as practicable  
6 after January first in each succeeding year, the chair of the board  
7 shall assess upon and collect from all self-insurers, except group self-  
8 insurers, the state insurance fund, all insurance carriers and group  
9 self-insurers, (A) a sum equal to one hundred fifty per centum of the  
10 total disbursements made from the special disability fund during the  
11 preceding calendar year (not including any disbursements made on account  
12 of anticipated liabilities or waiver agreements funded by bond proceeds  
13 and related earnings), less the amount of the net assets in such fund as  
14 of December thirty-first of said preceding calendar year, and (B) a sum  
15 sufficient to cover debt service, and associated costs (the "debt  
16 service assessment") to be paid during the calendar year by the dormito-  
17 ry authority, as calculated in accordance with subparagraph five of this  
18 paragraph. Such assessments shall be allocated to (i) self-insurers  
19 except group self-insurers and the state insurance fund based upon the  
20 proportion that the total compensation payments made by all self-insur-  
21 ers except group self-insurers and the state insurance fund bore to the

1 total compensation payments made by all self-insurers except group self-  
2 insurers, the state insurance fund, all insurance carriers and group  
3 self-insurers, (ii) insurance carriers based upon the proportion that  
4 the total compensation payments made by all insurance carriers bore to  
5 the total compensation payments by all self-insurers except group self-  
6 insurers, the state insurance fund and all insurance carriers and group  
7 self-insurers during the fiscal year which ended within said preceding  
8 calendar year, and (iii) group self-insurers based upon the proportion  
9 that the total compensation payments made by all group self-insurers  
10 bore to the total compensation payments made by all self-insurers, the  
11 state insurance fund and all insurance carriers during the fiscal year  
12 which ended within said preceding calendar year. Insurance carriers and  
13 self-insurers shall be liable for all such assessments regardless of the  
14 date on which they came into existence, or whether they have made any  
15 claim for reimbursement from the special disability fund. The portion of  
16 such sum allocated to self-insurers except group self-insurers and the  
17 state insurance fund that shall be collected from each self-insurer  
18 except a group self-insurer and the state insurance fund shall be a sum  
19 equal to the proportion of the amount which the total compensation  
20 payments of each such self-insurer except a group self-insurer or the  
21 state insurance fund bore to the total compensation payments made by all  
22 self-insurers except group self-insurers and the state insurance fund  
23 during the fiscal year which ended within said preceding calendar year.  
24 The portion of such sum allocated to insurance carriers that shall be  
25 collected from each insurance carrier shall be a sum equal to that  
26 proportion of the amount which the total [premiums written] standard  
27 premium by each such insurance carrier bore to the total [written premi-  
28 ums] standard premium reported by all insurance carriers during the

1 [fiscal] calendar year which ended within said preceding [calendar]  
2 fiscal year. The portion of such sum allocated to group self-insurers  
3 that shall be collected from each group self-insurer shall be a sum  
4 equal to that proportion of the amount which the pure premium calcu-  
5 lation for each such group self-insurer bore to the total pure premium  
6 calculation for all group self-insurers for the calendar year which  
7 ended within the preceding state fiscal year. The payments from the debt  
8 service assessment, unless otherwise set forth in the special disability  
9 fund financing agreement, are hereby pledged therefor and shall be  
10 deemed the first monies received on account of assessments in each year.  
11 For the purposes of this paragraph, ["direct premiums written" means  
12 gross premiums, including policy and membership fees, less return premi-  
13 ums and premiums on policies not taken] "standard premium" shall mean  
14 the premium as defined for the purposes of this assessment by the super-  
15 intendent of insurance, in consultation with the chair of the board and  
16 the workers' compensation rating board. For purposes of this paragraph  
17 "pure premium calculation" means the New York state annual payroll as of  
18 December thirty-first of the preceding year by class code for each  
19 employer member of a group self-insurer multiplied by the applicable  
20 loss cost for each class code as determined by the workers' compensation  
21 rating board in effect on December thirty-first of the preceding year,  
22 and for a group or individual self-insurer who has ceased to self-insure  
23 shall be based on payroll at the time the group or individual self-in-  
24 surer ceased to self-insure reduced by a factor reflecting the reduction  
25 in the group or individual self-insurer's self-insurance liabilities  
26 since ceasing to self-insure. An employer who has ceased to be a self-  
27 insurer or a group that ceases to be licensed as a group self-insurer  
28 shall continue to be liable for any assessments into said fund on

1 account of any compensation payments made by him or her on his or her  
2 account during such fiscal year, and the security fund, created under  
3 the provisions of section one hundred seven of this chapter, shall, in  
4 the event of the insolvency of any insurance company, be liable for any  
5 assessments that would have been made against such company except for  
6 its insolvency. No assessment shall be payable from the aggregate trust  
7 fund, created under the provisions of section twenty-seven of this arti-  
8 cle, but such fund shall continue to be liable for all compensation that  
9 shall be payable under any award or order of the board, the commuted  
10 value of which has been paid into such fund. Such assessments when  
11 collected shall be deposited with the commissioner of taxation and  
12 finance for the benefit of such fund. Unless otherwise provided, such  
13 assessments, shall not constitute an element of loss for the purpose of  
14 establishing rates for compensation insurance but shall for the purpose  
15 of collection be treated as separate costs by carriers. All insurance  
16 carriers and the state insurance fund, shall collect such assessments,  
17 from their policyholders through a surcharge based on premiums in  
18 accordance with rules set forth by the superintendent of insurance in  
19 consultation with the New York workers' compensation rating board[, as  
20 approved by the superintendent of insurance] and the chair of the board.  
21 Such surcharge shall be considered as part of premium for purposes  
22 prescribed by law including, but not limited to, computing premium tax,  
23 reporting to the superintendent of insurance pursuant to section nine-  
24 ty-nine of this chapter and section three hundred seven of the insurance  
25 law, determining the limitation of expenditures for the administration  
26 of the state insurance fund pursuant to section eighty-eight of this  
27 chapter and the cancellation by an insurance carrier, including the  
28 state insurance fund, of a policy for non-payment of premium. The

1 provisions of this paragraph shall not apply with respect to policies  
2 containing coverage pursuant to subsection (j) of section three thousand  
3 four hundred twenty of the insurance law relating to every policy  
4 providing comprehensive personal liability insurance on a one, two,  
5 three or four family owner-occupied dwelling. The state insurance fund  
6 shall, notify its insureds that such assessments, shall be, for the  
7 purpose of recoupment, treated as separate costs, respectively for the  
8 purpose of premiums billed on or after October first, nineteen hundred  
9 ninety-four.

10 For the purposes of this paragraph, except as otherwise provided: the  
11 term "insurance carrier" shall include only stock corporations, mutual  
12 corporations and reciprocal insurers authorized to transact the business  
13 of workers' compensation insurance in this state; the term "self-insur-  
14 er" shall include any employer or group of employers permitted to pay  
15 compensation directly under the provisions of subdivision three, three-a  
16 or four of section fifty of this chapter[;].

17 The board is hereby authorized to issue credits or refunds as neces-  
18 sary, in the case of overpayments made to the fund. An insurance carrier  
19 that knowingly underreports premiums for the purposes of this section  
20 shall be guilty of a class E felony.

21 § 2. Paragraph (b) of subdivision 2 of section 151 of the workers'  
22 compensation law, as amended by chapter 6 of the laws of 2007, the open-  
23 ing paragraph as amended by chapter 139 of the laws of 2008, is amended  
24 to read as follows:

25 (b) An itemized statement of the expenses so ascertained shall be open  
26 to public inspection in the office of the board for thirty days after  
27 notice to the state insurance fund, all insurance carriers and all self-  
28 insurers including group self-insurers affected thereby, before the

1 board shall make an assessment for such expenses. The chair shall assess  
2 upon and collect a proportion of such expenses as hereinafter provided  
3 from each insurance carrier, the state insurance fund and each self-in-  
4 surer including group self-insurers. The assessment for such expenses  
5 shall be allocated to (i) self-insurers except group self-insurers and  
6 the state insurance fund based upon the proportion that the total  
7 compensation payments made by all self-insurers except group self-insur-  
8 ers and the state insurance fund in such year bore to the total compen-  
9 sation payments made by all self-insurers except group self-insurers,  
10 the state insurance fund, all insurance carriers and group self-insurers  
11 and (ii) insurance carriers based upon the proportion that the total  
12 compensation payments made by all insurance carriers in such year bore  
13 to the total compensation payments by all self-insurers, the state  
14 insurance fund and all insurance carriers [during the fiscal year which  
15 ended within said preceding calendar year], and (iii) group self-insur-  
16 ers based upon the proportion that the total compensation payments made  
17 by all group self-insurers in such year bore to the total compensation  
18 payments made by all self-insurers, the state insurance fund and all  
19 insurance carriers [during the fiscal year which ended within said  
20 preceding calendar year]. The portion of the assessment for such  
21 expenses allocated to self-insurers except group self-insurers and the  
22 state insurance fund that shall be collected from each self-insurer  
23 except group self-insurers and the state insurance fund shall be a sum  
24 equal to the proportion of the amount which the total compensation  
25 payments of each such self-insurer except a group self-insurer or the  
26 state insurance fund in such year bore to the total compensation  
27 payments made by all self-insurers except group self-insurers and the  
28 state insurance fund. The portion of the assessment for such expenses

1 allocated to insurance carriers that shall be collected from each such  
2 insurance carrier shall be a sum equal to that proportion of the amount  
3 which the total [premiums written] standard premium by each such insur-  
4 ance carrier [in such year] bore to the total [written premiums] stand-  
5 ard premium reported by all insurance carriers for the calendar year  
6 which ended with the state fiscal year. The portion of such sum allo-  
7 cated to group self-insurers that shall be collected from each group  
8 self-insurer shall be a sum equal to that proportion of the amount which  
9 the pure premium calculation for each such group self-insurer bore to  
10 the total pure premium calculation for all group self-insurers for the  
11 calendar year which ended within the [preceding] state fiscal year. The  
12 amounts so secured shall be used for the payment of the expenses of  
13 administering this chapter. Pure premium for assessments against indi-  
14 vidual and group self-insurers who ceased to self-insure shall be based  
15 on payroll at the time the individual or group self-insurer has ceased  
16 to self-insure, reduced by a factor reflecting the reduction in the  
17 group or individual self-insurer's self-insurance liabilities since  
18 ceasing to self-insure.

19 For purposes of this paragraph, ["direct premiums written" means gross  
20 premiums, including policy and membership fees, less return premiums and  
21 premiums on policies not taken] "standard premium" shall mean the premi-  
22 um as defined for the purposes of this assessment by the superintendent  
23 of insurance, in consultation with the chair of the board and the work-  
24 ers' compensation rating board. For purposes of this paragraph "pure  
25 premium calculation" means the New York state annual payroll as of  
26 December thirty-first of the preceding year by class code for each  
27 employer member of a group self-insurer multiplied by the applicable  
28 rate for each class code as determined by the workers' compensation

1 rating board in effect on December thirty-first of the preceding year.  
2 The amounts so secured shall be used for the payment of the expenses of  
3 administering this chapter.

4 For the purposes of this paragraph, the term "insurance carrier" shall  
5 include only stock corporations, mutual corporations and reciprocal  
6 insurers authorized to transact the business of workers' compensation  
7 insurance in this state and the term "self-insurer" shall include any  
8 employer or group of employers permitted to pay compensation directly  
9 under the provisions of subdivision three, three-a or four of section  
10 fifty of this chapter.

11 § 3. (a) For purposes of this section, "insurance carrier," and "work-  
12 ers' compensation rating board" shall have the meaning set forth in  
13 section 2 of the workers' compensation law, and "affected insurance  
14 carrier" shall mean any insurance carrier or affiliated group of insur-  
15 ance carriers that has, prior to the effective date of this section: (1)  
16 paid to the workers' compensation board for any year an amount directed  
17 by the workers' compensation board under subdivision 8 of section 15,  
18 subdivision 3 of section 25-a or section 151 of the workers' compen-  
19 sation law that was less than the amount collected from its insured  
20 employers in that year, in accordance with a calculation provided by the  
21 workers' compensation rating board, (2) has identified and held any  
22 funds collected but not paid to the workers' compensation board, as  
23 measurable and available, as of November 1, 2008.

24 (b) Any affected insurance carrier shall notify the chair of the work-  
25 ers' compensation board, within thirty days of the effective date of  
26 this subdivision, of the amount of funds it has held as measurable and  
27 available under subdivision (a) of this section. The chair of the work-  
28 ers' compensation board may, at any time within one hundred twenty days

1 of the effective date of this subdivision, or at any time thereafter if  
2 the insurance carrier has not provided the notification required by this  
3 section, direct an affected insurance carrier to pay such funds to the  
4 board within thirty days if they are attributable to assessments in  
5 fiscal year 2006 or before, and as soon as practicable thereafter if  
6 they are attributable to subsequent assessments. Such funds shall be  
7 credited to the workers' compensation account and shall be reserved in  
8 the first instance for expenditure pursuant to a multi-year plan,  
9 prepared by the chair, to improve the quality, timeliness and fairness  
10 of services performed by the board, including any services funded by  
11 assessments under the workers' compensation law. Such plan must be  
12 approved by the director of the budget, and expenditures pursuant to  
13 such plan may equal up to ten percent of the 2008-09 appropriations made  
14 to the workers' compensation board, excluding contingency appropri-  
15 ations. As a part of such plan, the chair of the workers' compensation  
16 board may recommend suballocations of the funds credited to the workers'  
17 compensation account under this subdivision to the department of labor  
18 for any other purposes funded by assessments made under the workers'  
19 compensation law, or for the implementation of chapter 6 of the laws of  
20 2007, including for implementation of section 134 and subdivision 1 of  
21 section 35 of the workers' compensation law. Such suballocations shall  
22 be included within the total allowable expenditures under the plan and  
23 must also be approved by the director of the budget. Any amounts avail-  
24 able in any fiscal year after deducting amounts reflecting expenditures  
25 to be made by the workers' compensation board for that fiscal year under  
26 the plan provided for by this section shall be transferred by the comp-  
27 troller to the general fund, at the request of the director of the budg-  
28 et.

1 (c) Any affected insurance carrier that makes payments to the workers'  
2 compensation board in accordance with this section shall not be subject  
3 to any civil or criminal liability for damages arising out of the  
4 collection or maintenance of any such funds under subdivision 8 of  
5 section 15, subdivision 3 of section 25-a or section 151 of the workers'  
6 compensation law. Nothing in this section shall be deemed to impose any  
7 civil or criminal liability on any other entity, including any insurance  
8 carrier, the workers' compensation board, or the state of New York.

9 § 4. This act shall take effect immediately, provided that sections  
10 one and two of this act shall take effect on January 1, 2010.