S T A T E O F N E W Y O R K

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I N S E N A T E

June 17, 2012

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the workers' compensation law, in relation to assessments on workers' compensation policies and removing the mandatory aggregate trust fund deposit requirements for non-scheduled permanent partial disability cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 151 of the workers' compensation law, as added by chapter 74 of the laws of 1945, subdivision 1 as amended by chapter 694 of the laws of 1958, subdivision 2 as separately amended by chapters 125 and 316 of the laws of 1991, paragraph (a) of subdivision 2 as amended by chapter 309 of the laws of 1996, paragraphs (b) and (c) of subdivision 2 as amended by section 7 of part G of chapter 57 of the laws of 2011, the second undesignated paragraph of paragraph (b) and paragraph (c) of subdivision 2 as further amended by section 104 of part A of chapter 62 of the laws of 2011, subdivision 3 as separately amended by chapters 125 and 285 of the laws of 1991, subdivision 4 as amended by chapter 944 of the laws of 1972, and subdivision 5 as added by chapter 540 of the laws of 1984, is amended to read as follows:

S 151. Administration expenses. 1. The chairman, as soon as practicable after September first in each year, shall submit to the director of the budget for his approval an estimated budget of expenditures for the succeeding fiscal year. There may not be expended by the board for purposes of administration more than the amounts specified in such budget for each item of expenditure, except as authorized by the director of the budget. If there be officers or employees of the board whose duties relate partly to the general work of the board and partly to the work of the department of labor, and in case there is other expense which is incurred jointly on behalf of the general work of the board and the department of labor, an equitable apportionment of the expense shall be made and the part thereof which is applicable to the board shall be chargeable thereto. The board shall include in its annual report to the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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governor a statement showing the expense of administering the workmen's compensation law for the preceding fiscal year.

2. (a) The chair and department of audit and control annually as soon as practicable after April first shall ascertain the total amount of expenses, including in addition to the direct costs of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the state for or on account of personnel, rentals for space occupied in state owned or state leased buildings, such additional sum as may be certified to the chair and the department of audit and control as a reasonable compensation for services rendered by the department of law and expenses incurred by such department, for transfer into the training and education program on occupational safety and health fund created pursuant to chapter eight hundred eighty-six of the laws of nineteen hundred eighty-five and section ninety-seven-c of the state finance law, for the New York state occupational health clinics network, for the department of labor occupational safety and health program and for transfer into the uninsured employers' fund pursuant to subdivision two of section twenty-six-a of this chapter, and all other direct or indirect costs, incurred by the board during the preceding fiscal year in connection with the administration of this chapter, except those expenses for which [an assessment] A SURCHARGE is authorized pursuant to subdivision five of section fifty and sections two hundred twenty-eight and three hundred twenty-five of this chapter.

(b) [An itemized statement of the expenses so ascertained shall be open to public inspection in the office of the board for thirty days after notice to the state insurance fund, all insurance carriers and all self-insurers affected thereby, before the board shall make an assessment for such expenses. The chair shall assess upon and collect a proportion of such expenses as hereinafter provided from each insurance carrier, the state insurance fund and each self-insurer. The assessment for such expenses shall be allocated to (i) self-insurers and the state insurance fund based upon the proportion that the total compensation payments made by all self-insurers and the state insurance fund in such year bore to the total compensation payments made by all self-insurers, the state insurance fund, and all insurance carriers and (ii) insurance carriers based upon the proportion that the total compensation payments made by all insurance carriers in such year bore to the total compensation payments by all self-insurers, the state insurance fund and all insurance carriers. The portion of the assessment for such expenses allocated to self-insurers and the state insurance fund that shall be collected from each self-insurer and the state insurance fund shall be a sum equal to the proportion of the amount which the total compensation payments of each such self-insurer or the state insurance fund in such year bore to the total compensation payments made by all self-insurers and the state insurance fund. The portion of the assessment for such expenses allocated to insurance carriers that shall be collected from each such insurance carrier shall be a sum equal to that proportion of the amount which the total standard premium by each such insurance carrier bore to the total standard premium reported by all insurance carriers for the calendar year which ended with the state fiscal year. The amounts so secured shall be used for the payment of the expenses of administering this chapter.] THE CHAIR OF THE BOARD, WITH THE APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES, MAY ADOPT REGULATIONS TO ESTABLISH AN EMPLOYER SURCHARGE THAT SHALL GENERATE REVENUE NEEDED TO SATISFY SUCH ASCERTAINED EXPENSES. SUCH SURCHARGE, AT A RATE PUBLISHED

ANNUALLY BY THE BOARD, SHALL CONSTITUTE A PROPORTIONATE AMOUNT OF ASCERTAINED EXPENSES BETWEEN SELF-INSURERS, THE STATE INSURANCE FUND AND ALL INSURED EMPLOYERS, BASED ON THE TOTAL COMPENSATION PAYMENTS FROM THE PRECEDING CALENDAR YEAR. SELF-INSURERS, THE STATE INSURANCE FUND, AND ALL INSURANCE CARRIERS, SHALL COLLECT FROM ALL EMPLOYERS, AN AMOUNT EQUAL TO THE ASSESSED AMOUNT THROUGH A SURCHARGE BASED ON STANDARD PREMIUM. SUCH SURCHARGE SHALL NOT CONSTITUTE AN ELEMENT OF LOSS FOR THE PURPOSE OF ESTABLISHING RATES FOR WORKERS' COMPENSATION INSURANCE BUT, FOR THE PURPOSE OF COLLECTION, SHALL BE TREATED AS SEPARATE COSTS IMPOSED UPON INSURED EMPLOYERS. SELF-INSURERS, THE STATE INSURANCE FUND, AND ALL INSURANCE CARRIERS SHALL BE DEEMED TO BE COLLECTION AGENTS FOR PURPOSES OF COLLECTING SUCH SURCHARGE.

For purposes of this paragraph, "standard premium" shall mean the premium as defined for the purposes of this [assessment] SURCHARGE by the superintendent of financial services, in consultation with the chair of the board and the workers' compensation rating board. The amounts so secured shall be used for the payment of the expenses of administering this chapter.

For the purposes of this paragraph, the term "insurance carrier" shall include only stock corporations, mutual corporations and reciprocal insurers authorized to transact the business of workers' compensation insurance in this state and the term "self-insurer" shall include any employer or group of employers permitted to pay compensation directly under the provisions of subdivision three, three-a or four of section fifty of this chapter. For the purposes of this section, a "self-insurer" shall be: (i) an employer authorized to self-insure under subdivision three of section fifty of this chapter, or active groups authorized pursuant to subdivision three-a of section fifty of this chapter, a group of employers authorized to self-insure under paragraph ten of subdivision three-a of section fifty of this chapter; or (ii) a public employer as set forth in paragraph a of subdivision four of section fifty of this chapter authorized to self-insure under subdivision three, three-a or four of section fifty or article five of this chapter, whether individually or as a group.

(c) [Assessments for the special disability fund, the fund for reopened cases and for the operations of the board shall not constitute elements of loss but shall for collection purposes be treated as separate costs by carriers. All insurance carriers, including the state insurance fund, shall collect such assessments from their policyholders through a surcharge based on premium in accordance with rules set forth by the New York workers' compensation rating board, as approved by the superintendent of financial services. Such surcharge shall be considered as part of premium for purposes prescribed by law including, but not limited to, computing premium tax, reporting to the superintendent of financial services pursuant to section ninety-nine of this chapter and section three hundred seven of the insurance law,] THE SURCHARGE SHALL BE EXCLUDED FROM THE DEFINITION OF "PREMIUM" FOR ALL PURPOSES, INCLUDING PREMIUM TAXES; PROVIDED, HOWEVER, IT MAY BE USED IN determining the limitation of expenditures for the administration of the state insurance fund pursuant to section eighty-eight of this chapter and the cancellation by an insurance carrier, including the state insurance fund, of a policy for non-payment of premium.

3. Notwithstanding the provisions of subdivision two of this section, the chair [shall require that partial payments for expenses of the fiscal year beginning April first, nineteen hundred eighty-three, and for each fiscal year thereafter, shall be made on March tenth of the

preceding fiscal year and on June tenth, September tenth, and December tenth of each year] OF THE BOARD SHALL PRESCRIBE REQUIREMENTS FOR PAYMENT OF SURCHARGE AMOUNTS COLLECTED, or on such other dates as the director of the budget may prescribe, by each insurance carrier, including the state insurance fund. [Provided, however, that the payment due March tenth, nineteen hundred eighty-three for the fiscal year beginning April first, nineteen hundred eighty-three shall not be required to be paid until June tenth, nineteen hundred eighty-three.] Each such payment shall be a sum equal to [twenty-five per centum of the annual expenses assessed upon each carrier, including the state insurance fund, as estimated by the chair. The balance of assessments for the fiscal year beginning April first, nineteen hundred seventy-two and each fiscal year thereafter, shall be paid upon determination of the actual amount due in accordance with the provisions of subdivision two of this section. Any overpayment of annual assessments] SURCHARGE AMOUNTS COLLECTED DURING THE PRIOR PERIOD. ANY EXCESS SURCHARGE AMOUNTS resulting from the requirements of this subdivision shall be refunded or at the option of the chair shall be applied as a credit against the [assessment of] AGGREGATE SURCHARGE AMOUNT TO BE COLLECTED FOR the succeeding fiscal year. The requirements of this subdivision shall not apply to those carriers whose estimated annual [assessment] SURCHARGE COLLECTED for the fiscal year is less than one hundred dollars and such carriers shall make a single payment of the estimated annual [assessment] SURCHARGE on [or before September tenth of the fiscal year] A DATE DETERMINED BY THE CHAIR.

4. [Commencing with the fiscal year beginning April first, nineteen hundred seventy-three, the] THE provisions of [subdivision three of] this section shall be applicable to any county, city, town, village, or other political subdivision failing to secure compensation pursuant to subdivisions one and two of section fifty OF THIS CHAPTER, IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE CHAIR OF THE BOARD, WITH THE APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES.

5. The provisions of this section shall not apply with respect to policies containing coverage pursuant to [subdivision four-a of section one hundred sixty-seven] PARAGRAPH ONE OF SUBSECTION (J) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

S 2. Subdivision 3 of section 50 of the workers' compensation law, as amended by section 3 of part G of chapter 57 of the laws of 2011, the closing paragraph as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

3. By furnishing satisfactory proof to the chair of his financial ability to pay such compensation for himself, or to pay such compensation on behalf of a group of employers in accordance with subdivision ten of this section, in which case the chair shall require the deposit with the chair of such securities as the chair may deem necessary of the kind prescribed in subdivisions one, two, three, four and five, and subparagraph (a) of paragraph three of subdivision seven of section two hundred thirty-five of the banking law, or the deposit of cash, or the filing of irrevocable letters of credit issued by a qualified banking institution as defined by rules promulgated by the chair or the filing of a bond of a surety company authorized to transact business in this state, in an amount to be determined by the chair, or the posting and filing as aforesaid of a combination of such securities, cash, irrevocable letters of credit and surety bond in an amount to be determined

by the chair, to secure his liability to pay the compensation provided in this chapter. Any such surety bond must be approved as to form by the chair. If an employer or group of employers posts and files a combination of securities, cash, irrevocable letters of credit and surety bond as aforesaid, and if it becomes necessary to use the same to pay the compensation provided in this chapter, the chair shall first use such securities or cash or irrevocable letters of credit and, when the full amount thereof has been exhausted, he shall then require the surety to pay forthwith to the chair all or any part of the penal sum of the bond for that purpose. The chair may also require an agreement on the part of the employer or group of employers to pay any awards commuted under section twenty-seven of this chapter, into the special fund of the state fund, as a condition of his being allowed to remain uninsured pursuant to this section. The chair shall have the authority to deny the application of an employer or group of employers to pay such compensation for himself or to revoke his consent furnished, under this section at any time, for good cause shown. The employer or group of employers qualifying under this subdivision shall be known as a self-insurer.

If for any reason the status of an employer or group of employers under this subdivision is terminated, the securities or the surety bond, or the securities, cash, or irrevocable letters of credit and surety bond, on deposit referred to herein shall remain in the custody of the chair for such time as the chair may deem proper and warranted under the circumstances. In lieu thereof, and at the discretion of the chair, the employer, his or her heirs or assigns or others carrying on or liquidating such business, may execute an assumption of workers' compensation liability insurance policy securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in condition of such workers warranting the board making subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and issued by the state fund or any insurance company licensed to issue this class of insurance in this state. In the event that such policy is issued by an insurance company other than the state fund, then said policy shall be deemed of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-A of this chapter. It shall only be issued for a single complete premium payment in advance by the employer or group of employers and in an amount deemed acceptable by the chair and the superintendent of financial services. In lieu of the applicable premium charge ordinarily required to be imposed by a carrier, said [premium] POLICY shall include [a] THE EMPLOYER surcharge in an amount to be determined by the chair to: (i) satisfy all [assessment] SURCHARGE liability due and owing to the board and/or the chair under this chapter; and (ii) satisfy all future [assessment] SURCHARGE liability under this section, and which surcharge shall be adjusted from time to time to reflect any changes to the [assessment] SURCHARGE of group self-insured employers, including any changes enacted by the chapter of the laws of two thousand eleven amending sections fifteen and one hundred fifty-one of this chapter. Said surcharge shall be payable to the board simultaneous to the execution of the assumption of workers' compensation liability insurance policy. However, the payment of said surcharge does not relieve the carrier from any other liability, including liability owed to the superintendent of financial services pursuant to article six-A of this chapter. When issued such policy shall be non-cancellable without

recourse for any cause during the continuance of the liability secured and so covered.

S 3. Paragraph 7 of subdivision 3-a of section 50 of the workers' compensation law, as amended by section 4 of part R of chapter 56 of the laws of 2010, subparagraph (a) as amended by section 4 of part G of chapter 57 of the laws of 2011, and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(7) (a) If for any reason, the status of a group self-insurer under this subdivision is terminated, including by operation of law on and after January first, two thousand twelve, the securities or cash or the surety bond on deposit referred to herein shall remain in the custody of the chair for such time as the chair may deem proper and warranted. In lieu thereof, and at the discretion of the chair, the group self-insurer, its heirs or assigns or others carrying on or liquidating such group self-insurer, including the chair on the group self-insurer's behalf, may execute an assumption of workers' compensation liability insurance policy securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and issued by the state fund or any insurance company licensed to issue this class of insurance in this state. In the event that such policy is issued by an insurance company other than the state fund, then said policy shall be deemed of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-A of this chapter. It shall only be issued for a single complete premium payment in advance by the group self-insurer and in an amount deemed acceptable by the chair and the superintendent of financial services. In lieu of the applicable premium charge ordinarily required to be imposed by a carrier, said [premium] POLICY shall include [a] THE EMPLOYER surcharge in an amount to be determined by the chair to: (i) satisfy all [assessment] SURCHARGE liability due and owing to the board and/or the chair under this chapter; and (ii) satisfy all future [assessment] SURCHARGE liability under this section, and which surcharge shall be adjusted from time to time to reflect any changes to the assessment of group self-insured employers, including any changes enacted by the chapter of the laws of two thousand eleven amending sections fifteen and one hundred fifty-one of this chapter. Said surcharge shall be payable to the board simultaneous to the execution of the assumption of workers' compensation liability insurance policy. However, the payment of said surcharge does not relieve the carrier from any other liability, including liability owed to the superintendent of financial services pursuant to article six-A of this chapter. When issued such policy shall be noncancellable without recourse for any cause during the continuance of the liability secured and so covered.

(b) The chair shall levy an assessment on the members of a defaulted group self-insurer within one hundred twenty days of such default or of the effective date of the chapter of the laws of two thousand eight which amended this subdivision, whichever is later, and against the members of any other terminated group self-insurer when necessary, for such an amount as he or she determines to be necessary to discharge all liabilities of the group self-insurer, including the reasonable cost of liquidation such as claims administration costs, actuarial and account-

ing services, and the value of future SURCHARGES AND assessments on members of such group self-insurer. The chair may impose subsequent deficit assessments, or return funds to members, to adjust the moneys collected to reflect the time of participation, and percent of group self-insurer liabilities for such time. Notwithstanding any such action by the chair, each member of the group self-insurer shall remain jointly and severally responsible for all liabilities provided by this chapter including but not limited to outstanding and estimated future liabilities and [assessments] SURCHARGES. Further, separate and apart from, and in addition to a member's joint and several liability and notwithstanding any payments made by any other members of the group self-insurer pursuant to this subparagraph, in the event that a member neglects or fails to pay an assessment OR SURCHARGE levied pursuant to this subparagraph, the member shall be deemed in default in the payment of compensation. Such defaulting member is subject to the enforcement provisions of section twenty-six of this chapter for the payment of all compensation relative to awards due and owing on claims filed by the employees of such member that have neither been paid by the member or the group self-insurer. Nothing in this paragraph shall prevent the chair from offering payment plans or settling claims against members of any group self-insurer as necessary to facilitate collection.

(c) Upon the assumption of the assets and liabilities of a group self-insurer by the chair or his or her designee pursuant to regulation of the chair, all records, documents and files of whatever nature, pertaining to the group self-insurer, be they in the possession of the group self-insurer or a third party, and all remaining assets of the group self-insurer, shall become the property of the chair. All custodians of such records and/or funds shall turn over to the chair or his designee all such original records upon demand.

S 4. Clause 2 of subparagraph (a) of paragraph 10 of subdivision 3-a of section 50 of the workers' compensation law, as added by section 4 of part G of chapter 57 of the laws of 2011, is amended to read as follows:

(2) The members of the group, through the administrator, (a) jointly deposit sufficient securities in accordance with subdivision three of this section as to secure the liability of the members of the group to pay for all existing claims obligations, provided such deposit shall be made by November first, two thousand eleven, (b) jointly deposit sufficient securities in accordance with subdivision three of this section as to secure all anticipated present and future claims of the members of the group, by November first, two thousand fourteen, provided annual deposits are made in accordance with a schedule set by the chair on or before November first of each year, and provided that the deposit shall be deemed an asset of the group for the purpose of determining its funding status, and (c) by November first, two thousand eleven and thereafter, shall maintain funds sufficient for all other liabilities besides claims, including reserves for all [assessment] SURCHARGE liabilities, in a trust governed in accordance with Part 126 of title 11 of the New York code of rules and regulations, of which the board shall be the sole beneficiary, and the terms of the trust agreement, and the trustee, shall be approved by the chair in his or her sole discretion, and provided that any group self-insurer that does not hold such funds in a trust that meets the terms of this paragraph shall post them with the board;

S 5. Paragraphs 11 and 12 of subdivision 3-a of section 50 of the workers' compensation law, as added by section 4 of part G of chapter 57 of the laws of 2011, are amended to read as follows:

(11) Former group self-insurer. Any group self-insurer that has ceased to self-insure, or has ceased to self-insure any new liabilities after January first, two thousand twelve in accordance with paragraph two of this subdivision, shall remain subject to all the provisions of this subdivision and the regulations issued pursuant thereto and any SURCHARGES OR assessments provided for by this section until such time as the group self-insurer no longer possesses any liabilities.

(12) Any non-municipal group of employers authorized to self-insure under paragraph ten of this section on or after January first, two thousand twelve shall be deemed a "private self-insurer" for purposes of the assessments AND SURCHARGES set forth in sections fifteen and one hundred fifty-one of this chapter.

S 6. Paragraph (h) of subdivision 8 of section 15 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, subparagraph 4 as amended by section 1 of part QQ of chapter 56 of the laws of 2009, the opening paragraph, clause (A) and clause (B) of subparagraph 4 as amended by section 1 of part G of chapter 57 of the laws of 2011, clause (B) of subparagraph 4 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(h) Special disability fund. (1) The fund heretofore maintained and provided for by and pursuant to former subdivision eight of this section, is hereby continued and shall retain the liabilities heretofore charged or chargeable thereto under the provisions of such former subdivision eight of this section as it existed immediately prior to the time this subdivision, as hereby added, takes effect, and the liabilities chargeable thereto under the provisions of former subdivision eight-a of this section as added by chapter seven hundred forty-nine of the laws of nineteen hundred forty-four and repealed at the same time this subdivision, as heretofore added, takes effect, and payments therefrom on account of such liabilities shall continue to be made as provided herein. The said fund shall be known as the special disability fund and shall be available only for the purposes stated in this subdivision, and the assets thereof shall not at any time be appropriated or diverted to any other use or purpose.

(2) (A) No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund, for an injury or illness with a date of accident or date of disablement on or after July first, two thousand seven. No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund after July first, two thousand ten, and no written submissions or evidence in support of such a claim may be submitted after that date.

(B) All requests for reimbursement from the special disability fund with a date of injury or date of disablement prior to July first, two thousand seven as to which the board has determined that the special disability fund is liable must be submitted to the special disability fund by the later of (i) one year after the expense has been paid, or (ii) one year from the effective date of this paragraph.

(C) All claims for reimbursement from the special disability fund must be accompanied by a filing fee of two hundred fifty dollars, to be deposited in the special disability fund. Upon any final ruling that a claim is eligible for reimbursement from the fund, the fund will return two hundred dollars of this fee to the claimant.

(3) The chair of the board shall, as soon as practicable after April first, nineteen hundred forty-five, assess upon and collect from each insurance carrier, including the state insurance fund and any county,

city, town, village or other political subdivision failing to secure compensation pursuant to subdivision one or two of section fifty of this chapter, a sum equal to one per centum of the total compensation paid by such carrier in the year ending March thirty-first next preceding the date of such assessment.

(4) As soon as practicable after May first in the year nineteen hundred fifty-eight, and annually thereafter as soon as practicable after January first in each succeeding year, the chair of the board shall [assess upon and collect from] ESTABLISH AN EMPLOYER SURCHARGE TO BE COLLECTED BY all self-insurers, the state insurance fund, and all insurance carriers (A) a sum equal to one hundred fifty per centum of the total disbursements made from the special disability fund during the preceding calendar year (not including any disbursements made on account of anticipated liabilities or waiver agreements funded by bond proceeds and related earnings), less the amount of the net assets in such fund as of December thirty-first of said preceding calendar year, and (B) a sum sufficient to cover debt service, and associated costs (the "debt service [assessment] SURCHARGE") to be paid during the calendar year by the dormitory authority, as calculated in accordance with subparagraph five of this paragraph. Such [assessments] SURCHARGES shall be allocated to (i) self-insurers and the state insurance fund based upon the proportion that the total compensation payments made by all self-insurers and the state insurance fund bore to the total compensation payments made by all self-insurers, the state insurance fund, and all insurance carriers, and (ii) insurance carriers based upon the proportion that the total compensation payments made by all insurance carriers bore to the total compensation payments by all self-insurers, the state insurance fund and all insurance carriers during the fiscal year which ended within said preceding calendar year. [Insurance carriers and self-insurers shall be liable for all such assessments regardless of the date on which they came into existence, or whether they have made any claim for reimbursement from the special disability fund. The portion of such sum allocated to self-insurers and the state insurance fund that shall be collected from each self-insurer and the state insurance fund shall be a sum equal to the proportion of the amount which the total compensation payments of each such self-insurer or the state insurance fund bore to the total compensation payments made by all self-insurers and the state insurance fund during the fiscal year which ended within said preceding calendar year.] The portion of such sum allocated to [insurance carriers that shall be] INSURED EMPLOYERS AND collected [from] BY each insurance carrier shall be a sum equal to that proportion of the amount which the total standard premium by each such insurance carrier bore to the total standard premium reported by all insurance carriers during the calendar year which ended within said preceding fiscal year. The payments from the debt service [assessment] SURCHARGE, unless otherwise set forth in the special disability fund financing agreement, are hereby pledged therefor and shall be deemed the first monies received on account of [assessments] SURCHARGES in each year. For the purposes of this paragraph, "standard premium" shall mean the premium as defined for the purposes of this [assessment] SURCHARGE by the superintendent of financial services, in consultation with the chair of the board and the workers' compensation rating board. An employer who has ceased to be a self-insurer shall continue to be liable for any [assessments] SURCHARGES into said fund on account of any compensation payments made by him or her on his or her account during such fiscal year, and the security fund, created under the provisions of section one hundred seven of this

chapter, shall, in the event of the insolvency of any insurance company, be liable for any [assessments] SURCHARGES that would have been [made against] CHARGED TO such company except for its insolvency. No [assessment] SURCHARGE shall be payable from the aggregate trust fund, created under the provisions of section twenty-seven of this article, but such fund shall continue to be liable for all compensation that shall be payable under any award or order of the board, the commuted value of which has been paid into such fund. Such [assessments] SURCHARGES when collected shall be deposited with the commissioner of taxation and finance for the benefit of such fund. [Unless otherwise provided, such assessments, shall not constitute an element of loss for the purpose of establishing rates for compensation insurance but shall for the purpose of collection be treated as separate costs by carriers.] All insurance carriers and the state insurance fund, shall collect [such assessments, from their policyholders through a surcharge] SURCHARGES based on premiums in accordance with rules set forth by the superintendent of financial services in consultation with the New York workers' compensation rating board and the chair of the board. Such surcharge shall NOT be considered as part of premium for purposes [prescribed by law including, but not limited to,] OF computing premium tax, HOWEVER, SUCH SURCHARGE MAY BE USED for reporting PURPOSES to the superintendent of financial services pursuant to section ninety-nine of this chapter and section three hundred seven of the insurance law, determining the limitation of expenditures for the administration of the state insurance fund pursuant to section eighty-eight of this chapter and the cancellation by an insurance carrier, including the state insurance fund, of a policy for non-payment of premium. The provisions of this paragraph shall not apply with respect to policies containing coverage pursuant to subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling. [The state insurance fund shall notify its insureds that such assessments, shall be, for the purpose of recoupment, treated as separate costs, for the purpose of premiums billed on or after October first, nineteen hundred ninety-four.] For the purposes of this section, a "self-insurer" shall be: (i) an employer authorized to self-insure under subdivision three of section fifty of this chapter, active groups authorized pursuant to subdivision three-a of section fifty of this chapter or a group of employers authorized to self-insure under paragraph ten of subdivision three-a of section fifty of this chapter; or (ii) a public employer authorized as set forth in paragraph a of subdivision four of section fifty of this chapter to self-insure under subdivision three, three-a or four of such section or article five of this chapter, whether individually or as a group.

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

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

(5) (A) The chair and the commissioner of taxation and finance are authorized and directed to enter into a financing agreement with the dormitory authority, to be known as the "special disability fund financing agreement." Such agreement shall set forth the process for calculating the annual debt service of the bonds issued by the dormitory authority and any other associated costs. For purposes of this section, "associated costs" may include a coverage factor, reserve fund requirements, all costs of any nature incurred by the dormitory authority in connection with the special disability fund financing agreement or pursuant thereto, the operating costs of the waiver agreement management office, the costs of any independent audits undertaken under this section, and any other costs for the implementation of this subparagraph and the issuance of bonds by the dormitory authority, including interest rate exchange payments, rebate payments, liquidity fees, credit provider fees, fiduciary fees, remarketing, dealer, auction agent and related fees and other similar bond-related expenses, unless otherwise funded. By January first of each year, the dormitory authority shall provide to the chair the calculation of the amount expected to be paid by the dormitory authority in debt service and associated costs for purposes of calculating the debt service [assessment] SURCHARGE as set forth in subparagraph four of this paragraph. All monies received on account of any [assessment] SURCHARGE under subparagraph four of this paragraph and this subparagraph shall be applied in accordance with this subparagraph and in accordance with the financing agreement until the financial obligations of the dormitory authority in respect to its contract with its bondholders are met and all associated costs payable to the dormitory authority have been paid, notwithstanding any other provision of law respecting secured transactions. This provision may be included by the dormitory authority in any contract of the dormitory authority with its bondholders.

The special disability fund financing agreement may restrict disbursements, investments, or rebates, and may prescribe a system of accounts applicable to the special disability fund, including custody of an account with a trust indenture trustee that may be prescribed by the dormitory authority as part of its contract with the bondholders. For purposes of this paragraph, the term "bonds" shall include notes issued in anticipation of the issuance of bonds, or notes issued pursuant to a commercial paper program.

(B) The chair may conduct periodic audits of any self-insurer, insurance carrier and the state insurance fund concerning any information or payment required under this paragraph, including any information relevant to the payment or calculation of any [assessments] SURCHARGES. The self-insurer, insurance carrier and the state insurance fund shall provide all necessary documents and information in relation to an audit in a manner prescribed by the chair. Upon the determination of the chair that a self-insurer, insurance carrier or the state insurance fund has underpaid [an assessment] A SURCHARGE as a result of its inaccurate reporting, the self-insurer, insurance carrier or the state insurance fund upon notice from the chair, shall pay the full amount of the underpaid [assessment] SURCHARGE, along with interest at the rate of nine per cent per annum on the unpaid [assessment] SURCHARGE due not later than thirty days after such notice.

(6) The commissioner of taxation and finance is hereby authorized to receive and credit to such special disability fund any sum or sums that may at any time be contributed to the state by the United States of

America under any act of congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(7) The commissioner of taxation and finance shall be the custodian of said fund and, unless otherwise provided for in the special disability fund financing agreement, shall invest any surplus or reserve moneys thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York in an amount equal to the amount of such certificates of deposit, and may sell any of the securities or certificates of deposit in which such fund is invested if necessary for the proper administration or in the best interest of such fund. Disbursements from such fund as provided by this subdivision shall be made by the commissioner of taxation and finance upon vouchers signed by the chair of the board unless the financing agreement provides for some other means of authorizing such disbursements that is no less protective of the fund.

The commissioner of taxation and finance, as custodian of such fund, annually as soon as practicable after January first, shall furnish to the chair of the workers' compensation board a statement of the fund, setting forth the balance of moneys in the said fund as of the beginning of the calendar year, the income of the fund, the summary of payments out of the fund on account of reimbursements and other charges ordered to be paid by the board, and all other charges against the fund, and setting forth the balance of the fund remaining to its credit on December thirty-first. Such statement shall be open to public inspection in the office of the secretary of the board. The chair, not less than ninety days after the issuance of the dormitory authority's annual audit, shall furnish to the temporary president of the senate and the speaker of the assembly the following reports on the special disability fund: a revenue and operating expense statement; a financing plan; a report concerning the assets and liabilities; the number of waiver agreements entered into by the waiver agreement management office; the number of claimants remaining in the fund; the estimated current unfunded liability of the fund with respect to such claims; and a debt issuance report including but not limited to (i) pledged [assessment] SURCHARGE revenue and securitization coverage, (ii) debt service maturities, (iii) interest rate exchange or similar agreements, and (iv) financing and issuance costs.

The commissioner of taxation and finance may establish within the special disability fund such accounts and sub-accounts as he or she deems useful for the operation of the fund, or as necessary to segregate moneys within the fund, subject to the provisions of the financing agreement. The waiver agreement management office, as defined in section thirty-two of this article, shall make application to the chair on a quarterly basis for any administrative costs incurred by the office.

S 7. Subdivision 3 of section 25-a of the workers' compensation law, as amended by chapter 6 of the laws of 2007, the second and third undesignated paragraphs as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

3. Any awards so made shall be payable out of the special fund heretofore created for such purpose, which fund is hereby continued and shall be known as the fund for reopened cases. The employer, or, if insured, his insurance carrier shall pay into such fund, or, in the case of awards made on or after July first, nineteen hundred sixty-nine, either

into such fund or the uninsured employers' fund under section twenty-six-a of this article in accordance with the provisions thereof, for every case of injury causing death for which there are no persons entitled to compensation the sum of three hundred dollars where such injury occurred prior to July first, nineteen hundred forty and the sum of one thousand dollars where such injury shall occur on or after said date and prior to April first, nineteen hundred forty-five, and the sum of fifteen hundred dollars where such injury shall occur on or after April first, nineteen hundred forty-five and prior to September first, nineteen hundred seventy-eight and the sum of three thousand dollars where such injury shall occur on or after September first, nineteen hundred seventy-eight, and in each case of death resulting from injury sustained on or after July first, nineteen hundred forty and prior to September first, nineteen hundred seventy-eight, where there are persons entitled to compensation but the total amount of such compensation is less than two thousand dollars exclusive of funeral benefits, the employer, or, if insured, his insurance carrier, shall pay into such fund, or, in the case of awards made on or after July first, nineteen hundred sixty-nine and prior to September first, nineteen hundred seventy-eight, either into such fund or the uninsured employers' fund under section twenty-six-a of this article in accordance with the provisions thereof, the difference between the sum of two thousand dollars and the compensation, exclusive of funeral benefits, and in each case of death resulting from injury sustained on or after September first, nineteen hundred seventy-eight, the employer, or if insured, his insurance carrier shall pay into such fund or the uninsured employers' fund under section twenty-six-a of this article in accordance with the provisions thereof, the difference between the sum of five thousand dollars and the compensation, exclusive of funeral benefits actually paid to or for the dependents of the deceased employee together with any expense charge required by section twenty-seven of this article; provided, however, that where death shall occur subsequent to the periods limited by subdivision one of this section no payment into such special fund nor to the special fund provided by subdivision nine of section fifteen nor to the uninsured employers' fund provided by section twenty-six-a of this article shall be required. In addition to the [assessments made against all] EMPLOYER SURCHARGE COLLECTED BY insurance carriers for the expenses of administering this chapter provided for under the provisions of section one hundred fifty-one of this chapter, and the payments above provided, the employer, or, if insured, his insurance carrier, shall pay the sum of five dollars into said fund for each case in which an award is made pursuant to the provisions of paragraphs a to s inclusive of subdivision three of section fifteen of this [chapter] ARTICLE by reason of injury sustained between July first, nineteen hundred forty and June thirtieth, nineteen hundred forty-two, both dates inclusive, and the sum of ten dollars for each such case by reason of injury sustained between July first, nineteen hundred forty-two and June thirtieth, nineteen hundred fifty, both dates inclusive, which payment shall be in addition to any payment of compensation to the injured employee as provided in this chapter.

There shall be maintained in the special fund at all times assets at least equal in value to the sum of (1) the value of awards charged against such fund, (2) the value of all claims that have been reopened by the board as a charge against such fund but as to which awards have not yet been made, (3) effective January first, nineteen hundred seventy-one, the total supplemental benefits paid from such fund as

reimbursement pursuant to subdivision nine of this section during the calendar year immediately preceding, and (4) a reserve equal to ten per cent of the sum of items (1) and (2) of this paragraph. For the purpose of accumulating funds for the payment of supplemental benefits pursuant to subdivision nine of this section, the chairman shall impose against all carriers an assessment in the sum of five million dollars to be collected in the respective proportions established in the fiscal year commencing April first, nineteen hundred sixty-eight, under the provisions of section one hundred fifty-one of this chapter for each carrier. Annually, as soon as practicable after January first in each year, the chairman shall ascertain the condition of the fund and whenever the assets shall fall below the prescribed minimum as herein provided the chairman shall [assess and collect from] ESTABLISH AN EMPLOYER SURCHARGE TO BE COLLECTED BY all insurance carriers, [in the respective proportions] established in the prior [fiscal] CALENDAR year under the provisions of section one hundred fifty-one of this chapter for each carrier, an amount sufficient to restore the fund to the prescribed minimum. The chairman before [making an assessment] ESTABLISHING A SURCHARGE as provided in this section shall give thirty days' notice to the representative of the fund, designated pursuant to subdivision five of this section, that an itemized statement of the condition of the fund is open for his inspection. The superintendent of financial services may examine into the condition of the fund at any time on his own initiative or on request of the chairman or representative of the fund.

Such [assessment] SURCHARGE and the payments made into said fund shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance as provided in the insurance law [but shall for the purpose of recoupment be treated as separate costs by carriers]. Carriers shall [assess such costs on] COLLECT SUCH SURCHARGE FROM [their policyholders] INSURED EMPLOYERS in accordance with rules set forth by the New York workers' compensation rating board, as approved by the superintendent of financial services.

The provisions of this subdivision shall not apply with respect to policies containing coverage pursuant to section thirty-four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

S 8. Paragraph (f) of subdivision 9 of section 25-a of the workers' compensation law, as added by chapter 830 of the laws of 1968, is amended to read as follows:

(f) The special disability fund created under subdivision eight of section fifteen and the reopened cases fund created under section twenty-five-a and the aggregate trust fund created under section twenty-seven of this chapter shall be deemed to be insurance carriers for purposes of this subdivision, other than the payment of the [assessment] SURCHARGE under the provisions of subdivision three of this section.

S 9. Subparagraph (a) of paragraph 10 of subdivision 3-a of section 50 of the workers' compensation law is amended by adding a new clause 8 to read as follows:

(8) (A) NOTWITHSTANDING ANYTHING IN THIS SECTION, PRESENT AND FUTURE LIABILITIES MAY BE SECURED IN A TRUST FUND PURSUANT TO DEPARTMENT OF FINANCIAL SERVICES REGULATION 114 TRUST ACCOUNT;

(B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A TRUST MEETING THE FOLLOWING CRITERIA IS SUBJECT TO POSTING A SECURITY NOT TO EXCEED TEN PERCENT OF TOTAL RESERVES:

(I) ASSETS OVER ONE HUNDRED MILLION DOLLARS;

(II) NON-PROFIT ADMINISTRATOR SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT; AND

(III) ADMINISTRATOR IS ALSO THE ADMINISTRATOR OF MORE THAN FIVE ERISA TRUST FUNDS.

(C) TOTAL LIABILITIES SHALL NOT INCLUDE ASSESSMENT LIABILITY;

(D) THE MEMBERS OF ANY SUCH GROUP SHALL ENTER INTO AN AGREEMENT AMONG THEMSELVES AND WITH THE GROUP'S ADMINISTRATOR WHICH SHALL, AT A MINIMUM INDICATE THAT EACH OF THE MEMBERS OF THE GROUP IS PROTECTED AS TO ANY OF THE MEMBERS LIABILITIES OF THE GROUP BY A FORM OF SECURITY ACCEPTABLE TO THE BOARD INCLUDING BUT NOT LIMITED TO STOP LOSS INSURANCE, BONDS, SECURED IN A TRUST FUND PURSUANT TO DEPARTMENT OF FINANCIAL SERVICES REGULATION 114 TRUST ACCOUNT, OR OTHER FORMS OF SECURITY;

S 10. This act shall take effect immediately.