

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

10063--A

I N A S S E M B L Y

May 10, 2016

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Local Governments -- reference changed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, the workers' compensation law and the insurance law, in relation to participation in a public group self-insurer

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

1 Section 1. Paragraph b of subdivision 2 of section 119-o of the gener-
2 al municipal law, as amended by chapter 681 of the laws of 1961, is
3 amended to read as follows:
4 b. The manner of employing, engaging, compensating, transferring or
5 discharging necessary personnel, subject, however, to the provisions of
6 the civil service law where applicable; the making of employer's
7 contributions for retirement, social security, health insurance, work-
8 men's compensation, INCLUDING PARTICIPATION IN A PUBLIC GROUP SELF-IN-
9 SURER, and other similar benefits; the approval of attendances at
10 conventions, conferences and schools for public officials and the
11 approval and payment of travel and other expenses incurred in the
12 performance of official duties; the bonding of designated officers and
13 employees; the filing of oaths of office and resignations consistent
14 with general laws applicable thereto; provisions that for specific
15 purposes designated officers or employees of the joint service or a
16 joint water, sewage or drainage project shall be deemed those of a spec-
17 ified participating corporation or district; and provisions that person-
18 nel assigned to a joint service or a joint water, sewage or drainage
19 project shall possess the same powers, duties, immunities and privileges
20 they would ordinarily possess (1) if they performed their duties only in
21 the corporation or district by which they are employed or (2) if they
22 were employed by the corporation or district in which they are required
23 to perform their duties.
24 S 2. Paragraph 1, subparagraphs (a), (b) and (h) of paragraph 2,
25 subparagraph (a) and item e of subparagraph (d) of paragraph 5 and

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

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1 subparagraph (a) of paragraph 6 of subdivision 3-a of section 50 of the
2 workers' compensation law, paragraph 1, subparagraph (a) and item e of
3 subparagraph (d) of paragraph 5 and subparagraph (a) of paragraph 6 as
4 amended by chapter 139 of the laws of 2008 and subparagraphs (a), (b)
5 and (h) of paragraph 2 as amended by section 4 of part G of chapter 57
6 of the laws of 2011, are amended to read as follows:

7 (1) Definitions. As used in this chapter the term "employers" shall
8 include: (a) employers with related activity in a given industry [which
9 shall include municipal corporations as that term is defined in sections
10 two and six-n of the general municipal law,] employing persons who
11 perform work in connection with the given industry, (b) an incorporated
12 or unincorporated association or associations consisting exclusively of
13 such employers provided they employ persons who perform such related
14 work in the given industry, and (c) a combination of employers as
15 described in subparagraph (a) hereof and an association or associations
16 of employers as described in subparagraph (b) hereof.

17 (a) Any group consisting exclusively of such employers may adopt a
18 plan for self-insurance, as a group, for the payment of compensation
19 under this chapter to their employees, except that no new groups may
20 adopt such a plan, and no group not composed solely of public entities
21 set forth in [paragraph a of] subdivision [four] THREE-F of this section
22 may insure any liabilities for any employers on and after January first,
23 two thousand twelve, except as provided for in paragraph ten of this
24 subdivision. Under such plan the group shall assume the liability of all
25 the employers within the group and pay all compensation for which the
26 said employers are liable under this chapter[, except that in the case
27 of municipal corporations as herein defined no proof of financial ability
28 or deposit of securities or cash need be made in compliance with this
29 subdivision]. The group qualifying under this subdivision shall be known
30 as a group self-insurer and the employers participating therein and
31 covered thereby shall be known as members.

32 (b) Where such plan is adopted the group self-insurer, EXCEPT A GROUP
33 COMPOSED SOLELY OF PUBLIC ENTITIES SET FORTH IN SUBDIVISION THREE-F OF
34 THIS SECTION, shall furnish satisfactory proof to the chair of its
35 financial ability to pay such compensation for the members in the industry
36 covered by it, its revenues, their source and assurance of continuance.
37 The chair shall require the deposit with the chair of such securities
38 as may be deemed necessary of the kind prescribed in subdivisions
39 one, two, three, four and five, and subparagraph (a) of paragraph three
40 of subdivision seven of section two hundred thirty-five of the banking
41 law or the deposit of cash or the filing of irrevocable letters of credit
42 issued by a qualified banking institution as defined by rules promulgated
43 by the chair or the filing of a bond of a surety company authorized to
44 transact business in this state, in an amount to be determined to secure
45 its liability to pay the compensation of each employer as above provided.
46 Such surety bond must be approved as to form by the chair. The chair
47 shall require each group self-insurer to provide regular reports no less
48 than annually, which shall include but not be limited to audited financial
49 statements, actuarial opinions and payroll information containing proof that
50 it is fully funded. Such reports shall also include a contribution year
51 analysis detailing contributions and expenses associated with each specific
52 contribution year. For purposes of this paragraph, proof that a group self-
53 insurer is fully funded shall at a minimum include proof of unrestricted cash
54 and investments permitted by regulation of the chair of at least one hundred
55 percent of the total liabilities, including the estimate presented in the
56 actuarial

1 opinion submitted by the group self-insurer in accordance with this
2 chapter. The chair by regulation, may set further financial standards
3 for group self-insurers. Any group self-insurer that fails to show that
4 it is fully funded shall be deemed underfunded, and must submit a plan
5 for achieving fully funded status which may include a deficit assessment
6 on members of such group self-insurer which shall be subject to approval
7 or modification by the chair.

8 (h) Any member terminating membership in a PRIVATE group self-insurer
9 after less than four years in such PRIVATE group self-insurer, and any
10 member in a group self-insurer that has defaulted, shall be precluded
11 from obtaining prospective coverage from any PRIVATE group self-insurer
12 for a period of at least three years from the effective date of termi-
13 nation.

14 (a) Each PRIVATE group self-insurer shall, AND EACH GROUP SELF-INSURER
15 MAY, secure the services of a group administrator to be responsible for
16 assisting the group self-insurer in complying with the provisions of
17 this section and the rules and regulations promulgated hereunder, and
18 for coordinating services including but not limited to claims process-
19 ing, loss control, legal, accounting and actuarial services. No person,
20 firm or corporation shall coordinate such services or otherwise carry
21 out the tasks of a group administrator as provided in this subdivision
22 or in the regulations issued pursuant thereto on behalf of a group self-
23 insurer unless such person shall have obtained from the chair a license
24 authorizing it to act as a group self-insurer administrator, which
25 license may be revoked for good cause. The chair shall promulgate regu-
26 lations setting forth any additional qualifications for such license,
27 governing the conduct and compensation of group self-insurer administra-
28 tors, and setting a license fee in an amount not less than five thousand
29 dollars per year for such license for each group self-insurer the admin-
30 istrator administers. Each administrator shall post a bond in the amount
31 of five hundred thousand dollars for each group self-insurer adminis-
32 tered or such other amount as may be set by the chair based on the cost
33 and availability of such bond, from which the chair may recover any
34 recoveries or penalties against the administrator under this section.
35 Nothing in this section shall relieve the trustees of a group self-in-
36 surer of any fiduciary obligation they hold to the other members of such
37 group self-insurer.

38 e. the number and amount of rate deviations provided to members during
39 the prior year and whether the recipient of any such deviation was a
40 trustee, PROVIDED THAT THE APPLICATION OF RATING FACTORS IN A MANNER
41 CONSISTENT WITH THE FILED RATING PLAN IS NOT A DEVIATION WHICH MUST BE
42 REPORTED UNDER THIS SUBDIVISION; and

43 (a) Group self-insurers must file with the board, as soon as practica-
44 ble but no later than sixty days prior to the start of the fund year a
45 rating plan which is supported by an actuarial rate study prepared by an
46 independent, qualified actuary that is a fellow or associate of the
47 casualty actuarial society, that clearly identifies the actuary's indi-
48 cated rate assumptions therein. The rating plan must apply consistently
49 to all members, and must provide for a common renewal date for all
50 PRIVATE group self-insurer members. The rates filed can be adjusted
51 based on an experience modification calculated for every member in
52 accordance with the experience rating plan promulgated by the workers'
53 compensation rating board. Experience modification formulas must be
54 applied identically to all members. Other rate deviations may be permis-
55 sible provided a plan has been approved by the board. Such deviations
56 shall not be in excess of ten percent of the actuary's indicated rate

1 unless otherwise approved by the board for a fully funded group self-in-
2 surer, and shall in no event result in amounts less than the actuary's
3 overall indicated rate. The chair by regulation may set further rate
4 plan and actuarial reporting standards.

5 S 3. Paragraph (g) of subdivision 3-e of section 50 of the workers'
6 compensation law, as added by chapter 729 of the laws of 1993, is
7 amended and a new subdivision 3-f is added to read as follows:

8 (g) The state insurance fund, any other insurer or any group self-in-
9 surer for municipal corporations as defined in subdivision [three-a]
10 THREE-F of this section may, at its option, offer a deductible in an
11 amount specified in paragraph (c) of this subdivision to any policyhold-
12 er who is not otherwise eligible for a deductible under this subdivi-
13 sion.

14 3-F. (1) ANY GROUP CONSISTING EXCLUSIVELY OF MUNICIPAL CORPORATIONS
15 AND PUBLIC CORPORATIONS AS SUCH TERMS ARE DEFINED IN SECTION SIXTY-SIX
16 OF THE GENERAL CONSTRUCTION LAW, COUNTY SELF-INSURANCE PLANS ESTABLISHED
17 UNDER ARTICLE FIVE OF THIS CHAPTER, BOARDS OF COOPERATIVE EDUCATIONAL
18 SERVICES AND CONSORTIA ESTABLISHED BY BOARDS OF COOPERATIVE EDUCATIONAL
19 SERVICES MAY ADOPT A PLAN FOR SELF-INSURANCE, AS A GROUP, FOR THE
20 PAYMENT OF COMPENSATION UNDER THIS CHAPTER TO THEIR EMPLOYEES. SUCH
21 GROUP SHALL BE KNOWN AS A "PUBLIC GROUP SELF-INSURER". ALL OTHER GROUPS
22 ESTABLISHED UNDER THIS SECTION ARE "PRIVATE GROUP SELF-INSURERS". A
23 COUNTY SELF-INSURANCE PLAN ESTABLISHED UNDER ARTICLE FIVE OF THIS CHAP-
24 TER IS NOT ITSELF A PUBLIC GROUP SELF-INSURER, AND IS NOT ITSELF SUBJECT
25 TO THE REQUIREMENTS OF THIS SECTION, BUT MAY JOIN A PUBLIC GROUP
26 SELF-INSURER AND, IF IT DOES SO, SHALL ASSUME ALL OF THE OBLIGATIONS OF
27 ITS PARTICIPANTS TO THE PUBLIC GROUP SELF-INSURER. NO ENTITY WHICH IS
28 NOT A MUNICIPAL CORPORATION AS DEFINED IN SECTION SIXTY-SIX OF THE
29 GENERAL CONSTRUCTION LAW, A COUNTY SELF-INSURANCE PLAN ESTABLISHED UNDER
30 ARTICLE FIVE OF THIS CHAPTER, OR A CONSORTIUM ESTABLISHED BY A BOARD OF
31 COOPERATIVE EDUCATIONAL SERVICES, MAY JOIN A PUBLIC GROUP SELF-INSURER
32 UNLESS IT MAY LEVY TAXES OR IS OTHERWISE DIRECTLY CAPABLE OF GENERATING
33 REVENUE IN THE EVENT OF A FUNDING DEFICIENCY WITHIN THE PUBLIC GROUP
34 SELF-INSURER, OR ITS OBLIGATIONS ARE GUARANTEED BY ANOTHER MEMBER WHICH
35 IS SUCH A MUNICIPAL CORPORATION. A PUBLIC GROUP SELF-INSURER SHALL
36 COMPLY WITH ALL OF THE REQUIREMENTS OF SUBDIVISION THREE-A OF THIS
37 SECTION; PROVIDED HOWEVER THAT NO PROOF OF FINANCIAL ABILITY TO PAY THE
38 COMPENSATION PROVIDED FOR BY THIS CHAPTER OR DEPOSIT OF SECURITIES SHALL
39 BE REQUIRED AND, IN LIEU THEREOF, THE LIABILITY OF THE PUBLIC GROUP
40 SELF-INSURER'S MEMBERS SHALL SERVE AS THE SECURITY REQUIRED UNDER PARA-
41 GRAPH TWO OF SUBDIVISION THREE-A OF THIS SECTION. THE CHAIR SHALL IMPE-
42 LIMENT THE PROVISIONS OF THIS SUBDIVISION BY PROMULGATING RULES AND REGU-
43 LATIONS, WHICH SHALL INCLUDE PROVISIONS ESTABLISHING AN AGGREGATE
44 SECURITY REQUIREMENT, GUARANTEE FUND, OR OTHER MECHANISM TO PROVIDE
45 INTERIM FUNDING WHENEVER THE CHAIR SHALL DETERMINE THAT THE COMPENSATION
46 AND BENEFITS PROVIDED BY THIS CHAPTER MAY BE UNPAID BY REASON OF THE
47 DEFAULT OF THE PUBLIC GROUP SELF-INSURER, BUT NO SUCH RULES AND REGU-
48 LATIONS SHALL BE NECESSARY FOR ANY PROVISIONS OF THIS SUBDIVISION TO BE
49 EFFECTIVE.

50 (2) A PUBLIC GROUP SELF-INSURER AS DEFINED IN PARAGRAPH ONE OF THIS
51 SUBDIVISION MAY OFFER, AS PART OF THE AGREEMENT OR BY ENDORSEMENT,
52 DEDUCTIBLES OPTIONAL TO THE MEMBER FOR BENEFITS PAYABLE UNDER THE AGREE-
53 MENT, UPON A DETERMINATION BY THE CHAIR THAT THE PLAN IS SUPPORTED BY AN
54 ACTUARIAL ANALYSIS PREPARED BY AN INDEPENDENT, QUALIFIED ACTUARY WHO IS
55 A MEMBER OF THE CASUALTY ACTUARIAL SOCIETY THAT CLEARLY IDENTIFIES THE
56 ACTUARY'S INDICATED DEDUCTIBLE CREDIT AND RATE ASSUMPTIONS, AND SUBJECT

1 TO UNDERWRITING BY THE PUBLIC GROUP SELF-INSURER, CONSISTENT WITH THE
2 FOLLOWING STANDARDS OR FACTORS:

3 (A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND CLAIMANTS' BENEFITS
4 ARE PAID WITHOUT REGARD TO ANY SUCH DEDUCTIBLE;

5 (B) APPROPRIATE PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF ANY
6 DEDUCTIBLE APPROVED BY THE CHAIRMAN AND SELECTED BY THE MEMBER;

7 (C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED BEFORE APPLICA-
8 TION OF ANY EXPERIENCE MODIFICATION, PREMIUM SURCHARGE, OR PREMIUM
9 DISCOUNT;

10 (D) RECOGNITION IS GIVEN TO MEMBER CHARACTERISTICS, INCLUDING SIZE,
11 FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF EMPLOYEES;

12 (E) IF THE MEMBER SELECTS A DEDUCTIBLE, THE MEMBER IS LIABLE TO THE
13 PUBLIC GROUP SELF-INSURER FOR THE DEDUCTIBLE AMOUNT IN REGARD TO BENE-
14 FITS PAID FOR COMPENSABLE CLAIMS;

15 (F) THE PUBLIC GROUP SELF-INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT,
16 APPLICABLE TO A COMPENSABLE CLAIM, TO THE PERSON OR PROVIDER ENTITLED TO
17 BENEFITS AND REQUIRES THE MEMBER TO PAY TO IT IN ADVANCE AN AMOUNT ACTU-
18 ARIALLY DETERMINED TO BE SUFFICIENT TO PAY THE PORTION OF THE COMPEN-
19 SATION CLAIM THAT IS WITHIN THE DEDUCTIBLE AMOUNT AS THOSE PAYMENTS
20 BECOME DUE; PROVIDED THAT SUCH PERIODIC PAYMENTS SHALL BE PAID TO THE
21 PUBLIC GROUP SELF-INSURER IN INTERVALS OF NO GREATER OF SIX MONTHS; AND

22 (G) FAILURE TO REIMBURSE DEDUCTIBLE AMOUNTS BY THE MEMBER TO THE
23 PUBLIC GROUP SELF-INSURER IS TREATED UNDER THE COVERAGE AGREEMENT IN THE
24 SAME MANNER AS NONPAYMENT OF CONTRIBUTIONS.

25 (3) IF, IN THE DETERMINATION OF THE CHAIR, A PUBLIC GROUP SELF-INSURER
26 BECOMES INSOLVENT OR OTHERWISE DEFAULTS ON ITS OBLIGATIONS, THE INSOL-
27 VENT GROUP WILL REQUIRE EACH MEMBER AND EACH FORMER MEMBER TO PAY A
28 SUPPLEMENTAL ASSESSMENT IN AN AMOUNT SUFFICIENT TO MAKE THE PUBLIC GROUP
29 SELF-INSURER SOLVENT BASED UPON A FORMULA TO BE ESTABLISHED BY THE CHAIR
30 IN REGULATIONS WHICH CONSIDERS THE MEMBERS' ANNUAL CONTRIBUTIONS AND
31 LOSS EXPERIENCE; PROVIDED HOWEVER, NOTHING HEREIN SHALL PRECLUDE THE
32 CHAIR FROM DIRECTING THAT AN UNDERFUNDED PUBLIC GROUP SELF-INSURER LEVY
33 AN ASSESSMENT ON ITS MEMBERS AS PART OF A PLAN IMPLEMENTED PURSUANT TO
34 SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBDIVISION THREE-A OF THIS
35 SECTION. AS USED IN THIS PARAGRAPH, INSOLVENT MEANS THE SUM OF THE
36 PUBLIC GROUP SELF-INSURERS' ASSETS BEING LESS THAN THE TOTAL COST OF ALL
37 OF THE PUBLIC GROUP SELF-INSURER'S ANTICIPATED WORKERS' COMPENSATION
38 LIABILITIES THAT WILL ACCRUE WITHIN THE SUCCEEDING SIX MONTHS. IF AN
39 ASSESSMENT IS NOT SUFFICIENT TO CURE THE INSOLVENCY OR DEFAULT, (I) EACH
40 MEMBER AND ANY FORMER MEMBER WILL BE LIABLE FOR THE REMAINING DEFICIT
41 BASED UPON A SUPPLEMENTAL ASSESSMENT FORMULA DETERMINED BY THE CHAIR;
42 AND (II) WHENEVER THE CHAIR SHALL DETERMINE THAT THE COMPENSATION AND
43 BENEFITS PROVIDED BY THIS CHAPTER MAY BE UNPAID BY REASON OF THE DEFAULT
44 OF A PUBLIC GROUP SELF-INSURER, THE CHAIR SHALL PAY SUCH COMPENSATION
45 AND BENEFITS FROM ADMINISTRATION EXPENSES AS PROVIDED IN SECTION ONE
46 HUNDRED FIFTY-ONE OF THIS CHAPTER UPON AUDIT AND WARRANT OF THE COMP-
47 TROLLER UPON VOUCHERS APPROVED BY THE CHAIR. SUCH PAYMENTS SHALL BE
48 CONSIDERED EXPENSES OF ADMINISTRATION. THE CHAIR SHALL BE REIMBURSED
49 THEREFOR FROM ANY MEMBER OF THE PUBLIC GROUP SELF-INSURER, FIRST PURSU-
50 ANT TO THE SUPPLEMENTAL ASSESSMENT FORMULA DETERMINED BY THE CHAIR.

51 S 4. The opening paragraph of section 3443 of the insurance law, as
52 added by chapter 924 of the laws of 1990, is amended to read as follows:

53 An insurer issuing a workers' compensation and employers' liability
54 insurance policy, [and a group self-insurer for municipal corporations
55 as defined in subdivision three-a of section fifty of the workers'
56 compensation law,] may offer, as part of the policy or by endorsement,

1 deductibles optional to the policyholder for benefits payable under the
2 policy, subject to approval by the superintendent and subject to under-
3 writing by the insurer, consistent with the following standards or
4 factors:

5 S 5. This act shall take effect immediately.