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Cal. No. 1309

I N S E N A T E

May 18, 2016

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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.

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

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

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

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

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

ted by regulation of the chair of at least one hundred percent of the total liabilities, including the estimate presented in the actuarial opinion submitted by the group self-insurer in accordance with this chapter. The chair by regulation, may set further financial standards for group self-insurers. Any group self-insurer that fails to show that it is fully funded shall be deemed underfunded, and must submit a plan for achieving fully funded status which may include a deficit assessment on members of such group self-insurer which shall be subject to approval or modification by the chair.

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

(a) Each PRIVATE group self-insurer shall, AND EACH GROUP SELF-INSURER MAY, secure the services of a group administrator to be responsible for assisting the group self-insurer in complying with the provisions of this section and the rules and regulations promulgated hereunder, and for coordinating services including but not limited to claims processing, loss control, legal, accounting and actuarial services. No person, firm or corporation shall coordinate such services or otherwise carry out the tasks of a group administrator as provided in this subdivision or in the regulations issued pursuant thereto on behalf of a group self-insurer unless such person shall have obtained from the chair a license authorizing it to act as a group self-insurer administrator, which license may be revoked for good cause. The chair shall promulgate regulations setting forth any additional qualifications for such license, governing the conduct and compensation of group self-insurer administrators, and setting a license fee in an amount not less than five thousand dollars per year for such license for each group self-insurer the administrator administers. Each administrator shall post a bond in the amount of five hundred thousand dollars for each group self-insurer administered or such other amount as may be set by the chair based on the cost and availability of such bond, from which the chair may recover any recoveries or penalties against the administrator under this section. Nothing in this section shall relieve the trustees of a group self-insurer of any fiduciary obligation they hold to the other members of such group self-insurer.

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

(a) Group self-insurers must file with the board, as soon as practicable but no later than sixty days prior to the start of the fund year a rating plan which is supported by an actuarial rate study prepared by an independent, qualified actuary that is a fellow or associate of the casualty actuarial society, that clearly identifies the actuary's indicated rate assumptions therein. The rating plan must apply consistently to all members, and must provide for a common renewal date for all PRIVATE group self-insurer members. The rates filed can be adjusted based on an experience modification calculated for every member in accordance with the experience rating plan promulgated by the workers' compensation rating board. Experience modification formulas must be applied identically to all members. Other rate deviations may be permis-

sible provided a plan has been approved by the board. Such deviations shall not be in excess of ten percent of the actuary's indicated rate unless otherwise approved by the board for a fully funded group self-insurer, and shall in no event result in amounts less than the actuary's overall indicated rate. The chair by regulation may set further rate plan and actuarial reporting standards.

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

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

3-F. (1) ANY GROUP CONSISTING EXCLUSIVELY OF MUNICIPAL CORPORATIONS AND PUBLIC CORPORATIONS AS SUCH TERMS ARE DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, COUNTY SELF-INSURANCE PLANS ESTABLISHED UNDER ARTICLE FIVE OF THIS CHAPTER, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES AND CONSORTIA ESTABLISHED BY BOARDS OF COOPERATIVE EDUCATIONAL SERVICES MAY ADOPT A PLAN FOR SELF-INSURANCE, AS A GROUP, FOR THE PAYMENT OF COMPENSATION UNDER THIS CHAPTER TO THEIR EMPLOYEES. SUCH GROUP SHALL BE KNOWN AS A "PUBLIC GROUP SELF-INSURER". ALL OTHER GROUPS ESTABLISHED UNDER THIS SECTION ARE "PRIVATE GROUP SELF-INSURERS". A COUNTY SELF-INSURANCE PLAN ESTABLISHED UNDER ARTICLE FIVE OF THIS CHAPTER IS NOT ITSELF A PUBLIC GROUP SELF-INSURER, AND IS NOT ITSELF SUBJECT TO THE REQUIREMENTS OF THIS SECTION, BUT MAY JOIN A PUBLIC GROUP SELF-INSURER AND, IF IT DOES SO, SHALL ASSUME ALL OF THE OBLIGATIONS OF ITS PARTICIPANTS TO THE PUBLIC GROUP SELF-INSURER. NO ENTITY WHICH IS NOT A MUNICIPAL CORPORATION AS DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, A COUNTY SELF-INSURANCE PLAN ESTABLISHED UNDER ARTICLE FIVE OF THIS CHAPTER, OR A CONSORTIUM ESTABLISHED BY A BOARD OF COOPERATIVE EDUCATIONAL SERVICES, MAY JOIN A PUBLIC GROUP SELF-INSURER UNLESS IT MAY LEVY TAXES OR IS OTHERWISE DIRECTLY CAPABLE OF GENERATING REVENUE IN THE EVENT OF A FUNDING DEFICIENCY WITHIN THE PUBLIC GROUP SELF-INSURER, OR ITS OBLIGATIONS ARE GUARANTEED BY ANOTHER MEMBER WHICH IS SUCH A MUNICIPAL CORPORATION. A PUBLIC GROUP SELF-INSURER SHALL COMPLY WITH ALL OF THE REQUIREMENTS OF SUBDIVISION THREE-A OF THIS SECTION; PROVIDED HOWEVER THAT NO PROOF OF FINANCIAL ABILITY TO PAY THE COMPENSATION PROVIDED FOR BY THIS CHAPTER OR DEPOSIT OF SECURITIES SHALL BE REQUIRED AND, IN LIEU THEREOF, THE LIABILITY OF THE PUBLIC GROUP SELF-INSURER'S MEMBERS SHALL SERVE AS THE SECURITY REQUIRED UNDER PARAGRAPH TWO OF SUBDIVISION THREE-A OF THIS SECTION. THE CHAIR SHALL IMPLEMENT THE PROVISIONS OF THIS SUBDIVISION BY PROMULGATING RULES AND REGULATIONS, WHICH SHALL INCLUDE PROVISIONS ESTABLISHING AN AGGREGATE SECURITY REQUIREMENT, GUARANTEE FUND, OR OTHER MECHANISM TO PROVIDE INTERIM FUNDING WHENEVER THE CHAIR SHALL DETERMINE THAT THE COMPENSATION AND BENEFITS PROVIDED BY THIS CHAPTER MAY BE UNPAID BY REASON OF THE DEFAULT OF THE PUBLIC GROUP SELF-INSURER, BUT NO SUCH RULES AND REGULATIONS SHALL BE NECESSARY FOR ANY PROVISIONS OF THIS SUBDIVISION TO BE EFFECTIVE.

(2) A PUBLIC GROUP SELF-INSURER AS DEFINED IN PARAGRAPH ONE OF THIS SUBDIVISION MAY OFFER, AS PART OF THE AGREEMENT OR BY ENDORSEMENT, DEDUCTIBLES OPTIONAL TO THE MEMBER FOR BENEFITS PAYABLE UNDER THE AGREEMENT, UPON A DETERMINATION BY THE CHAIR THAT THE PLAN IS SUPPORTED BY AN ACTUARIAL ANALYSIS PREPARED BY AN INDEPENDENT, QUALIFIED ACTUARY WHO IS

1 A MEMBER OF THE CASUALTY ACTUARIAL SOCIETY THAT CLEARLY IDENTIFIES THE
2 ACTUARY'S INDICATED DEDUCTIBLE CREDIT AND RATE ASSUMPTIONS, AND SUBJECT
3 TO UNDERWRITING BY THE PUBLIC GROUP SELF-INSURER, CONSISTENT WITH THE
4 FOLLOWING STANDARDS OR FACTORS:

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

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

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

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

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

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

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

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

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

55 An insurer issuing a workers' compensation and employers' liability
56 insurance policy, [and a group self-insurer for municipal corporations

1 as defined in subdivision three-a of section fifty of the workers'
2 compensation law,] may offer, as part of the policy or by endorsement,
3 deductibles optional to the policyholder for benefits payable under the
4 policy, subject to approval by the superintendent and subject to under-
5 writing by the insurer, consistent with the following standards or
6 factors:

7 S 5. This act shall take effect immediately.