

STATE OF NEW YORK

191

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL, TITUS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the workers' compensation law, in relation to establishing the New York small contractor safety group, inc. and providing for its functions, powers and duties, and establishing the New York small contractor safety group fund within the New York state insurance fund and making an appropriation therefor

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

1 Section 1. This act shall be known and may be cited as the "small
2 contractors relief act of 2019."

3 § 2. The labor law is amended by adding a new article 25-D to read as
4 follows:

ARTICLE 25-D

NEW YORK SMALL CONTRACTOR SAFETY GROUP, INC. PILOT PROGRAM

Section 863. Definitions.

8 863-a. New York small contractor safety group, inc. pilot
9 program.

10 863-b. Management of the safety group; board of directors.

11 863-c. Plan of operation.

12 863-d. Membership.

13 863-e. Securing coverage.

14 863-f. Assessment of safety group members.

15 863-g. Audit authority.

16 863-h. Financial oversight of the safety group.

17 863-i. Exemption from taxes.

18 863-j. Mandatory work safety program attendance and partic-
19 ipation.

20 863-k. Expiration of pilot program.

21 863-l. Rules and regulations.

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

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1 Section 863. Definitions. For purposes of this article the following
2 terms shall have the following meanings:

3 1. "Board" means the board of directors of the safety group.

4 2. "Liability insurance" means personal injury liability insurance,
5 property damage liability insurance and employer's liability insurance,
6 as such terms are defined in paragraphs thirteen, fourteen and fifteen
7 of subsection (a) of section one thousand one hundred thirteen of the
8 insurance law and shall also include any type of insurance deemed by the
9 superintendent of financial services to be substantially similar pursu-
10 ant to paragraph thirty of subsection (a) of such section.

11 3. "Small contractor" means any contractor which (i) is a resident in
12 this state, (ii) is independently owned and operated, (iii) is either
13 (A) a certified minority or women owned business as provided for in law
14 or (B) if not such a certified minority or women owned business, both
15 (1) in the fiscal year prior to the year for which application for
16 coverage under this article is requested, had less than one million
17 dollars in gross revenues, and (2) provides adequate proof, as evidenced
18 by a letter of rejection or otherwise appropriate documentation, that
19 after written application for liability insurance coverage from an
20 insurer licensed in this state to provide such insurance, it has been
21 denied coverage for either the prior fiscal year, or the fiscal year for
22 which liability insurance is requested. Additionally, it shall also
23 include contractors with a gross revenue of one million dollars or more,
24 up to a limit to be determined by the safety group following actuarially
25 prudent principles, provided that such contractors can provide adequate
26 proof that they are unable to secure insurance coverage as provided for
27 herein.

28 4. "Safety group" means the New York small contractor safety group,
29 inc. established in section eight hundred sixty-three-a of this arti-
30 cle.

31 § 863-a. New York small contractor safety group, inc. pilot program.
32 There is hereby created a pilot program to be conducted by a not-for-
33 profit corporation to be known at the New York small contractor safety
34 group, inc. To the extent that the provisions of the not-for-profit
35 corporation law do not conflict with the provisions of this article, or
36 with the plan of operation established pursuant to this article, the
37 not-for-profit corporation law shall apply to the safety group, which
38 shall be a type c corporation pursuant to such law. If an applicable
39 provision of this article or of the safety group's plan of operation
40 relates to a matter embraced in a provision of the not-for-profit corpo-
41 ration law but is not in conflict therewith, both provisions shall
42 apply. The safety group shall perform its functions in accordance with
43 its plan of operation established and approved pursuant to this article
44 and shall exercise its powers through the board herein established.

45 § 863-b. Management of the safety group; board of directors. 1. Within
46 forty-five days after the effective date of this article, there shall be
47 appointed the board of the safety group, which board shall have the
48 authority to manage the business and affairs of the safety group. The
49 board shall consist of nine directors, three of whom shall be selected
50 by the governor, two of whom shall be appointed by the temporary presi-
51 dent of the senate, two of whom shall be appointed by the speaker of
52 assembly, one of whom shall be appointed the minority leader of the
53 senate, and one of whom shall be appointed by the minority leader of the
54 assembly. Each member of the board shall be appointed for a term of
55 three years, provided however, that of the initial members appointed,
56 the members selected by the governor shall have a term of three years.

1 the members appointed by the temporary president of the senate and the
2 minority leader of the assembly shall be appointed for a term of two
3 years, and the members appointed by the speaker of the assembly and the
4 minority leader of the senate shall be appointed for a term of one year.
5 Members who are appointed shall have experience in one or more of the
6 fields of organized labor, construction, public bidding, work safety or
7 any other construction related fields, and have in their professional
8 capacity demonstrated a willing and conscientious effort to promote work
9 safety and fair and equitable treatment of workers and management.

10 2. The board shall have the power to remove for cause any director.
11 The authority that appointed a director shall have the power to remove
12 such director for cause or without cause. At the expiration of a direc-
13 tor's term, the authority that appointed such director shall re-appoint
14 such director for an additional term or appoint a new director for such
15 subsequent term. A vacancy occurring in a director position shall be
16 filled by the authority that originally made such selection or appoint-
17 ment. A vacancy in any one or more of the director positions shall not
18 prevent the remaining directors from transacting any business, provided
19 a quorum is presented and voting.

20 3. All of the directors shall have equal voting rights and five or
21 more directors shall constitute a quorum, provided that if the number of
22 directors in office is fewer than five, a quorum shall consist of the
23 number of directors in office. The affirmative vote of five directors
24 shall be necessary for the transaction of any business or the exercise
25 of any power or function of the safety group, provided that if the
26 number of directors in office is fewer than five, the affirmative vote
27 of all directors in office shall be necessary for the transaction of any
28 business or the exercise of any power or function of the safety group.
29 The board may delegate to one or more of its directors, officers, agents
30 or employees such powers and duties as it may deem proper.

31 4. For their attendance at meetings, the directors of the safety group
32 shall be entitled to compensation, as authorized by the board, in an
33 amount not to exceed two hundred dollars per meeting per director and to
34 reimbursement of their actual out-of-pocket expenses. Directors of the
35 safety group, except as otherwise provided by law, may engage in private
36 or public employment or in a profession or business.

37 5. The safety group shall indemnify and hold harmless each director
38 and officer of the safety group from all liability, claims, or damages
39 by reason of his or her acts or omissions in connection with the
40 performance of his or her duties as a director or officer of the safety
41 group to the fullest extent permitted by the not-for-profit corporation
42 law, and, in furtherance thereof, the safety group shall obtain direc-
43 tor's and officer's liability insurance coverage on terms consistent
44 with section seven hundred twenty-six of the not-for-profit corporation
45 law.

46 § 863-c. Plan of operation. 1. Within ninety days after the effective
47 date of this article, the safety group shall file with the commissioner
48 of labor and the superintendent of financial services its plan of opera-
49 tion, which shall be designed to assure the fair, reasonable and equita-
50 ble administration of the safety group. The plan of operation and any
51 subsequent amendments thereto shall be filed with the commissioner of
52 labor and the superintendent of financial services, who shall have nine-
53 ty days to approve or reject any proposal contained in such plan which
54 they jointly determine does not conform to the intent of this article.
55 Upon transmission to the safety group of such objections the group shall
56 modify the plan accordingly and the plan shall then become operative.

1 2. The plan of operation shall constitute the by-laws of the safety
2 group and shall, in addition to the requirements enumerated elsewhere in
3 this article, (a) establish procedures for collecting and managing the
4 assets of the safety group; (b) establish regular places and times for
5 meetings of the board of directors and the members; (c) establish
6 accounting and record-keeping procedures for all financial transactions
7 of the safety group, its agents and the board of directors; (d) estab-
8 lish a procedure for determining and collecting the appropriate amount
9 of assessments and surcharges under this article; (e) set forth the
10 procedures by which the safety group may exercise the audit rights
11 granted to it under this article; (f) establish procedures for the
12 creation of a safety program, risk management program and such other
13 programs for the safety group's members as the board deems appropriate;
14 (g) establish procedures for expelling members who fail to satisfy the
15 safety group's safety compliance rules which rules shall provide for
16 grace periods of coverage after expulsion as determined fair and equita-
17 ble by the group; (h) establish rules for the calculation of membership
18 fee assessments; and (i) contain such additional provisions as the board
19 may deem necessary or proper for the execution of the powers and duties
20 of the safety group.

21 § 863-d. Membership. Membership in the safety group shall be open to
22 all small contractors initially admitted as members of the group and all
23 small contractors who thereafter apply for insurance coverage and are
24 determined to be eligible for insurance coverage as provided by the
25 group and, as provided in the plan of operation. The safety group shall
26 provide to its members a copy of the plan of operation and any subse-
27 quent amendments and shall inform its members of their rights and duties
28 as members of the safety group.

29 § 863-e. Securing coverage. 1. Within two hundred seventy days after
30 the effective date of this article, the safety group shall take such
31 actions as are necessary to purchase liability insurance. Limitations on
32 coverage and other specific requirements for any such policy of liabil-
33 ity insurance purchased by the group shall be as provided for in the
34 plan of operation. No later than thirty days after the commencement of a
35 new policy year the safety group shall file with the commissioner of
36 labor, and the superintendent of financial services a copy of the group
37 policy it has purchased for that year.

38 2. The safety group may also purchase a group policy for excess
39 liability insurance coverage on behalf of those of its members desiring
40 such excess liability insurance coverage.

41 § 863-f. Assessment of safety group members. 1. In order to meet the
42 obligations and pay (a) the costs of the group general liability insur-
43 ance policy purchased pursuant to this article and (b) its expenses in
44 carry out its powers, duties and obligations under this article, the
45 safety group shall ascertain by reasonable estimate the total funding
46 necessary to carry on its operations. Based upon such estimation, the
47 safety group shall assess its members a membership fee, to fairly
48 reflect the cost of the liability insurance coverage procured by the
49 safety group and the administration of the safety group. Fees shall be
50 collected annually or more often as determined by the safety group upon
51 written notice that they shall be due within sixty days of the date upon
52 which such notice is received. The safety group shall determine the
53 basis for calculating such fees in accordance with rules set forth in
54 the plan of operation, which rules shall be applied in a fair and equi-
55 table manner, and in an open and transparent manner so as to make known
56 the basis upon which such calculations have been made. Upon calculation

1 of the fee each member must pay, from within amounts appropriated by
2 law, the state shall make an initial capital contribution to the safety
3 group in an amount equal to fifty percent of the amount of the fee so
4 assessed for the purpose of providing initial capitalization of the
5 safety group which will enable it to conduct business in a financially
6 prudent manner, provided however, that the amount of such initial
7 capitalization provided by the state shall not exceed twenty-five
8 million dollars.

9 2. Should the safety group determine that the membership fees that
10 have been paid to it are inadequate to meet its obligations under this
11 article, the safety group shall determine the amount required to elimi-
12 nate such deficiency. Based upon such amount, the safety group shall
13 assess its members a surcharge, calculated on a similar basis as above
14 determined for the original membership fee, in accordance with rules set
15 forth in the plan of operation.

16 3. To pay the costs of any excess liability insurance coverage
17 purchased pursuant to this article, the safety group shall assess those
18 of its members who wish to obtain such excess liability insurance a
19 separate fee, calculated in accordance with rules set forth in the plan
20 of operation.

21 § 863-g. Audit authority. The safety group shall have the power
22 directly or through its representatives to inspect the books and records
23 of its members to verify (a) compliance with the requirements of member-
24 ship in the safety group and (b) the accuracy of information furnished
25 to the safety group. The safety group or its representatives shall be
26 afforded convenient access at all reasonable hours to all books, records
27 and other documents of its members that may be relevant to such audits.
28 In addition the comptroller of this state shall have the authority to
29 periodically audit the books and records of the safety group in order to
30 ensure its compliance with the law.

31 § 863-h. Financial oversight of the safety group. No later than April
32 first of each year, the safety group shall submit to the commissioner of
33 labor and the superintendent of financial services certified financial
34 statements prepared in accordance with generally accepted accounting
35 principles by a certified public accountant. The members of the safety
36 group shall be required on and after January first of each year to
37 afford a certified public accountant convenient access at all reasonable
38 hours to all books, records and other documents that may be relevant to
39 the preparation of such statements. Such commissioner and superintendent
40 are hereby authorized to undertake such studies and investigations it
41 deems warranted to ensure the safety group is complying with all appli-
42 cable state laws.

43 § 863-i. Exemption from taxes. The safety group shall be exempt from
44 payment of all fees and taxes levied by the state or any of its subdivi-
45 sions, except taxes levied on real property.

46 § 863-j. Mandatory work safety program attendance and participation.
47 In order to effectively carry out the intent of this article to provide
48 liability insurance to small contractors, members of the safety group
49 shall be required to attend and participate in work and job site safety
50 training and satisfy the safety group's safety compliance rules as a
51 condition to their membership. Any member who fails or refuses to extend
52 its full cooperation in attending or participating in such program or
53 satisfying such safety compliance rules may be terminated from the
54 group, or suspended until it brings itself into compliance. The safety
55 group, in establishing the components of the program may utilize the

1 expertise of large contractors' work and job safety programs, or the
2 services of other experts in the field.

3 § 863-k. Expiration of pilot program. The provisions of this article
4 shall for all purposes be conducted in the manner of a pilot program
5 which shall expire and be of no further force and effect on and after
6 the date occurring five years after the date upon which this article
7 shall have become a law, unless duly extended or made permanent by the
8 legislature. One year prior to such date of expiration, the safety group
9 shall submit a detailed analysis of the operation and effectiveness of
10 the program to the temporary president of the senate, the speaker of the
11 assembly, the commissioner of labor, and the superintendent of financial
12 services for the purposes of amending, revising, adding to or in any
13 manner altering the provisions of this article, the plan of operation
14 then in effect or any other significant changes to law, rule or regu-
15 lation which would improve the provision of liability coverage afforded
16 to insureds pursuant to the insurance policies provided by the safety
17 group.

18 § 863-l. Rules and regulations. The commissioner of labor on notice to
19 the superintendent of financial services is hereby authorized to promul-
20 gate any regulations as may be necessary for the proper implementation
21 of this article.

22 § 3. The workers' compensation law is amended by adding a new section
23 87-j to read as follows:

24 § 87-j. Authority to issue general liability insurance to the New York
25 small contractor safety group, inc. 1. The state insurance fund is here-
26 by authorized to issue policies of general liability insurance and
27 liability excess insurance policies, as needed, to the New York small
28 contractor safety group, inc. in order to enable such not-for-profit
29 corporation to provide coverage to members of the safety group.

30 2. A separate fund shall be created within the state insurance fund,
31 which shall be known as the "New York small contractor safety group
32 fund" (the "safety group fund"), and which shall consist of all premiums
33 received and paid into the safety group fund on account of the general
34 liability insurance and the liability excess insurance policies to the
35 safety group, all property and securities acquired by and through the
36 use of moneys belonging to the safety group fund, and of interest earned
37 upon moneys belonging to the safety group fund. The assets and liabil-
38 ities of the safety group fund shall be and remain separate and apart
39 from the assets and liabilities of the state insurance fund and its
40 other funds, and no moneys of the safety group fund shall be transferred
41 to the state insurance fund and its other funds. The safety group fund
42 shall be exempt from payment of all fees and taxes levied by the state
43 or any of its subdivisions, except taxes levied on real property.

44 3. An annual per centum of the premiums collected from the safety
45 group shall be set aside towards the surplus of the safety group fund
46 until such time as in the judgment of the commissioners such surplus
47 shall be sufficiently large to both (a) provide for adequate loss
48 reserves and (b) return to the state the amount of the initial appropri-
49 ation made by law to provide state funds for the establishment and
50 administration of the chapter of the laws of two thousand nineteen which
51 established the New York small contractor safety group, inc. at which
52 time that amount shall be repaid to the state as provided for in the
53 appropriation contained in such chapter. Thereafter the contribution to
54 such surplus may be reduced or discontinued conditional upon constant
55 maintenance of a sufficient surplus to provide against catastrophe.

1 Reserves shall be set up and maintained adequate to meet anticipated
2 losses and carry all claims and policies to maturity.

3 4. The entire expense of administering the safety group fund shall be
4 paid out of the safety group fund, which expenses shall be determined on
5 an equitable basis with due allowance for the division of overhead
6 expenses between the safety group fund and the state insurance fund and
7 its other funds. There shall be submitted to the director of the budget
8 quarterly financial statements on a calendar year basis. In no case
9 shall the amount of administrative expenditures so authorized for an
10 entire year from the safety group fund exceed twenty-five per centum of
11 the earned premiums from the safety group fund for that year.

12 § 4. The sum of twenty-five million dollars (\$25,000,000), or so much
13 thereof as may be necessary, is hereby appropriated from any moneys in
14 the state treasury in the general fund to the credit of the state
15 purposes account not otherwise appropriated to the state insurance fund
16 for the initial capital of the New York small contractor safety group
17 fund in carrying out the provisions of this act. Such sum shall be paya-
18 ble on the audit and warrant of the state comptroller on vouchers certi-
19 fied or approved in the manner provided by law. No expenditure shall be
20 made from this appropriation until a certificate of approval of avail-
21 ability shall have been issued by the director of the budget and filed
22 with the state comptroller and a copy filed with the chairman of the
23 senate finance committee and the chairman of the assembly ways and means
24 committee. Such certificate may be amended from time to time by the
25 director of the budget and a copy of each such amendment shall be filed
26 with the state comptroller, the chairman of the senate finance committee
27 and the chairman of the assembly ways and means committee. The director
28 of the budget shall not issue any certificate of appropriation of avail-
29 ability until the safety group fund has entered into a written agreement
30 with the director of the budget providing for repayment by such corpo-
31 ration to the state of New York of an amount equal to the total amount
32 expended by the state from the appropriation made herein. Such repayment
33 may be made over a number of years as agreed to by the director of the
34 budget and the safety group fund, and as necessary it may be amended
35 from time to time as the director of the budget and the safety group
36 fund agree. A copy of each such agreement and any amendment shall be
37 filed with the state comptroller, the chairman of the senate finance
38 committee and the chairman of the assembly ways and means committee.

39 § 5. This act shall take effect immediately.