STATE OF NEW YORK

8952

IN SENATE

September 2, 2020

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

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:

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

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

ARTICLE 25-D

NEW YORK SMALL CONTRACTOR SAFETY GROUP, INC. PILOT PROGRAM

Section 863. Definitions.

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

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

863-c. Plan of operation.

863-d. Membership.

863-e. Securing coverage.

863-f. Assessment of safety group members.

863-g. Audit authority.

863-h. Financial oversight of the safety group.

863-i. Exemption from taxes.

863-j. Mandatory work safety program attendance and participation.

863-k. Expiration of pilot program.

863-l. Rules and regulations.

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

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

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

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

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

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

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

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

minority leader of the senate shall be appointed for a term of one year. Members who are appointed shall have experience in one or more of the fields of organized labor, construction, public bidding, work safety or any other construction related fields, and have in their professional capacity demonstrated a willing and conscientious effort to promote work safety and fair and equitable treatment of workers and management.

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

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

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

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

§ 863-c. Plan of operation. 1. Within ninety days after the effective date of this article, the safety group shall file with the commissioner of labor and the superintendent of financial services its plan of operation, which shall be designed to assure the fair, reasonable and equitable administration of the safety group. The plan of operation and any subsequent amendments thereto shall be filed with the commissioner of labor and the superintendent of financial services, who shall have ninety days to approve or reject any proposal contained in such plan which they jointly determine does not conform to the intent of this article. Upon transmission to the safety group of such objections the group shall modify the plan accordingly and the plan shall then become operative.

2. The plan of operation shall constitute the by-laws of the safety group and shall, in addition to the requirements enumerated elsewhere in this article, (a) establish procedures for collecting and managing the

assets of the safety group; (b) establish regular places and times for meetings of the board of directors and the members; (c) establish accounting and record-keeping procedures for all financial transactions of the safety group, its agents and the board of directors; (d) establish a procedure for determining and collecting the appropriate amount of assessments and surcharges under this article; (e) set forth the procedures by which the safety group may exercise the audit rights granted to it under this article; (f) establish procedures for the creation of a safety program, risk management program and such other programs for the safety group's members as the board deems appropriate; (g) establish procedures for expelling members who fail to satisfy the safety group's safety compliance rules which rules shall provide for grace periods of coverage after expulsion as determined fair and equitable by the group; (h) establish rules for the calculation of membership fee assessments; and (i) contain such additional provisions as the board may deem necessary or proper for the execution of the powers and duties of the safety group.

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

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

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

§ 863-f. Assessment of safety group members. 1. In order to meet the obligations and pay (a) the costs of the group general liability insurance policy purchased pursuant to this article and (b) its expenses in carry out its powers, duties and obligations under this article, the safety group shall ascertain by reasonable estimate the total funding necessary to carry on its operations. Based upon such estimation, the safety group shall assess its members a membership fee, to fairly reflect the cost of the liability insurance coverage procured by the safety group and the administration of the safety group. Fees shall be collected annually or more often as determined by the safety group upon written notice that they shall be due within sixty days of the date upon which such notice is received. The safety group shall determine the basis for calculating such fees in accordance with rules set forth in the plan of operation, which rules shall be applied in a fair and equitable manner, and in an open and transparent manner so as to make known the basis upon which such calculations have been made. Upon calculation of the fee each member must pay, from within amounts appropriated by law, the state shall make an initial capital contribution to the safety group in an amount equal to fifty percent of the amount of the fee so

assessed for the purpose of providing initial capitalization of the safety group which will enable it to conduct business in a financially prudent manner, provided however, that the amount of such initial capitalization provided by the state shall not exceed twenty-five million dollars.

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

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

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

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

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

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

§ 863-k. Expiration of pilot program. The provisions of this article shall for all purposes be conducted in the manner of a pilot program

which shall expire and be of no further force and effect on and after the date occurring five years after the date upon which this article shall have become a law, unless duly extended or made permanent by the legislature. One year prior to such date of expiration, the safety group shall submit a detailed analysis of the operation and effectiveness of the program to the temporary president of the senate, the speaker of the assembly, the commissioner of labor, and the superintendent of financial services for the purposes of amending, revising, adding to or in any manner altering the provisions of this article, the plan of operation then in effect or any other significant changes to law, rule or regulation which would improve the provision of liability coverage afforded to insureds pursuant to the insurance policies provided by the safety group.

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

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

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

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

3. An annual per centum of the premiums collected from the safety group shall be set aside towards the surplus of the safety group fund until such time as in the judgment of the commissioners such surplus shall be sufficiently large to both (a) provide for adequate loss reserves and (b) return to the state the amount of the initial appropriation made by law to provide state funds for the establishment and administration of the chapter of the laws of two thousand nineteen which established the New York small contractor safety group, inc. at which time that amount shall be repaid to the state as provided for in the appropriation contained in such chapter. Thereafter the contribution to such surplus may be reduced or discontinued conditional upon constant maintenance of a sufficient surplus to provide against catastrophe. Reserves shall be set up and maintained adequate to meet anticipated losses and carry all claims and policies to maturity.

4. The entire expense of administering the safety group fund shall be paid out of the safety group fund, which expenses shall be determined on an equitable basis with due allowance for the division of overhead

expenses between the safety group fund and the state insurance fund and its other funds. There shall be submitted to the director of the budget quarterly financial statements on a calendar year basis. In no case shall the amount of administrative expenditures so authorized for an entire year from the safety group fund exceed twenty-five per centum of the earned premiums from the safety group fund for that year.

§ 4. The sum of twenty-five million dollars ($25,000,000), or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated to the state insurance fund for the initial capital of the New York small contractor safety group fund in carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. The director of the budget shall not issue any certificate of appropriation of availability until the safety group fund has entered into a written agreement with the director of the budget providing for repayment by such corporation to the state of New York of an amount equal to the total amount expended by the state from the appropriation made herein. Such repayment may be made over a number of years as agreed to by the director of the budget and the safety group fund, and as necessary it may be amended from time to time as the director of the budget and the safety group fund agree. A copy of each such agreement and any amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 5. This act shall take effect immediately.