STATE OF NEW YORK

7317

2023-2024 Regular Sessions

IN ASSEMBLY

May 17, 2023

Introduced by M. of A. BRAUNSTEIN -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing the New York small contractor captive insurance pilot program; provides for the repeal upon expiration thereof; and making an appropriation thereof

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

Section 1. Short title. This act shall be known and may be cited as the "New York small contractor captive insurance pilot program".

§ 2. The legislature hereby declares that the market for insurance for small construction contractors and certified minority and women-owned construction contractors has been challenged both by high insurance rates and a lack of market capacity. These challenges are acute for small construction contractors, and minority and women-owned construction contractors working for public owners. This act shall provide for a private market insurance solution for small construction contractors, and minority and women-owned construction contractors through the creation of a captive insurance company.

§ 3. The insurance law is amended by adding a new article 70-A to read as follows:

ARTICLE 70-A

NEW YORK SMALL CONTRACTOR CAPTIVE INSURANCE PILOT PROGRAM

Section 7013. Definitions.
7014. New York small contractor captive insurance company.
7015. Reinsurance and retrocession reinsurance.
7016. No refusal.
7017. Risk management program.

§ 7013. Definitions. For the purpose of this article, the following terms shall have the following meanings:

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

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(a) "Liability insurance" shall mean personal injury liability insurance and property damage liability insurance, as such terms are defined in paragraphs thirteen and fourteen of subsection (a) of section one thousand one hundred thirteen of this chapter, and shall include any type of insurance deemed by the superintendent of financial services to be substantially similar thereto pursuant to paragraph thirty-four of subsection (a) of such section.

(b) "Small construction contractor" shall mean any contractor which (i) is resident in this state; (ii) is independently owned and operated; (iii) is exclusively engaged in construction contracting or subcontracting; and (iv) had less than three million dollars in gross revenues for the calendar year prior to an application for insurance being filed pursuant to the terms of this article, or is a certified minority or women-owned business.

§ 7014. New York small contractor captive insurance company. (a) A captive insurance company organized pursuant to this article shall be formed and regulated pursuant to the provisions of article seventy of this chapter. Such entity may be a corporation, association, a joint stock company or association, or an aggregation or partnership pursuant to the laws of the state of New York.

(b) A captive insurance company may be organized pursuant to this article for the sole purpose of providing liability insurance as defined in subsection (a) of section seven thousand thirteen of this article to small construction contractors, as that term is defined in subsection (a) of section seven thousand thirteen of this article.

§ 7015. Reinsurance and retrocession reinsurance. A captive insurance company organized pursuant to this article shall be authorized to purchase, and the New York state insurance fund (hereinafter the "fund") shall be authorized and directed, to provide reinsurance and retrocession reinsurance for such captive insurance company, on either a quota share arrangement or facultative arrangement (hereafter "reinsurance") at a rate to be determined by the board of the fund. The fund shall provide such reinsurance on an application for such coverage unless, in the opinion of the executive director, providing such coverage on an application will imperil the financial safety and soundness of the fund. The executive director of the fund shall provide, in writing, to the board of the fund and the superintendent not less than quarterly a report on all such applications for coverage that are denied, together with the grounds for and an analysis of the basis for such denial.

§ 7016. No refusal. A small contractor captive insurance company organized pursuant to this article shall not refuse to issue, renew or cancel a policy of any qualified small construction contractor based upon geographic location or line of business engaged in by such contractor.

§ 7017. Risk management program. A captive insurance company organized pursuant to this article shall establish and promote a risk management program among its members to identify and reduce risks by implementation of loss control, safety programs and other methods of risk management, and any small construction contractor accepted for coverage from such insurer shall be responsible for adopting and following such risk management program.

§ 4. Not less than six months before the expiration date of article 70-A of the insurance law the superintendent of financial services shall issue to the governor, the speaker of the assembly and the temporary president of the senate, and the chairs of the insurance and labor committees of each house, a report on the performance of the New York

small construction contractor captive insurance pilot program and its impact upon the small construction contractor sector. If such pilot program is to expire, it shall not impede such captive insurance programs created under article 70-A of the insurance law to continue to operate as if the provisions of such article were still in full force and effect, assuming that such programs are otherwise viable pursuant to the provisions of article 70 of the insurance law.

§ 5. The sum of fifty million dollars ($50,000,000) is hereby appropriated for the support of up to two captives under this pilot program. Such funds may be used for the purpose of providing paid-in capital and initial surplus contributions for captives organized pursuant to article 70-A of the insurance law, such amounts not to exceed twenty-five million dollars ($25,000,000) for any one captive insurer so organized. The New York state insurance fund is authorized, upon action of its board of directors, to invest other funds as may be appropriate in a captive organized pursuant to article 70-A of the insurance law.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall expire and be deemed repealed five years after such effective date.