A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the workers' compensation law, in relation to
disability payments

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

1 Section 1. Subparagraph 4 of paragraph (h) of subdivision 8 of section
2 15 of the workers' compensation law, as amended by chapter 139 of the
3 laws of 2008, is amended to read as follows:
4 (4) As soon as practicable after May first in the year nineteen
5 hundred fifty-eight, and annually thereafter as soon as practicable
6 after January first in each succeeding year, the chair of the board
7 shall assess upon and collect from all self-insurers, except group self-
8 insurers, the state insurance fund, all insurance carriers and group
9 self-insurers, (A) a sum equal to one hundred fifty per centum of the
10 total disbursements made from the special disability fund during the
11 preceding calendar year (not including any disbursements made on account
12 of anticipated liabilities or waiver agreements funded by bond proceeds
13 and related earnings), less the amount of the net assets in such fund as
14 of December thirty-first of said preceding calendar year, and (B) a sum
15 sufficient to cover debt service, and associated costs (the "debt
16 service assessment") to be paid during the calendar year by the dormitory
17 authority, as calculated in accordance with subparagraph five of this
18 paragraph. Such assessments shall be allocated to (i) self-insurers
19 except group self-insurers and the state insurance fund based upon the
20 proportion that the total compensation payments made by all self-insur-
21 ers except group self-insurers and the state insurance fund bore to the
total compensation payments made by all self-insurers except group self-
insurers, the state insurance fund, all insurance carriers and group
self-insurers, (ii) insurance carriers based upon the proportion that
the total compensation payments made by all insurance carriers bore to
the total compensation payments by all self-insurers except group self-
insurers, the state insurance fund and all insurance carriers and group
self-insurers during the fiscal year which ended within said preceding
calendar year, and (iii) group self-insurers based upon the proportion
that the total compensation payments made by all group self-insurers
bore to the total compensation payments made by all self-insurers, the
state insurance fund and all insurance carriers during the fiscal year
which ended within said preceding calendar year. Insurance carriers and
self-insurers shall be liable for all such assessments regardless of the
date on which they came into existence, or whether they have made any
claim for reimbursement from the special disability fund. The portion of
such sum allocated to self-insurers except group self-insurers and the
state insurance fund that shall be collected from each self-insurer
except a group self-insurer and the state insurance fund shall be a sum
equal to the proportion of the amount which the total compensation
payments of each such self-insurer except a group self-insurer or the
state insurance fund bore to the total compensation payments made by all
self-insurers except group self-insurers and the state insurance fund
during the fiscal year which ended within said preceding calendar year.
The portion of such sum allocated to insurance carriers that shall be
collected from each insurance carrier shall be a sum equal to that
proportion of the amount which the total [premiums written] standard
premium by each such insurance carrier bore to the total [written premi-
ums] standard premium reported by all insurance carriers during the
(fiscal) calendar year which ended within said preceding (calendar) fiscal year. The portion of such sum allocated to group self-insurers that shall be collected from each group self-insurer shall be a sum equal to that proportion of the amount which the pure premium calculation for each such group self-insurer bore to the total pure premium calculation for all group self-insurers for the calendar year which ended within the preceding state fiscal year. The payments from the debt service assessment, unless otherwise set forth in the special disability fund financing agreement, are hereby pledged therefor and shall be deemed the first monies received on account of assessments in each year.

For the purposes of this paragraph, ["direct premiums written" means gross premiums, including policy and membership fees, less return premiums and premiums on policies not taken] "standard premium" shall mean the premium as defined for the purposes of this assessment by the superintendent of insurance, in consultation with the chair of the board and the workers' compensation rating board. For purposes of this paragraph "pure premium calculation" means the New York state annual payroll as of December thirty-first of the preceding year by class code for each employer member of a group self-insurer multiplied by the applicable loss cost for each class code as determined by the workers' compensation rating board in effect on December thirty-first of the preceding year, and for a group or individual self-insurer who has ceased to self-insure shall be based on payroll at the time the group or individual self-insurer ceased to self-insure reduced by a factor reflecting the reduction in the group or individual self-insurer's self-insurance liabilities since ceasing to self-insure. An employer who has ceased to be a self-insurer or a group that ceases to be licensed as a group self-insurer shall continue to be liable for any assessments into said fund on
account of any compensation payments made by him or her on his or her account during such fiscal year, and the security fund, created under the provisions of section one hundred seven of this chapter, shall, in the event of the insolvency of any insurance company, be liable for any assessments that would have been made against such company except for its insolvency. No assessment shall be payable from the aggregate trust fund, created under the provisions of section twenty-seven of this article, but such fund shall continue to be liable for all compensation that shall be payable under any award or order of the board, the commuted value of which has been paid into such fund. Such assessments when collected shall be deposited with the commissioner of taxation and finance for the benefit of such fund. Unless otherwise provided, such assessments, shall not constitute an element of loss for the purpose of establishing rates for compensation insurance but shall for the purpose of collection be treated as separate costs by carriers. All insurance carriers and the state insurance fund, shall collect such assessments, from their policyholders through a surcharge based on premiums in accordance with rules set forth by the superintendent of insurance in consultation with the New York workers' compensation rating board[, as approved by the superintendent of insurance] and the chair of the board. Such surcharge shall be considered as part of premium for purposes prescribed by law including, but not limited to, computing premium tax, reporting to the superintendent of insurance pursuant to section ninety-nine of this chapter and section three hundred seven of the insurance law, determining the limitation of expenditures for the administration of the state insurance fund pursuant to section eighty-eight of this chapter and the cancellation by an insurance carrier, including the state insurance fund, of a policy for non-payment of premium. The
provisions of this paragraph shall not apply with respect to policies
containing coverage pursuant to subsection (j) of section three thousand
four hundred twenty of the insurance law relating to every policy
providing comprehensive personal liability insurance on a one, two,
three or four family owner-occupied dwelling. The state insurance fund
shall, notify its insureds that such assessments, shall be, for the
purpose of recoupment, treated as separate costs, respectively for the
purpose of premiums billed on or after October first, nineteen hundred
ninety-four.

For the purposes of this paragraph, except as otherwise provided: the
term "insurance carrier" shall include only stock corporations, mutual
corporations and reciprocal insurers authorized to transact the business
of workers' compensation insurance in this state; the term "self-insur-
er" shall include any employer or group of employers permitted to pay
compensation directly under the provisions of subdivision three, three-
or four of section fifty of this chapter[;]

The board is hereby authorized to issue credits or refunds as neces-
sary, in the case of overpayments made to the fund. An insurance carrier
that knowingly underreports premiums for the purposes of this section
shall be guilty of a class E felony.

§ 2. Paragraph (b) of subdivision 2 of section 151 of the workers'
compensation law, as amended by chapter 6 of the laws of 2007, the open-
ing paragraph as amended by chapter 139 of the laws of 2008, is amended
to read as follows:

(b) An itemized statement of the expenses so ascertained shall be open
to public inspection in the office of the board for thirty days after
notice to the state insurance fund, all insurance carriers and all self-
insurers including group self-insurers affected thereby, before the
board shall make an assessment for such expenses. The chair shall assess
upon and collect a proportion of such expenses as hereinafter provided
from each insurance carrier, the state insurance fund and each self-in-
surer including group self-insurers. The assessment for such expenses
shall be allocated to (i) self-insurers except group self-insurers and
the state insurance fund based upon the proportion that the total
compensation payments made by all self-insurers except group self-insur-
ers and the state insurance fund in such year bore to the total compen-
sation payments made by all self-insurers except group self-insurers,
the state insurance fund, all insurance carriers and group self-insurers
and (ii) insurance carriers based upon the proportion that the total
compensation payments made by all insurance carriers in such year bore
to the total compensation payments by all self-insurers, the state
insurance fund and all insurance carriers [during the fiscal year which
ended within said preceding calendar year], and (iii) group self-insur-
ers based upon the proportion that the total compensation payments made
by all group self-insurers in such year bore to the total compensation
payments made by all self-insurers, the state insurance fund and all
insurance carriers [during the fiscal year which ended within said
preceding calendar year]. The portion of the assessment for such
expenses allocated to self-insurers except group self-insurers and the
state insurance fund that shall be collected from each self-insurer
except group self-insurers and the state insurance fund shall be a sum
equal to the proportion of the amount which the total compensation
payments of each such self-insurer except a group self-insurer or the
state insurance fund in such year bore to the total compensation
payments made by all self-insurers except group self-insurers and the
state insurance fund. The portion of the assessment for such expenses
allocated to insurance carriers that shall be collected from each such insurance carrier shall be a sum equal to that proportion of the amount which the total [premiums written] **standard premium** by each such insurance carrier [in such year] bore to the total [written premiums] **standard premium** reported by all insurance carriers for the calendar year which ended with the state fiscal year. The portion of such sum allocated to group self-insurers that shall be collected from each group self-insurer shall be a sum equal to that proportion of the amount which the pure premium calculation for each such group self-insurer bore to the total pure premium calculation for all group self-insurers for the calendar year which ended within the [preceding] state fiscal year. The amounts so secured shall be used for the payment of the expenses of administering this chapter. Pure premium for assessments against individual and group self-insurers who ceased to self-insure shall be based on payroll at the time the individual or group self-insurer has ceased to self-insure, reduced by a factor reflecting the reduction in the group or individual self-insurer's self-insurance liabilities since ceasing to self-insure.

For purposes of this paragraph, ["direct premiums written" means gross premiums, including policy and membership fees, less return premiums and premiums on policies not taken] "**standard premium**" shall mean the premium as defined for the purposes of this assessment by the superintendent of insurance, in consultation with the chair of the board and the workers' compensation rating board. For purposes of this paragraph "pure premium calculation" means the New York state annual payroll as of December thirty-first of the preceding year by class code for each employer member of a group self-insurer multiplied by the applicable rate for each class code as determined by the workers' compensation
rating board in effect on December thirty-first of the preceding year. The amounts so secured shall be used for the payment of the expenses of administering this chapter.

For the purposes of this paragraph, the term "insurance carrier" shall include only stock corporations, mutual corporations and reciprocal insurers authorized to transact the business of workers' compensation insurance in this state and the term "self-insurer" shall include any employer or group of employers permitted to pay compensation directly under the provisions of subdivision three, three-a or four of section fifty of this chapter.

§ 3. (a) For purposes of this section, "insurance carrier," and "workers' compensation rating board" shall have the meaning set forth in section 2 of the workers' compensation law, and "affected insurance carrier" shall mean any insurance carrier or affiliated group of insurance carriers that has, prior to the effective date of this section: (1) paid to the workers' compensation board for any year an amount directed by the workers' compensation board under subdivision 8 of section 15, subdivision 3 of section 25-a or section 151 of the workers' compensation law that was less than the amount collected from its insured employers in that year, in accordance with a calculation provided by the workers' compensation rating board, (2) has identified and held any funds collected but not paid to the workers' compensation board, as measurable and available, as of November 1, 2008.

(b) Any affected insurance carrier shall notify the chair of the workers' compensation board, within thirty days of the effective date of this subdivision, of the amount of funds it has held as measurable and available under subdivision (a) of this section. The chair of the workers' compensation board may, at any time within one hundred twenty days
of the effective date of this subdivision, or at any time thereafter if the insurance carrier has not provided the notification required by this section, direct an affected insurance carrier to pay such funds to the board within thirty days if they are attributable to assessments in fiscal year 2006 or before, and as soon as practicable thereafter if they are attributable to subsequent assessments. Such funds shall be credited to the workers' compensation account and shall be reserved in the first instance for expenditure pursuant to a multi-year plan, prepared by the chair, to improve the quality, timeliness and fairness of services performed by the board, including any services funded by assessments under the workers' compensation law. Such plan must be approved by the director of the budget, and expenditures pursuant to such plan may equal up to ten percent of the 2008–09 appropriations made to the workers' compensation board, excluding contingency appropriations. As a part of such plan, the chair of the workers' compensation board may recommend suballocations of the funds credited to the workers' compensation account under this subdivision to the department of labor for any other purposes funded by assessments made under the workers' compensation law, or for the implementation of chapter 6 of the laws of 2007, including for implementation of section 134 and subdivision 1 of section 35 of the workers' compensation law. Such suballocations shall be included within the total allowable expenditures under the plan and must also be approved by the director of the budget. Any amounts available in any fiscal year after deducting amounts reflecting expenditures to be made by the workers' compensation board for that fiscal year under the plan provided for by this section shall be transferred by the comptroller to the general fund, at the request of the director of the budget.
(c) Any affected insurance carrier that makes payments to the workers' compensation board in accordance with this section shall not be subject to any civil or criminal liability for damages arising out of the collection or maintenance of any such funds under subdivision 8 of section 15, subdivision 3 of section 25-a or section 151 of the workers' compensation law. Nothing in this section shall be deemed to impose any civil or criminal liability on any other entity, including any insurance carrier, the workers' compensation board, or the state of New York.

§ 4. This act shall take effect immediately, provided that sections one and two of this act shall take effect on January 1, 2010.