LEGISLATIVE UPDATE

2013/ 2014 NYS Proposed Budget
FEBRUARY 2013

On January 22, 2013 the Governor presented his 2013/2014 Executive Budget to the Legislature. The Legislature is currently holding public hearings relative to the Governor's proposals and if all goes according to plan will act on the budget by March 22, 2013.

The Executive Budget proposes an increase in total state spending of under 2% and closes a budget gap of $1.3 billion. As in past years the budget does not call for new taxes but does use financing avenues including reserve fund sweeps, public authority fund transfers, and continuation of expiring taxes and fees.

ISSUES OF INTEREST

WORKERS COMPENSATION REFORM (S2605/A3005 Part O)

The Executive Budget proposes reforms to the Workers' Compensation program that are intended to reduce costs to businesses, increase overall solvency and facilitate the settlement of approximately $900 million in potential liabilities associated with Group Self Insured Trusts (GSITs).

Single Arbitrator Panels. Under current law, when both parties fail to agree on the value of a medical or other health related service that was rendered, the value of the service in question is determined through an arbitration committee (two or more members licensed to practice in the profession pertaining to the service provided). This proposal introduces single arbitrator panels which would be required for liabilities of less than $1,000 and be at the option of the provider for liabilities exceeding $1,000.

Pass Through Assessments. The purpose of this provision is to allow carriers to directly charge customers the exact amount in assessments owed to the Workers' Compensation Board.

Close The Reopened Case Fund. The Reopened Case Fund will be closed effective January 1, 2014; however, a provision is included that allows the Workers' Compensation Board to make a finding after such date if an appeal for an existing case was filed in a timely manner. The reopened case fund provides payments directly to claimants and health providers when the claimant's case is reopened. The original intent of the fund was to provide carrier's relief in circumstances where liability unexpectedly arises after a case has been closed for many years. The Executive asserts that closing this fund would significantly reduce assessments on businesses. Details regarding the specific amount of annual liabilities are pending.

Aggregate Trust Fund (ATF). The intent of the ATF was to protect a claimant in the event a carrier defaulted in its payments. The Executive proposes to eliminate mandatory deposits that are required of Workers' Compensation insurance carriers, the self insured and the SIF, and to shift the responsibility of the ATF to the Workers' Compensation Guarantee Fund.

Group Self Insured Trusts (GSITs). The Executive Budget contains a provision that would allow the remaining GSITs to maintain custody of reserves required to pay claims pursuant to §50 (3) of the Workers' Compensation Law by depositing them into a trust fund that allows them to invest and generate returns on the reserve balances. The Executive proposal would establish a program to authorize the issuance of bonds to finance loss portfolio transfers (LPTs) as a means of settling approximately $900 million in outstanding GSIT liabilities. The bonds would be issued by the New York State Dormitory Authority and backed by a new Workers'

Compensation assessment on solvent self insurers. These bonds would provide cash to pay claims for defaulted GSITs. State Insurance Fund (SIF) The Executive Budget would change the method of calculating reserves from a liability basis to a pay-as-you-go basis. According to the Executive, this eliminates the need for the assessment based reserve.

The Executive proposes to transfer $2 billion in reserves from the SIF to the Workers' Compensation Board as follows:

- Annual deposits into the Debt Reduction Reserve in the amount of $250 million for FY 2014, $500 million for FY 2015, and $250 million for FY 2016 and FY 2017;

- $500 million would be used to fund pay-as- you-go long term capital projects that would otherwise have to be debt financed; and,

- The remaining reserves would be used to temporarily keep Workers' Compensation rates down and to finance unspecified spending initiatives. Management of the Special Disability Fund This provision expands the powers of the Workers' Compensation Board as follows:

- The scope of authority to collect assessments finance claims against the Special Disability Fund is expanded to include all affected employers as opposed to self-insurers, the state insurance fund and carriers. However, the nature of the assessment is changed from 150 percent of disbursements during the preceding year to 150 percent of expected disbursements during the current year less the estimated amount of net assets expected to be in the fund by the end of the year. This amount is included in the administrative assessment established pursuant to section 151 of the Workers' Compensation Law.

- Expands the scope of the Workers' Compensation Board's authority to conduct audits from being limited to self insurers, insurance carriers and the SIF to having audit authority over all employers. Also the scope of the audits is expanded from conducting audits of special disability fund financing agreements to having the authority to conduct audits of any matter falling under the Workers' Compensation Law.

Minimum Compensation Benefit. This provision would increase the minimum weekly payment to claimants from $100 per week to $150. The last time the minimum weekly payment was increased was July 2007 when it was increased from $40 to $100. The maximum benefit is currently two thirds of the New York State average weekly wage for the year.

Miscellaneous Provisions. The Executive proposal repeals and reconstitutes §151 of the Workers' Compensation law which delineates the Board's authority to collect it's administrative expenses through an assessment on employers. This provision appears to consolidate existing fees and surcharges but the entirety of its implications are undetermined.

UNEMPLOYMENT INSURANCE REFORM (S2607/A3007 Part O)

This bill would broadly reform New York's Unemployment Insurance (UI) system, reducing employer costs, increasing UI benefits for claimants, creating incentives for employment and stabilizing UI Trust Fund finances.

Currently, the UI Trust Fund is insolvent, with a $3.5 billion deficit. Employer costs are high, while worker benefits are inadequate and lower than national averages. This proposal would reform both the tax and benefit structure to eliminate the current deficit, decrease costs to employers, increase claimant benefits, and relieve businesses of uncertainty due to repeated Trust Fund deficit cycles. Enactment would result in a solvent Trust Fund in 2016.

The UI Trust fund's insolvency results from paying out more in claims than is taken in through the New York State UI Tax (SUTA). When the UI trust runs a deficit, New York State must borrow money from the Federal government, which in turn charges the State interest. That cost of the interest is passed along by the State to businesses through the Interest

Assessment Surcharge (IAS). The Federal government also institutes a protocol to recover its principal directly from businesses. The Interest Assessment Surcharge (IAS) is an additional charge to employers when the UI Trust runs a deficit. The amount of the assessment that was due September 30, 2012, was $102 million. The SFY 2013-14 Executive Budget contains an IAS appropriation for $125 million, however the actual cash assessment is expected to be less than the full appropriation.

Federal Unemployment Tax Act (FUTA) Credit. In addition to being assessed for unemployment insurance through the State Unemployment Tax Act (SUTA), the Federal government charges a FUTA tax to cover its administrative costs. The full amount of the tax is six percent of the taxable wage base (discussed under “Modify Wage Base”). Businesses that pay their UI assessments in a timely manner receive a credit of 5.4 percent, which makes the effective FUTA rate .6 percent. When the UI Trust runs a deficit for two consecutive years, the Federal government incrementally reduces this credit each year by .3 percent until the principal is fully recovered. Reductions in the FUTA credit translate into higher costs for businesses. Modify Wage Base. The SUTA and FUTA is assessed on a per employee basis against the first $8,500 of wages paid (referred to as the “base”).

Specifically, the bill would:

• Increase the maximum weekly benefit to workers, currently $405, annually through 2026, when the benefit would be incrementally adjusted to 50% of the average weekly wage and also increase the minimum benefit from $65 to $100;

• Modify the wage base, from $8,500 to $10,300 in 2014 with incremental increases thereafter, and amend the schedule for determining employer liability in order to increase revenues to stabilize the Trust Fund, eliminate the current deficit, and lower employers costs;

- Further decrease employer costs by removing obligations when employees are terminated or resign, reducing benefits when employees receive severance or pension, and combating fraud; and

- Encourage UI recipients to actively seek employment by mandating weekly contacts with potential employers, adjusting the benefit calculation, and increasing the requirements to accept employment offers.

- Makes permanent the Department of Labor's authority to assess surcharges for interest payments on federal government UI benefits loans.

DESIGN/BUILD PROVISIONS (S2605/A3005 Part S)

To speed the State's recovery from Superstorm Sandy, this bill would permit State agencies and authorities to use design-build contracts and design-build-finance contracts as alternative project delivery methods -- approaches which the Governor claims have been shown to shorten time to completion for a project, without sacrificing quality.

Design-build is a method of project delivery in which a single contract is executed with a single entity or team of entities providing architectural, engineering and construction services. The benefits of the approach include:

- Expedited project completion by grouping multiple responsibilities in a single contract (such as combined design and construction);

- Streamlined procurement process;

- Access to specialized expertise (such as financial management);

- Improved design, thereby reducing flaws and future remediation costs;

- Access to proprietary technology (such as special pavement design); and

• Ability to apply special incentives and disincentives to improve project performance.

Certain state entities were authorized to use this alternative project delivery method pursuant to the Infrastructure Investment Act (L. 2011, c. 56) to rebuild roads and bridges but not buildings. This proposal specifically includes buildings.

This bill would permit all State agencies and authorities except SUNY and CUNY to use design-build contracts and would also allow them to use design-build-finance contracts, in which a single contract may be executed with an entity or team of entities for the design, construction, and financing of a capital project. Such financing may consist of private capital or a combination of private and public funds.

The Governor noted that with billions of dollars expected to be spent in the coming months to recover from Superstorm Sandy, the savings to taxpayers would be substantial.

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