



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

OSC No. 19

MEMORANDUM
RE
AN ACT

to amend the workers' compensation law, in relation to the pre-audit of expenditures from the state insurance fund by the state comptroller and to repeal certain provisions of such law relating thereto

PURPOSE: This bill clarifies that payments from the State Insurance Fund are subject to pre-audit by the State Comptroller.

SUMMARY OF PROVISIONS: There are two Sections numbered 88 in the Workers' Compensation Law. Section 1 of this bill amends the Section 88 of the Workers' Compensation Law that was amended by Chapter 6 of the Laws of 2007 and Section 2 of this bill repeals the Section 88 of the Workers' Compensation Law that was amended by Chapter 635 of the Laws of 1996. These amendments make it clear that the payments made from the State Insurance Fund ("Fund") are subject to pre-audit by the State Comptroller.

Section 3 of this bill states that this act would take effect immediately and be deemed effective as of April 1, 1996.

PRIOR LEGISLATIVE HISTORY:

S. 7562 and A. 10316 – (Passed Assembly) of 2011- 2012

JUSTIFICATION: Chapter 635 of the Laws of 1996 made major changes to the State's workers' compensation system. As part of that chapter, Section 88 of the Workers' Compensation Law was amended to provide that the Fund shall not be considered a State agency or fund for purposes of Section 4 of the State Finance Law, thus eliminating it from the appropriation requirement of that section, and eliminating approval of the Fund's budget by the Budget Director. The amendment was intended, in part, to prevent further transfers of the State Insurance Fund's moneys to the State's general fund.

These amendments to Section 88 of the Workers' Compensation Law exceeded their intended purpose by attempting to eliminate the constitutionally mandated pre-audit of the Fund's funds by OSC pursuant to Section 111 of the State Finance Law, apparently as a corollary to eliminating the Fund from the appropriation requirement of Section 4 of the State Finance Law. However, the requirements of appropriation and pre-audit derive from two separate constitutional provisions.

Section 4 of the State Finance Law, which requires appropriation of all money "under the management of the State, or any agency or officer thereof," is broader than the constitutional appropriation requirement of Article VII, Section 7, as articulated by the Court of Appeals. In Anderson v. Regan (53 N.Y.2d 356) the Court indicated that "off

budget" funds (those deposited outside the State Treasury) are not subject to the appropriation requirement of Article VII, Section 7. Therefore, it is constitutionally permissible to remove off-budget State funds from the appropriation requirement of State Finance Law Section 4. It does not follow that off-budget funds can be removed from the constitutional pre-audit requirement, which derives independently from Article V, Section 1 of the New York State Constitution.

Article V, Section 1 mandates the pre-audit by the Comptroller of all money of the State and all money under its control, and is not limited to funds in the State Treasury. Section 111 of the State Finance Law is merely a codification of that constitutional requirement. The exemption of the Fund from the appropriations requirement of Section 4 of the State Finance Law does not alter the fact that the Fund's moneys are both money of the State and money under the control of the State for purposes of Article V, Section 1 of the State Constitution.

This bill deletes the language added by Chapter 635 which purported to eliminate the pre-audit authority of the Comptroller.

Accordingly, the Comptroller urges passage of this legislation.

BUDGET IMPLICATIONS: This bill has no significant fiscal impact.

EFFECTIVE DATE: This bill would take effect immediately and be deemed effective as of April 1, 1996.