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| <b>2008-09<br/>Spending<br/>Plan</b> | <b>Agency Name: NYS Workers Compensation Board</b> |
|                                      | <b>Agency Head: Zachary Weiss - Chair</b>          |

## **A. Overview of Proposed Plan**

### *A.1 Overall Approach*

In accordance with the directives contained in Budget Bulletin B-1178, the Board has completed a review of every Division/Bureau within the agency in order to meet the requirements of the bulletin. The Board continues to adhere to the long standing direction from DOB to deliver core functions more effectively and to eliminate non-core functions and non-essential spending. As you are aware, the Board is a Special Revenue Other agency that receives all of its funding from assessments upon insurance carriers, self insured employers and political subdivisions. As a steward of these funds, the Board has always been accountable to that constituency as well as the State control agencies to utilize these funds in the most efficient manner possible.

The Board's plan achieves the required savings on a recurring basis, through a mix of personal service and non-personal service reductions. The plan allows the Board to continue to implement the workers compensation reform legislation that was enacted in 2007. However, new programmatic requirements are likely to be imposed upon the Board as a result of a continuing need to reform the workers' compensation system, and these new -- as yet non-quantified -- needs have not been addressed within this plan, and may require additional resources in the future.

### *A.2 Achievement of Savings on a Recurring Basis*

The Board will reduce its Personal Service expenditures by \$1.9 million by careful management and redeployment of its current staff in critical areas, as well as reducing staff through attritions. This management process will not allow for any increases that are mandated by the five programmatic outgrowths of the reform legislation that are detailed in section A4 of this document. The Board will reduce its Non-Personal Service expenditures by \$3.2 million through a series of spending cuts/modifications across all programmatic areas of the agency, and continue its existing efforts to hold down spending in all areas. An important part of the focus of NPS cuts going forward will be the conversion of consultants to State workers. It is estimated that this conversion could take place over the next three years, providing full annual savings upon completion of approximately \$2.6 million.

### *A.3 Protecting Key Priorities*

On a consistent basis, the Board continues to seek innovative efficiencies in its service delivery processes/business operations; continues to invest in our infrastructure; and continues to deploy critical systems in support of the Board's mission, all of which is done in an effort to ensure the most cost effective delivery of services while ensuring that the Board's core operational requirements are met. As you know, the Board is now completely dependent on its computer systems to accomplish its day-to-day business. To that end, the Board remains focused on keeping its systems operating efficiently while developing its systems to better serve the users and to support its business functions.

#### *A.4 Treatment of New Initiatives*

The following initiatives are related either to the recently enacted reform legislation or to the Self Insurance Re-Engineering and Defaulted Group Self Insured Employer issues. The Board will not be able to fully implement the proposals if the mandated reductions are absorbed by the agency's administrative budget.

Data Collection: The use of data is critical to important decisions and analysis, which are made by the leaders of New York State government, and the New York State Workers' Compensation Board (WCB) in the measurement, analysis and administration of the workers' compensation system in the State of New York. For example, on March 13, 2007, former Governor Spitzer signed into law a sweeping Workers' Compensation Reform initiative. During the analysis that led to its passage, no organization, public or private, had all of the data necessary to answer fundamental questions regarding the cost of increasing the maximum weekly benefit level nor the cost savings related to capping permanent partial disability benefits – the two issues that had left stakeholders in a 12 year old stalemate. The WCB was ultimately cited by the governor as able to provide the data necessary to reach an agreement, but only with considerable effort. This led to the identification of the need for improved "Data Collection" in the area of Workers' Compensation data in a letter from the Governor that accompanied the passage of the reform legislation.

The Board maintains some data on workers' compensation claims and its own performance regarding the resolution of claims. However, the data currently collected is not adequate to easily calculate costs or assist in making informed policy decisions. In response to the direction of then Governor Spitzer, the Superintendent of Insurance issued his report Summarizing Workers' Compensation Data and Recommending Improvements in Data Collection and Development of a Research Structure for Public Policy on March 1, 2008. In his report, the Superintendent recommended that the Board create an independent division that reports to the Chair to house the data warehouse and conduct research on public policy issues. To implement this recommendation the Board must obtain all necessary hardware to support a data warehouse that is separate from the transactional system used for claims and the staff to maintain the warehouse and conduct the research. Such research will require the talents of economists, actuaries and other professionals who can properly analyze the data to determine costs, savings, and trends in the New York workers' compensation system and compare that data to other states. Furthermore, the data warehouse will need to receive data from the State Insurance Fund, private insurance carriers, self-insured employers and third party administrators. This means a standardized format and processes must be developed for the data. The Superintendent also recommends the creation of a research advisory committee comprised of representatives of the Legislature, business, labor, insurers, academia, the Departments of Insurance and Labor and the Board.

In addition to its role in the reform legislation, the WCB receives requests from legislators, stakeholders, policy analysts and researchers as well as from internal stakeholders seeking data to drive continuous improvement within the WCB. In the ever-increasing direction toward transparency in government the traditional role the WCB played in "closing claims" must expand to address the needs of New Yorkers for quick and accurate data collection systems. Additionally, data for use in fraud detection should expand. According to the National Insurance Crime Bureau, workers' compensation fraud costs employers \$6.5 billion a year nationwide. In the Information Age, data mining is one of the most powerful tools for identifying fraud and abuse.

To satisfy these data needs, the processes and tools which are currently used by WCB for the analysis of enterprise information are inefficient. The time and expertise required to answer analytical questions or to provide analytical data often require the effort of specialized resources who must dedicate considerable time to each data request. Individual stakeholders are often limited in the speed or scope of the data they can be provided because of competing priorities. It will be difficult and cumbersome to measure the effects of the 2007 reform and to be able to make data driven decisions to advance the Workers Compensation system even further in the future with the current tools and processes.

The expansion of the WCB's data warehouse will address multiple data-related needs of policy makers, WCB management and the public by accumulating in a standard accessible platform the data required to inform the development and implementation of sound public policy. The exact number of staff and other resource needs are still being developed.

Waiver Agreement Management Office (WAMO): The 2007 workers' compensation reform legislation closes the Special Disability Fund (also known as the Second Injury Fund and hereinafter referred to as the Fund) to claims with dates of accidents or disabilities on or after July 1, 2007, and directs the Chair to establish the Waiver Agreement Management Office to reduce the liability of the Fund for covered claims. This Fund reimburses insurance carriers and self-insured employers for payments to claimants when the claimant suffers a work related injury that results in permanent disability that is greater than it would have been if not for the existence of a pre-existing disability of the claimant. The Fund is funded on a pay as you go basis through assessments on employers and has built up an approximately 16 billion dollar liability. In order to reduce the liability of the Fund, the WAMO is authorized to use a variety of methods that either close the claims for which the Fund is liable through the use of waiver agreements pursuant to Workers' Compensation Law §32 or transfer the Fund's liability to another entity. To fund the waiver agreements or the transfer arrangements, the legislation authorized the issuance of bonds by the Dormitory Authority. It is the responsibility, under the supervision of the Chair and with the guidance of the Special Disability Fund Advisory Committee, of the WAMO to determine the best way to manage and reduce the liability of the Fund. In order to achieve its statutory objectives, the WAMO must be properly staffed so that information can be gathered and decisions made. Among other issues, the WAMO must decide which methods provided by the statute should be used to reduce the liability, how to implement the methods, conduct any necessary procurements, evaluate the value of claims and possibly the solvency of insurance carriers or financial institutions. Most of this activity must occur before bonds are even issued. Without a properly staffed WAMO, the liability of the Fund will not be properly managed or reduced and the savings attributed to the closure of the Fund and the reduction in its liability will not be realized for New York employers. Once plans are made for reducing the liability and the bonds issued, the cost of the WAMO can be funded through bond proceeds. However, to get to the point where bonds can be issued, the Board must have the ability to staff and fund the WAMO.

Return to Work Recommendations: The 2007 workers' compensation reform legislation for the first time limits the length of time a claimant, injured or disabled on or after March 13, 2007, with a permanent partial disability (PPD) classification may receive cash benefits based upon the injured worker's degree of disability. To protect injured workers whose benefits will cease under the new legislation, a safety net was established. Part of the safety net includes a report by the Commissioner of Labor of recommendations for facilitating return to work for those categorized as permanently partially disabled. Return to work programs are good for both employers and employees as they reduce overall costs for employers and improve the mental, social and economic well being of employees. The recommendations include: 1) creating a return to work education program which includes sample policies and procedural frameworks for return to work programs and the value and

components of an effective program as well as training for physicians; 2) having the Board reimbursing physicians for the time spent evaluating claimants and for the time necessary to coordinate with the employer and carrier around the injured worker's job specifications and physical demands; 3) a Board requirement that all employers with 25 or more employees have a formal, consistent return to work policy; 3) a neutral, non-medical vocational rehabilitation evaluation of all claimants who have not returned to work by the time they reach maximum medical improvement to determine if vocational education or retraining will help them to return to work paid for by the insurance carrier or self-insured employer; 4) creation of an incentive programs to encourage the hiring of workers who have permanent work restrictions; 5) compensating attorneys for representing claimants in medical-only cases; and 6) having the Board implement proactive approaches to return to work such as a) developing procedures for promptly contacting claimants with 120 days of injury or within two weeks of medical maximum improvement to determine the feasibility of return to work, b) designing and implementing a training program for Board employees to understand the role of return to work, c) developing, implementing and enforcing penalties for late or non-filing of forms related to return to work and rehabilitation programs, and d) reviewing forms used by employers to ensure that the forms promote expanded interaction between the employer and the claimant to facilitate return to work. Some of the recommendations require statutory changes, while others can be implemented without such changes. Regardless, most of the recommendations require additional work by Board staff and the development and training for Board staff on how to accomplish the additional work.

Medical Guidelines: The Superintendent of Insurance was directed to develop guidelines for treating injured workers, evaluating impairments of claimants and training on the guidelines. Currently New York does not have any treatment guidelines. The Superintendent, with the assistance of an Advisory Committee, was tasked with developing treatment guidelines in order ensure appropriate treatment, minimize factual disputes over treatment and speed the delivery of treatment to injured workers. On December 3, 2007, the Superintendent issued a report with treatment guidelines for the low back, cervical spine, knee and shoulder and guidance on the necessary education and training of physicians, insurance carrier examiners, Board staff and attorneys about the guidelines. Approximately 32,828 medical providers require training. If the training is not adequate, the treatment guidelines will not be used properly and conflicts will not decrease. Further, the training must be developed and provided by medically trained educators. The Superintendent has not completed the impairment guidelines. However, once they are completed, training will be necessary. This training will be for the same individuals and is critical because the impairment guidelines will assist the medical providers in determining the degree of disability of a claimant, which will be used to determine the claimant's percentage loss of wage earning capacity due to the work related injury. It is the percentage loss of wage earning capacity that determines for how long an injured worker will receive permanent partial disability benefits. While the Board currently has impairment guidelines, they are outdated, not based upon objective criteria and inadequate because they are not compatible with the new schedule of maximum benefit weeks for claimants classified with a permanent partial disability. Currently the Board does not have a medical director, but with the development of new treatment and impairment guidelines a medical director is a necessity. The Board needs a physician or physicians on staff to answer medical questions, lead and oversee updates to the guidelines, advise the Chair on treatment questions, pharmacy issues relating to the pharmacy fee schedule, and assist with the maintenance of the list of tests or procedures for which prior authorization is not required under WCL §13-a(5). The Board must have adequate funding to ensure the proper implementation and updating of the guidelines in order to achieve the estimated savings from limiting the number weeks of permanent partial disability benefits claimants receive. The savings from setting maximum number of benefit weeks accounts for a large portion of the 1 billion savings and 20% rate decrease announced in July 2007.

**Self Insurance:** Recent developments in the self insurance program have highlighted the need for a substantially higher level of personal and non-personal service costs associated with both the group and individual self insurance programs. Most notably, during 2007-08, there have been a number of group defaults. These defaults have increased the self insurer's assessment from \$20 million annually to \$66 million for the current fiscal year, and perhaps as high as \$80 million for the next fiscal year. It is currently projected that the defaulting groups have an unfunded liability of almost \$500 million.

In addition, the 2007 reform legislation mandated that the Board report to the Governor and the Legislature on the feasibility of a pooled approach to securing the claims of individual self insurers. Under the pooled approach, a guarantee pool would be created and funded with the money that would otherwise have to be paid to financial institutions for individual security deposits. In turn, the pool would be used to guarantee the payment of claims in the event of a default.

There is currently a legislative proposal under development which will address the group defaults and transition the individual self insurance program consistent with the recommendations presented in the 2007 report. That proposal, if passed, will result in a major restructuring of the various self insurance programs. Regardless of the legislative outcome, there are a number of additional programmatic changes under development, particularly related to the group program, that will result in significant program enhancements designed to eliminate the likelihood of group defaults on the scale recently experienced (i.e., more robust reporting and funding standards).

**B. Summary of General Fund Financial Impacts: N/A**

**C. Identification of Proposed General Fund Actions: N/A**

**D. Summary of Impact on Other Funds**

| <b>OTHER FUNDS -- SAVINGS SUMMARY</b> |                       |                    |                    |
|---------------------------------------|-----------------------|--------------------|--------------------|
|                                       | Required<br>Reduction | 2008-09<br>Savings | 2009-10<br>Savings |
| Personal Service                      | N/A                   | 1,941,000          | 2,086,000          |
| Non-personal Service                  | N/A                   | 3,175,000          | 5,053,000          |
| Total State Operations                |                       | 5,116,000          | 7,139,000          |
| <b>TOTAL</b>                          |                       | <b>5,116,000</b>   | <b>7,139,000</b>   |

| <b>OTHER FUNDS -- YEAR-TO-YEAR CHANGE, AFTER SAVINGS</b> |                   |                       |                   |
|--|-------------------|-----------------------|-------------------|
|  | 2007-08<br>Actual | Revised<br>Projection | Percent<br>Change |
| Personal Service   | 82,205,000        | 84,918,000            | 3.3%              |
| Non-personal Service                                     | 108,917,000       | 108,778,000           | -.07%             |
| Total State Operations                                   | 191,122,000       | 193,696,000           | 1.3%              |
| <b>TOTAL</b>   |                   |                       |                   |

**E. Identification of Proposed Other Fund Actions**

|   | 2008-09<br>Cash | 2009-10<br>Cash | 2010-11<br>Cash |
|---|-----------------|-----------------|-----------------|
| <b>OTHER FUNDS (Note the fund/s affected by each proposal, in parentheses at the end of each entry)</b> | 5,116,000       | 7,139,000       | 7,989,000       |
| <b>State Operations: Miscellaneous SRO Fund 339 - B7</b>  |                 |                 |                 |
| 1. Reduce Personal Service – vacant positions   | 1,392,000       | 1,392,000       | 1,392,000       |
| 1a. Reduce Personal Service - -attrition  | 435,000         | 580,000         | 580,000         |
| 1b. Reduce Overtime/Stand-by  | 114,000         | 114,000         | 114,000         |
| 2. Reduce associated Fringe Benefits/Indirect Costs   | 1,342,000       | 1,420,000       | 1,420,000       |
| 3. Reduce Travel, Training and Subscription Costs   | 233,000         | 233,000         | 233,000         |
| 4. Convert Consultants to State Workforce   | 600,000         | 1,900,000       | 2,600,000       |
| 5. Reduce the Cost of Maintenance Agreements  | 200,000         | 200,000         | 200,000         |
| 6. Modify IT Equipment Purchase Schedule  | 700,000         | 700,000         | 700,000         |
| 7. Close 11 Customer Service Centers – Statewide  | 100,000         | 600,000         | 750,000         |

**F. Plan to Manage the Workforce***F.1 Overall Approach*

In response to the required savings target exercise, the agency will eliminate vacant positions. Additionally, the Board will carefully manage and redeploy its current staff into critical programmatic areas. Reductions in staff levels will be achieved by attritions throughout this fiscal year in order to better position the agency to adapt to critical shortages wherever they occur. It is expected that all of the specific programmatic needs can be met through attrition and that certain key positions will have to be filled from the State's employment pool; however, the Board will attempt to minimize this type of hiring.

*F.2 Plan for Refill of Vacant Positions (both current and anticipated vacancies)*

The Board has identified a 40 positions that are currently vacant, or expected to become vacant, which can be eliminated as part of this exercise. These positions will be used to absorb the responsibilities of a technology services currently performed by private contractors, at savings of \$2.6 million when fully implemented.

| <b>Workforce Impact -- All Funds</b>                                  |       |
|---|-------|
| <b>a. Initial Target: 1,539</b>                                       | ----- |
| b. Current Fills PP# 3 or 4   | 1,509 |
| c. Recurring impact of proposed actions (see Parts C & E)             | -10   |
| d. Recurring impact of vacancy-refilling plan (see F.2) *             | 40^   |
| e. Total FTEs March 31, 2009 (line b minus line c, plus/minus line d) | 1539  |
| f. Change from Initial 2008-09 Target (line a minus line e)           | 0     |

\* - Additional FTE's that will be required for implementation of the Waiver Agreement Management Office, the Return to Work Program, the Medical Guidelines Program, the Data Warehouse Program, and the Self Insurance Program are not yet known, and are not reflected in the table.

^ - The number of positions needed to fully implement the technology in-sourcing initiative is 40 FTEs; the number expected to be filled in FY 2008-09 will be less.

## G. Monthly Projections: All Funds Workforce; General Fund State Operations/Local/Capital

|                                 | APR    | MAY    | JUN    | JUL    | AUG    | SEP    | OCT    | NOV    | DEC    | JAN    | FEB    | MAR    | TOTAL   |
|---------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| <b>A. Workforce - All Funds</b> |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Est FTEs Month-end              | 1,508  | 1,509  | 1,509  | 1,509  | 1,510  | 1,510  | 1,515  | 1,515  | 1,519  | 1,519  | 1,519  | 1,519  |         |
| <b>B. State Operations</b>      |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Personal Service                |        |        |        |        |        |        |        |        |        |        |        |        |         |
| 1st PP                          | 3,254  | 3,276  | 3,292  | 3,292  | 3,292  | 3,294  | 3,294  | 3,306  | 3,306  | 3,315  | 3,315  | 3,315  | 39,551  |
| 2nd PP                          | 3,288  | 3,292  | 3,292  | 3,292  | 3,294  | 3,294  | 3,306  | 3,306  | 3,315  | 3,315  | 3,315  | 3,315  | 39,624  |
| 3rd PP (if applies)             | 3,290  | 0      | 0      | 0      | 0      | 0      | 3,306  | 0      | 0      | 0      | 0      | 0      | 6,596   |
| Subtotal PS                     | 9,832  | 6,568  | 6,584  | 6,584  | 6,586  | 6,588  | 9,906  | 6,612  | 6,621  | 6,630  | 6,630  | 6,630  | 85,771  |
| NPS                             | 16,552 | 5,759  | 4,516  | 13,864 | 5,272  | 3,862  | 15,620 | 5,083  | 5,567  | 17,102 | 7,680  | 7,048  | 107,925 |
| <b>Total Disbursements --</b>   |        |        |        |        |        |        |        |        |        |        |        |        |         |
| State Ops                       | 26,384 | 12,327 | 11,100 | 20,448 | 11,858 | 10,450 | 25,526 | 11,695 | 12,188 | 23,732 | 14,310 | 13,678 | 193,696 |

NOTE: The amounts above for PS and NPS are displayed in thousands

NOTE: The amounts above do not reflect an additional \$5 million reduction which is under discussion with DOB

## H. Assumptions Underlying the Proposed Plan

The primary assumption that this proposal is based upon is that the primary task of this agency is ensuring that injured workers, and other affected participants of the workers' compensation system receive fair and equitable treatment with regard to their injuries. Our review of all of the operational aspects of the Board's various programs were performed with this over-riding mission in mind. The efforts made within the Board to meet the savings goals and still provide these services are reflected in this document. However, it must be noted that this plan does not yet reflect any new resources -- as yet unidentified -- which may be necessary to implement the initiatives/mandates discussed in section A4.

## **I. Management of Risks Inherent in the Plan**

The risks attached to this plan include the following:

- An inability to convert consultants to State workers on the assumed schedule could jeopardize some of those savings. To mitigate this risk, the Board will proactively work with Civil Service and Budget to establish the appropriate items that will be needed for this conversion effort. Additionally, we will closely monitor the implementation of the conversion initiative in order to ensure that the pertinent benchmarks for this process are met.
- Closing 11 Customer Service Centers could cause some concern in those communities and claimants relative to those closures. In order to maintain a consistent and appropriate statewide delivery of services for the injured workers and employers, as well as meeting the savings goal, the agency has reviewed its current network of facilities as well as the proposed network to make sure that there was a Board location within a reasonable distance that is accessible for all of its constituents.

## **J. Additional Savings Opportunities for 2008-09**

Reduce or Eliminate the Maintenance Undistributed appropriations to DOL and DOH within the Workers' Compensation Board's budget.

## **K. Potential Future Savings Opportunities/Operational Improvements (indicate if statutory change is required)**

- Investigate the use of Technology to replace the need for the physical presence of a Verbatim Reporter at every hearing that the Board holds.
- Investigate further requirements for Board forms to be submitted electronically in order to reduce scanning costs.