

2011-12 NEW YORK STATE EXECUTIVE BUDGET

**TRANSPORTATION
ECONOMIC DEVELOPMENT AND
ENVIRONMENTAL CONSERVATION
ARTICLE VII LEGISLATION**

MEMORANDUM IN SUPPORT

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MEMORANDUM IN SUPPORT

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

AN ACT to authorize funding for the Consolidated Local Street and Highway Improvement Program (CHIPS) and Marchiselli program for state fiscal year 2011-2012 (Part A); to amend chapter 279 of the laws of 1998 amending the transportation law relating to enabling the commissioner of transportation to establish a single audit pilot program, in relation to making such provisions permanent (Part B); to amend chapter 312 of the laws of 1994, amending the vehicle and traffic law relating to suspensions of licenses pending prosecution of certain alcohol-related charges, and authorizations for probationary and conditional drivers' licenses, in relation to the effectiveness thereof (Part C); to amend chapter 533 of the laws of 1993, amending the vehicle and traffic law and the correction law relating to suspension and revocation of driver's licenses upon conviction of certain drug-related offenses, in relation to the effectiveness thereof (Part D); to amend chapter 569 of the laws of 1981, amending the vehicle and traffic law relating to motor vehicle liability insurance, financial security, criminal acts and penalties for non-compliance, in relation to making provisions permanent; and to amend chapter 781 of the laws of 1983, amending the vehicle and traffic law and other laws relating to motor vehicle liability insurance, financial security, criminal acts and certain penalties for noncompliance, in relation to making provisions permanent (Part E); to amend the vehicle and traffic law and the criminal procedure law, in relation to governing operators of commercial motor vehicles and federal requirements for medical certification pertaining to such operators (Part F); to amend chapter 393 of the laws of 1994 amending the New York state urban development corporation act, relating to the powers of the New York state urban development corporation to make loans, in relation to the effectiveness thereof (Part G); to amend the state finance law, in relation to the excelsior linked deposit act (Part H); to amend part U of chapter 57 of the

laws of 2005 amending the labor law and other laws implementing the state fiscal plan for the 2005-2006 state fiscal year, relating to New York state higher education matching grant program for independent colleges, in relation to the effectiveness thereof (Part I); to amend the public authorities law, in relation to the state governmental cost recovery system; and to repeal section 2975-a of such law relating thereto (Part J); to amend the executive law, in relation to the community services block grant program; and to amend chapter 728 of the laws of 1982 and chapter 710 of the laws of 1983, amending the executive law relating to community services block grant programs, in relation to the effectiveness thereof (Part K); to amend chapter 21 of the laws of 2003, amending the executive law relating to permitting the secretary of state to provide special handling for all documents filed or issued by the division of corporations and to permit additional levels of such expedited service, in relation to the effectiveness thereof (Part L); to amend the public service law and the real property tax law, in relation to repealing the Tug Hill commission and to repeal certain provisions of the executive law and the public service law relating thereto (Part M); to amend the executive law, in relation to the salary of the chairperson of the New York State athletic commission (Part N); to amend the executive law, the economic development law and the state administrative procedure act, in relation to the removal of statutory references to the governor's office of regulatory reform; and to repeal subdivision 8 of section 202-b of the state administrative procedure act, relating thereto (Part O); to authorize and direct the New York state energy research and development authority to make a payment to the general fund of up to \$913,000 (Part P); to authorize the New York State Energy Research and Development Authority to finance a portion of its research, development and demonstration and policy and planning programs from assessments on gas and electric corporations (Part Q); to authorize the department of health to finance certain activities with revenues generated from an assessment on cable television companies (Part R); to amend the environmental conservation law and chapter 67 of the laws of 1992 amending

the environmental conservation law relating to pesticide product registration timetables and fees, in relation to pesticide registration time frames and fees (Part S); to amend the agriculture and markets law, authorizing the commissioner of agriculture and markets to establish a competitive grants program (Part T); to amend the New York state urban development corporation act, in relation to the healthy food/communities initiative; to amend the agriculture and markets law, in relation to authorizing the establishment of a revolving loan fund; and to amend the agriculture and markets law, in relation to state aid for farmers' markets (Part U); to amend the state finance law, in relation to the "I Love NY waterways" boating safety account; and to repeal article 4-A of the navigation law, relating to enforcement by counties (Part V); to amend the state finance law, in relation to the transfer of tribal compact revenue to the general fund and to the city of Niagara Falls (Part W); to amend the racing, pari-mutuel wagering and breeding law, in relation to assessing a surcharge on purses (Part X); to amend the general business law, in relation to increasing the term of licensure and registration from two to four years (Part Y); and to amend the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law and the state finance law, in relation to establishing standards for electronic real property tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents, debit cards issued for tax refunds, improving sales tax compliance and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part Z)

PURPOSE:

This bill contains provisions needed to implement the Transportation, Economic Development and Environmental Conservation portions of the 2011-12 Executive Budget.

This memorandum describes Parts A through Z of the bill which are described wholly within the parts listed below.

Part A – Provide the annual authorization for the Consolidated Local Street and Highway Improvement Program (CHIPS) and Marchiselli programs.

Purpose:

This bill authorizes funding for the Consolidated Local Street and Highway Improvement Program (CHIPS) and Marchiselli Programs for State Fiscal Year 2011-12.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill authorizes the CHIPS and Marchiselli capital aid programs to counties, cities, towns and villages for State Fiscal Year 2011-12 at \$363.1 million and \$39.7 million, respectively.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because annual authorization is required for these programs.

Effective Date:

This bill takes effect immediately.

Part B – Permanently extend Department of Transportation Single Audit Program.

Purpose:

This bill makes permanent the provisions of Transportation Law § 21, which unifies and simplifies the audit process for State transportation assistance to municipalities and public authorities by aligning that process with the federal single audit.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Transportation Law § 21 applies to municipalities and public authorities with annual State transportation assistance spending in excess of \$100,000 for programs administered by the New York State Department of Transportation (DOT). In cases where such entity is already required to perform a federal single audit under the Federal Single Audit Act of 1984, the current law allows an independent certified public accountant to conduct an audit of State funds received by a municipality at the same time and in the same format as they conduct the federal audit, thereby satisfying State audit requirements and eliminating the need for examination by State auditors.

DOT benefits from having audit information collected in a uniform, simplified, and reliable manner. Since the inception of Section 21, there has been a decrease in workload for DOT auditors, allowing more time for audits of State-only programs and smaller programs. The municipalities and authorities that receive State transportation assistance benefit by performing both federal and State audits in a unified and simplified manner.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because the Department would incur approximately \$300,000 in additional annual auditing costs for these programs in the absence of the single audit legislation.

Effective Date:

This bill takes effect immediately.

Part C – Permanently extend suspension of drivers' licenses for certain alcohol-related charges.

Purpose:

This bill prevents the State from losing vital transportation capital grants from the Federal government, by conforming State law to federal requirements regarding penalties for use of alcohol while operating motor vehicles.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill amends Section 7 of Chapter 312 of the Laws of 1994 (pertaining to Vehicle and Traffic Law) to avoid losing federal highway assistance funding. This bill makes permanent the State's conformance to federal law by removing the expiration date for the statute that imposes a suspension of driving privileges upon those charged with

driving while intoxicated. Failure to enact this legislation results in non-compliance with Title 23 USC, § 164, causing the Department of Transportation a three percent annual loss of certain federal highway funds (Surface Transportation Program, Interstate Maintenance, and National Highway System).

These provisions have been extended repeatedly, most recently by Part C of Chapter 59 of 2009, which extended the law until October 1, 2011 (after the end of the Federal fiscal year).

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget because failure to do so would require the State to transfer highway capital funds (\$10.75 million in 2011-12 and \$21.5 million annually thereafter) to highway safety programs.

Effective Date:

This bill takes effect on April 1, 2011.

Part D – Permanently extend suspension/revocation of drivers' licenses for certain drug-related offenses.

Purpose:

This bill prevents the State from losing vital transportation capital grants from the Federal government, by conforming State law to federal requirements regarding penalties for use of drugs while operating motor vehicles.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill amends Section 9 of Chapter 533 of the Laws of 1993 (pertaining to Vehicle and Traffic Law and Correction Law) to avoid losing federal highway assistance funding. This bill makes permanent the State's conformance to federal law by removing the expiration date for the statute that imposes a suspension of driving privileges upon those convicted of certain drug-related crimes. Failure to enact this legislation would result in non-compliance with Title 23 USC, § 159, causing a ten percent annual loss of certain federal highway funds (Surface Transportation Program, Interstate Maintenance, and National Highway System).

These provisions have been extended repeatedly, most recently by Part D of Chapter 59 of 2009, which extended the law until October 1, 2011 (after the end of the Federal fiscal year).

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget because failure to do so would cost the State ten percent of certain categories of federal highway capital funds (\$35.8 million in 2011-12 and \$71.6 million annually thereafter).

Effective Date:

This bill takes effect on April 1, 2011.

Part E – Make permanent provisions relating to the Motor Vehicle Financial Security Act.

Purpose:

This bill makes permanent certain provisions relating to the Motor Vehicle Financial Security Act. A portion of the proceeds from the penalties assessed for lapsed insurance coverage are deposited in the Department of Motor Vehicle's (DMV's) Compulsory Insurance Fund, which supports DMV's efforts to ensure that motorists are properly insured.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill makes permanent the requirement that motorists maintain vehicle insurance at all times as well as the related fines and penalties for non compliance.

The mission of the Motor Vehicle Financial Security Act is to ensure driver safety. The related fines and penalties allow DMV to effectively administer the Program.

These provisions were most recently extended in 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget to generate \$24 million in revenue for 2011-12 and thereafter.

Effective Date:

This bill takes effect June 30, 2011.

Part F – Conform the Vehicle and Traffic Law to Federal requirements, governing operators of commercial motor vehicles and medical certification requirements.

Purpose:

This bill conforms the Vehicle and Traffic Law (VTL) to federal requirements governing operators of commercial motor vehicles and medical certification requirements pertaining to such operators.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Recent amendments to New York State Law brought New York State largely into compliance with the Motor Carrier Safety Improvement Act of 1999 (MCSIA) and the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). However, the Federal Motor Carrier Safety Administration (FMCSA) conducted an audit in October of 2009 to assess New York's compliance with federal law and found several areas of noncompliance.

In November of 2010, New York State received a *Final Determination of Substantial Noncompliance* from the Federal Motor Carrier Safety Administration (FMCSA) regarding New York's commercial driver license (CDL) program. This bill addresses the deficiencies noted in the audit and is necessary to avoid the loss of highway funding and the potential for decertification. Failure to meet federal requirements could result in the loss of \$35 million in federal highway funds in SFY 2011-12.

The federal audit found three deficiencies:

1. Although the Department of Motor Vehicles (DMV) retains the records related to major disqualifying violations committed by CDL holders for 55 years, DMV does not retain such records for the same time period if the offense is committed by a non-CDL holder who operated a commercial motor vehicle at the time of the offense. This bill provides that major disqualifying violations committed in commercial motor vehicles shall be retained for 55 years. (49 CFR §§384.225 and 384.231)
2. Vehicle and Traffic Law currently does not mandate court reporting of traffic related convictions committed by out-of-state CDL holders or by out-of-state non-CDL holders operating commercial motor vehicles to DMV in a manner that would achieve compliance with federal law that requires states to report such convictions to the out-of-state licensees' home jurisdiction within 10 days. It is necessary for the courts to transmit such convictions within 96 hours so that DMV has sufficient time to complete the transfer of information to the home jurisdiction. (49 CFR §384.209) This is consistent with the current requirement for reporting convictions that result in action against a driver's license. (VTL §514(1)(b))

3. Criminal Procedure Law (CPL) §170.55, which addresses adjournment in contemplation of dismissal, establishes a “masking” or “diversion” program, which is prohibited by 49 CFR §384.226. To comply with this determination, this bill prohibits a court from issuing such an adjournment if the offense involves a traffic violation committed by a CDL holder or is committed in a commercial motor vehicle.

In addition to the deficiencies outlined above, on May 21, 2010 the FMCSA adopted 49 C.F.R. §391.41 to set forth the requirements to be implemented by the states to insure that CDL holders are medically qualified. This bill also implements the requirements of this recently adopted federal rule.

The final federal rule regarding FMCSA’s medical certification requirements requires that a commercial driver’s medical certification information be linked directly to his or her CDL. States have until January 30, 2012 to modify their systems and processes to be in compliance with federal requirements. (49 C.F.R. §383.73(a)(5)).

Starting on January 30, 2012, new CDL applicants will be required to self-certify to DMV regarding the type of driving they will perform and, if appropriate, that they are not subject to the federal physical qualification rules. Such applicants will also submit a valid medical certificate and, if applicable, a valid medical variance to DMV. Starting in 2012, existing CDL holders will be required to self-certify to DMV regarding the type of driving they perform and, if appropriate, that they are not subject to the federal physical qualification rules. Those CDL holders who are subject to the physical qualification requirements will have to submit a valid medical certificate (and, if applicable, a valid medical variance) to DMV. DMV in turn will be required to receive this data and post required information onto a national databank of commercial driver information. Under the federal rules, DMV must “downgrade” a CDL if a driver fails to provide the required self-certification and/or medical certificate/variance to DMV. The federal rules also require that states impose – at the very minimum – a 60-day suspension of a CDL where a CDL-holder is found to have falsified information in certain documents.

This bill gives DMV the needed authority to accomplish the mandated downgrade via a suspension of the CDL, as well as provide for the restoration of the CDL upon the submission of the required documentation and upon the happening of certain other events. The bill also grants DMV express authority to suspend a CDL upon DMV’s receipt of information from the issuer that a medical certificate or variance was issued by mistake. The bill also provides for a one-year CDL revocation for falsification of information, which is in keeping with the one-year revocations currently mandated or authorized for VTL section 392 violations. The bill also requires CDL-applicants to submit a medical certificate to DMV and authorizes DMV to suspend a CDL learner’s permit if – after issuance of the permit – the medical certificate expires.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because failure to enact this legislation could result in the loss of \$35 million in federal highway funds.

Effective Date:

Bill sections 1 and 7 takes effect on the 60th day following enactment, and bill sections 2, 3, 4, 5 and 6 takes effect on January 30, 2012.

Part G – Make permanent the general loan powers of the New York State Urban Development Corporation.

Purpose:

This bill makes permanent the general loan powers of the New York State Urban Development Corporation (UDC).

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Chapter 393 of the Laws of 1994 provides UDC with the general power to make loans. This authorization has been renewed annually and is currently set to expire on July 1, 2011.

Several similar bills repealing the sunset provision have previously been introduced, but such bills were not enacted. Provisions to extend the sunset date have been enacted each year since 1997.

Absent enactment of this bill, UDC will only be authorized to make loans in connection with certain State-funded economic development programs that have statutory loan authorization.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget, which assumes that UDC will provide certain economic development assistance through loans, rather than grants. Absent this legislation, the UDC could not fund approved loans being made by the Metropolitan Economic Revitalization Fund.

Effective Date:

This bill takes effect immediately.

Part H – Modify the Linked Deposit Program to increase the lifetime maximum per eligible business from \$1 million to \$2 million.

Purpose:

This bill increases the lifetime maximum of a linked deposit loan from \$1 million to \$2 million and allows for a four year renewal of a linked deposit loan.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill amends State Finance Law § 217 to increase the lifetime maximum of a linked deposit loan from \$1 million to \$2 million. In addition, this bill adds a new State Finance Law § 220, which allows for a four year renewal of a Linked Deposit loan.

The Linked Deposit Program helps New York State firms obtain reduced-rate financing so they can undertake projects to improve their competitiveness, market access and product development; modernize their equipment; expand their facilities for productivity growth; introduce new technologies; facilitate ownership transition; and promote job creation and retention. Funding for the Linked Deposit Program stands at \$560 million, and currently has excess capacity of \$192 million. Moreover, 300 participants have reached the lifetime maximum loan amount of \$1 million. Increasing the lifetime limit will expand utilization of the Program, and increase the amount of funds available for New York's small businesses to grow and create new jobs.

The risk that such added funding would be misused is minimal since all projects must provide evidence of economic expansion, such as job creation or development of a new facility. Additionally, allowing for the renewal of a linked deposit loan for four additional years is warranted, as borrowers have expressed interest in such an extension, and the increased timeframe of the benefit should help companies to create jobs and expand growth during these difficult economic times.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget, because increasing utilization of the Linked Deposit Program will make more capital available to small businesses in New York. Allowance of a four-year renewal on linked deposit loans should assist companies in creating jobs and expand economic growth.

Effective Date:

This bill takes effect immediately.

Part I – Extend the New York State Higher Education Capital Matching Grant Program.

Purpose:

This bill extends the New York State Higher Education Capital (HECap) Matching Grant Program for one additional year.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The 2005-06 Enacted Budget authorized the creation of the \$150 million New York State HECap Matching Grant Program to support capital projects at the State's various independent colleges. Projects are selected through a formula-driven process and must have a three to one (non-State to State) dollar match by eligible academic institutions. To date, 124 projects totaling nearly \$127 million have been approved.

With the HECap Program set to expire on March 31, 2011, a one year extender ensures that all funds are provided to the remaining eligible academic institutions in a fair and equitable manner. Absent this legislation, the remaining HECap funds cannot be approved.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget, which assumes the entire \$150 million in the HECap program is provided to eligible academic institutions.

Effective Date:

This bill takes effect immediately.

Part J – Clarify the State Governmental Cost Recovery System.

Purpose:

This bill amends the Public Authorities Law to increase the amount that the State may recover from public benefit corporations for costs incurred by the state.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Public benefit corporations use state resources for their activities. Currently, the law only permits the state to recover up to 55 million dollars in such costs. This bill provides

that the state may recover up to 60 million dollars from public benefit corporations to recover those costs.

This bill also repeals Public Authorities Law § 2975-a, which addresses prospective recovery of costs from IDA's.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget.

Effective Date:

This bill takes effect immediately.

Part K – Permanently establish the distribution formula for the Community Services Block Grant Program.

Purpose:

This bill makes permanent the distribution formula for the Community Services Block Grant Program.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Section 150-i of the Executive Law in relation to the distribution formula for the Federal Community Services Block Grant (CSBG) Program expires on September 30, 2011. Historically, this statute has been extended annually to authorize the Department of State (DOS) to distribute Federal grant awards to community action agencies. The formula is set in accordance with federal law, and there is no purpose in allowing it to lapse every year. Further, making this provision permanent would remove any danger that federal aid could be endangered by its lapse.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget. DOS has administered the Community Services Block Grant Program since 1982. The Department's authority to distribute CSBG funds is predicated upon the receipt of funding from the Federal government. The Department anticipates continued Federal funding for the CSBG Program and the State Financial Plan assumes these funds will be disbursed during the 2011-12 State Fiscal Year.

Effective Date:

This bill takes effect immediately.

Part L – Permanently establish the authority of the Secretary of State to charge increased fees for expedited handling of documents.

Purpose:

This bill makes permanent provisions of law permitting the Secretary of State to charge increased fees for the expedited handling of documents issued by or requested from the Department's Division of Corporations, and setting timeframes for the handling of such documents. The increased fees for expedited handling are necessary to reimburse the Department of State for increased administrative costs associated with expedited handling.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The Executive Law currently authorizing the Secretary of State to charge increased fees for expedited handling expires on March 31, 2011. Historically this statute has been extended annually to coincide with the enactment of the Budget. An annual sunset of the funding needed for a service provided by the Department of State to the business community is inefficient.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget. The 2011-12 Executive Budget assumes that expedited handling fees will be enacted since the costs associated with expedited handling are greater than traditional requests. Failure to enact this legislation will result in annual revenue losses of approximately \$3.5 million, forcing the Department to bear the additional costs related to expedited services without supporting revenues.

Effective Date:

This bill takes effect immediately.

Part M – Dissolve the Tug Hill Commission.

Purpose:

This bill removes all references to the Tug Hill Commission in State law to facilitate the dissolution of the Commission as recommended in the Executive Budget.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The Tug Hill Commission provides various forms of technical and other assistance to local governments in the Tug Hill region of New York, located between the Adirondacks and Lake Ontario. The Commission's programs are not essential for maintaining vital State services during this period of fiscal austerity, since the services it offers can also be provided by the Department of State's Local Government and Community Services Program. The annual expenses of the Commission are supported through General Fund appropriation.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget as the State Financial Plan assumes \$1.226 million in recurring savings resulting from the dissolution of the Tug Hill Commission.

Effective Date:

This bill takes effect immediately.

Part N – Eliminate the salary for the Chair of the State Athletic Commission.

Purpose:

This bill amends the Executive Law to eliminate the statutorily mandated salary of the Chair of the New York State Athletic Commission. The Commission would continue to exist, but the Chair position would no longer be funded.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The State Athletic Commission regulates and supervises all activities related to boxing and wrestling contests, matches and exhibitions including granting licenses to applicants, enforcing rules and regulations, and evaluating medical and safety standards to ensure the health and safety of boxers and wrestlers. While the Commission performs essential services on behalf of the State, it can do so without a full-time salaried Chair. This bill achieves Financial Plan savings by eliminating the statutorily mandated salary of the Chair of the State Athletic Commission.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget as the State Financial Plan assumes \$154,000 in recurring savings resulting from not funding the State Athletic Chair position.

Effective Date:

This bill takes effect immediately.

Part O – Eliminate statutory references to the Governor's Office of Regulatory Reform.

Purpose:

This bill removes all statutory references to the Governor's Office of Regulatory Reform (GORR) to facilitate the dissolution of the agency.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The Governor's Office of Regulatory Reform, along with its mission and powers, was established through Executive Order (EO 20 of 1995) and is referenced in various provisions of State law. This bill removes all statutory references to the Governor's Office of Regulatory Reform to facilitate the agency's complete dissolution.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget as the State Financial Plan assumes approximately \$1.5 million in savings from the elimination of the Governor's Office of Regulatory Reform.

Effective Date:

This bill takes effect immediately.

Part P – Authorize and direct the Comptroller to receive for deposit to the credit of the General Fund a payment of up to \$913,000 from the New York State Energy Research and Development Authority.

Purpose:

This bill authorizes and directs the Comptroller to receive for deposit to the credit of the General Fund a payment of up to \$913,000 from the New York State Energy Research and Development Authority (NYSERDA).

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill authorizes and directs the Comptroller to receive for deposit to the credit of the General Fund a payment of up to \$913,000 from NYSERDA from unrestricted corporate funds. The \$913,000 transfer will help offset New York State's debt service requirements relating to the Western New York Nuclear Service Center (West Valley). Chapter 59 of the Laws of 2010 provided a similar one-year authorization.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because it authorizes the Comptroller to accept from NYSERDA \$913,000 in payments to the General Fund as provided in the Financial Plan.

Effective Date:

This bill takes effect immediately.

Part Q – Authorize the New York State Energy Research and Development Authority to finance a portion of its research, development and demonstration, and policy and planning programs, and to finance the Department of Environmental Conservation climate change program, from assessments on gas and electric corporations.

Purpose:

This bill authorizes the New York State Energy Research and Development Authority (NYSERDA) to obtain revenue for certain programs from a special assessment on gas corporations and electric corporations collected pursuant to section 18-a of the Public Service Law.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The bill authorizes NYSERDA to finance its research, development and demonstration, and policy and planning programs, and to finance the Department of Environmental Conservation's climate change program, from a special assessment on gas corporations and electric corporations. Section 18-a of the Public Service Law authorizes the Department of Public Service to assess gas corporations and electric corporations for expenses related to administering Public Service Law programs. This is a special assessment, in addition to the section 18-a assessment, which has been proposed annually as an Article VII provision, and a similar bill was last enacted as Part CC of Chapter 59 of the Laws of 2010. Without this authorization, NYSERDA and DEC could not continue to implement necessary programs in the 2011-12 State Fiscal Year.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because it authorizes the collection of assessments to fund NYSERDA's research, development and demonstration, and policy and planning programs and, as set forth in the appropriation, DEC's climate change program. A \$16.2 million appropriation is included in NYSERDA's budget for these programs.

Effective Date:

This bill takes effect immediately.

Part R – Authorize the Department of Health to finance certain activities with revenues generated from an assessment on cable television companies.

Purpose:

This bill authorizes the Department of Health (DOH) to finance public service education activities with revenues generated from an assessment on cable television companies.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The bill authorizes certain expenditures of DOH as eligible expenses for cable television assessment revenue. Section 217 of the Public Service Law authorizes the Department of Public Service (DPS) to assess cable television companies for DPS costs associated with the regulation of cable television companies. This annual Article VII bill also makes DOH public service education expenses, charged to the special revenue cable television account, eligible for this funding. Chapter 59 of the Laws of 2010 provided similar authorization.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because it ensures the recovery of public service education expenses incurred by DOH, as provided for in the Financial Plan. A \$454,000 appropriation is included in DOH's budget for these activities.

Effective Date:

This bill takes effect immediately.

Part S – Make permanent the current time frames for review of pesticide product registration applications and pesticide product registration fees.

Purpose:

This bill makes permanent the current time frames for review of pesticide product registration applications and pesticide product registration fees.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The current registration fees, which were established to fund the expedited review process, are comparable to those of other states. If this legislation is not enacted and the current fees reverted to \$50, a loss of approximately \$7 million per year in revenue would result. Failure to enact this legislation would also result in additional reductions of Department of Environmental Conservation (DEC) staff which review and approve pesticide product registration applications.

The bill amends Section 9 of Chapter 67 of the Laws of 1992 to remove the sunset date applicable to the Environmental Conservation Law (ECL) §33-0704, and make permanent the current time frames relating to DEC's review of pesticide product registration applications. Additionally, this bill amends ECL §33-0705 to make permanent the current pesticide product registration fees.

These review time frames and fees were established in 1993 and reauthorized in 1996, 1999, 2002, 2005, and most recently in 2008.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget because, absent this bill, there would be a loss of approximately \$7 million from the financial plan. The first \$5 million in pesticide program fees is deposited in the Environmental Protection Fund and the remaining fees are deposited in the Environmental Regulatory Account. The 2009-10 revenue from all pesticide program fees was \$7.9 million, with \$5 million deposited in the Environmental Protection Fund and the remaining \$2.9 million deposited in the Environmental Regulatory Account.

Effective Date:

This bill takes effect immediately.

Part T – Authorize the Commissioner of Agriculture and Markets to establish a competitive grants program to fund agricultural research, marketing and education initiatives.

Purpose:

This bill authorizes the Commissioner of Agriculture and Markets (Commissioner) to establish a competitive grants program to fund research, marketing and education initiatives for the benefit of New York’s agricultural community.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Currently, there are various and diverse local agricultural assistance programs that support the marketing, promotion, education and research related to agricultural products. This bill would restructure the allocation of moneys supporting such programs. By creating such a program, this bill enables the Department of Agriculture and Markets (Department) to focus on supporting programs for a wide range of entities whose research, marketing and educational activities have been the most successful in directly benefiting New York’s agricultural community.

Additionally, this bill makes technical amendments to existing law to broaden eligibility for farmland viability grants, as well as to remove the sixty thousand dollar grant award cap for food and agriculture industry development (FAID) grant awards.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget and authorizes the Department to administer a competitive grants program. This new \$1.2 million competitive program will replace \$3.2 million in existing discrete agricultural programs.

Effective Date:

This bill takes effect immediately.

Part U – Implement key components of the Governor’s “Share NY Food” initiative.

Purpose:

This bill implements key components of the Governor’s “Share NY Food” initiative by providing the Department of Agriculture and Markets (the Department) with increased ability to expand access to fresh, nutritious New York farm products to communities Statewide.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill amends current law to clarify that farmers' markets are eligible for funding through the Healthy Food/Healthy Communities portion of the Upstate Agricultural Economic Development Fund, which is administered by the Empire State Development Corporation (ESDC) in consultation with the Department. These markets are important vehicles for the delivery of locally-produced, nutritious foods in communities across the State; as such, it is appropriate to clarify the reach of the existing Healthy Food/Healthy Communities Program in this respect.

Existing law does not specifically authorize the Department to facilitate the creation of a revolving loan fund to support agricultural programs – another key component of the "Share NY Food" initiative. By authorizing the Department to create this revolving loan fund, opportunities would be created to expand burgeoning and innovative food outlets like Community Supported Agriculture (CSA) operations, mobile vendors and other non-traditional markets. Such a fund would help cover farmer costs and shares upfront, thereby allowing subscribers to pay their CSA shares over the course of the CSA season.

Finally, the Department currently administers grants to farmers' markets for capital projects or promotional assistance; however, such grants cannot be utilized toward the purchase of equipment – a key element in the ability of these markets to offer wireless Electronic Benefits Transfer (EBT) capabilities, which in turn increases access to locally-grown, nutritious food to consumers all across the state.

Budget Implications:

While this bill does not have a direct State fiscal impact, it will enable the Department to more effectively meet the goals of the Governor's "Share NY Food" initiative.

Effective Date:

This bill takes effect immediately.

Part V – Repeal Article 4-A of the Navigation Law regarding reimbursements paid to certain governmental entities.

Purpose:

This bill repeals Article 4-A of the Navigation law, to remove provisions that require reimbursements to be paid to governmental entities that voluntarily enforce the Navigation Law.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The bill repeals Article 4-A of the Navigation Law to remove provisions that require reimbursements to be paid to governmental entities that voluntarily enforce the provisions of the Navigation Law. This bill also makes corresponding changes to section 97-nn of the State Finance Law.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget to achieve Financial Plan savings.

Effective Date:

This bill takes effect immediately and shall be deemed to have been in full force and effect on April 1, 2011.

Part W – Facilitate an efficient transfer of Tribal State Compact Revenue to the General Fund and make a technical correction to the distribution of the local share of such revenues associated with the Niagara Falls Casino.

Purpose:

This bill facilitates a more efficient transfer of the State share of Native American casino revenue to the General Fund and make a technical correction to the distribution of local share moneys associated with the Niagara Falls Casino.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Chapter 383 of the Laws of 2001 provided that the State share a portion of any revenues received from the Native American casinos with the municipal governments that host these facilities and transfer any remaining revenues to the General Fund. Payments received by the State from Native American casinos generally reflect lagged and/or partial-year payments. Current law assumes that the basis for General Fund transfers of the State share of such moneys is dependent on annual receipt of casino revenues. Since these payments do not flow to the State on that basis, the transfer of these funds to the State's General Fund can be significantly delayed.

This bill amends Section 99-h of State Finance Law to facilitate a more efficient transfer of the State share of Native American Casino revenue to the General Fund. Additionally, this bill makes a technical correction to the distribution of Niagara Falls Casino tribal compact moneys associated with the Niagara Falls Underground Railroad Heritage Commission.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-2012 Executive Budget as the State Financial Plan assumes the transfer of money from the Tribal State Compact Revenue Account to the General Fund.

Effective Date:

This bill becomes effective immediately.

Part X – Establish a surcharge on purses at harness and thoroughbred racetracks.

Purpose:

This bill establishes a 2.75 percent surcharge on purses at harness and thoroughbred tracks.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Overall declines in the racing industry handle have impaired the Racing and Wagering Board's ability to fully support the costs of the regulation of horse racing from resources currently dedicated to these activities. This bill amends the Racing, Pari-Mutuel Wagering and Breeding Law to impose a surcharge on purses at harness and thoroughbred racetracks. Receipts from the surcharge will support the Racing and Wagering Board's oversight and regulation of horse racing.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget which assumes approximately \$7.6 million in additional revenues needed to support the Racing and Wagering Board's regulation of the State's horse racing industry.

Effective Date:

This bill takes effect immediately.

Part Y – Extend the renewal period for certain disciplines licensed by the Department of State.

Purpose:

This bill increases the renewal term for appearance enhancement disciplines and barbers from two to four years and doubles the associated fee.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill amends the General Business Law to extend the term for certain disciplines licensed and regulated by the Department of State. Each renewal fee would be doubled as a result of the extended licensing term.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget as the State Financial Plan assumes approximately \$2.25 million in additional revenue from the implementation of its provisions.

Effective Date:

This bill takes effect immediately.

Part Z – Authorize the Tax Modernization Project.

Purpose:

This bill: (a) reduces the cost of real property tax administration by enabling notices, filings and other transactions to be completed electronically; (b) creates efficiencies and reduces mailing costs by allowing the Department of Taxation and Finance to use electronic means to deliver documents it is required to mail, when authorized by the mail recipient; (c) improves administration of the Tax Department's electronic filing and payment requirements to create further efficiencies and cost savings, and to increase tax collections due to higher compliance resulting from electronic e-filing; (d) clarifies, for abandoned property purposes, which dormancy period would apply to debit cards issued on behalf of the State of New York for tax refunds if those debit cards are never activated; and (e) enacts measures to improve sales tax compliance.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

a. Electronic Real Property Tax Administration

This bill will modernize and reduce the cost of real property tax administration by laying the groundwork for a comprehensive system of paperless transactions. Specifically, it gives the Commissioner of Taxation and Finance the authority to establish standards allowing for: (1) electronic filing and/or transmission of all documents, including exemption applications and petitions for administrative review of assessments, and (2) a paperless tax collection system, with property tax bills issued electronically, taxes paid electronically, and receipts issued electronically. Though the bill also makes it possible for taxpayer notices, tax bills and receipts to be distributed electronically, no taxpayer will be required to accept electronic communications if he or she does not affirmatively elect to do so.

In order to promote greater accountability and disclosure, the bill also requires local assessment inventories to be maintained electronically and final assessment rolls to be of the locality, or the county in which the locality is located, effective with assessment rolls based on taxable status dates occurring on and after March 1, 2012. It also authorizes the Department of Taxation and Finance to establish a centralized data base for all local assessment records, and to develop web-based software for assessment management, to be made available to all assessing units.

For the most part, the existing laws governing real property tax administration (some of which date back to the Colonial Era), do not permit notifications, filings or other transactions to be done electronically. The few statutes that currently accommodate modern technology do so in a flawed, incomplete and/or haphazard way.

For example, the new Real Property Tax Law § 955 (3-a) (added by the L.2010 ch.365) ostensibly allows property tax receipts to be furnished electronically with the taxpayer's consent. However, it applies only when the payments are made to cities, towns or villages, not to counties or school districts, and only when the payments are made through escrow accounts, not when the payments made by the taxpayer directly. It also presents the paradox that, while property tax receipts may now be furnished to taxpayers electronically in at least some cases, property tax bills still may not be.

Another example of a well-intentioned but problematic statute in this area is Real Property Tax Law § 925-c, which in conjunction with section 5-b of the General Municipal Law allows property taxes to be paid over the internet via the municipal website. That statute has been construed to preclude using the services of a third party vendor for this purpose, though that is common business practice.

As a result of these and other statutory limitations, the public interest in an efficient, understandable property tax system is often thwarted. This bill will bring about an orderly transition to the electronic era.

b. Electronic State Tax Administration

Advances in technology have made electronic delivery of documents a reliable, cost-effective and efficient means of communicating with an addressee that has already established an electronic relationship with the sender. Delivery of confidential information through electronic communications is widely accepted and embraced in conducting both personal and business activities on a broad scale. For example, financial service institutions use secure mechanisms to inform businesses and individuals of account balances and financial transactions, issue account statements and deliver tax reporting documents required by law. Many taxpayers and tax professionals have already established secure online services accounts with the Department, through which they conduct transactions such as e-filing and e-paying tax obligations and fees. These account holders provide the Department with an e-mail address, and are capable of receiving communications from the Department via electronic means. This proposal would permit the Department to use secure electronic means to deliver documents to account holders who agree to receive electronic communications, notwithstanding statutory requirements specifying use of postal mail, certified mail, or registered mail. The Department's electronic communication with an account holder will be governed by existing tax secrecy requirements. For example, any communication involving confidential tax information will be conducted through the account holder's secure online account with the Department. The Department's electronic systems are capable of producing records that may be offered, if necessary, to show that a particular document was delivered to an online services account holder at a particular date and time.

The bill adds a new Tax Law § 35, which would enable the Department, when authorized by an online services account holder, to use electronic means of communication to furnish any document it is required to mail per law or regulation. It provides that if the Department furnishes such document in accordance with this section, Department records of such transaction shall constitute appropriate and sufficient proof of delivery thereof and be admissible in any action or proceeding.

c. Electronic Filing Mandates

Currently, the Tax Law requires electronic filing in two separate sections of the law — Section 658(g)(10) for tax preparers of personal income tax (PIT) returns and Section 29 for all other preparers and business self-filers. There are also penalty provisions that apply directly to those provisions, and there are corresponding provisions in the Administrative Code of the City of New York. This bill makes improvements to the administration of the Tax Department's electronic filing and payment mandates by consolidating all preparer and self-filer requirements and penalties into one section of the Tax Law, an amended Section 29, and extending e-filing requirements for PIT filers who use tax software to prepare their PIT returns. It also imposes appropriate penalties for failure to comply with the mandates. The bill repeals sections of the Tax Law and the Administrative Code of the City of New York that would no longer be necessary.

Consolidating the e-file and e-pay mandates into one section of the Tax Law will make the requirements more readily understandable and eliminate confusion among self-filers and practitioners concerning differences between the two current sections. The bill also makes consistent the terminology used in connection with the mandates. For example, section 29 currently refers to “authorized tax documents” while section 658(g)(10) refers to “authorized returns.” The new bill adopts the term “authorized tax documents.” for both. To produce efficiencies and cost savings to the State, the threshold for the preparer e-file mandate would be reduced from preparation of 100 tax documents to preparation of any tax document. Requiring preparers and self-filers that use tax preparation software to e-file recognizes that if a person uses tax software to prepare return(s), s/he is capable of e-filing. The threshold reduction for preparers is also consistent with federal government actions, as the Internal Revenue Service reduced its threshold for the 2012 filing season.

In preserving the provision that only preparers and taxpayers that use tax software must e-file, this bill ensures that taxpayers subject to this requirement are already familiar with the technology and have the knowledge, ability and wherewithal to e-file. Importantly, a new provision in the Tax Law passed during the previous budget year, which provides that no separate charge will be imposed for e-filing of a NYS return, means that such e-filing will result in no additional financial burden.

This bill increases the preparer penalties for failure to e-file from \$50 per occurrence to \$500 for the first tax document and \$1,000 for each subsequent tax document that is not e-filed. This would bring the penalties for failure to e-file in line with other existing penalties, like the penalty imposed for charging a separate fee for NYS e-file.. Individual PIT taxpayers would be subject to a \$50 penalty for failure to e-file and all other taxpayers would be subject to a \$100 penalty for failure to e-file all taxes except PIT. Amended section 29(e)(2) will also subject all taxpayers to a failure to file penalty if they were required to e-file and failed to do so, except in regard to PIT.

The bill also amends Tax Law § 658 to extend the due date for the filing fee return for limited liability companies from the 30th day after the end of the taxable year to the 60th day. Both software developers and tax preparers have difficulty meeting the present due date for this return, which is typically at the end of January. A change in this due date is consistent with the intent of this bill to convert paper returns to e-filed returns.

This bill will produce cost savings to the State immediately, since e-filing and e-payment of taxes creates cost and tax administration efficiencies that will benefit both the State and taxpayers. A taxpayer’s use of e-file and e-pay reduces the number of errors that may be associated with the filing of a paper return. With e-file, an error can be immediately detected, and the taxpayer prompted to correct and resubmit his or her return. Also with e-file, the taxpayer gets an official acknowledgement that his or her return was received. Moreover, e-filed tax returns are processed quicker than paper, potentially resulting in faster refunds. In addition, the more taxpayers that e-file and e-

pay, the more cost savings the State will realize, since administrative cost savings accrue with every tax document e-filed with the Department.

This bill will also generate additional personal income and sales tax revenue due to its positive impacts on voluntary tax compliance. Greater usage of professionally and electronically prepared and filed returns will ensure more accurate and timely tax liability reporting.

d. Abandoned Property Amendments for Tax Refund Debit Cards

The Department is considering debit cards as a future method for the payment of personal income tax refunds. This bill would clarify that those debit cards that are not activated within one year from the date of issuance will be treated in the same manner as unpaid checks or drafts issued by the State. The New York State Abandoned Property Law requires various organizations such as banks, corporations, insurance companies, and courts to annually review their records and transfer accounts that have reached certain dormancy thresholds to the State Comptroller, who serves as custodian of the abandoned property funds until they can be returned to their rightful owners.

Current Abandoned Property Law specifies a five-year dormancy period for inactive bank accounts and a one-year dormancy period for unpaid checks or drafts issued by the State. The law does not address whether debit cards that are never activated would be treated as a type of inactive bank account or as an unpaid check or draft issued by the State. Therefore, it is not clear which dormancy period would apply.

This bill clarifies that debit cards issued for tax refund purposes that are never activated will be treated like unpaid checks or drafts issued by the State and will therefore be subject to the one-year dormancy period provided for by Abandoned Property Law § 1315 and State Finance Law § 102. Accordingly, any debit card issued on behalf of the State for the purpose of paying a tax refund that is not activated within one year from the date of issuance will be deemed abandoned property and paid to the State Comptroller. If the debit card is activated within the one-year period, the debit card funds will be treated as an ordinary bank account and thus will be subject to the five-year dormancy period generally applicable to bank accounts.

e. Improving Sales Tax Compliance

This bill amends Tax Law § 1135 to allow the use of modern technology to improve sales tax compliance. Specifically, this amendment authorizes the Commissioner to require a “person required to collect tax” (i.e., a sales tax vendor) who fails to collect, truthfully account for, or pay over sales tax moneys, or to file returns as required by law, and whose total tax due for the four most recent quarterly periods for which data is available exceeds \$3,000, to use a certified system to capture information about its transactions (including the subject of the transaction, price, date, time, and sales tax collected, if any), calculate the tax on each sale, determine the amount of tax the vendor must remit with his or her return, and maintain the required documentation for each

sale. The Department would certify the accuracy of the system. A vendor that uses a certified system would not be held liable for errors made by the system or for the system's failure to maintain the required documentation. This provision would improve the accuracy of a vendor's returns and tax calculations, and enhance the reliability of their records.

This bill also amends Tax Law § 1136 to allow the Commissioner to require sales tax vendors that file returns on a quarterly basis to file on part-quarterly (monthly) basis, when the Commissioner deems it necessary to protect sales tax revenue. For example, this allows the Department to obtain returns and payment of trust tax moneys collected by the vendor more frequently in situations where there is a risk that the vendor would not be able to pay the tax due on the due date of the quarterly return.

Budget Implications:

Enactment of this bill is necessary to implement the 2011-12 Executive Budget because it would generate \$200 million of additional tax revenue and \$25 million of administrative savings.

Effective Date:

This bill takes effect immediately and sections 13 through 17 apply to tax documents filed on or after the 60th day after this act becomes a law.

The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.