

2012-13 NEW YORK STATE EXECUTIVE BUDGET

**EDUCATION, LABOR AND FAMILY ASSISTANCE
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 amend the in relation to school district eligibility for an increase in apportionment of school aid and implementation of new standards for conducting annual professional performance reviews to determine teacher and principal effectiveness; to amend the education law, in relation to contracts for excellence, apportionment of school aid, apportionment of school aid and of current year approved expenditures for debt service, calculation of the gap elimination restoration amount, apportionment for transportation, maximum class size; to amend chapter 756 of the laws of 1992 relating to funding a program for work force education conducted by the consortium for worker education in New York city, in relation to apportionment and reimbursement; and in relation to extending the expiration of certain provisions; to amend chapter 169 of the laws of 1994 relating to certain provisions related to the 1994-95 state operations, aid to localities, capital projects and debt service budgets, chapter 82 of the laws of 1995, amending the education law and certain other laws relating to state aid to school districts and the appropriation of funds for the support of government, chapter 698 of the laws of 1996 amending the education law relating to transportation contracts, chapter 147 of the laws of 2001 amending the education law relating to conditional appointment of school district, charter school or BOCES employees, chapter 425 of the laws of 2002 amending the education law relating to the provision of supplemental educational services,

attendance at a safe public school and the suspension of pupils who bring a firearm to or possess a firearm at a school, chapter 101 of the laws of 2003 amending the education law relating to implementation of the No Child Left Behind Act of 2001, to amend chapter 57 of the laws of 2008 amending the education law relating to the universal pre-kindergarten program, in relation to extending the expiration of certain provisions of such chapters; in relation to school bus driver training; in relation to the support of public libraries; to provide special apportionment for salary expenses; to provide special apportionment for public pension expenses; in relation to sub-allocation of certain education department accruals; in relation to purchases by the city school district of Rochester; relating to submission of school construction final cost reports; and providing for the repeal of certain provisions upon expiration thereof (Part A); to amend the education law, in relation to tenured teacher disciplinary hearings (Part B); to amend the social services law, in relation to increasing the standards of monthly need for aged, blind and disabled persons living in the community (Part C); to amend the social services law, in relation to the standards of monthly need for persons in receipt of public assistance (Part D); to amend the social services law, in relation to authorizing the office of temporary and disability assistance to administer the program of supplemental security income additional state payments; and to repeal certain provisions of such law relating thereto (Part E); to amend chapter 83 of the laws of 2002 amending the executive law and other laws relating to funding for children and family services, in relation to the effectiveness thereof; and to amend the social services law, in relation to reauthorizing child welfare financing to continue current funding structure (Part F); to amend the social services law and the family

court act, in relation to establishing a juvenile justice services close to home initiative and providing for the repeal of such provisions upon expiration thereof (Subpart A); and to amend the social services law and the family court act, in relation to juvenile delinquents (Subpart B) (Part G); to amend 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 the New York state higher education capital matching grant program for independent colleges, in relation to the effectiveness thereof (Part H); to amend the education law, in relation to provision of services, technical assistance and program activities to state agencies by Cornell university (Part I); and to amend the education law, in relation to special education programs for preschool children with a disability (Part J)

PURPOSE:

This bill contains provisions needed to implement the Education, Labor and Family Assistance portions of the 2012-13 Executive Budget.

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

Part A – Enact various provisions necessary to implement the education portion of the 2012-13 Executive Budget, including School Aid and other education-related programs.

Purpose:

This bill contains various provisions necessary to implement the education portion of the 2012-13 Executive Budget.

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

Public education in New York represents a significant commitment of State and local resources. With total spending levels exceeding \$53 billion, New Yorkers have maintained the highest per-pupil spending levels in the nation – even in these difficult

financial times. Not only is education the largest area of State spending, it is also the largest component of local property taxes. This substantial investment is a reflection of New York State's long-standing commitment to providing opportunity for all students.

This bill includes several measures to authorize School Aid along with other changes necessary to implement education-related programs in the Executive Budget. Significant provisions include:

- **2012-13 School Aid Increase.** Consistent with the two-year appropriation enacted in 2011-12, the 2013-13 Executive Budget recommends \$20.3 billion in School Aid for the 2012-13 school year, a year-to-year increase of \$805 million, or 4 percent. As part of the \$805 million total increase in School Aid for the 2012-13 school year, this bill would provide a methodology to target a portion of the allowable growth to high need school districts, as well as those that were impacted the most by aid reductions in the 2011-12 school year. Additionally, under this bill, increases in School Aid would be linked to school district compliance with a new teacher evaluation process.
- **Teacher Evaluation Process.** In 2010, as part of its successful application for the Federal Race to the Top grant, New York State made a commitment to implement a teacher evaluation system. The system would make student performance a significant component of that teacher's evaluations – and thus an element of employment decisions. In spite of commitments by education stakeholders to develop and implement the new teacher evaluations, it has not yet occurred. The Executive Budget, therefore, would link increases in School Aid to compliance with the implementation of a new and effective evaluation system. As such, school districts would not be eligible for aid increases unless they fully implemented a new and truly effective teacher evaluation system by January 17, 2013.
- **Performance Grants.** The 2011-12 Enacted Budget authorized two competitive grant programs to encourage school districts to implement innovative approaches to achieve academic gains and management efficiency. This bill would provide that each annual increase in School Aid would be partially dedicated to support \$100 million towards these performance grants beginning in the 2013-14 school year.
- **Cost Report Deadline for Building Aid.** The Executive Budget provides a window of opportunity for school districts to regain eligibility for Building Aid in cases where a district has been denied aid for missing the final cost report filing deadline for school construction projects. The loss of Building Aid would be limited to the amount of aid payable during the period the cost report was outstanding.
- **Bus Purchasing.** To improve the cost-effectiveness of the State's school transportation program, this bill would limit reimbursement to school districts for bus purchases to those that are purchased through a central State contract. This approach will enable both the State and the local school district to benefit from the combined purchasing power of all school districts statewide. Prospectively, it will

also eliminate technical obstacles to shared maintenance and other services between districts.

- **County Vocational Education and Extension Boards (CVEEBs).** Reimbursement for CVEEBs would be limited to courses submitted to the Commissioner of Education for approval on or before July 1, 2010. In addition, the statute would be clarified to codify the methodology used by State Education Department to calculate reimbursement and a statute of limitations would be established to ensure timely submission of claims.
- **Contracts for Excellence.** This bill would require that all school districts currently in the Contracts for Excellence program remain in the program unless all of the school buildings in the district are reported as “In Good Standing” for purposes of the State accountability system. School districts that remain would be required to maintain funding on Contract for Excellence programs at the same level required for the 2011-12 school year.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget and to ensure continued eligibility for the receipt of \$700 million under the Federal “Race to the Top” program.

Effective Date:

This bill takes effect immediately and is deemed to have been in full force and effect on and after April 1, 2012, except that selected provisions take effect on other specified dates.

Part B – Reform the Teacher Disciplinary Hearing Process.

Purpose:

This bill would reform the teacher arbitration process by providing more timely hearing decisions, implementing reforms to contain costs, and restructuring the overall financing of the hearing process.

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

The State pays the full cost of teacher arbitrations, including the fee paid to hearing officers, and there is no statutory cap on such fees. In addition, arbitrators set their own rates which often results in exorbitant and uncontrolled costs imposed on the State. Moreover, the statutory timeframes for completing such hearings are regularly ignored, often leading to unnecessarily long and costly proceedings. The combination of these

factors has resulted in the State incurring significant expenses and led to a backlog in payments owed by the State to hearing officers.

In order to expedite the hearing process and contain costs while assuring fairness to those who are subject to such hearings, this bill would implement the following reforms:

- Allow the Education Commissioner to set maximum rates paid to arbitrators;
- Limit the number of study days claimed by arbitrators;
- Eliminate the requirement for court reporters at teacher arbitrations;
- Disqualify arbitrators for failure to comply with statutory timelines; and
- Require all future arbitration costs to be split evenly between the school district and the teacher's bargaining unit, or the employee if the employee is not represented by a union.

Budget Implications:

Enactment of this bill and the corresponding appropriation language is necessary to implement the 2012-13 Executive Budget. The State Education Department expects to owe \$9.6 million in payments to hearing officers by April 1, 2012. As a result, the State would not immediately realize any Financial Plan savings but would be able to begin addressing payment of outstanding liabilities.

It is estimated that school districts could realize more than \$75,000 in savings per case, when the proposal is fully phased-in primarily due to stricter adherence to the statutory timeframes for the hearing process which will decrease school district expenses for substitute teachers. This savings will be partially offset by the costs of the hearings.

Effective Date:

This bill takes effect on April 1, 2012.

Part C – Authorize the pass-through of the 2013 Federal Cost of Living Adjustment.

Purpose:

To authorize SSI benefits to be increased in 2013 by the percentage of any Federal SSI Cost of Living Adjustment (COLA).

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

Sections 131-o and 209 of the Social Services Law establish specific amounts for the monthly Personal Needs Allowance (PNA) and the monthly SSI standard of need (the maximum combined Federal and State benefit) for recipients in various living

arrangements. This bill amends those sections of law to set forth the actual 2012 PNA amounts and the standard of need for eligibility and payment of additional State payments. It also authorizes those amounts to be automatically increased in 2013 by the percentage of any Federal SSI COLA which becomes effective within the first half of calendar year 2013.

Legislation to effectuate the Federal SSI COLA has been enacted annually since 1984.

Budget Implications:

If the pass-through of the Federal SSI COLA is not authorized in State statute, there will be no statutory authority to provide SSI recipients with the full amount of any Federal increase plus a State supplement at the current level. The State supplements would be automatically reduced to reflect the current standards of need set forth in the SSL.

Effective Date:

This act shall take effect July 1, 2012.

Part D – Phase in the scheduled Public Assistance Grant increase.

Purpose:

This bill would phase in the full implementation of the scheduled public assistance grant increase from one final ten percent increase in July 2012 to a five percent increase in July 2012 and another five percent increase in July 2013.

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

The Enacted 2009-2010 Budget included a ten percent increase to the non-shelter portion of the public assistance grant for three consecutive years. The first two increases were implemented in July 2009 and July 2010 and raised the monthly non-shelter portion of the grant from \$291 to \$353 for the average public assistance household. The Enacted 2011-2012 Budget delayed the third increase (which would have increased the monthly non-shelter portion of the grant to \$388) originally scheduled for July 2011 until July 2012. The non-shelter portion varies based on family composition and is comprised of a basic allowance, a home energy allowance and a supplemental home energy allowance.

This bill would:

- Reduce the planned July 2012 increase to the non-shelter portion of the grant from ten percent to five percent;

- Increase the non-shelter portion of the grant by an additional five percent in July 2013; and
- Align the income threshold used to determine public assistance eligibility with the value of the grant.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget, which assumes \$6 million in General Fund savings.

Effective Date:

This bill takes effect April 1, 2012.

Part E – Authorize administration of the State Supplemental Security Income Supplementation Program.

Purpose:

This bill would authorize a State administrative takeover of the SSI Supplementation Program from the Federal Government to avoid the cost of rising federal administrative fees.

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

The Federal Social Security Administration (SSA) administers New York's SSI Supplementation Program and charges a fee for each payment issued on the State's behalf. The fee increases annually and is currently set at \$10.94. Total administrative costs to the State are projected to be \$92 million in the 2013 fiscal year. In light of rapidly increasing federal charges, many states have established their own administrative systems for state supplemental benefits. New York is now one of only five states that continue to contract with SSA for this service.

Current law authorizes the State Supplementation Program to be administered by the federal government or by local social services districts. This bill would authorize the Office of Temporary and Disability Assistance (OTDA) to administer the program.

This bill would also authorize recipients of State SSI supplements to request a fair hearing from OTDA; clarify the definition of "additional State payments" and add a definition for "standard of need"; establish that no additional State payments may be given to persons who are ineligible for federal SSI benefits for any reason other than having income exceeding the federal benefit rate; and authorize OTDA to make

Medicaid disability determinations for recipients of additional State payments who are not eligible for federal SSI benefits.

Budget Implications:

Through an upfront investment of \$23.9 million in new IT systems and staff over two years beginning in 2012-13, the State can provide the same service that the Federal Government currently provides at \$10.94 per benefit issuance for under \$2 per benefit issuance, saving over \$90 million annually after full implementation in SFY 2014-2015.

Effective Date:

This bill takes effect immediately.

Part F – Reauthorize Child Welfare Financing Provisions.

Purpose:

This bill would extend provisions related to funding for children and family services that are intended to keep families intact, while encouraging expedited permanency for children in foster care.

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

Child Welfare Financing Reform, enacted in 2002, created important General Fund programs to support at-risk children and their families. It currently provides 62 percent open-ended State reimbursement to local social service districts (LSSDs) for the non-Federal share of child preventive services, child protective services, after care, independent living and adoption subsidies, services and administrative costs, while capping reimbursement for foster care services. The current funding structure is intended to help keep families intact and, if that outcome is determined not to be in the best interest of the child, to establish permanent placements for foster children as quickly as possible.

Child Welfare Financing Reform is scheduled to sunset on June 30, 2012, which would return the State to a funding structure with open-ended 50/50 State/local shares for foster care and open-ended 75/25 State/local shares for preventive services, protective services, and adoption subsidies, services and administrative costs. This bill would renew the State's commitment to funding programs that keep children safe, provide support to children and families in their homes and encourage permanency, by extending Child Welfare Financing Reform until June 30, 2017. It would, however, allow the State Commission on the Quality of Foster Care, authorized in the 2002 reform but never established, to sunset.

Additionally, this bill would continue State reimbursement to LSSDs for kinship guardianship assistance expenditures through the Foster Care Block Grant.

Furthermore, this bill would amend provisions of the Social Services Law to accurately reflect the current percentages of State reimbursement to LSSDs for child preventive, child protective, after care, independent living, and adoption subsidies, services and administration costs.

Budget Implications:

This bill is necessary to implement the 2012-13 Executive Budget, which assumes that the current funding structure is continued for child welfare services, foster care, adoption, and kinship guardianship. If the Child Welfare Financing Reform provisions were to sunset, the State would face unbudgeted costs because the funding structure would revert back to an open-ended State share for the foster care program and higher open-ended shares in preventive services, protective services, and adoption subsidies, services and administrative costs.

Effective Date:

This bill takes effect April 1, 2012.

Part G – Enact Juvenile Justice Reform.

Purpose:

This bill would improve outcomes for youth in the juvenile justice system through comprehensive services provided closer to home.

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

This bill would transform the juvenile justice system by authorizing New York City to develop a juvenile justice system that provides an effective combination of community services, supervision, treatment and residential placement. Through the use of a validated risk assessment instrument and process, youth would be placed in the least restrictive, most appropriate level of care, consistent with public safety and keeping youth close to home to strengthen family and community connections. Programs and services provided to youth would be those with a record of improving outcomes for youth and maintaining public safety.

Effective April 1, 2012, New York City will be authorized to implement a close to home initiative to provide services for adjudicated juvenile delinquents determined by a Family Court as needing placement in other than a secure facility and to contract with authorized agencies to operate and maintain non-secure and limited secure facilities.

The initiative would be subject to a plan prepared by New York City and approved by the Office of Children and Family Services (OCFS) and the Director of the Budget. Before submitting a plan, New York City would be required to hold at least one public hearing on its proposed plan.

Upon approval of a close to home initiative plan, Family Courts in New York City will only be able to place juvenile delinquents needing the level of care contained in the plan with the Administration for Children Services; such youth could no longer be placed with OCFS. In addition, OCFS will petition the Family Courts to transfer New York City youth who are in its care to New York City, except when such a transfer would be detrimental to a particular youth. To balance the size and cost of the State-run system and provide regionally-based care to the remaining juveniles, OCFS will be authorized, for up to one year from the effective date of the approved plan, to close any of its facilities in the same level of care, and to make associated service and staffing reductions, upon 60 days' notice of its intent to close a facility.

OCFS will be responsible for oversight and monitoring of the initiative. Such activities will include: establishing regulations; licensing new residential programs; conducting case record reviews, on-site inspections, and staff, family and client interviews; reviewing information and data regarding provider performance, youth and staff safety, and quality of care; and requiring corrective actions, if necessary.

The bill expands to all social services districts OCFS's current authority to conditionally release juvenile delinquents placed in its care and to obtain court authority to provide routine medical care to juvenile delinquents. It also requires the use of a pre-dispositional risk assessment instrument throughout the State to provide an objective tool to inform the court, prior to its dispositional decision, of the risk an adjudicated delinquent may pose to public safety. In addition, it eliminates the Family Courts' authority to require that juvenile delinquents placed in the custody of OCFS or social services districts reside in specific voluntary agencies.

Under existing law, OCFS operates facilities across the State for juvenile delinquents sent for residential placement by the Family Courts. Such facilities are costly. In addition, many are a significant distance from the home communities of New York City youth, need to improve the conditions of care, and have inconsistent results at reducing recidivism.

Budget Implications:

This bill is necessary to implement the 2012-13 Executive Budget because it authorizes the closure of OCFS youth facilities and the implementation of a close to home initiative, both of which are included in the Executive Budget. While the bill is estimated to have a modest cost (\$3 million) to the State and to provide modest savings to local governments in 2012-13 initially, when fully implemented there would be an estimated recurring cost savings to both the State (\$4.5 million) and localities.

Effective Date:

This bill takes effect immediately. Part A is effective April 1, 2012 expires and is repealed on March 31, 2018. Part B is effective April 1, 2012.

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

Purpose:

This bill would extend the Higher Education Capital (HECap) Matching Grant Program for one additional year.

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

The 2006 Enacted Budget authorized the creation of the \$150 million 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, 123 projects totaling \$126.4 million have been approved. The HECap Program is set to expire on March 31, 2012. A one year extender would ensure that all funds would be provided to the remaining eligible academic institutions in a fair and equitable manner. Furthermore, reallocation of remaining funds would be distributed in a manner consistent with the goals and objectives of the State's Regional Economic Development Councils.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget, which assumes that the entire \$150 million is provided to eligible academic institutions.

Effective Date:

This bill takes effect immediately.

Part I – Provide for the development of a master agreement with general terms and conditions and the use of memoranda of understanding between State agencies and Cornell University, to facilitate the provision of services and technical assistance to the State.

Purpose:

This bill would provide for the development of a master agreement with general terms and conditions and authorizes the use of memoranda of understanding (MOUs) between State agencies and Cornell University for the purposes of Cornell's provision of services and technical assistance to the State.

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

Under existing law, statutory colleges of the state are not expressly defined as either private institutions or state agencies for the purposes of entering into contracts with state agencies. This bill would amend and clarify in statute the relationship between the statutory colleges and the state for purposes of complying with State Finance Law. The amendments would provide for appropriate oversight of standard contractual terms and conditions, as well as delineate such land grant services provided to the state for which MOUs would be used. Allowing an MOU process would help expedite the work that Cornell University performs on behalf of the state as part of the University's land grant mission.

Budget Implications:

Enactment of this bill would result in administrative efficiencies for state agencies which frequently rely on services provided by land grant institutions.

Effective Date:

This bill takes effect immediately.

Part J – Rationalize the Financing System for Preschool Special Education.

Purpose:

This bill would rationalize the financing structure for preschool special education and eliminate potential conflicts of interest inherent in the current evaluation system, generating tens of millions in fiscal relief for counties outside New York City.

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

New York State offers extensive services to its students with disabilities, including services to children before they reach school age. The State's investment in preschool special education has doubled over the past ten years to a projected State cost of \$1.1 billion for the upcoming school year. This bill rationalizes the existing preschool special education financing system by requiring that school districts, who make most programmatic decisions, share equally in the costs of growth in the program with the State and counties.

The bill also addresses the potential conflict of interest intrinsic in the existing evaluation system by:

- requiring an explanation when a distant provider is recommended instead of a closer, suitable provider; and
- prohibiting, in most cases, children being evaluated by the same agency that provides the child's educational services or by an evaluator with a less-than-arms-length relationship to the agency.

Budget Implications:

Enactment of this bill is necessary to modify the financing structure for preschool special education and implement other provisions related to the 2012-13 Executive Budget.

Effective Date:

This bill takes effect July 1, 2012.

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.