

2013-14 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 2013-2014 (Part A); to amend the tax law, in relation to the statewide transmission tax (Part B); to amend the vehicle and traffic law, in relation to imposing drivers license sanctions (Part C); to amend the vehicle and traffic law, in relation to the hours of operation of the department of motor vehicles (Part D); to amend the public authorities law, in relation to enforcement assistance; and to repeal section 357-a of such law relating to payment by the New York state thruway authority for services provided by the division of state police (Part E); to amend the environmental conservation law and the state finance law, in relation to establishing the "Cleaner, Greener NY Act of 2013"; and repealing section 27-1017 of the environmental conservation law relating thereto (Part F); to amend the environmental conservation law, in relation to waste tire management and recycling fees (Part G); 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 H); to amend chapter 58 of the laws of 2012 amending the public authorities law relating to authorizing the dormitory authority to enter into certain design and construction management agreements, in relation to extending certain authority of the dormitory authority of the state of New York (Part I); to amend the New York state urban development corporation act, in relation to the powers of the New York state urban development corporation to make grants (Part J); 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 K); 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 L); to authorize the department of health to finance certain activities with revenues generated from an assessment on cable television companies (Part M); to amend the public service law, in relation to extending the temporary state energy and utility conservation assessment; and to amend section 6 of part NN of chapter 59 of the laws of 2009 amending the public service law relating to financing the operations of the department of public service, the public service commission, department support and energy management services provided by other state agencies, increasing the utility assessment cap and the minimum threshold for collection thereunder, and establishing a temporary state energy and utility service conservation assessment and providing for the collection thereof, in relation to extending the effectiveness thereof (Part N); to amend the public service law, in relation to strengthening the oversight and enforcement mechanisms of the Public Service Commission; to amend the general business law, in relation to expanding the definition of underground facilities and increasing fines for violations relating to the protection of underground facilities; and to repeal certain provisions of the public service law relating thereto (Part O); 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 extending the expiration date thereof (Part P); and to amend the banking law, the cooperative corporations law, the general business law, and the not-for-profit corporation law, in relation to facilitating an online corporate filing system by removing the type classification system for not-for-profit corporations; to repeal certain provisions of the not-for-profit corporation law and the religious corporations law, relating thereto (Subpart A); to amend the business corporation law, the education law, the general business law, the limited liability company law, the not-for-profit corporation law, the partnership law, the private housing finance law, the public health law and the transportation corporations law, in relation to facilitating online filing by authorizing self-certification

by filers with regard to required consents; to repeal certain provisions of the business corporation law and the not-for-profit corporation law, relating thereto (Subpart B); to amend the business corporation law, the limited liability company law, the not-for-profit corporation law and the partnership law, in relation to authorizing electronic attendance at meetings (Subpart C); to amend the business corporation law, the limited liability company law and the not-for-profit corporation law, in relation to who may act as an incorporator (Subpart D); to amend the general associations law, in relation to serving process upon the secretary of state as agent (Subpart E); to amend the tax law, in relation to reducing the taxes on shares (Subpart F) (Part Q)

PURPOSE:

This bill contains provisions needed to implement the Transportation, Economic Development and Environmental Conservation portions of the 2013-14 Executive Budget.

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

Part A – Provide the annual authorization for the CHIPS and Marchiselli programs

Purpose:

This bill would authorize funding for the Consolidated Local Street and Highway Improvement Program (CHIPS) and Marchiselli program for State fiscal year 2013-14.

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 2013-14 at \$363.1 million and \$39.7 million respectively.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget because annual authorization is required for these programs.

Effective Date:

This bill would take effect immediately upon enactment.

Part B – Continue the redistribution of the statewide collected transmission tax between the upstate (PTOA) and downstate (MMTOA) transit accounts in an equitable manner

Purpose:

This bill would continue to redistribute the revenue collected from the corporate and utilities taxes imposed under Sections 183 and 184 of the Tax Law to provide an equitable share to the public transportation systems operating assistance accounts.

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

This bill would amend Section 205 of Tax Law to provide that, on and after April 1, 2013, after reserving amounts for refunds and reimbursements, twenty percent of the moneys collected from the taxes imposed by Sections 183 and 184 of Tax Law shall be deposited to the credit of the Dedicated Highway and Bridge Trust Fund; fifty-four percent shall be deposited in the Mass Transportation Operating Assistance Fund, to the credit of the MMTOA account; and, twenty-six percent shall be deposited in the Mass Transportation Operating Assistance Fund, to the credit of the PTOA account.

This bill would not increase the tax rate; it would simply continue the redistribution of the amount currently deposited in the Mass Transportation Operating Assistance Fund between the two accounts within the fund, in accordance with a regional split. Since the taxes are collected statewide, the distribution is based upon population within the downstate and upstate service districts.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget because without this tax distribution, the PTOA account would not receive sufficient revenues for operating aid to upstate transit systems.

Effective Date:

This bill would take effect April 1, 2013.

Part C – Impose license sanctions for violations of the cell phone (mobile telephone) and texting (portable electronic device) laws by commercial motor vehicle operators and conform State law to federal law regarding cell phone use and texting by such operators

Purpose:

This bill would impose license sanctions for violations of the cell phone (mobile telephone) and texting (portable electronic device) laws by commercial motor vehicle operators and conform state law to federal law regarding cell phone use and texting by such operators.

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

Federal Motor Carrier Safety Administration (FMCSA) rules prohibit operators of commercial motor vehicles (CMV) from texting and using a cell phone while driving. Additionally, motor carriers may not allow or require their drivers to text or use a cell phone while driving. Violators of these rules are subject to suspension of their commercial driver's license (CDL).

The FMCSA adopted a final rule effective October 27, 2010, requiring states to comply with federal rules, no later than October 28, 2013, related to texting while operating a CMV. The FMCSA also adopted a final rule, effective January 3, 2012, requiring states to comply with federal rules, no later than January 3, 2015, related to using a cell phone while operating a CMV. The FMCSA promulgated these rules after researching the use of cell phones and texting devices by drivers on our highways.

In 2011, there were 3,471 convictions for texting violations and 186,844 convictions for cell phone violations in New York State. As of September 1, 2012, there have been 7,925 convictions for texting violations and 105,389 convictions for cell phone violations.

This bill would conform New York law to FMCSA rules by amending various sections of Vehicle and Traffic Law providing:

- for the suspension of a CDL if the operator of a CMV violates a State or local law regarding cell phone use or texting;
- that no person shall use a cell phone or portable electronic device while operating a CMV on a public highway if the vehicle is temporarily stationary because of traffic, a traffic control device, or other momentary delays; and
- that no motor carrier shall allow or require its drivers to use a cell phone or portable electronic device while operating a CMV.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget because failure to do so could result in the loss of up to \$64 million in federal highway funding and \$8 million in FMCSA program funding.

Effective Date:

This bill would take effect on October 28, 2013 and would apply to offenses committed on or after such date.

Part D – Permit the Department of Motor Vehicles to serve the public on Saturdays

Purpose:

This bill would permit the Department of Motor Vehicles (DMV) to serve the public on Saturdays.

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

This bill would amend Vehicle and Traffic Law § 200(1) to permit the Commissioner of DMV to designate certain branch offices to be open to serve the public and transact business on Saturdays.

Saturday office hours are a popular option currently offered by two offices operated by DMV's county clerk agents. Those hours are very popular with the residents served by those offices, which offer additional flexibility and greater customer service than can be afforded by State-run DMV offices. Notably, Public Officers Law §62(1) permits the public offices of a county to operate on Saturdays, yet §62(2) prohibits such operation by the State. DMV would like to offer Saturday hours in certain offices to improve customer service levels offered to citizens living in areas not served by county clerk agents. By offering DMV services on Saturdays, the DMV will be able to both give customers the flexibility of obtaining such services during non-working hours and also reduce waiting times during the week.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget in order to achieve the goals of DMV's customer service initiative. DMV will combine the use of advanced technology and best practices in customer service in order to reduce office wait times, make DMV more customer friendly, increase percentage of transactions through alternate service channels and provide overall improved customer experience.

This bill would provide a neutral budget impact by offering employees the opportunity to work the same number of hours each week, with a portion of them on Saturday.

Effective Date:

This bill would take effect immediately upon enactment.

Part E – Provide financial assistance for the New York State Thruway Authority and eliminate the need for a commercial toll hike

Purpose:

This bill would amend existing law to provide for State assumption of certain Thruway expenses and would exempt the Thruway Authority from the cost recovery provisions of the Public Authorities Law. These actions will provide the Thruway Authority with the financial assistance necessary to eliminate the need for a substantial commercial toll increase.

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

This bill would ensure that the Thruway Authority's expenses are reduced by approximately \$85 million per year.

The provisions of the bill amend Section 357-a of the Public Authorities Law to (i) eliminate the existing requirement that the Thruway Authority reimburse the State for certain costs associated with State Police personnel provided on the Thruway System and ensure such policing is maintained at a level of service consistent with historical precedent, while also continuing to fund certain retained costs pursuant to a written agreement between the Thruway Authority and the State Police; (ii) authorize the State to assume \$24 million in other annual Thruway operating costs incurred on its behalf, as specified in an agreement between the Thruway Authority and the Director of the Division of the Budget; and (iii) exempt the Thruway Authority from the cost recovery provisions of Section 2975 of the Public Authorities Law.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget that includes \$85 million in Thruway Authority operating cost reductions.

Effective Date:

This bill takes effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2013.

Part F – Enact the Cleaner Greener New York Act of 2013 to increase revenues deposited to the Environmental Protection Fund by redirecting unclaimed bottle deposit receipts and by strengthening enforcement of the Bottle Bill to prevent fraud

Purpose:

This bill would require the payment of \$15 million per year to the Environmental Protection Fund (EPF) from unredeemed “Bottle Bill” deposit collections currently deposited to the General Fund and establish a formula for further increasing the revenue the State receives from unclaimed deposits based on increased enforcement of the Bottle Bill, and directing those increased funds to the EPF.

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

The EPF was created in 1993 to provide a permanent funding mechanism for environmental programs, including those associated with open space and farm land protections, land acquisition, estuary management, waterfront revitalization, and recycling. Well-over \$1 billion has been expended since creation of the fund. The increased funding sources to the EPF proposed in the bill represent New York’s continuing leadership with respect to open space, farmland and environmental protection.

This administration has protected the EPF from sweeps and cuts over the past two fiscal years and has ensured that it is used for the purposes for which it was created. Before the SFY 2010-11, there were significant reductions to the EPF, but since that time, it has been maintained at \$134 million per year. This bill would, for the first time in several years, increase revenue going to the EPF. In particular, the bill would require the deposit of \$15 million per year from unredeemed deposits associated with the Bottle Bill. The bill would also require that all unredeemed deposits collected each fiscal year in excess of the amount collected in SFY 2012-13 be deposited to the EPF.

Further, the bill would amend the Bottle Bill law to enhance enforcement provisions. The proposal would prevent: (i) the sale of containers for which no deposit was initiated in New York; (ii) the redemption of containers for which no deposit was paid; and (iii) the repeated redemption of the same containers – all of which constitute violations of the Bottle Bill. For example, the bill would authorize the imposition of new criminal sanctions associated with certain violations of the Bottle Bill. The bill would also authorize localities to enforce the Bottle Bill with associated civil penalties payable to such locality. The Department of Environmental Conservation would be authorized to require redemption centers to obtain registrations or permits and revoke the same, and to take any and all measures to reduce fraud associated with the Bottle Bill.

It is expected that these “anti-fraud” measures will increase the amount of unredeemed Bottle Bill deposits in excess of the 2012-13 base year and, concomitantly, the amount

deposited to EPF in future fiscal years by an additional \$4 million in SFY 2013-14 and \$8 million for each fiscal year thereafter.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-2014 Executive Budget, because it would deposit an additional \$19 million in revenues to the EPF for environmental programs in SFY 2013-14 and \$23 million in each fiscal year thereafter.

Effective Date:

This bill would take effect immediately upon enactment.

Part G – Make permanent the waste tire management and recycling fee

Purpose:

This bill would eliminate the December 31, 2013 sunset applicable to the waste tire management and recycling fee.

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

This bill would ensure that adequate monies continue to be available to DEC for the regulation of waste tire storage facilities and abatement of noncompliant waste tire stockpiles. This bill would also make permanent the current \$2.50 fee which is collected on each new tire sold, the current requirement that the tire service collect the fee and remit it to the Department of Taxation and Finance (DTF), and provisions authorizing additional waste tire management and recycling costs of the tire service. Additionally, it would provide that the commissioner of DTF may require that the tire service pay the fee electronically and extends the provision that each tire service make a return to DTF on a quarterly basis. Furthermore, it would provide that the manner and form of the quarterly return be prescribed by the DTF commissioner and would adjust the date that such returns be filed to the last day of February, May, August and November of each year.

The fund will also be used to administer and enforce other provisions of Environmental Conservation Law in relation to the collection, treatment, disposal, and management of solid and hazardous wastes.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-2014 Executive Budget because it would continue revenue that will be used to offset DEC General Fund costs resulting in approximately \$2.8 million of financial plan savings.

Effective Date:

This bill would take effect immediately upon enactment.

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

Purpose:

This bill would make 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 since 1997 and is currently set to expire on July 1, 2013.

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 2013-14 Executive Budget, which assumes that UDC will provide certain economic development assistance through loans. Absent this legislation, the UDC could not fund approved loans made through economic programs lacking specific statutory authorization.

Effective Date:

This bill would take effect immediately upon enactment.

Part I – Extend the authorization for the Dormitory Authority of the State of New York to enter into certain design and construction management agreements

Purpose:

This bill would extend for two years the authorization of the Dormitory Authority of the State of New York (DASNY) to enter into a design and construction management agreement with the Department of Environmental Conservation (DEC) and the Office of Parks, Recreation and Historic Preservation (OPRHP).

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

Last year DASNY was granted the authority to enter into management agreements with DEC and OPRHP to provide design and construction services. This bill would extend the authorization for two years, allowing DASNY to continue current agreements beyond the April 1, 2013 sunset date.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget, portions of which appropriate funding to DEC and Parks for capital purposes requiring DASNY services.

Effective Date:

This bill would take effect immediately upon enactment.

Part J – Provide general grant-making power for the New York State Urban Development Corporation

Purpose:

This bill would add grant-making to the general powers of the New York State Urban Development Corporation (UDC).

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

Currently, UDC's ability to make grants derives primarily from the program-specific sections of the New York State Urban Development Corporation Act (UDC Act). These individual program sections typically include program-specific loan-making and grant-making authority.

To further support and clarify the statutory activities of UDC, the corporation was given the legal authority to make loans without program-specific authorization in 1994. UDC has relied on this general loan-making power to make loans using available funds that do not relate to a program contained within the UDC Act. Enactment of this bill would clarify UDC's ability to make grants as well as loans with all available funds for initiatives that are in furtherance of the UDC Act's legislative findings and purpose and is a logical corollary to UDC's general loan-making power.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget, portions of which appropriate funding for purposes related to programs authorized outside of the UDC Act.

Effective Date:

This bill would take effect immediately upon enactment.

Part K – 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 to offset debt service related to the Western New York Nuclear Service Center (West Valley)

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 NYSEERDA from unrestricted corporate funds. The \$913,000 transfer would help offset New York State's debt service requirements relating to the Western New York Nuclear Service Center (West Valley). Chapter 58 of the Laws of 2012 provided a similar one year authorization.

Budget Implications:

The \$913,000 transfer authorized by this legislation is necessary to implement the 2013-2014 Executive Budget and State Financial Plan.

Effective Date:

This bill would take effect immediately upon enactment.

Part L – 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’s climate change program, from an assessment 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.

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. This special assessment is in addition to Section 18-a of the Public Service Law which authorizes the Department of Public Service to assess gas corporations and electric corporations for expenses related to administering Public Service Law programs. This bill which has been proposed annually as an Article VII provision, and a similar bill was last enacted as Part P of Chapter 58 of the Laws of 2012. Without this authorization, NYSERDA and DEC could not continue to implement necessary programs in the 2013-14 State Fiscal Year.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-2014 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. This special assessment supports a \$16.2 million appropriation included in NYSERDA's budget for these programs.

Effective Date:

This bill would take effect immediately upon enactment.

Part M – 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 of the Department of Public Service (DPS). 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 58 of the Laws of 2012 provided similar authorization.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-2014 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 would take effect immediately upon enactment.

Part N – Extend the Temporary State Energy and Utility Service Conservation Assessment, to provide continued revenues in support of necessary expenses of the State, including the purchase of utility services

Purpose:

This bill would extend the “Temporary State Energy and Utility Service Conservation Assessment” (“Temporary Utility Assessment”) on utility entities, capped at two percent of a utility entity’s gross intrastate utility revenues less the amount such entity is assessed for the costs of the Public Service Commission and Department of Public Service.

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

This bill would extend the Temporary Utility Assessment for 5 years, until March 31, 2019. Originally enacted in 2009, the assessment provides over \$500 million annually to the General Fund and is an important component in funding a portion of the State’s over \$900 million in annual energy costs. The Temporary Utility Assessment is levied on electric, gas, steam and water utilities.

The Temporary Utility Assessment supports necessary expenses of the State, including the purchase of utility services. Extending the assessment prevents the need to reduce these or other essential expenses financed by the General Fund.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget because it authorizes the collection of assessment revenues for deposit to the General Fund, as contemplated in the Financial Plan. The bill will generate \$254 million in revenues in 2013-14 and \$509 million annually thereafter.

Effective Date:

This bill would take effect immediately upon enactment.

Part O – Implement recommendations made by the Moreland Commission on Utility Storm Preparation and Response, related to strengthening the oversight and enforcement mechanisms of the Public Service Commission to ensure that public utility companies are held accountable and responsive to regulators and customers.

Purpose:

This bill would expand the authority of the Public Service Commission (PSC) to, among other things, (i) initiate administrative proceedings to recover civil penalties against each public utility company and obtain increased penalties to ensure adequate deterrence, (ii) review the performance of each company to provide safe and adequate service and order appropriate relief in the context of such review, (iii) formerly review each company's emergency response plan and initiate proceedings regarding compliance with such plan, and (iv) require each company to file a report in connection with a management and operations audit detailing how it intends to implement such audit and to make such plan enforceable upon the PSC's approval.

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

On November 13, 2012, Governor Cuomo established a Moreland Commission pursuant to Executive Law § 6 to study, examine, investigate, and review the response, preparation, and management of New York's power utility companies with respect to several major storms that have impacted the State. Due to the urgent need to address, in part, the shortcomings in the PSC's authority over electric utility companies, the Moreland Commission determined it would be appropriate to issue an Interim Report and make preliminary recommendations for consideration regarding new oversight and enforcement mechanisms to permit the PSC to make such companies more accountable and responsive to regulators and customers. This bill would implement the

Moreland Commission's recommendations and otherwise provide the PSC with expanded authority to protect the public health and safety of all New Yorkers.

Key provisions include:

A new Public Service Law (PSL) § 24 would be added to authorize the PSC to initiate an administrative proceeding to recover penalties against a public utility company, without having to prove a "knowing" violation as required under existing law. The maximum civil penalty amount would be increased in a manner that takes into consideration a utility's gross operating revenue. The new provision would also require the recovery of any penalties to be remitted to, or for the benefit of, ratepayers and prohibit a utility from recovering the payment associated with such penalty from ratepayers.

The PSC's role with respect to examining a utility's emergency management plan would be substantially strengthened. Each electric utility would be required by December 15 of each year to provide its emergency management plan to the PSC for review and approval, and the PSC would be authorized to initiate investigations associated with the sufficiency of such plan and/or the performance of a utility in restoring service or otherwise meeting the requirements of its emergency response plan during an emergency event. In the context of such investigation, the PSC would be authorized to issue an order requiring implementation of specific measures and assessing a civil penalty under the new PSL § 24.

To ensure compliance with audit recommendations, each electric or gas utility subject to a management and operations audit would be required to file a report with the PSC detailing its plan to implement such recommendations and the plan itself would become enforceable upon approval by the PSC. The PSC would also be required to, in conjunction with each management and operations audit (*i.e.*, at least once every five years), review the capability of each electric or gas utility to provide safe and adequate service. Such review would also examine the capability of a utility to meet the standards specified in its emergency management plan. The PSC would be provided with new authority, in the context of such review, to direct a utility to comply with more stringent terms of service or cause it to divest some or all of its state-based utility assets, based upon standards and procedures to ensure continuity of safe and adequate service, due process, and fair and just compensation.

In accordance with similar provision in several other states, PSL § 68 would be amended to authorize the PSC to modify or revoke a certificate of public convenience and necessity previously issued to any gas or electric utility, based on consideration of several factors, including whether such modification or revocation could be undertaken in such manner to ensure the continuity of safe and adequate service, due process and fair and just compensation.

The Chief Executive Officer of each utility would be required to certify that such utility is in compliance with all applicable laws and procedures, including the obligation to provide safe and adequate service.

Finally, the General Business Law would be amended to increase the civil penalties for violations of the one-call procedures intended to protect underground facilities – such as gas pipelines – from excavation activities.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-2014 Executive Budget because it would strengthen PSC oversight of utilities. In order to implement the requirements of this bill, the Executive Budget includes funding to support a staffing level of 524 for the PSC, as recommended by the Moreland Commission. Additionally, the increased civil penalties for violations of the one-call procedures will result in additional revenues deposited to the Underground Facilities Safety Training Account of approximately \$190,000 annually.

Effective Date:

This bill would take effect immediately upon enactment.

Part P – Extend for one year the authority of the Secretary of State to charge increased fees for expedited handling of documents

Purpose:

This bill would extend for one year the Secretary of State's authority to charge increased fees for the expedited handling of documents issued by or requested from the Department's Division of Corporations. 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, 2013. This statute has been extended annually to coincide with the enactment of the Budget since 2003.

Budget Implications:

Enactment of this bill is necessary to implement the 2013-14 Executive Budget. The 2013-14 Executive Budget assumes that expedited handling fees will be continued since the costs associated with expedited handling are greater than those associated

with traditional requests. Failure to enact this legislation will result in annual revenue losses of approximately \$4.5 million, forcing the Department to bear the additional costs related to expedited services without supporting revenues.

Effective Date:

This bill would take effect immediately upon enactment.

Part Q – Facilitate an online corporate filing system and reduce costs and regulatory burdens on the State's businesses

Purpose:

This bill supports reform of the State's filing process for corporations and other business entities. It would alleviate burdensome processing requirements on businesses and not-for-profit corporations, and local governments, facilitate the development of a streamlined online corporate filing system and reduce costs to the State by eliminating duplicative and unnecessary administrative practices.

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

New York law governing corporations and other business entities includes certain duplicative and antiquated provisions, which unnecessarily hinder the formation of corporations and other business entities, increase the cost of doing business in New York State and produce inefficiencies within State government. This bill would amend New York law to reduce the cost of forming corporations and other business entities and ease regulatory burdens while at the same time facilitating the development of a streamlined, efficient online corporation filing system.

This bill would, among other things, do the following:

- The bill would eliminate the Not-For-Profit Corporation Law's (NCPL) "type" classification system. This revision of the law would, to a great extent, standardize the application of the provisions of the NCPL. In light of the range of purposes pursued by not-for-profits, certain variations would be preserved in the law.
- In order to implement its online filing system, the bill would authorize the State to allow certain corporations seeking to incorporate to self-certify that they have received the necessary consent or approval to pursue their proposed activities from any State agency or other entity from which such consent or approval must be obtained. The bill would penalize false certification by suspending the authority to conduct business in New York of a business that falsely certifies that it has consent from a State agency. Currently, filers must attach the original

consent or approval to their paper incorporation materials. Submitting such documents online limit the benefits of speed and efficiency that can be gained from an electronic filing system. New York is one of very few states that require such consents for incorporation.

- This bill would allow shareholders of business corporations and members of not-for-profit corporations to participate in shareholder meetings or meetings of members, respectively, by conference call or similar means, unless the organization's by-laws provide otherwise. It would also permit members of limited liability companies (LLCs) to vote by electronic means, unless otherwise provided by the LLC's operating agreement and allow partnership agreements of limited partnerships to permit voting by electronic means.
- Under the provisions of this bill, partnerships, LLCs, and corporations would be authorized to incorporate business corporations and non-profit corporations. Similarly, corporations, partnerships and LLCs would be permitted to act as organizers of an LLC. Currently, only natural persons at least 18 years old may act as incorporators and organizers. It's notable, however, that such incorporators do not necessarily, or even typically, remain associated with the newly formed entity. In fact, more than half of incorporations in New York are filed by a service company using a service company employee as the incorporator. Once an organizational meeting takes place, the incorporator has no further duty to the corporation (in cases where an organizational meeting does not take place, certain responsibilities of the incorporator survive—these duties should fall upon the actual filer, rather than someone who is not associated with the corporation).
- Upon filing a Certificate of Incorporation, a business corporation currently must pay a fee of \$125 as well as a tax on shares. This tax is one-twentieth of one per centum upon the amount of the par value of all the shares with a par value and a tax of five cents on each share without a par value. The minimum tax to be collected is \$10. Many corporations set an extremely low par value in order to pay the minimum tax. The bill would provide a uniform \$10 tax regardless of the number of shares or par value.

Budget Implications:

It is anticipated that due to eased requirements and elimination of barriers to business formation, the bill will lead to increased revenue from new businesses being formed in the State. It is also expected that, this increase will offset, in part, the elimination of filing fees and the reduction in the amount of organizational tax collected.

Effective Date:

Sub-part A of this bill would take effect 60 days following enactment. Sub-parts B through F would take effect immediately, except that Section 23 of sub-part B would take effect 60 days after enactment.

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.