

**2014-15 NEW YORK STATE EXECUTIVE BUDGET**

**PUBLIC PROTECTION AND GENERAL GOVERNMENT**

**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 vehicle and traffic law, in relation to the revocation of driver's licenses for multiple convictions of driving while intoxicated, civil penalties, and aggravated unlicensed operation of a motor vehicle; and to repeal certain provisions of such law relating thereto (Part A); to amend the vehicle and traffic law, in relation to the suspension and revocation of certain driver's licenses for violations relating to the use of mobile telephones and portable electronic devices while driving and increased fines for such violations (Part B); to amend chapter 503 of the laws of 2009, relating to the disposition of monies recovered by county district attorneys before the filing of an accusatory instrument, in relation to the effectiveness thereof (Part C); to amend the tax law, in relation to suspending the transfer of monies into the emergency services revolving loan fund from the public safety communications account (Part D); to amend the civil service law, in relation to the reimbursement of medicare premium charges (Part E); to amend the civil service law, the state technology law, the general municipal law and the public officers law, in relation to supporting the consolidation of state information technology resources (Part F); to amend chapter 410 of the laws of 2009, amending the state finance law relating to authorizing the aggregate purchases of energy for state agencies, institutions, local governments, public authorities and public benefit corporations and chapter 97 of the laws of 2011, amending the state finance law and other laws relating to providing certain centralized service to political subdivisions and extending the authority of the commissioner of general services to aggregate purchases of energy for state

agencies and political subdivisions, in relation to extending the expiration dates for the provision of certain centralized services and purchasing authorizations (Part G); to amend the criminal procedure law, in relation to the prosecution of misconduct by public servants, and in relation to including corrupting the government within the definition of a designated offense; to amend the penal law, in relation to establishing the crime of corrupting the government, requires the intent to influence within the crime of bribery, and expands the crime of bribe receiving; to amend the legislative law, in relation to lobbying; to amend the state finance law, in relation to cancellation and disqualification of certain contracts; to amend the civil practice law and rules, in relation to including the crime of public corruption within the term of preconviction forfeiture crime; to amend the public officers law, in relation to persons deemed incapable of holding a civil office; to amend the real property tax law, in relation to certain exemption limitations; to amend the general municipal law, in relation to limitations on empire zone designation; to amend the tax law, in relation to certain tax credit limitations; to amend the public officers law, in relation to financial disclosure and to repeal section 195.20 of the penal law relating to defrauding the government (Subpart A); to amend the election law, in relation to the state board of elections chief enforcement counsel; and to amend the criminal procedure law, in relation to the chief enforcement counsel of the state board of elections (Subpart B); to amend the election law, in relation to campaign finance reform and in relation to campaign contribution limits and penalties for violations (Subpart C); and to amend the election law, in relation to campaign receipts and expenditures; to amend the election law, in relation to contribution and receipt limitations; to amend the election law, in relation to public financing; to amend the state finance law, in relation to the New York state campaign

finance fund; and to amend the tax law, in relation to the New York state campaign finance fund check-off (Subpart D) (Part H); and to provide for the administration of certain funds and accounts related to the 2014-15 budget, authorizing certain payments and transfers; to amend the state finance law, in relation to school tax relief fund; to amend the state finance law, in relation to payments, transfers and deposits; to amend the state finance law, in relation to the period for which appropriations can be made; to transfer certain employees of the division of military and naval affairs to the office of general services; to amend the state finance law, in relation to the issuance of bonds and notes; to amend the state finance law, in relation to the general fund; to amend the New York state urban development corporation act, in relation to funding project costs for certain capital projects; to amend chapter 389 of the laws of 1997, relating to the financing of the correctional facilities improvement fund and the youth facility improvement fund, in relation to the issuance of bonds; to amend the private housing finance law, in relation to housing program bonds and notes; to amend chapter 329 of the laws of 1991, amending the state finance law and other laws relating to the establishment of the dedicated highway and bridge trust fund, in relation to the issuance of bonds; to amend the public authorities law, in relation to the dormitory authority; to amend chapter 61 of the laws of 2005, providing for the administration of certain funds and accounts related to the 2005-2006 budget, in relation to issuance of bonds by the urban development corporation; to amend the New York state urban development corporation act, in relation to the Clarkson-trudeau partnership, the New York genome center, the Cornell University college of veterinary medicine, the Olympic regional development authority, a project at nano Utica, Onondaga county revitalization projects; to amend the public authorities law,

in relation to the state environmental infrastructure projects; to amend the state finance law, in relation to the New York state storm recovery capital fund; to amend the New York state urban development corporation act, in relation to authorizing the urban development corporation to issue bonds to fund project costs for the implementation of a NY-CUNY challenge grant program; to amend chapter 81 of the laws of 2002, providing for the administration of certain funds and accounts related to the 2002-2003 budget, in relation to increasing the aggregate amount of bonds to be issued by the New York state urban development corporation; to amend the public authorities law, in relation to financing of peace bridge and transportation capital projects; to amend the public authorities law, in relation to dormitories at certain educational institutions other than state operated institutions and statutory or contract colleges under the jurisdiction of the state university of New York; to amend the public authorities law, in relation to authorization for the issuance of bonds for the capital restructuring bond finance program; to amend chapter 389 of the laws of 1997, providing for the financing of the correctional facilities improvement fund and the youth facility improvement fund, in relation to the issuance of bonds; to amend the public authorities law, in relation to environmental remediation; to amend the New York state medical care facilities finance agency act, in relation to bonds and mental health facilities improvement notes and providing for the repeal of certain provisions upon expiration thereof (Part I)

**PURPOSE:**

This bill contains provisions needed to implement the Public Protection and General Government portions of the 2014-15 Executive Budget.

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

## **Part A – Increase license sanctions for multiple alcohol- and drug-related driving offenses, and increase fines for certain alcohol- and drug-related driving offenses**

### Purpose:

This bill would increase the license sanctions for persons who commit multiple alcohol- and drug-related driving offenses, and increase fines for alcohol- and drug-related driving offenses.

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

Although New York State has made significant progress in addressing the problem of drunk driving, more needs to be done. There are still 47,000 persons with three or more alcohol- or drug-related convictions who have their licenses. In 2012, 8,633 alcohol- and drug-related crashes in NYS resulted in 358 deaths and 6,303 injuries. Approximately, 17,500 drivers who have had three or more alcohol- or drug-related convictions have been involved in at least one crash that killed or injured someone. In 2010, 28% of the alcohol-related injurious crashes Statewide involved someone with three or more alcohol-related convictions. This bill imposes tough sanctions upon those recidivist drivers who continue to threaten public safety.

This bill would amend section 1193(2) of the Vehicle and Traffic Law (VTL) to provide that a person who commits two violations of VTL section 1192 within three years would have his or her license revoked for at least five years. In addition, a person who commits three such violations in his or her lifetime would have his or her license permanently revoked.

This bill increases the civil penalty from \$750 to \$1,000 for drivers who refuse to submit to a chemical test if they have previously had their license revoked for driving while intoxicated or for refusing to submit to a chemical test. In addition, the bill increases the fine from \$500 to \$1,000 for aggravated unlicensed operation of a motor vehicle in the first degree.

### Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget, because it increases fine levels and is expected to produce a small, undetermined amount of additional State revenue.

### Effective Date:

This bill takes effect on the first day of November after enactment.

**Part B – Increase license sanctions for texting and cell phone violations committed by persons under the age of 21, and increase the maximum fines for all texting and cell phone use while driving violations**

Purpose:

This bill would increase the license sanctions imposed for texting and cell phone violations committed by persons under the age of 21, and increase the maximum fines for all texting and cell phone use while driving violations.

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

Texting while driving is now the leading cause of death of teen drivers. Yet 77% of teens believe they can text and drive safely. In 2013, there were 1,052 convictions for texting violations and 3,290 convictions for cell phone violations committed by drivers under the age of 21. Since 2002, there have been 116,415 such convictions.

This bill amends sections 510(2), 510(6) and 510-c of the Vehicle and Traffic Law to impose a one-year suspension if a driver under the age of 21 is convicted of a texting or cell phone violation. In addition, such license will be revoked for at least one year if the driver commits another texting or cell phone violation while under the age of 21.

In addition, the bill amends sections 1225-c and 1225-d of the Vehicle and Traffic Law to increase the maximum fines that may be imposed for mobile phone use while driving and texting while driving violations.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget.

Effective Date:

This bill takes effect on the first of November after enactment.

**Part C – Continue provisions relating to the disposition of certain monies recovered by county district attorneys**

Purpose:

This bill would continue the existing formula for distribution of certain monies recovered by county district attorneys.

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

This bill amends Chapter 503 of the laws of 2009, as amended by Part F of Chapter 55 of the Laws of 2013, to extend that statute by one year. Pursuant to that law, a county district attorney in New York City may retain a portion of recoveries it makes before the filing of an accusatory instrument, and the remaining amount is distributed equally between the State and the City of New York. The existing statute will otherwise expire on March 31, 2014.

Over the past six years, the Manhattan District Attorney's Office has recovered significant monies from pre-indictment settlements (i.e., pursuant to deferred prosecution agreements). Since 2009, the State and the City of New York have received equal distributions from the Manhattan District Attorney's recoveries. This equal distribution will not be altered by this bill.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget. It is necessary to ensure the receipt of settlement revenues that may become available during the fiscal year. By continuing the distribution rules, this bill ensures that there will be a State share in the event of a recovery in 2014-15.

Effective Date:

This bill takes effect March 31, 2014.

**Part D – Suspend a subsidy to a revolving loan fund from cell surcharge revenues**

Purpose:

This bill would change the required use of cellular surcharge revenues by suspending the annual transfer of \$1.5 million from the Public Safety Communications Account to the Emergency Services Revolving Loan Fund for four fiscal years.

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

This bill amends Section 186-f of the Tax Law to suspend an annual transfer of \$1.5 million from the Public Safety Communications Account to the Emergency Services Revolving Loan Fund for four fiscal years. This transfer was previously suspended for 2011-12 and 2012-13 by Section 1 of Part D of Chapter 57 of the laws of 2011.

The Emergency Services Revolving Loan Fund is a means to assist local governments, fire districts and not-for-profit fire/ambulance corporations in financing emergency

response equipment, such as firefighter apparatus, fire engines and ambulances, and construction costs related to the housing of such equipment. Since it is structured as a revolving loan fund (i.e., payments of principal and interest are deposited into the fund) and presently there is a robust balance of approximately \$10 million, eliminating the annual transfer from the Public Safety Communications Account should not diminish the ability of Revolving Loan Fund's administrators to make new loans. Annual spending out of the fund and repayments to it both average approximately \$3 million.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget. It will ensure that the Public Safety Communications Account has sufficient funds to support other statutorily authorized purposes, including interoperable communication grants to counties.

#### Effective Date:

This bill takes effect immediately.

### **Part E – An act to amend the Civil Service Law in relation to the reimbursement of Medicare premium charges**

#### Purpose:

This bill would amend Section 167-a of the Civil Service Law to cease reimbursement of additional Income Related Medicare Adjustment Amount (IRMAA) premiums paid by higher-income retirees retroactive to January 1, 2014.

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

To minimize employee health benefit costs, the State requires all retirees participating in the New York State Health Insurance Plan (NYSHIP) to enroll in Medicare Part B upon turning age 65. After enrolling, the federal government requires enrollees to pay a monthly premium (\$104.90 in 2014). State retirees pay this monthly premium to the federal government (typically taken as a Social Security check deduction), but are later reimbursed the full amount by the State as a credit in their monthly pension allowance. This arrangement has been in statute since 1966.

In 2007, the federal government implemented an additional income-related Part B premium requiring higher income enrollees to pay higher monthly premiums. These higher monthly premiums are called Income Related Medicare Adjustment Amounts (IRMAA). The table below shows the IRMAA levels for the 2014 calendar year.

## Means-Tested 2014 Medicare Part B Premiums (IRMAA)

Income Threshold		Regular	Additional	
<u>Single</u> <u>Retirees</u>	<u>Married</u> <u>Retirees</u>	<u>Medicare</u> <u>Premium</u>	<u>IRMAA</u> <u>Premium</u>	<u>Total</u> <u>Premium</u>
Up to \$85,000	Up to \$170,000	\$104.90	N/A	\$104.90
\$85,001 - \$107,000	\$170,001 - \$214,000	\$104.90	\$42.00	\$146.90
\$107,001 - \$160,000	\$214,001 - \$320,000	\$104.90	\$104.90	\$209.80
\$160,001 - \$214,000	\$320,001 - \$428,000	\$104.90	\$167.80	\$272.70
Above \$214,000	Above \$428,000	\$104.90	\$230.80	\$335.70

Under the current law, largely unchanged since 1966, the State also fully reimburses affected retirees if they are required to pay the additional IRMAA premiums. Through September of calendar year 2013, the State reimbursed 4,184 State retirees a total of \$4.3 million in IRMAA premiums. Typically, 95 percent of IRMAA reimbursements for the entire calendar year are processed by the end of September.

At a time when the State is focused on controlling spending, it can realize savings by ceasing the reimbursement of the additional IRMAA premiums which would impact less than 5 percent of the Medicare-eligible retiree/dependent population. Furthermore, the federal Medicare benefit design change intended that such higher-income retirees bear such cost.

### Budget Implications:

The Department of Civil Service reimburses IRMAA premiums on a yearly lag. By implementing this change retroactively to January 1, 2014, Civil Service would cease reimbursements to higher-income retirees beginning in January of 2015 associated with 2014 IRMAA premiums. This would save approximately \$1.7 million in FY 2014, but would grow to over \$7 million on a full annual basis in FY 2018.

In addition, the number of IRMAA eligible retirees is expected to significantly increase in upcoming years because of a change included in the federal Patient Protection and Affordable Care Act (PPACA). When IRMAA was first implemented in 2007, the income brackets at which Medicare Part B enrollees were required to pay IRMAA premiums were indexed each year to account for inflation. A provision included in PPACA froze the IRMAA income brackets at their current levels through 2019. This will increase the number of State retirees required to pay the IRMAA premiums, which will result in a commensurate increase in State costs unless action is taken.

<b>State Fiscal Year</b>	<b>Projected IRMAA Retirees</b>	<b>Annual Savings</b>
2014-15	5,585	\$1.7
2015-16	6,452	\$5.4
2016-17	7,454	\$6.3
2017-18	8,612	\$7.2

Effective Date:

This bill takes effect retroactive to January 1, 2014.

**Part F – Support the previous consolidation of information technology staff and services within the Office of Information Technology Services**

Purpose:

This bill would make changes necessary to support the consolidation of information technology services within the State Office of Information Technology Services (ITS).

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

The Governor established ITS in 2012 to consolidate statewide IT operations, policies, and standards, in order to deliver services more efficiently to customers and enable other State agencies to focus on their core policy missions.

A key purpose of the ITS Consolidation was to provide greater promotional and training opportunities for the State's IT workforce across multiple programs and services. This bill would allow for the reclassification of individuals, now transferred to ITS, into appropriate IT titles so that they may benefit from these opportunities. This bill also allows individuals in certain IT positions to become eligible for term appointments without examination.

In the near future, ITS will have the ability to provide unified information technology services in direct support of the programs and missions of external government entities. This bill would facilitate that endeavor. It would also continue ITS's cyber security functions, allowing ITS to monitor, detect, and respond to cyber incidents, providing protection for State agencies.

Budget Implications:

These provisions support the ongoing consolidation of financial support for the Office of Information Technology Services and the economies and savings engendered by its activities.

Effective Date:

This act would take effect immediately.

**Part G – Extend the authorization for local governments and school districts to piggyback on certain county, state, and federal contracts and extend the authorization for joint purchases of electricity and fuel from the Office of General Services for both local governments and state agencies**

Purpose:

This bill would extend the authorization for local governments and school districts to piggyback on certain county, state, and federal contracts, including some that are necessary to implement the proposed Smart Schools Bond Act. It would also extend the authorization for joint purchases of electricity and fuel from the Office of General Services (OGS) for both local governments and state agencies.

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

This bill would extend several authorizations for centralized services and procurement for state agencies, local governments, and school districts.

Chapter 410 of the Laws of 2009 authorized state institutions and other state agencies to jointly purchase electricity and fuel through OGS. This bill would extend this authorization for an additional five years, until July 31, 2020. The authorization was previously extended by four years from July 31, 2011 to July 31, 2015 by Chapter 68 of the Laws of 2011.

Chapter 97 of the Laws of 2011 authorized local governments and school districts to: (1) purchase electricity and fuel through OGS; (2) piggyback off certain federal contracts, including GSA Schedule 70 (IT contracts), federal e-government contracts, and national defense authorization contracts; and (3) piggyback off county public works contracts. These authorizations were expanded by: (1) Chapter 55 of the Laws of 2012 to allow piggybacking on contracts from state agencies other than OGS and piggybacking on state contracts for materials, equipment, technology, food products, and supplies; and (2) Chapter 497 of the Laws of 2013 to allow piggybacking on additional federal contracts. These provisions are scheduled to sunset June 24, 2014. This bill would extend these procurement authorizations until July 31, 2020.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget because it will ensure the continuation of procurement authorizations that provide cost containment

and savings opportunities for state agencies, local governments, and school districts. It is also necessary for the implementation of the proposed Smart Schools Bond Act.

Effective Date:

This bill takes effect April 1, 2014.

**Part H – The Public Trust Act, Campaign Finance Reform and Public Campaign Financing**

Purpose:

This bill would strengthen the State's anti-corruption laws, reinvigorate enforcement of the election law, reform campaign contribution limits, and enact a voluntary public campaign finance program in order to restore the public's trust in State government.

In 2013, Governor Cuomo unveiled a series of Governor Program Bills that would impact the panoply of ethics issues plaguing New York's government and elections process. Later, in 2013, Governor Cuomo created a Moreland Commission to investigate corruption in government and propose reforms to address weaknesses in the law. The Commission has undertaken a number of investigations to determine the role money plays in the political system and identify any weaknesses in the structure of the State Board of Elections. The Commission has also examined weaknesses in existing laws, regulations and procedures relating to public corruption, conflicts of interest, and ethics in State government and made a number of recommendations. This portion of the Executive Budget addresses many of those key concerns.

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

The bill is composed of four subparts as follows:

**Subpart A**

**I. Enhanced Penalties for Existing Crimes**

A. Official Misconduct

This bill would make the crime of official misconduct (current § 195.20 of the Penal Law) a class C, D, or E felony, depending on the severity of the misconduct, rather than a misdemeanor offense, as follows:

- Official misconduct in the third degree, for any benefit, regardless of value: class E felony

- Official misconduct in the second degree, where the benefit gained from such misconduct is valued in excess of \$1000.00: class D felony
- Official misconduct in the first degree, where the benefit gained from such misconduct is valued in excess of \$3,000.00: class C felony

B. Corrupting the Government, Enhancements When the State is the Victim of the Crime

This bill would also create a new Article 496 of the Penal Law, “Corrupting the Government,” which will include the crimes of “corrupting the government” and “public corruption.”

1. A person would be guilty of the lowest level crime of corrupting the government if he or she: engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state, or to obtain property, services or other resources from such state, political subdivision or governmental instrumentality by false or fraudulent pretenses, representations or promises.

The degree of crimes depend on whether or not the person or persons obtain property and/or the value of property, services or other resources, and the amount of such gain:

- Fourth degree, basic offense: class E felony
  - Third degree, in excess of \$1,000.00: class D felony
  - Second degree, in excess of \$5,000.00: class C felony
  - First degree, in excess of \$10,000: class B felony
2. The crime of “public corruption” would increase penalties for specific existing crimes in cases where the victim is a public entity. The crime would be deemed one category higher than the offense type or offense level of the specified offense. Thus, a class A misdemeanor would become an E felony, an E felony would become a D felony, and so on. These enhancements would apply whether or not the offender is a public official.

The specific existing crimes affected are those defined by the following provisions of the Penal Law:

- § 155.25 (petit larceny)
- § 155.30 (grand larceny, fourth degree)
- § 155.35 (grand larceny, third degree)
- § 155.40 (grand larceny, second degree)
- § 155.42 (grand larceny, first degree)
- § 156.05 (unauthorized use of a computer)

- § 165.05 (unauthorized use of a vehicle in the third degree)
- § 165.06 (unauthorized use of a vehicle in the second degree)
- § 165.08 (unauthorized use of a vehicle in the first degree)
- § 470.05 (money laundering in the third degree)
- § 470.15 (money laundering in the second degree)
- § 470.20 (money laundering in the first degree)

### C. Non-Criminal Consequences

1. In addition, the following penalties would be imposed on anybody convicted of corrupting the government, public corruption and official misconduct:
  - A court could impose a fine of up to three times the profit or other gain from the crime and forfeiture of proceeds from the crime.
  - The Tax Law would be amended to permit automatic offset by the State for any amount for which an individual is convicted of defrauding or stealing from a public entity.

## II. **Bribery**

### A. Establishment of New Crime: Failure to Report Bribery

This bill would create the class A misdemeanor of “failure to report bribery,” which would mandate that a public servant report attempts to bribe that individual, or any other bribery or attempted bribery of another public servant of which that individual is aware.

### B. Overhaul of Bribery Statute

This bill would amend the statutory definition of bribery crimes—bribery, bribe receiving and bribe giving and receiving for public office. Thus, “a person is guilty of bribery in the first degree when he or she confers, or offers or agrees to confer: any benefit upon a public servant with the intent to influence such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant.” The law would no longer require proof of an agreement or understanding between the parties, conforming New York’s law to federal law. Severity of the crime of bribery would be as follows:

- Third degree, an offer or agreement to confer a benefit in excess of \$1,000.00: class D felony
- Second degree, an offer or agreement to confer a benefit greater than \$5,000.00: class C felony
- First degree, an offer or agreement to confer a benefit greater than \$10,000: class B felony

The current structure of the law for accepting election contributions and payment of lobbying expenses will remain in place so that a public servant and a person

could be convicted of bribery or bribe receiving if any election contribution or a lobbying expense was paid in agreement for the performance of an act by a public servant.

### **III. Protecting the Public: Investigation and Post-Conviction**

#### **A. Investigation**

1. The legislation would impose the same statute of limitations, and related tolling provisions, on both public servants and those persons acting in concert with a public servant to commit misconduct in public office. Currently, the statute of limitations tolls for public officials but not those acting in concert with them who are not public officials.
2. All offenses described in new Article 496 and official misconduct in the third, second and first degrees, as defined in §§ 195.00, 195.01, and 195.02 respectively of the Penal Law, would become designated offenses under Criminal Procedure Law § 700.05, “Eavesdropping and Video Surveillance Warrants.”
3. For the first time, a witness who testifies before a grand jury investigating fraud on the government or misconduct, nonfeasance or neglect in public office by a public servant would receive “use” immunity, not “transactional” immunity for statements that witness gives under oath. This means that the witness, who may or may not also be part of the criminal transaction under investigation, may still be prosecuted for his or her role if the People develop evidence other than, and independent of, the evidence given by the witness. This important tool in fighting crime would conform New York practice to federal practice.
4. The bill would add new offenses to the set of crimes that constitute a basis for enterprise corruption charges.
5. The bill would amend civil forfeiture pre-conviction provisions to permit forfeiture of gain when the new public corruption and official misconduct crimes are charged.

#### **B. Post-Conviction**

To further protect the public, the following collateral consequences would flow to an individual convicted of any of the bribery, official misconduct or public corruption crimes:

1. A convicted offender would be barred from registering as a lobbyist.
2. A convicted offender would be prohibited from serving in a civil office.
3. A convicted entity (or corporations which employ an individual convicted of such offense in fiduciary position) would be disqualified from receiving tax credits, real estate tax benefits, and other benefits, such as those associated with Empire Zone designation.
4. The State Finance Law would be amended to disqualify individual and corporate offenders from bidding on and obtaining State contracts and to allow

specific consideration by the State of any other crimes when determining whether an entity is a “responsible” bidder, and to provide that a conviction for crimes set forth in the Public Trust Act would be grounds for cancellation of State contracts.

5. Convicted offenders would be automatically disqualified from participating as Medicaid, EI or Workers’ Compensation providers.

Under existing law:

- For the crimes of petit larceny, grand larceny, unauthorized use of a computer, unauthorized use of a vehicle, and money laundering, the same penalties apply no matter who the victim of the crime is.
- Conviction for crimes involving public corruption does not disqualify an offender from holding civil office or debarment from state contracting.
- There is no crime of failure to report bribery.
- New York’s bribery laws require a prosecutor to establish evidence of an agreement or understanding between the parties to a bribe as a necessary element of any bribery related offense.
- There is only one level of crime of defrauding the government regardless of the amount defrauded, an E felony, and such fraud must involve \$1000.00 or more.

#### **IV. Expand Financial Disclosure**

This bill would amend Public Officers Law §73-a. Legislators will now be required to disclose the names of all of their firm’s clients who have business before the State. Reporting individuals will also be required to disclose what services they actually provide, so that the public can more clearly understand their outside employment activity. Finally, legislators will be required to disclose all direct referrals of business to their firms by lobbyists or clients of lobbyists to avoid even the appearance of a conflict of interest.

Statement in support of Subpart A:

As the recent past and as the majority of the Moreland Commission has made clear, New York’s regimen of Penal Law enforcement and public disclosure laws needs drastic revision to more effectively deter and punish official misconduct. This legislation will help accomplish that.

#### **Subpart B**

This bill would create a new, independent division of election law enforcement headed by a chief enforcement counsel that would enforce and prosecute violations of the election law. The chief enforcement counsel would be appointed by the Governor, with the advice and consent of the New York State Senate. The counsel, who will serve a four year term, will be designated a district attorney for the purposes of enforcing the election law. He or she will be authorized to investigate criminal violations of the Election Law, issue subpoenas, apply for search warrants and initiate criminal proceedings as well as investigate and prosecute all civil violations of the Election Law both before an independent hearing officer and in court.

#### Statement in Support of Subpart B:

The Election Law currently grants the Board of Elections limited enforcement powers. It does not have the authority to prosecute criminal violations, but instead must refer such matters to a district attorney. This legislation would create a robust, independent election law enforcement entity.

### **Subpart C**

Section 1 would amend Election Law § 14-100 by adding new definitions for “clearly identified candidate,” “general public audience,” “labor organization,” and “intermediary.”

Section 2 would amend Election Law § 14-102 to require that statements filed by political committees include information about intermediaries.

Section 3 would amend Election Law § 14-106 to expand the types of political communications that must be reported to and filed with the board of elections by candidates, labor organizations, corporations, political committees, and other entities to include electronic, e-mail, and text message communications.

Section 4 would add a new § 14-107 to the Election Law that would:

- define independent expenditures;
- require that political communications paid for by an independent expenditure costing more than \$1,000 identify the source of the communication and, with respect to communications regarding a candidate, state that the communication is not authorized by the candidate or the candidate's political committee or its agents;
- require that any person who intends to make an independent expenditure in the upcoming year register with the state board of elections as a political committee and report independent expenditures over \$1,000; and that any contribution over \$1,000 to that person also be disclosed by that person to the state board of elections either within 48 hours of receipt if received more than 30 days before an election, or within 24 hours of receipt within 30 days before an election, in a specified format and filed electronically; and
- require that copies of political communications paid for by independent expenditure be submitted to the state board of elections.

Section 5 would amend subdivision 3 of Election Law § 14-124 to apply a \$25,000 contribution limit to so-called “housekeeping accounts.”

Section 6 would amend Election Law § 14-126 to create penalties for falsely identifying or failing to identify the source of an independent expenditure. It also authorizes the State Board of Elections to impose fines directly after a hearing for violations, rather than seeking such fines by filing a civil proceeding in court.

## **Subpart D**

Section 1 creates a new heading for Article 14 of the Election Law: Campaign Receipts and Expenditures; Public Financing.

Section 2 designates Election Law §§ 14-100 through 14-130 as a new title I, with the heading: Campaign Receipts and Expenditures.

Section 3 would amend Election Law § 14-100 by adding a definition of “authorized committee.”

Section 3-a would amend Election Law § 3-104 to create a public financing unit within the state board of elections.

Section 3-b would amend Election Law § 14-108 to provide that the receipt of any campaign contribution or loan in excess of \$1,000 be disclosed within 48 hours of receipt.

Section 4 would amend subdivisions 1 and 10 of Election Law § 14-114 to amend the campaign contributions limits for candidates participating in the public financing system, as well as for those not participating. For those participating in the public financing system, statewide candidates have a contribution limit of \$6,000 for both the primary and general election, for an aggregate of \$12,000, candidates for assembly, a contribution limit of \$2,000 for both the primary and the general, for an aggregate of \$4,000, and for candidates for state senate, a contribution limit of \$4,000 for both the primary and general election, for an aggregate of \$8,000.

For those candidates not participating in the public financing system, statewide candidates would have a contribution limit of \$10,000 for the primary and \$15,000 for the general election, for an aggregate of \$25,000; for candidates for assembly, a contribution limit of \$3,000 for both the primary and the general, for an aggregate of \$6,000; and for candidates for state senate, a contribution limit of \$5,000 for both the primary and general election, for an aggregate of \$10,000.

In addition, this section would limit transfers from party or constituted committees to other party or constituted committee to no more than \$5,000 per election, except that such committees may transfer or spend up to \$500 from each contributor to support or oppose a candidate. This section would also require that authorized committees keep written documentation of their bundlers, and requires that bundlers make an affirmation and would also prohibit contributions from any contributor to a party or constituted committee greater than \$25,000 per year.

Section 5 would amend Election Law § 14-116 to close the limited liability company (LLC) loophole which allows LLCs to contribute to candidates as if they were individuals, and lowers the LLC and corporate contribution limit to \$1,000.

Section 6 would amend Election Law § 14-130 to clarify and strengthen the prohibition on the use of campaign contributions for “personal use” – including prohibiting using contributions to pay fines or penalties imposed in connection with a criminal conviction or by JCOPE or the Legislative Ethics Commission.

Section 7 would amend the Election Law by creating a new Title II under Article 14 entitled “Public Financing.” Its major components include:

- comprehensive reporting and disclosure requirements to ensure maximum transparency and accountability [new Election Law § 14-201];
- eligibility criteria, including criteria based on accrual of “matchable contributions” by candidates [new Election Law §§ 14-204];
- limits on the total amounts of public funds that may be provided in any election cycle [new Election Law § 14-205];
- provisions governing the calculation and payment of public matching funds [new Election Law § 14-206];
- allowable uses for public matching funds [new Election Law § 14-207];
- provisions requiring board of election audits and providing for repayment of any excess State funds disbursed [new Election Law § 14-209]; and
- civil and criminal penalties for violations [new Election Law § 14-210].

Section 8 would amend the State Finance Law by adding a new § 92-t creating the “New York State Campaign Finance Fund.”

Section 9 would amend State Finance Law § 95 to allow for certain transfers from the abandoned property fund into the Campaign Finance Fund.

Section 10 would amend Tax Law § 658 by adding a new subsection (f) establishing a check-off for the “New York State Campaign Finance Fund” on tax returns.

Section 11 is the severability clause for this subpart.

Section 12 provides the effective date for the subpart.

Statement in support of Subparts C and D:

New York lacks any public financing for statewide or legislative candidates. New York’s political candidates routinely rely far more upon large donors than candidates in other states—in 2010, on average only 6% of aggregate individual contributions received by candidates for state offices were for amounts of \$250 or less, and in no other state did a smaller percentage of the total population contribute to political campaigns (.05%).

In addition, for most offices, New York State’s contribution limits are substantially higher than any other State that imposes any limits, and so high as to ensure that large donors dominate major political campaigns and candidates spend a large amount of time raising money rather than talking with voters about issues. At present, individuals in New York are permitted to give up to \$60,800 for primary and general election campaigns

(combined) for state-wide office candidates, \$16,800 for State Senate candidates, and \$8,200 for Assembly candidates.

And even the existing contribution limits are undermined by loopholes. Corporations are limited to political contributions of \$5,000 per year. But because LLCs are treated as individuals by the New York State Board of Elections, wealthy individuals and special interests can use LLCs to contribute large amounts to candidates.

This legislation is an effort to overhaul the State's lax campaign finance laws to create a healthier, more diverse, and more competitive democracy. This bill would enact a voluntary system of public financing. In addition, the bill lowers contribution limits, closes loopholes in the campaign finance law, and clarifies and enhances restrictions on the personal use of campaign funds.

Finally, this bill would require increased disclosure of contributions. The bill would expand and clarify the types of political communications that must be reported to and filed with the Board of Elections by candidates, labor organizations, corporations, political committees, and other entities and would prohibit the false identification of the source of such political communications. It would also require virtually real-time disclosure of contributions within 48 hours of receipt to candidates, to party committees, and to entities making independent expenditures to influence an election.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget. The budget implications of each sub part are:

#### **Subpart A**

While there is no anticipated immediate impact on State or local finances, enactment of this legislation will help deter fraud and other illegal conduct which costs taxpayers millions of dollars.

#### **Subpart B**

The 2014-15 Executive Budget provides a total of \$4.3 million to the State Board of Elections fund this new independent division of election law enforcement. In addition, support for technology related to this effort expected to be provided by the Office for Technology is valued at more than \$1 million.

#### **Subpart C:**

The costs associated with this subpart are subsumed within the amounts provided for the new independent division of election law enforcement created in Subpart B.

#### **Subpart D:**

Public campaign financing will be financed by allowing resident taxpayers to make a donation to a new Campaign Finance Fund through a check-off box on their State income tax return, beginning with the 2014 tax year. Given the election cycle, there is no impact

in SFY 2014, and impacts in future years will be dependent on participation in the program.

Effective Date:

This bill takes effect immediately, with each subpart having effective dates particular to that subpart.

**Subpart A:**

This subpart would take effect on the thirtieth day after it has become law and would apply to crimes committed on or after that date.

**Subpart B:**

This subpart would take effect immediately.

**Subpart C:**

This subpart takes effect June 1, 2014

**Subpart D:**

This subpart would take effect immediately and apply to all legislative elections in 2016 and remaining statewide elected officials in 2018.

**Part I – Authorization for transfers, temporary loans, and amendments to miscellaneous capital/debt provisions, including bond caps**

Purpose:

This bill would provide the statutory authorization necessary for the administration of funds and accounts included in the fiscal year 2014-15 Executive Budget, and propose certain modifications to improve the State's General Fund position in the upcoming fiscal year. Specifically, it would: (1) authorize temporary loans and the deposits of certain revenues to specific funds and accounts, (2) authorize the transfers and deposits of funds to and across various accounts, (3) extend various provisions of Chapter 57 of the Laws of 2013 in relation to capital projects and certain certifications, and (4) modify various debt and bond provisions necessary to implement the budget.

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

History:

This bill is necessary to execute a balanced Financial Plan in accordance with the 2014-15 Executive Budget. Similar legislation is enacted annually to authorize the transfer of funds budgeted in the financial plan (that do not have permanent statutory authorization) and to provide for other transactions necessary to effectuate the provisions of the budget. The bill includes the following provisions:

- Section 1 of this bill would authorize the Comptroller to make temporary loans to specific State funds and accounts during fiscal year 2014-15.
- Section 1-a of this bill would authorize the Comptroller to make temporary loans to accounts within specific Federal funds during fiscal year 2014-15.
- Sections 2 and 3 of this bill would authorize the Comptroller to make transfers between designated funds and accounts.
- Section 3-a of this bill would authorize the transfer of certain employees of the Division of Military and Naval Affairs to the Office of General Services.
- Section 4 of this bill would authorize the Dormitory Authority of the State of New York (DASNY) to transfer \$7 million to the health care reform act (HCRA) Resources Fund - HCRA Resources Account.
- Section 5 of this bill would authorize the Comptroller to deposit funds into the Banking Services Account.
- Section 6 of this bill would authorize DASNY to transfer \$22 million to the State University of New York (SUNY) for bondable equipment costs, which in turn would be re-paid to the State General Fund.
- Section 7 of this bill would authorize SUNY to transfer up to \$16 million to the General Fund for debt service costs related to capital project costs for the NY-SUNY 2020 Challenge Grant program at the University at Buffalo.
- Section 8 of this bill would authorize SUNY to transfer up to \$6.5 million to the General Fund for debt service costs related to capital project costs for the NY-SUNY 2020 Challenge Grant program at the University at Albany.
- Section 9 of this bill would authorize the SUNY Chancellor to transfer the estimated tuition revenue balances from the State University Collection Fund to the State University Fund, State University General Revenue Offset Account.
- Section 10 of this bill would authorize the Comptroller, at the request of the SUNY Chancellor, to transfer up to \$69.3 million from the General Fund to the State University Income Fund, State University Hospitals Income Reimbursement Account.
- Section 11 of this bill would authorize the Comptroller to transfer \$969.1 million from the General Fund to the State University Income Fund, State University General Revenue Offset Account.
- Section 12 of this bill would authorize the Comptroller to transfer up to \$50 million from the State University Income Fund, State University Hospitals Income

Reimbursable and Long Island Veterans' Home accounts, to the State University Capital Projects Fund.

- Section 13 of this bill would authorize the Comptroller to transfer monies from the State University Collection and the State University Income funds to the State University Income Fund, State University Hospitals Income Reimbursable Account, in amounts sufficient to permit the full transfer of moneys authorized for transfer to the General Fund for SUNY Hospitals' debt service.
- Section 14 of this bill would authorize the Comptroller to transfer up to \$80 million between the State University Dormitory Income Fund and the State University Residence Hall Rehabilitation Fund.
- Section 15 of this bill would authorize the Comptroller to transfer up to \$350 million between the following accounts, in any combination: the Miscellaneous Special Revenue Fund, Patient Income Account; the Miscellaneous Special Revenue Fund, Mental Hygiene Program Fund Account; the Miscellaneous Special Revenue Fund, Federal Salary Sharing Account; and the General Fund.
- Section 16 of this bill would authorize the Comptroller to transfer up to \$500 million from the unencumbered balance of any Special Revenue Fund (excluding Federal funds, or any fund in which the eligibility for Federal benefits would be impacted) to the General Fund.
- Section 17 of this bill would authorize the Comptroller to transfer up to \$100 million from any non-general fund or account (excluding funds in which the eligibility for Federal benefits would be impacted) to the Technology Financing Account or the Miscellaneous Capital Projects Fund, Information Technology Capital Financing Account, for the consolidation of costs related to technology services.
- Section 18 of this bill would authorize the Comptroller to transfer up to \$300 million from any non-general fund or account (excluding funds in which the eligibility for Federal benefits would be impacted) to the General Fund as reimbursement for costs related to technology services.
- Section 19 of this bill would authorize the transfer of up to \$90 million from the Power Authority of the State of New York to the credit of the General Fund, with at least \$25 million transferred by June 30, 2014 and the remainder transferred by March 31, 2015.
- Section 20 of this bill would amend State Finance Law (SFL) §97-rrr to allow the State Comptroller to increase the deposit to the School Tax Relief Fund.
- Section 21 of this bill would authorize the Comptroller to transfer to the General Fund funding from the Correctional Facilities Capital Improvement Fund.

- Section 22 of this bill would amend SFL § 4(6) to authorize the Comptroller to receive moneys for deposit to funds and accounts as identified by the Director of the Budget.
- Section 23 of this bill would amend SFL § 40(4) to permit payment of prior years' liabilities.
- Section 24 would continue the authorization to use any balance remaining in the debt service appropriation for Mental Hygiene facilities to make rebates necessary to protect the tax-exempt status of the bonds.
- Section 25 would amend SFL § 68-b to authorize the Comptroller to deposit proceeds from Personal Income Tax Revenue Bonds to the capital projects fund or any other appropriate fund to reimburse capital spending for authorized purposes.
- Section 26 would amend SFL § 69-n to authorize the Comptroller to deposit proceeds from Sales Tax Revenue Bonds to the capital projects fund or any other appropriate fund to reimburse capital spending for authorized purposes.
- Section 27 of this bill would amend SFL § 72(4) to make permanent the authority to set-aside monies in the General Debt Service Fund in advance of payments, to ensure scheduled debt service payments on State general obligation and service contract bonds are made on time and in full.
- Section 28 of this bill would increase the bond cap for the office of information technology services from \$87.74 million to \$182.44 million.
- Section 29 of this bill would increase the bond cap for financing correctional facilities from \$7.133 billion to \$7.148 billion.
- Section 30 of this bill would increase the bond cap for financing housing programs from \$2.845 billion to \$2.999 billion.
- Section 31 of this bill would amend the bond cap for financing local highway projects to provide funds to the thruway authority for debt service requirements of any bonds or any obligations issued to reimburse the state for funding such local highway projects. Additionally, the bond cap would increase from \$7.592 billion to \$8.08 billion.
- Section 32 of this bill would increase the bond cap for financing library facilities from \$112 million to \$126 million.
- Section 33 of this bill would amend the bond cap for financing state police capital projects to include projects for IT initiatives. Additionally, the bond cap would increase from \$133.6 million to \$149.6 million.

- Section 34 of this bill would amend the bond cap for financing economic development to include projects from the Clarkson-Trudeau Partnership, the New York Genome Center, the Cornell University College of Veterinary Medicine, the Olympic Regional Development Authority, Nano Utica, and Onondaga County revitalization projects. Additionally, the bond cap would increase from \$1.003 billion to \$2.195 billion.
- Section 35 of this bill would increase the bond cap for financing environmental infrastructure projects from \$1.27 billion to \$1.398 billion.
- Section 36 of this bill would amend SFL §93-a to make technical changes to the New York State Storm Recovery Capital Fund to remove interest earnings as part of the fund and require that capital projects have a substantial likelihood of federal eligibility for reimbursement.
- Section 37 of this bill would increase the bond cap for financing the NY-SUNY and NY-CUNY 2020 challenge grant program from \$220 million to \$330 million.
- Section 38 of this bill would increase the bond cap for financing homeland security and training facilities from \$67 million to \$204 million, and increase the bond cap for financing improvements to State office buildings and other facilities from \$220.8 million to \$317.8 million.
- Section 39 of this bill would increase the bond cap for financing transportation initiatives from \$240 million to \$465 million.
- Section 40 of this bill would increase the bond cap for financing SUNY educational facilities from \$10.42 billion to \$10.93 billion.
- Section 41 of this bill would increase the bond cap for financing City University of New York senior and community colleges from \$6.85 billion to \$7.13 billion.
- Section 42 of this bill would increase the bond cap for financing SUNY community colleges from \$663 million to \$695 million.
- Section 43 of this bill would establish a new \$1.2 billion bond cap for the capital restructuring financing program.
- Section 44 of this bill would increase the bond cap for financing youth facilities from \$429.5 million to \$465.4 million.
- Section 45 of this bill would amend the bond cap for financing hazardous waste site remediation projects to include projects for environmental restoration, and would remove the restriction for issuing bonds. Additionally, the bond cap would increase from \$1.2 billion to \$1.3 billion.

- Section 46 of this bill would increase the bond cap for financing mental health services facilities improvement from \$7.367 billion to \$7.436 billion.

All of the sections of this bill would become permanent upon enactment except for sections one through nine and thirteen through nineteen, which would all expire on March 31, 2015.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget, including the transfer of funds budgeted in the financial plan and the provision of temporary loans from the State Treasury for cash flow purposes. This bill is also necessary to reimburse projected Capital Projects Fund spending with the proceeds of bonds sold by public authorities, to ensure the continued borrowing necessary for certain State-supported debt issuances to implement the budget, and to permit the State to carry out basic administrative functions.

Effective Date:

This bill takes effect April 1, 2014.

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.