

STATE OF NEW YORK

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SENATE - ASSEMBLY

February 1, 2011

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT relating to constituting chapter 18-A of the consolidated laws in relation to financial services; to amend the insurance law, the banking law, the executive law, the education law, the energy law, the state technology law, the real property law, the general business law, the public authorities law, the public health law, the public service law, the New York state defense emergency act, the state finance law, the criminal procedure law, the tax law, and chapter 784 of the laws of 1951, constituting the New York state defense emergency act, in relation to the creation of the department of financial services; to amend chapter 322 of the laws of 2007, amending the banking law relating to the power of banks, private bankers, trust companies, savings banks, savings and loan associations, credit unions and foreign banking corporations to exercise the rights of national banks, federal savings associations, federal credit unions and federal branches and agencies of foreign banks, in relation to the effectiveness of certain provisions of such chapter; to transfer certain authority with respect to consumer protection from the executive law to the department of state; to amend chapter 3 of the laws of 1997, amending the banking law and the insurance law relating to authorizing the banking board to permit banks and trust companies to exercise the rights of national

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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banks, in relation to the effectiveness of the provisions of such chapter; and to repeal certain provisions of the banking law, the insurance law, the executive law, the agriculture and markets law, the general business law, the tax law, the criminal procedure law and chapter 610 of the laws of 1995, amending the insurance law relating to investments relating to financial services and to making technical corrections; and providing for the repeal of certain provisions upon expiration thereof (Part A); Intentionally omitted (Part B); to amend the correction law and the executive law, in relation to merging the department of correctional services and division of parole into the department of corrections and community supervision; repealing certain provisions of the executive law relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Subpart A); and to amend the correction law, abandoned property law, alcoholic beverage control law, civil practice law and rules, civil rights law, civil service law, county law, court of claims act, criminal procedure law, education law, election law, environmental conservation law, executive law, facilities development corporation act, family court act, general business law, general municipal law, labor law, legislative law, mental hygiene law, municipal home rule law, penal law, public buildings law, public health law, public officers law, railroad law, retirement and social security law, social services law, state administrative procedure act, state finance law, state technology law, surrogate's court procedure act, tax law, town law, vehicle and traffic law, and the workers' compensation law, in relation to making conforming technical changes; and to repeal certain provisions of the correction law relating thereto (Subpart B) (Part C); to amend the economic development law, in relation to transferring the powers, functions and affairs of the New York state foundation for science, technology and innovation to the division of science, technology and innovation within the department of economic development; and to repeal sections 3151 and 3152 of the public authorities law relating thereto (Part D); and to amend the executive law, in relation to **gubernatorial reorganization** of governmental agencies and functions; and to amend the legislative law, in relation to formulation of a concurrent resolution; and providing for the repeal of such provisions upon expiration thereof (Part E)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to implement the state fiscal plan for the 2011-2012
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through E. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part, includ-
7 ing the effective date of the Part, which makes a reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section three of this act sets forth the
11 general effective date of this act.

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PART E

37 Section 1. The executive law is amended by adding a new article 3-A

38 to read as follows:

39 ARTICLE 3-A

40 EXECUTIVE REORGANIZATION ACT OF 2011

41 Section 33. Short title.

42 34. Duty of governor to examine agencies; legislative purpose.

43 35. Definitions.

44 36. Findings by governor; issuance of reorganization plan.

45 37. Contents of reorganization plan.

46 38. Provisions not to be included in a reorganization plan.

47 39. Effective date of reorganization plan.

48 39-a. Effect on actions or proceedings.

49 39-b. Severability.

50 § 33. Short title. This article shall be known and may be cited as
51 the "executive reorganization act of 2011".

52 § 34. Duty of governor to examine agencies; legislative purpose. 1.
53 The governor, from time to time, shall examine the organization of all
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1 agencies and shall determine what changes therein are necessary to
2 accomplish one or more of the following purposes:

3 (a) to promote the better execution of the laws, the more effective
4 management of the government and of its agencies and functions, and the
5 expeditious administration of public business;

6 (b) to reduce expenditures and promote economy to the fullest extent
7 consistent with the efficient operation of the government;

8 (c) to increase the efficiency of the operations of the government to
9 the fullest extent practicable;

10 (d) to group, consolidate, coordinate and merge agencies and functions
11 of the government;

12 (e) to reduce the number of agencies by consolidating those having
13 similar functions, and to abolish such agencies or functions thereof as
14 may not be necessary for the efficient conduct of the government; and

15 (f) to eliminate overlap and duplication of effort.

16 2. The legislature declares that the public interest is best served by
17 fulfilling the purposes set forth in this section and that such purposes
18 may be accomplished more speedily and effectively under this article.

19 § 35. Definitions. As used in this article, the following terms shall
20 have the following meanings:

21 1. "Agency" means:

22 (a) Any administrative unit of state government, including, but not
23 limited to, any agency, board, bureau, commission, department, division,
24 institution, office, state public authority, state task force, or other
25 body, or parts thereof, however designated, whether or not it receives
26 legislative appropriations, but does not include any entity whose prima-
27 ry function is service to the legislative or judicial branches of state
28 government, the department of law, the department of audit and control
29 or the board of regents;

30 (b) Any office or officer in any agency, except the department of law
31 and department of audit and control; and

32 (c) Any state public authority or public benefit corporation created
33 by or existing under any state law, or parts thereof, however desig-
34 nated, with one or more of its members appointed by the governor or who
35 serve as members by virtue of holding a civil office of the state, other
36 than an interstate or international authority or public benefit corpo-
37 ration, including any subsidiaries of such public authority or public
38 benefit corporation.

39 Provided that "agency" shall not include any department, board,

40 bureau, commission, division, office, council, committee or officer of a
41 municipality or a local industrial development agency or local public
42 authority or local public benefit corporation as that term is defined in
43 section sixty-six of the general construction law.

44 2. "Assembly" means the New York state assembly.

45 3. "Function" means any activity, assignment, duty, power, responsi-
46 bility, right, set of operations or other activity.

47 4. "Governor" means the governor of the state of New York.

48 5. "Legislature" means the legislature of the state of New York.

49 6. "Officer" means every officer appointed by one or more state offi-
50 cers, or by the legislature, and authorized to exercise their official
51 functions throughout the entire state, or without limitation to any
52 political subdivision of the state, and is not limited to persons
53 receiving compensation for their services.

54 7. "Regulation or other action" means any regulation, rule, order,
55 policy, determination, directive, authorization, permit, privilege,
56 requirement, designation, or other action.

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1 8. "Reorganization" or "reorganize" means:

2 (a) The transfer of the whole or any part of any agency, or of the
3 whole or any part of the functions thereof, to the jurisdiction and
4 control of any other agency;

5 (b) The abolition of all or any part of the functions of any agency;

6 (c) The consolidation, coordination or merger of the whole or any
7 part of any agency, or of the whole or any part of the functions there-
8 of, with the whole or any part of any other agency or the functions
9 thereof;

10 (d) The consolidation, coordination or merger, of any part of any
11 agency or the functions thereof with any other part of the same agency
12 or the functions thereof;

13 (e) The authorization of any non-elective officer to delegate any of
14 their functions;

15 (f) The abolition of the whole or any part of any agency which does
16 not have, or upon the taking effect of reorganization will not have, any
17 functions; or

18 (g) The establishment of a new agency to perform the whole or any part
19 of the functions of any existing agency or agencies.

20 9. "Reorganization plan" or "plan" shall mean the bill prepared by the
21 governor, and submitted to the legislature as a program bill, that
22 contains terms and information regarding the reorganization of one or
23 more agencies pursuant to this article which, when enacted, shall accom-
24 plish such reorganization.

25 10. "Senate" means the New York state senate.

26 § 36. Findings by governor; issuance of reorganization plan. 1. When-
27 ever the governor finds it in the public interest, he or she may reor-
28 ganize one or more agencies.

29 2. Nothing in this article shall prohibit or limit the authority of
30 the governor or legislature to implement or enact a reorganization plan
31 pursuant to any other lawful process.

32 § 37. Contents of reorganization plan. 1. A reorganization plan
33 shall:

34 (a) set forth as findings in such plan, a description of the nature
35 and purposes of the reorganization, together with an explanation of the
36 advantages that will result from its implementation, including:

37 (i) anticipated savings and costs associated with each significant
38 modification of any agency functions or operations;

39 (ii) the productivity gains measured in numbers of full-time employees
40 and the types of positions, if any, that may be created or eliminated as
41 a result of the reorganization plan;

42 (iii) estimated improvements and other impacts, including fiscal and
43 service impacts, on programs or services recipients, if the reorganiza-
44 tion plan is adopted; and

45 (iv) estimated long-term projected fiscal impact of the reorganization
46 plan;

47 (b) specify with respect to each function that is either abolished or
48 merged with another function included in the plan the statutory authori-
49 ty for the exercise of the function;

50 (c) provide for the uninterrupted conduct of the governmental services
51 and functions affected by but not absorbed by the plan;

52 (d) provide for the transfer, assumption or other disposition of the
53 records, property, and personnel affected by a reorganization, further
54 provided, should any employees be transferred from one agency to anoth-
55 er, that such transfer will be without further examination or qualifica-
56 tion and such employees shall retain their respective civil service

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1 classifications, status and collective bargaining unit designations and
2 be governed by applicable collective bargaining agreements;

3 (e) provide for terminating the affairs of an agency abolished;

4 (f) set forth every law and chapter that will be directly impacted
5 pursuant to the reorganization plan;

6 (g) provide for the transfer of such unexpended balances of appropri-
7 ations and reappropriation of remaining expended or unexpended funds
8 whether allocated or unallocated and whether obligated or unobligated,
9 available for use in connection with a function or agency affected by a
10 reorganization, as necessary by reason of the reorganization for use in
11 connection with the functions affected by the reorganization, or for the
12 use of the agency which shall have the functions after the reorganiza-
13 tion plan is effective. However, the unexpended balances so transferred
14 may be used only for the purposes for which the appropriation was
15 originally made. Such reorganization plan may not contain appropri-
16 ations for a reorganized agency. Any such appropriation as may be needed
17 may only be considered pursuant to a single appropriation in legislation
18 outside of the reorganization plan or in the executive budget submitted
19 in the fiscal year following the enactment of the reorganization plan;

20 (h) provide that no existing right or remedy shall be lost, impaired
21 or affected by any reorganization plan;

22 (i) provide that no action or proceeding pending at any time when such
23 reorganization plan takes effect, brought by or against any agency which
24 is subject to such plan, shall be affected by any provision of the plan,
25 but the same may be prosecuted or defended in the name of such agency.
26 In all such actions and proceedings, if an agency is eliminated and its
27 functions and responsibilities are transferred, then the head of the
28 surviving agency, upon application of the court, shall be substituted as
29 a party;

30 (j) describe in detail:

31 (i) other actions, if any, necessary to plan to complete the reorgan-
32 ization;

33 (ii) the anticipated nature and substance of any orders, directives,
34 and other administrative and operational actions which are expected to
35 be required for completing or implementing the reorganization; and

36 (iii) any preliminary actions which have been taken in the implementa-
37 tion process;

38 (k) provide a projected timetable for completion of the implementation
39 process; and

40 (l) include provisions for the appointment and compensation of the
41 head and one or more officers of an agency (including an agency result-
42 ing from a consolidation or other type of reorganization) if the gover-
43 nor finds and declares that by reason of a reorganization made by the
44 plan the provisions are in the public interest. The agency head may be
45 an individual or may be a commission or board with more than one member.
46 In any case, the term of office may not be fixed for a period in excess
47 of the term remaining to be served by the then governor, the pay may not
48 be at a rate in excess of that found by the governor to be applicable to
49 comparable officers in the state government, and, if the appointment is
50 not to a position in the competitive service, it shall be made by the
51 commissioner or other chief executive officer, board or commission of
52 the agency affected. If the reorganization plan creates a new agency
53 that includes the function of an agency whose head was confirmed with
54 the advice and consent of the senate, or substantially modifies the
55 functions of an existing agency whose head was confirmed with the advice
56 and consent of the senate, then the head or heads of such new or modi-

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1 fied agency shall be appointed with the advice and consent of the
2 senate.

3 2. A reorganization plan may change the name of an agency affected by
4 a reorganization and the title of its head, and shall designate the name
5 of an agency resulting from a reorganization and the title of its head.

6 § 38. Provisions not to be included in a reorganization plan. 1. No
7 reorganization plan shall provide for, and no reorganization under this
8 article shall have the effect of:

9 (a) abolishing or modifying any agency or entity created or estab-
10 lished by the New York state constitution, including without limitation,
11 the board of regents, legislature, judiciary, comptroller and attorney
12 general, or abolishing or modifying any agency or entity administered by
13 such constitutionally established agency or entity that is not subject
14 to direct gubernatorial control, or abolishing or transferring to or
15 from the jurisdiction and control of any such agency any function
16 conferred by the New York state constitution on an agency authorized by
17 such constitution, or affecting or changing any implementing statutes
18 related to such agencies or entities;

19 (b) abolishing any function required by federal law or interstate
20 compacts;

21 (c) violating any covenant with bondholders; or

22 (d) abolishing statutorily prescribed functions, provided that such
23 functions may be assigned to a different agency than the one to which
24 they were originally assigned by the statute.

25 2. No reorganization plan shall have the effect of limiting in any way
26 the validity of any statute enacted, or any regulation or other action
27 made, prescribed, issued, granted or performed in respect to or by any
28 agency before the effective date of the plan except to the extent that
29 the plan specifically so provides nor shall such plan have the effect of
30 limiting or altering the advice and consent powers of the senate.

31 § 39. Effective date of reorganization plan. 1. A reorganization plan
32 shall be voted on by each house of the legislature, without amendment as
33 submitted by the governor, within thirty days after such submission.
34 The governor may submit only one such plan annually and may amend that
35 plan one time within such thirty day period. Both houses of the legisla-
36 ture shall then have thirty days from the submission of such amendment

37 to vote on the amended reorganization plan. Without the consent of both
38 houses of the legislature, neither a plan nor an amendment may be
39 submitted by the governor after the thirtieth day of May in any year.

40 2. Under provisions contained in a reorganization plan, a provision of
41 the plan may be effective at a time later than the date on which the
42 plan otherwise is effective.

43 § 39-a. Effect on actions or proceedings. This article shall not
44 affect actions or proceedings, civil or criminal, brought by or against
45 any agency or officer, the functions, powers and duties of which have
46 been transferred or abolished pursuant to this article; nor shall any
47 reorganization affect any order or recommendation made by, or other
48 matters or proceedings before, any agency or officer, the functions,
49 powers and duties of which have been transferred or abolished pursuant
50 to a reorganization plan under this article.

51 § 39-b. Severability. If any clause, sentence, paragraph, subdivi-
52 sion, section or part of this article shall be adjudged by any court of
53 competent jurisdiction to be invalid, such judgment shall not affect,
54 impair, or invalidate the remainder thereof, but shall be confined in
55 its operation to the clause, sentence, paragraph, subdivision, section
56 or part thereof directly involved in the controversy in which such judg-

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1 ment shall have been rendered. It is hereby declared to be the intent of
2 the legislature that this article would have been enacted even if such
3 invalid provisions had not been included in this section.

4 § 2. The legislative law is amended by adding a new section 54-b to
5 read as follows:

6 § 54-b. Reorganization plan. The legislature may by concurrent resol-
7 ution prescribe rules for the consideration and disposition of a reor-
8 ganization plan, as defined in article three-A of the executive law.

9 § 3. This act shall take effect immediately and shall be deemed
10 repealed May 31, 2014.

11 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
12 sion, section or part of this act shall be adjudged by any court of
13 competent jurisdiction to be invalid, such judgment shall not affect,
14 impair, or invalidate the remainder thereof, but shall be confined in
15 its operation to the clause, sentence, paragraph, subdivision, section
16 or part thereof directly involved in the controversy in which such judg-
17 ment shall have been rendered. It is hereby declared to be the intent of
18 the legislature that this act would have been enacted even if such
19 invalid provisions had not been included herein.

20 § 3. This act shall take effect immediately provided, however, that
21 the applicable effective date of Parts A through E of this act shall be
22 as specifically set forth in the last section of such Parts.
