

413

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. KRUEGER, MONTGOMERY, SERRANO, VALESKY -- read twice  
and ordered printed, and when printed to be committed to the Committee  
on Finance

AN ACT to amend the executive law, in relation to establishing the  
empire state performance commission in the executive department for  
the purpose of designing and advising the governor and the legislature  
on the implementation of a performance-management and performance-  
budgeting system

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "empire state performance commission act".  
3     S 2. Legislative intent. New York's lack of a comprehensive perfor-  
4     mance-budgeting scheme for state-funded programs often leads to irreg-  
5     ular appropriation practices and rigid across-the-board cuts, without  
6     regard to the programs' effectiveness. A performance-management and  
7     performance-budgeting system that ties program funding to the results  
8     the programs achieve would provide lawmakers with more flexibility in  
9     making budget decisions and provide the public with a means by which  
10    they can evaluate how their tax dollars are being spent.  
11    The legislature recognizes that implementing and maintaining a compre-  
12    hensive system of performance-management and performance-budgeting is a  
13    complicated process that will require cooperation between the legisla-  
14    tive and executive branches in order to be successful. Unilaterally  
15    imposing performance-management and performance-budgeting requirements  
16    on executive agencies would likely be unproductive and ineffective.  
17    Reforming the state budget process requires careful deliberation that  
18    includes feedback from the various stakeholders in the process, includ-  
19    ing the public.

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

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1 This legislation creates a blue ribbon commission that will be charged  
2 with designing a performance-management and performance-budgeting model  
3 for New York to adopt. The commission is structured to elicit input from  
4 both houses of the legislature, the governor, executive agencies, and  
5 the public. Additionally, it is expected that the commission will  
6 consult with performance-management and/or performance-budgeting  
7 experts, other state governments, and/or academic research on perfor-  
8 mance-management and performance-budgeting. The intent of the legisla-  
9 ture in creating this commission is to have legislation ready for  
10 passage in 2012 that implements a performance-management and perfor-  
11 mance-budgeting system starting with the 2013-2014 budget.

12 S 3. The executive law is amended by adding a new article 51 to read  
13 as follows:

14 ARTICLE 51

15 EMPIRE STATE PERFORMANCE COMMISSION

16 SECTION 1010. EMPIRE STATE PERFORMANCE COMMISSION; PURPOSE.

17 1011. MEMBERSHIP; TERMS; CHAIRMAN AND VICE CHAIRMAN.

18 1012. DUTIES OF THE COMMISSION.

19 1013. DELIBERATIONS OF THE COMMISSION; ADVISORY COMMITTEES.

20 1014. STAFF; COOPERATION AND ASSISTANCE.

21 S 1010. EMPIRE STATE PERFORMANCE COMMISSION; PURPOSE. THE EMPIRE STATE  
22 PERFORMANCE COMMISSION (THE COMMISSION) IS ESTABLISHED AS A BLUE RIBBON  
23 COMMISSION IN THE EXECUTIVE DEPARTMENT. THE PURPOSE OF THE COMMISSION IS  
24 TO DESIGN AND ADVISE THE GOVERNOR AND THE LEGISLATURE ON THE IMPLEMENTA-  
25 TION OF A PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM. WHEN  
26 USED IN THIS ARTICLE, THE TERM "PERFORMANCE-MANAGEMENT" MEANS A MANAGE-  
27 MENT SYSTEM CONSISTING OF STRATEGIC PLANNING, STRATEGIC PERFORMANCE AND  
28 PRODUCTIVITY MEASUREMENT, PROGRAM EVALUATION, AND PERFORMANCE BUDGETING,  
29 AND THE TERM "PERFORMANCE-BUDGETING" MEANS A SYSTEMIC INCORPORATION OF  
30 PLANNING, STRATEGIC PERFORMANCE AND PRODUCTIVITY MEASUREMENT, AND  
31 PROGRAM EVALUATION INFORMATION INTO THE BUDGETARY PROCESS.

32 S 1011. MEMBERSHIP; TERMS; CHAIRMAN AND VICE CHAIRMAN. 1. THE COMMIS-  
33 SION SHALL BE COMPOSED OF FIFTEEN MEMBERS THAT INCLUDE SIX LEGISLATIVE  
34 MEMBERS AND NINE NON-LEGISLATIVE MEMBERS AS FOLLOWS:

35 (A) THE GOVERNOR;

36 (B) THE COMPTROLLER;

37 (C) THE SPEAKER OF THE ASSEMBLY;

38 (D) THE MINORITY LEADER OF THE ASSEMBLY;

39 (E) THE CHAIRMAN OF THE ASSEMBLY WAYS AND MEANS COMMITTEE;

40 (F) THE TEMPORARY PRESIDENT OF THE SENATE;

41 (G) THE MINORITY LEADER OF THE SENATE;

42 (H) THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE;

43 (I) ONE NON-LEGISLATIVE CITIZEN MEMBER APPOINTED BY THE SPEAKER OF THE  
44 ASSEMBLY;

45 (J) ONE NON-LEGISLATIVE CITIZEN MEMBER APPOINTED BY THE TEMPORARY  
46 PRESIDENT OF THE SENATE;

47 (K) THE DIRECTOR OF THE DIVISION OF THE BUDGET;

48 (L) TWO EXECUTIVE DEPARTMENT HEADS APPOINTED BY THE GOVERNOR; AND

49 (M) TWO NON-LEGISLATIVE CITIZEN MEMBERS APPOINTED BY THE GOVERNOR.

50 2. THE LEGISLATIVE LEADERS SHALL SUBMIT THEIR APPOINTMENTS TO THE  
51 GOVERNOR, AND THE GOVERNOR SHALL MAKE HIS OR HER APPOINTMENTS, NO LATER  
52 THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE. IF ANY SUCH  
53 APPOINTMENT IS NOT MADE BY SUCH DATE, THE APPOINTING OFFICER MAY MAKE  
54 THE APPOINTMENT AFTER THAT DATE, BUT THE VACANT APPOINTMENT SHALL NOT  
55 COUNT FOR CALCULATION OF A QUORUM UNTIL IT IS FILLED. THE GOVERNOR AND  
56 THE COMPTROLLER SHALL SERVE ON THE COMMISSION COINCIDENT WITH THEIR

1 TERMS OF OFFICE. LEGISLATIVE MEMBERS, THE DIRECTOR OF THE DIVISION OF  
2 THE BUDGET, AND THE TWO EXECUTIVE DEPARTMENT HEADS APPOINTED BY THE  
3 GOVERNOR SHALL SERVE ON THE COMMISSION COINCIDENT WITH THEIR HOLDING  
4 THEIR RESPECTIVE POSITIONS. IN THE EVENT THAT A LEGISLATIVE MEMBER  
5 HOLDS MORE THAN ONE OF THE POSITIONS LISTED IN SUBDIVISION ONE OF THIS  
6 SECTION, SUCH LEGISLATIVE MEMBER SHALL DESIGNATE ANOTHER LEGISLATIVE  
7 MEMBER OR MEMBERS, AS APPLICABLE, TO SERVE AS THE REPRESENTATIVE FOR THE  
8 OTHER POSITION OR POSITIONS. NON-LEGISLATIVE CITIZEN MEMBERS SHALL BE  
9 APPOINTED FOR A TERM ENDING ONE YEAR SUBSEQUENT TO THE EFFECTIVE DATE OF  
10 THIS ARTICLE, OR JUNE FIRST, TWO THOUSAND TWELVE, WHICHEVER IS LATER.  
11 VACANCIES SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINT-  
12 MENTS. THE GOVERNOR SHALL SERVE AS THE CHAIRMAN OF THE COMMISSION. THE  
13 COMMISSION SHALL ELECT A VICE CHAIRMAN FROM ITS MEMBERSHIP.

14 3. THE MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR  
15 THEIR SERVICES AS MEMBERS, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECES-  
16 SARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. MEMBERS OF  
17 THE COMMISSION SHALL BE CONSIDERED PUBLIC OFFICERS FOR PURPOSES OF  
18 SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW.

19 S 1012. DUTIES OF THE COMMISSION. THE COMMISSION SHALL HAVE THE  
20 FOLLOWING DUTIES:

21 1. DESIGN A PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM  
22 FOR THE STATE WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:

23 (A) STRATEGIC PLANNING;

24 (B) PERFORMANCE MEASUREMENT;

25 (C) PROGRAM EVALUATION;

26 (D) UNIFORM STANDARDS FOR MEASURING, COMPILING, AND REPORTING PERFORM-  
27 ANCE INFORMATION;

28 (E) A WEBSITE OR OTHER APPROPRIATE MEANS FOR DISSEMINATING INFORMATION  
29 ABOUT THE PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM TO THE  
30 PUBLIC; AND

31 (F) A CONTINUING OVERSIGHT AND ADVISORY ROLE FOR THE COMMISSION.

32 2. ESTABLISH A TIMETABLE FOR PHASING IN AND ESTABLISHING A PERFOR-  
33 MANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM.

34 3. PROVIDE ADVICE ON THE IMPLEMENTATION OF THE PERFORMANCE-MANAGEMENT  
35 AND PERFORMANCE-BUDGETING SYSTEM ACROSS STATE GOVERNMENT.

36 4. RECOMMEND A SYSTEMATIC PROCESS FOR THE PERIODIC EVALUATION OF THE  
37 PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM WHICH PROVIDES  
38 FOR ENHANCED OPPORTUNITIES FOR PUBLIC PARTICIPATION AND INPUT.

39 5. SOLICIT PUBLIC INPUT ON APPROPRIATE ASPECTS OF PERFORMANCE-MANAGE-  
40 MENT AND PERFORMANCE-BUDGETING AS DETERMINED BY THE COMMISSION.

41 6. ON OR BEFORE MARCH FIRST, TWO THOUSAND TWELVE, THE COMMISSION SHALL  
42 RECOMMEND TO THE GOVERNOR AND THE LEGISLATURE LEGISLATION IMPLEMENTING A  
43 PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM FOR THE STATE  
44 STARTING WITH FISCAL YEAR TWO THOUSAND THIRTEEN--TWO THOUSAND FOURTEEN.  
45 AT THE SAME TIME, THE COMMISSION SHALL SUBMIT TO THE GOVERNOR AND THE  
46 LEGISLATURE A SUMMARY REPORT OF THE ACTIVITY AND FINDINGS OF THE COMMIS-  
47 SION. THE COMMISSION SHALL DISSOLVE AT THE EXPIRATION OF ONE YEAR SUBSE-  
48 QUENT TO THE EFFECTIVE DATE OF THIS ARTICLE, OR JUNE FIRST, TWO THOUSAND  
49 TWELVE, WHICHEVER IS LATER.

50 S 1013. DELIBERATIONS OF THE COMMISSION; ADVISORY COMMITTEES. 1. THE  
51 COMMISSION SHALL MEET AT LEAST FOUR TIMES. THE MEETINGS OF THE COMMIS-  
52 SION SHALL BE HELD AT THE CALL OF THE CHAIRMAN OR WHENEVER FIVE OR MORE  
53 MEMBERS SO REQUEST. A MAJORITY OF MEMBERS OF THE COMMISSION SHALL  
54 CONSTITUTE A QUORUM. APPROVAL OF ANY MATTER SHALL REQUIRE THE AFFIRMA-  
55 TIVE VOTE OF A MAJORITY OF THE MEMBERS VOTING THEREON. MEMBERS MAY

1 DESIGNATE AND AUTHORIZE ANOTHER PERSON TO ACT FOR HIM OR HER BY PROXY.  
2 PROXIES SHALL BE REVOCABLE AT THE PLEASURE OF THE MEMBER EXECUTING IT.

3 2. THE DELIBERATIONS, MEETINGS AND OTHER PROCEEDINGS OF THE COMMISSION  
4 AND ANY COMMITTEE THEREOF SHALL BE GOVERNED BY ARTICLE SEVEN OF THE  
5 PUBLIC OFFICERS LAW. ANY ONE OR MORE MEMBERS MAY PARTICIPATE IN A MEET-  
6 ING BY MEANS OF A CONFERENCE TELEPHONE, CONFERENCE VIDEO OR SIMILAR  
7 COMMUNICATIONS EQUIPMENT ALLOWING ALL PERSONS PARTICIPATING IN THE MEET-  
8 ING TO HEAR EACH OTHER AT THE SAME TIME. PARTICIPATION BY SUCH MEANS  
9 SHALL CONSTITUTE PRESENCE IN PERSON AT A MEETING. AT ANY MEETINGS OF THE  
10 COMMISSION CONDUCTED BY MEANS OF A CONFERENCE TELEPHONE, CONFERENCE  
11 VIDEO OR SIMILAR COMMUNICATIONS EQUIPMENT, OTHER THAN EXECUTIVE  
12 SESSIONS, THE PUBLIC SHALL BE GIVEN AN OPPORTUNITY TO LISTEN. IF A MEET-  
13 ING OTHER THAN AN EXECUTIVE SESSION IS TO BE CONDUCTED BY MEANS OF A  
14 CONFERENCE TELEPHONE, CONFERENCE VIDEO OR SIMILAR COMMUNICATIONS EQUIP-  
15 MENT, THE PUBLIC NOTICE FOR THE MEETING SHALL INFORM THE PUBLIC THAT  
16 SUCH EQUIPMENT WILL BE USED, AND IDENTIFY THE MEANS BY WHICH THE PUBLIC  
17 MAY LISTEN TO SUCH MEETING.

18 3. THE COMMISSION MAY FORM SUCH ADVISORY COMMITTEES AS IT DEEMS NECES-  
19 SARY, CONVENIENT, OR DESIRABLE TO ADVISE AND ASSIST IN PERFORMING THE  
20 DUTIES CONFERRED BY THIS ARTICLE.

21 S 1014. STAFF; COOPERATION AND ASSISTANCE. 1. THE DIVISION OF THE  
22 BUDGET SHALL PROVIDE STAFF ASSISTANCE TO THE COMMISSION. ADDITIONAL  
23 ASSISTANCE AS NEEDED SHALL BE PROVIDED BY THE STAFFS OF THE ASSEMBLY  
24 WAYS AND MEANS COMMITTEE AND THE SENATE FINANCE COMMITTEE. ALL AGENCIES,  
25 AUTHORITIES, AND INSTITUTIONS OF THE STATE SHALL COOPERATE AND PROVIDE  
26 SUCH ASSISTANCE TO THE COMMISSION AS THE COMMISSION MAY REQUEST.

27 2. THE CHAIRMAN, IN CONSULTATION WITH THE COMMISSION, MAY HIRE OR  
28 APPOINT AN EXECUTIVE DIRECTOR FOR THE COMMISSION IF DEEMED NECESSARY.

29 S 4. This act shall take effect immediately.