

S. 2608

A. 3008

S E N A T E - A S S E M B L Y

January 22, 2013

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

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

AN ACT to authorize funding for the Consolidated Local Street and Highway Improvement Program (CHIPS) and Marchiselli program for state fiscal year 2013-2014 (Part A); to amend the tax law, in relation to the statewide transmission tax (Part B); to amend the vehicle and traffic law, in relation to imposing drivers license sanctions (Part C); to amend the vehicle and traffic law, in relation to the hours of operation of the department of motor vehicles (Part D); to amend the public authorities law, in relation to enforcement assistance; and to repeal section 357-a of such law relating to payment by the New York state thruway authority for services provided by the division of state police (Part E); to amend the environmental conservation law and the state finance law, in relation to establishing the "Cleaner, Greener NY Act of 2013"; and repealing section 27-1017 of the environmental conservation law relating thereto (Part F); to amend the environmental conservation law, in relation to waste tire management and recycling fees (Part G); to amend chapter 393 of the laws of 1994, amending the New York state urban development corporation act, relating to the powers of the New York state urban development corporation to make loans, in relation to the effectiveness thereof (Part H); to amend chapter 58 of the laws of 2012 amending the public authorities law relating to authorizing the dormitory authority to enter into certain design and construction management agreements, in relation to extending certain authority of the dormitory authority of the state of New York (Part I); to amend the New York state urban development corporation act, in relation to the powers of the New York state urban development corporation to make grants (Part J); to authorize and direct the New York state energy research and development authority to make a payment to the general fund of up to \$913,000 (Part K); to authorize the New York state energy research and development authority to finance a portion of its research, development and demonstration

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

LBD12573-01-3

and policy and planning programs from assessments on gas and electric corporations (Part L); to authorize the department of health to finance certain activities with revenues generated from an assessment on cable television companies (Part M); to amend the public service law, in relation to extending the temporary state energy and utility conservation assessment; and to amend section 6 of part NN of chapter 59 of the laws of 2009 amending the public service law relating to financing the operations of the department of public service, the public service commission, department support and energy management services provided by other state agencies, increasing the utility assessment cap and the minimum threshold for collection thereunder, and establishing a temporary state energy and utility service conservation assessment and providing for the collection thereof, in relation to extending the effectiveness thereof (Part N); to amend the public service law, in relation to strengthening the oversight and enforcement mechanisms of the Public Service Commission; to amend the general business law, in relation to expanding the definition of underground facilities and increasing fines for violations relating to the protection of underground facilities; and to repeal certain provisions of the public service law relating thereto (Part O); to amend chapter 21 of the laws of 2003, amending the executive law relating to permitting the secretary of state to provide special handling for all documents filed or issued by the division of corporations and to permit additional levels of such expedited service, in relation to extending the expiration date thereof (Part P); and to amend the banking law, the cooperative corporations law, the general business law, and the not-for-profit corporation law, in relation to facilitating an online corporate filing system by removing the type classification system for not-for-profit corporations; to repeal certain provisions of the not-for-profit corporation law and the religious corporations law, relating thereto (Subpart A); to amend the business corporation law, the education law, the general business law, the limited liability company law, the not-for-profit corporation law, the partnership law, the private housing finance law, the public health law and the transportation corporations law, in relation to facilitating online filing by authorizing self-certification by filers with regard to required consents; to repeal certain provisions of the business corporation law and the not-for-profit corporation law, relating thereto (Subpart B); to amend the business corporation law, the limited liability company law, the not-for-profit corporation law and the partnership law, in relation to authorizing electronic attendance at meetings (Subpart C); to amend the business corporation law, the limited liability company law and the not-for-profit corporation law, in relation to who may act as an incorporator (Subpart D); to amend the general associations law, in relation to serving process upon the secretary of state as agent (Subpart E); to amend the tax law, in relation to reducing the taxes on shares (Subpart F) (Part Q)

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 2013-2014
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through Q. The effective date for each particular

provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. The sum of four hundred two million seven hundred ninety-seven thousand dollars (\$402,797,000), or so much thereof as shall be necessary, and in addition to amounts previously appropriated by law, is hereby made available, in accordance with subdivision 1 of section 380 of the public authorities law as amended, according to the following schedule. Payments pursuant to subdivision (a) of this section shall be made available as moneys become available for such payments. Payments pursuant to subdivisions (b) and (c) of this section shall be made available on the fifteenth day of June, September, December and March or as soon thereafter as moneys become available for such payments. No moneys of the state in the state treasury or any of its funds shall be available for payments pursuant to this section:

SCHEDULE

(a) Thirty-nine million seven hundred thousand dollars (\$39,700,000) to municipalities for repayment of eligible costs of federal aid municipal street and highway projects pursuant to section 15 of chapter 329 of the laws of 1991, as added by section 9 of chapter 330 of the laws of 1991, as amended. The department of transportation shall provide such information to the municipalities as may be necessary to maintain the federal tax exempt status of any bonds, notes, or other obligations issued by such municipalities to provide for the non-federal share of the cost of projects pursuant to chapter 330 of the laws of 1991 or section 80-b of the highway law.

The program authorized pursuant to section 15 of chapter 329 of the laws of 1991, as added by section 9 of chapter 330 of the laws of 1991, as amended, shall additionally make payments for reimbursement according to the following schedule:

State Fiscal Year	Amount
2013-14	\$39,700,000

(b) Three hundred four million three hundred thousand dollars (\$304,300,000) to counties, cities, towns and villages for reimbursement of eligible costs of local highway and bridge projects pursuant to sections 16 and 16-a of chapter 329 of the laws of 1991, as added by section 9 of chapter 330 of the laws of 1991, as amended. For the purposes of computing allocations to municipalities, the amount distributed pursuant to section 16 of chapter 329 of the laws of 1991 shall be deemed to be \$121,520,000. The amount distributed pursuant to section 16-a of chapter 329 of the laws of 1991 shall be deemed to be \$182,780,000. Notwithstanding the provisions of any general or special law, the amounts deemed distributed in accordance with section 16 of chapter 329 of the laws of 1991 shall be adjusted so that such amounts will not be less than 83.807 percent of the "funding level" as defined in subdivision 5 of section 10-c of the highway law for each such municipality. In order to achieve the objectives of section 16 of chapter 329 of the laws of 1991, to the extent necessary, the amounts in excess of 83.807 percent of the funding level to be deemed distributed to each

1 municipality under this subdivision shall be reduced in equal propor-
2 tion.

3 (c) Fifty-eight million seven hundred ninety-seven thousand dollars
4 (\$58,797,000) to municipalities for reimbursement of eligible costs of
5 local highway and bridge projects pursuant to sections 16 and 16-a of
6 chapter 329 of the laws of 1991, as added by section 9 of chapter 330 of
7 the laws of 1991, as amended. For the purposes of computing allocations
8 to municipalities, the amount distributed pursuant to section 16 of
9 chapter 329 of the laws of 1991 shall be deemed to be \$23,480,000. The
10 amount distributed pursuant to section 16-a of chapter 329 of the laws
11 of 1991 shall be deemed to be \$35,317,000. Notwithstanding the
12 provisions of any general or special law, the amounts deemed distributed
13 in accordance with section 16 of chapter 329 of the laws of 1991 shall
14 be adjusted so that such amounts will not be less than 16.193 percent of
15 the "funding level" as defined in subdivision 5 of section 10-c of the
16 highway law for each such municipality. In order to achieve the objec-
17 tives of section 16 of chapter 329 of the laws of 1991, to the extent
18 necessary, the amounts in excess of 16.193 percent of the funding level
19 to be deemed distributed to each municipality under this subdivision
20 shall be reduced in equal proportion. To the extent that the total of
21 remaining payment allocations calculated herein varies from \$58,797,000,
22 the payment amounts to each locality shall be adjusted by a uniform
23 percentage so that the total payments equal \$58,797,000.

24 The program authorized pursuant to sections 16 and 16-a of chapter 329
25 of the laws of 1991, as added by section 9 of chapter 330 of the laws of
26 1991, as amended, shall additionally make payments for reimbursement
27 according to the following schedule:

State Fiscal Year	Amount
2013-14	\$363,097,000

28
29
30 S 2. This act shall take effect immediately.

31 PART B

32 Section 1. Subdivision 3 of section 205 of the tax law, as added by
33 section 8 of part U1 of chapter 62 of the laws of 2003, is amended to
34 read as follows:

35 3. [From the] THE moneys collected from the taxes imposed by sections
36 one hundred eighty-three and one hundred eighty-four of this article on
37 and after April first, two thousand [four] THIRTEEN, after reserving
38 amounts for refunds or reimbursements, SHALL BE DISTRIBUTED AS FOLLOWS:
39 twenty percent of such moneys shall be deposited to the credit of the
40 dedicated highway and bridge trust fund established by section eighty-
41 nine-b of the state finance law[. The remainder], FIFTY-FOUR PERCENT OF
42 SUCH MONEYS shall be deposited in the mass transportation operating
43 assistance fund to the credit of the metropolitan mass transportation
44 operating assistance account created pursuant to section eighty-eight-a
45 of the state finance law AND TWENTY-SIX PERCENT OF SUCH MONEYS SHALL BE
46 DEPOSITED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO THE
47 CREDIT OF THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT
48 CREATED PURSUANT TO SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW.

49 S 2. This act shall take effect on the same date and in the same
50 manner as the expiration and repeal of subdivision 3 of section 205 of
51 the tax law per section 2 of part P of chapter 59 of the laws of 2012,
52 as amended; provided, however, that the amendments to subdivision 3 of
53 section 205 of the tax law made by section one of this act shall not

1 affect the repeal of such subdivision and shall be deemed repealed therewith.
2

3 PART C

4 Section 1. Paragraph (a) of subdivision 4 of section 510-a of the
5 vehicle and traffic law, as amended by section 14 of part E of chapter
6 60 of the laws of 2005, is amended to read as follows:

7 (a) A serious traffic violation shall mean operating a commercial
8 motor vehicle IN VIOLATION OF A STATE OR LOCAL LAW OR ORDINANCE
9 RESTRICTING OR PROHIBITING THE USE OF A HAND-HELD MOBILE TELEPHONE OR A
10 PORTABLE ELECTRONIC DEVICE WHILE DRIVING OR in violation of any
11 provision of this chapter or the laws of any other state, the District
12 of Columbia or any Canadian province which (i) limits the speed of motor
13 vehicles, provided the violation involved fifteen or more miles per hour
14 over the established speed limit; (ii) is defined as reckless driving by
15 state or local law or regulation; (iii) prohibits improper or erratic
16 lane change; (iv) prohibits following too closely; (v) relates to motor
17 vehicle traffic (other than parking, standing or stopping) and which
18 arises in connection with a fatal accident; (vi) operating a commercial
19 motor vehicle without first obtaining a commercial driver's license as
20 required by section five hundred one of this title; (vii) operating a
21 commercial motor vehicle without a commercial driver's license in the
22 driver's possession; or (viii) operating a commercial motor vehicle
23 without the proper class of commercial driver's license and/or endorse-
24 ment for the specific vehicle being operated or for the passengers or
25 type of cargo being transported.

26 S 2. Paragraphs (c) and (e) of subdivision 1 of section 1225-c of the
27 vehicle and traffic law, as added by chapter 69 of the laws of 2001, are
28 amended to read as follows:

29 (c) "Using" shall mean holding a mobile telephone to, or in the imme-
30 diate proximity of, the user's ear, DIALING OR ANSWERING A MOBILE TELE-
31 PHONE BY PRESSING MORE THAN A SINGLE BUTTON, OR REACHING FOR A MOBILE
32 TELEPHONE IN A MANNER THAT REQUIRES A DRIVER TO MANEUVER SO THAT SUCH
33 DRIVER IS NO LONGER IN A SEATED POSITION, RESTRAINED BY A SEAT BELT THAT
34 IS INSTALLED IN ACCORDANCE WITH 49 CFR 393.93 AND ADJUSTED IN ACCORDANCE
35 WITH THE VEHICLE MANUFACTURER'S INSTRUCTIONS.

36 (e) "Hands-free mobile telephone" shall mean a mobile telephone that
37 has an internal feature or function, or that is equipped with an attach-
38 ment or addition, whether or not permanently part of such mobile tele-
39 phone, by which a user engages in a call without the use of either hand,
40 whether or not the use of either hand is necessary to activate, deacti-
41 vate or initiate a function of such telephone, PROVIDED, HOWEVER, THAT A
42 TELEPHONE THAT REQUIRES DIALING OR ANSWERING SUCH TELEPHONE BY PRESSING
43 MORE THAN A SINGLE BUTTON SHALL NOT CONSTITUTE A HANDS-FREE MOBILE TELE-
44 PHONE.

45 S 3. Paragraphs (a) and (b) of subdivision 2 of section 1225-c of the
46 vehicle and traffic law, as added by chapter 69 of the laws of 2001, are
47 amended and a new paragraph (d) is added to read as follows:

48 (a) Except as otherwise provided in this section, no person shall
49 operate a motor vehicle upon a public highway while using a mobile tele-
50 phone to engage in a call while such vehicle is in motion, PROVIDED,
51 HOWEVER, NO PERSON SHALL OPERATE A COMMERCIAL MOTOR VEHICLE, AS DEFINED
52 IN SUBDIVISION FOUR-A OF SECTION TWO OF THE TRANSPORTATION LAW, WHILE
53 USING A MOBILE TELEPHONE ON A PUBLIC HIGHWAY, INCLUDING WHILE TEMPORAR-
54 ILY STATIONARY BECAUSE OF TRAFFIC, A TRAFFIC CONTROL DEVICE, OR OTHER

1 MOMENTARY DELAYS. THE OPERATOR OF A COMMERCIAL MOTOR VEHICLE MAY USE A
2 MOBILE TELEPHONE WHEN SUCH OPERATOR HAS MOVED THE VEHICLE TO THE SIDE
3 OF, OR OFF, A HIGHWAY AND HAS HALTED IN A LOCATION WHERE THE VEHICLE CAN
4 REMAIN STATIONARY UNLESS STOPPING IS PROHIBITED BY LAW, RULES AND REGU-
5 LATIONS OR BY A DIRECTIVE OF LAW ENFORCEMENT.

6 (b) An operator of [a] ANY motor vehicle who holds a mobile telephone
7 to, or in the immediate proximity of his or her ear while such vehicle
8 is in motion is presumed to be engaging in a call within the meaning of
9 this section, PROVIDED, HOWEVER, THAT AN OPERATOR OF A COMMERCIAL MOTOR
10 VEHICLE WHO HOLDS A MOBILE TELEPHONE TO, OR IN THE IMMEDIATE PROXIMITY
11 OF HIS OR HER EAR WHILE SUCH VEHICLE IS TEMPORARILY STATIONARY BECAUSE
12 OF TRAFFIC, A TRAFFIC CONTROL DEVICE, OR OTHER MOMENTARY DELAYS IS ALSO
13 PRESUMED TO BE ENGAGING IN A CALL WITHIN THE MEANING OF THIS SECTION.
14 The presumption established by this subdivision is rebuttable by
15 evidence tending to show that the operator was not engaged in a call.

16 (D) NO MOTOR CARRIER, AS DEFINED IN SUBDIVISION SEVENTEEN OF SECTION
17 TWO OF THE TRANSPORTATION LAW, SHALL ALLOW OR REQUIRE ITS DRIVERS TO USE
18 A HAND-HELD MOBILE TELEPHONE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE.

19 S 4. Subdivision 1 of section 1225-d of the vehicle and traffic law,
20 as added by chapter 403 of the laws of 2009, is amended to read as
21 follows:

22 1. Except as otherwise provided in this section, no person shall oper-
23 ate a motor vehicle while using any portable electronic device while
24 such vehicle is in motion, PROVIDED, HOWEVER, NO PERSON SHALL OPERATE A
25 COMMERCIAL MOTOR VEHICLE, AS DEFINED IN SUBDIVISION FOUR-A OF SECTION
26 TWO OF THE TRANSPORTATION LAW, WHILE USING A PORTABLE ELECTRONIC DEVICE
27 ON A PUBLIC HIGHWAY, INCLUDING WHILE TEMPORARILY STATIONARY BECAUSE OF
28 TRAFFIC, A TRAFFIC CONTROL DEVICE, OR OTHER MOMENTARY DELAYS. THE OPERA-
29 TOR OF A COMMERCIAL MOTOR VEHICLE MAY USE A PORTABLE ELECTRONIC DEVICE
30 WHEN SUCH OPERATOR HAS MOVED THE VEHICLE TO THE SIDE OF, OR OFF, A HIGH-
31 WAY AND HAS HALTED IN A LOCATION WHERE THE VEHICLE CAN REMAIN STATIONARY
32 UNLESS STOPPING IS PROHIBITED BY LAW, RULES, AND REGULATIONS OR BY A
33 DIRECTIVE OF LAW ENFORCEMENT.

34 S 5. Section 1225-d of the vehicle and traffic law is amended by
35 adding a new subdivision 1-a to read as follows:

36 1-A. NO MOTOR CARRIER, AS DEFINED IN SUBDIVISION SEVENTEEN OF SECTION
37 TWO OF THE TRANSPORTATION LAW, SHALL ALLOW OR REQUIRE ITS DRIVERS TO USE
38 A PORTABLE ELECTRONIC DEVICE WHILE DRIVING A COMMERCIAL MOTOR VEHICLE.

39 S 6. Paragraphs (a) and (b) of subdivision 2 of section 1225-d of the
40 vehicle and traffic law, as added by chapter 403 of the laws of 2009,
41 are amended to read as follows:

42 (a) "Portable electronic device" shall mean any hand-held mobile tele-
43 phone, as defined by subdivision one of section twelve hundred twenty-
44 five-c of this article, personal digital assistant (PDA), handheld
45 device with mobile data access, laptop computer, pager, broadband
46 personal communication device, two-way messaging device, electronic
47 game, or portable computing device OR ANY OTHER DEVICE USED TO INPUT,
48 WRITE, SEND, RECEIVE OR READ TEXT.

49 (b) "Using" shall mean holding a portable electronic device while
50 viewing, taking or transmitting images, INSTANT MESSAGING, PERFORMING A
51 COMMAND OR REQUEST TO ACCESS A WORLD WIDE WEB PAGE, playing games, or
52 composing, sending, reading, viewing, accessing, browsing, transmitting,
53 saving or retrieving e-mail, text messages, or other electronic data.

54 S 7. This act shall take effect October 28, 2013 and shall apply to
55 violations committed on or after such date.

1

PART D

2 Section 1. Subdivision 1 of section 200 of the vehicle and traffic
3 law, as amended by chapter 60 of the laws of 1993, is amended to read as
4 follows:

5 1. There shall be in the state government a department of motor vehi-
6 cles. The head of the department shall be the commissioner of motor
7 vehicles who shall be appointed by the governor, by and with the advice
8 and consent of the senate, and hold office until the end of the term of
9 the appointing governor and until a successor is appointed and has qual-
10 ified, and who shall receive an annual salary within the amount appro-
11 priated therefor. The commissioner of motor vehicles shall have the
12 immediate charge of the department. The commissioner of motor vehicles
13 may appoint, and at pleasure remove, such deputy commissioners of motor
14 vehicles, inspectors, examiners and other assistants and employees of
15 the department as are deemed necessary, within the amounts available
16 therefor by appropriation. The commissioner of motor vehicles and all
17 other officers and employees of the department shall be paid and allowed
18 their necessary, actual and reasonable expenses incurred in the exercise
19 of their duties. All salaries and expenses of the department shall be
20 paid out of the state treasury on the audit and warrant of the comp-
21 troller on the certificate of the commissioner of motor vehicles. The
22 principal office of the department shall be in the city of Albany.
23 NOTWITHSTANDING THE PROVISIONS OF SECTION SIXTY-TWO OF THE PUBLIC OFFI-
24 CERS LAW, THE COMMISSIONER OF MOTOR VEHICLES MAY DESIGNATE CERTAIN
25 BRANCH OFFICES OF THE DEPARTMENT TO BE OPEN TO SERVE THE PUBLIC AND
26 TRANSACT BUSINESS ON SATURDAYS.

27 S 2. This act shall take effect immediately.

28

PART E

29 Section 1. Section 357-a of public authorities law is REPEALED and a
30 new section 357-a is added to read as follows:

31 S 357-A. STATE POLICE AND STATE PAYMENT FOR SERVICES. 1. ENFORCEMENT
32 ASSISTANCE SHALL BE PROVIDED BY THE DIVISION OF STATE POLICE AT A LEVEL
33 CONSISTENT WITH HISTORICAL PRECEDENTS, AS A MATTER OF STATE INTEREST, ON
34 ALL SECTIONS OF THE THRUWAY. THE AUTHORITY SHALL PROVIDE GOODS AND
35 SERVICES TO THE DIVISION OF STATE POLICE IN CONNECTION WITH ITS ENFORCE-
36 MENT ACTIVITY ON THE THRUWAY. THE DIVISION OF STATE POLICE AND THE
37 AUTHORITY SHALL ENTER INTO AN AGREEMENT IDENTIFYING THOSE GOODS AND
38 SERVICES THAT THE AUTHORITY WILL PROVIDE TO THE DIVISION OF STATE POLICE
39 AND DETERMINE REPORTING AND OTHER REQUIREMENTS RELATED THERETO. ANY
40 COSTS BORNE BY THE STATE POLICE OUTSIDE OF SUCH AGREEMENT SHALL NOT BE
41 REIMBURSED BY THE AUTHORITY NOR SHALL THEY BE DEEMED COSTS OF THE
42 AUTHORITY.

43 2. THE STATE SHALL BE RESPONSIBLE FOR ADDITIONAL GOODS AND SERVICES
44 PROVIDED BY THE AUTHORITY EQUAL TO TWENTY-FOUR MILLION DOLLARS IN EACH
45 CALENDAR YEAR. SUCH GOODS AND SERVICES SHALL BE DEEMED TO BE COSTS TO
46 THE STATE AND NOT OPERATING COSTS OF THE AUTHORITY. THE AUTHORITY AND
47 THE DIRECTOR OF THE DIVISION OF THE BUDGET SHALL ENTER INTO AN AGREEMENT
48 IDENTIFYING ANY SUCH STATE COSTS AND DETERMINE REPORTING AND OTHER
49 REQUIREMENTS RELATED THERETO.

50 3. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE AUTHORITY SHALL NOT
51 CONSTITUTE A PUBLIC BENEFIT CORPORATION WITHIN THE MEANING OF SECTION
52 TWENTY-NINE HUNDRED SEVENTY-FIVE OF THIS CHAPTER AND SHALL NOT BE
53 ASSESSED AN ANNUAL COST RECOVERY CHARGE UNDER SAID SECTION.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2013.

PART F

Section 1. This act shall be known and may be cited as the "Cleaner, Greener NY act of 2013."

S 2. Subdivision 2-a of section 27-1003 of the environmental conservation law, as added by section 3 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

2-a. "Bottler" means a person, firm or corporation who:

a. bottles, cans or otherwise packages beverages in beverage containers except that if such packaging is for [a distributor] ANY OTHER PERSON, FIRM OR CORPORATION having the right to bottle, can or otherwise package the same brand of beverage, then such [distributor] OTHER PERSON, FIRM OR CORPORATION shall be the bottler; or

b. imports filled beverage containers into the United States.

S 3. Subdivisions 2, 3, 4, 5, 7, 8 and 11 of section 27-1007 of the environmental conservation law, as added by section 4 of part SS of chapter 59 of the laws of 2009, are amended to read as follows:

2. A dealer shall post a conspicuous sign, at the point of sale, that states:

"NEW YORK BOTTLE BILL OF RIGHTS

STATE LAW REQUIRES US TO REDEEM EMPTY RETURNABLE BEVERAGE CONTAINERS OF THE SAME TYPE AND BRAND THAT WE SELL OR OFFER FOR SALE

YOU HAVE CERTAIN RIGHTS UNDER THE NEW YORK STATE RETURNABLE CONTAINER ACT:

THE RIGHT to return your empties for refund to any dealer who sells the same brand, type and size, whether you bought the beverage from the dealer or not. It is illegal to return containers for refund [that you did not pay] ON WHICH a deposit WAS NEVER PAID in New York state.

THE RIGHT to get your deposit refund in cash, without proof of purchase.

THE RIGHT to return your empties any day, any hour, except for the first and last hour of the dealer's business day (empty containers may be redeemed at any time in 24-hour stores).

THE RIGHT to return your containers if they are REASONABLY CLEAN, empty and intact. [Washing containers is not required by law, but is strongly recommended to maintain sanitary conditions.]

The New York state returnable container act can be enforced by the New York state department of environmental conservation, the New York state department of agriculture and markets, the New York state department of taxation and finance, the New York state attorney general and/or by your local government."

Such sign must be no less than eight inches by ten inches in size and have lettering a minimum of one quarter inch high, and of a color which contrasts with the background. The department shall maintain a toll free telephone number for a "bottle bill complaint line" that shall be available from 9:00 a.m. to 5:00 p.m. each business day to receive reports of violations of this title. The telephone number shall be listed on any sign required by this section.

3. [On or after June first, two thousand nine, a] A dealer WHOSE PLACE OF BUSINESS IS LESS THAN TEN THOUSAND SQUARE FEET IN SIZE may limit the number of empty beverage containers to be accepted for redemption at the

dealer's place of business to no less than seventy-two containers per visit, per redeemer, per day, provided that:

(a) The dealer has a written agreement with a redemption center, be it either at a fixed physical location within the same county and within ONE AND one-half mile of the dealer's place of business, or a mobile redemption center, operated by a redemption center, that is located within [one-quarter] ONE mile of the dealer's place of business. The redemption center must have a written agreement with the dealer to accept containers on behalf of the dealer; and the redemption center's hours of operation must cover at least 9:00 a.m. through 7:00 p.m. daily or in the case of a mobile redemption center, the hours of operation must cover at least four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The dealer must post a conspicuous, permanent sign, meeting the size and color specifications set forth in subdivision two of this section, open to public view, identifying the location and hours of operation of the affiliated redemption center or mobile redemption center; [and] OR

(b) The dealer provides, at a minimum, a consecutive two hour period between 7:00 a.m. and 7:00 p.m. daily whereby the dealer will accept up to two hundred forty containers, per redeemer, per day, and posts a conspicuous, permanent sign, meeting the size and color specifications set forth in subdivision two of this section, open to public view, identifying those hours. The dealer may not change the hours of redemption without first posting a thirty day notice[; and

(c) The dealer's primary business is the sale of food or beverages for consumption off-premises, and the dealer's place of business is less than ten thousand square feet in size].

4. A deposit initiator shall accept from a dealer or operator of a redemption center any empty beverage container of the design, shape, size, color, composition and brand sold or offered for sale by the deposit initiator, PROVIDED SUCH CONTAINERS ARE PROPERLY SORTED AS DETERMINED IN RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER and shall pay the dealer or operator of a redemption center the refund value of each such beverage container as established by section 27-1005 of this title. A deposit initiator shall accept and redeem all such empty beverage containers from a dealer or redemption center without limitation on quantity.

5. A deposit initiator's or distributor's failure to pick up empty beverage containers[, including containers processed in a reverse vending machine,] from a redemption center, dealer or the operator of a reverse vending machine, shall be a violation of this title.

7. A deposit initiator [on a brand] WHO INITIATES A DEPOSIT ON A BEVERAGE CONTAINER shall accept SUCH EMPTY BEVERAGE CONTAINER from [a] AND REIMBURSE ANY distributor who [does not initiate deposits on that brand any] ACCEPTED AND REDEEMED SUCH empty beverage [containers of that brand accepted by the distributor] CONTAINER from a dealer or operator of a redemption center [and shall reimburse the distributor] FOR the [refund value of each such beverage container, as established by section 27-1005 of this title] DEPOSIT AND HANDLING FEE PAID BY THE DISTRIBUTOR. [In addition, the deposit initiator shall reimburse such distributor for each such beverage container the handling fee established under subdivision six of this section.] Without limiting the rights of the department or any person, firm or corporation under this subdivision or any other provision of this [section] TITLE, a distributor shall have a civil right of action to enforce this subdivision, including, upon three days notice, the right to apply for temporary and preliminary injunctive

1 relief against continuing violations, and until arrangements for
2 collection and return of empty containers or reimbursement of [such] THE
3 REDEEMING distributor for such deposits and handling fees are made.

4 8. It shall be the responsibility of the deposit initiator or distrib-
5 utor to provide to a dealer or redemption center a sufficient number of
6 bags, cartons, or other suitable containers, at no cost, for the packag-
7 ing, handling and pickup of empty beverage containers that are not
8 redeemed through a reverse vending machine. The bags, cartons, or
9 containers must be provided by the deposit initiator or distributor on a
10 schedule that allows the dealer or redemption center sufficient time to
11 sort the empty beverage containers prior to pick up by the deposit
12 initiator or distributor. In addition:

13 (a) When picking up empty beverage containers, a deposit initiator or
14 distributor shall not require a dealer or redemption center to load
15 their own bags, cartons or containers onto or into the deposit initi-
16 ator's or distributor's vehicle or vehicles or provide the staff or
17 equipment needed to do so. HOWEVER, WHERE PALLETS OR SKIDS, BAGS,
18 CARTONS OR CONTAINERS ARE READILY MOVABLE ONLY BY MEANS OF A FORKLIFT OR
19 SIMILAR EQUIPMENT, A DEPOSIT INITIATOR OR DISTRIBUTOR MAY REQUIRE A
20 DEALER OR REDEMPTION CENTER TO MOVE OR LOAD SUCH ITEMS AT NO COST USING
21 A FORKLIFT OR SIMILAR EQUIPMENT BELONGING TO THE DEALER OR REDEMPTION
22 CENTER.

23 (b) A deposit initiator or distributor [shall not] MAY require empty
24 containers to be counted at a location other than the redemption center
25 or dealer's place of business. The dealer or redemption center shall
26 have the right to be present at the count.

27 (c) A deposit initiator or distributor shall pick up empty beverage
28 containers from the dealer or redemption center at reasonable times and
29 intervals THAT SHALL ALSO TAKE INTO ACCOUNT A MINIMUM VOLUME OF CONTAIN-
30 ERS NECESSARY FOR SUCH A PICK UP as determined in rules or regulations
31 promulgated by the department OR ON A SCHEDULE MEETING THE MINIMUM
32 REQUIREMENTS OF SUCH REGULATIONS AND AGREED TO IN WRITING BY THE DEPOSIT
33 INITIATOR OR DISTRIBUTOR AND THE REDEMPTION CENTER.

34 11. [Notwithstanding the provisions of subdivision two of section
35 27-1009 of this title, a deposit initiator or distributor shall accept
36 and redeem beverage containers as provided in this title, if the dealer
37 or operator of a redemption center shall have accepted and paid the
38 refund value of such beverage containers.] NO PERSON SHALL PROGRAM,
39 TAMPER WITH, MISUSE, RENDER INACCURATE, OR CIRCUMVENT THE PROPER OPERA-
40 TION OF A REVERSE VENDING MACHINE TO ELICIT DEPOSIT MONIES WHEN NO
41 VALID, REDEEMABLE BEVERAGE CONTAINER HAS BEEN PLACED IN THE REVERSE
42 VENDING MACHINE.

43 S 4. Section 27-1009 of the environmental conservation law, as amended
44 by section 5 of part SS of chapter 59 of the laws of 2009, is amended to
45 read as follows:

46 S 27-1009. Refusal of acceptance.

47 1. A dealer or operator of a redemption center [may] SHALL refuse to
48 accept from a redeemer, and a deposit initiator or distributor [may]
49 SHALL refuse to accept from a dealer or operator of a redemption center
50 any empty beverage container which does not state thereon a refund value
51 as established by section 27-1005 and provided by section 27-1011 of
52 this title.

53 2. A dealer [or], operator of a redemption center, DISTRIBUTOR, OR
54 DEPOSIT INITIATOR may also refuse to accept any BEVERAGE CONTAINER WHICH
55 IS NOT REASONABLY CLEAN OR CONTAINS A SIGNIFICANT AMOUNT OF FOREIGN
56 MATERIAL, ANY broken bottle, ANY corroded, CRUSHED or dismembered [can]

CONTAINER, or any beverage container which [contains a significant amount of foreign material,] IS OTHERWISE ALTERED SO THAT IT IS RENDERED UNREDEEMABLE as determined in rules and regulations to be promulgated by the commissioner. SUCH REFUSAL MUST OCCUR AT THE TIME THE BEVERAGE CONTAINER IS TENDERED FOR REDEMPTION. NOTWITHSTANDING THE FOREGOING, CONTAINERS PROCESSED THROUGH REVERSE VENDING MACHINES AUTHORIZED BY A DISTRIBUTOR OR DEPOSIT INITIATOR, AS DOCUMENTED THROUGH REVERSE VENDING MACHINE RECONCILIATION STATEMENTS OR OTHER REASONABLE DOCUMENTATION, SHALL BE ACCEPTED BY A DISTRIBUTOR OR DEPOSIT INITIATOR.

S 5. Subdivision 1 of section 27-1011 of the environmental conservation law, as amended by chapter 149 of the laws of 1983, is amended to read as follows:

1. a. Every beverage container sold or offered for sale in this state [by a distributor or dealer] shall clearly indicate by permanently marking or embossing the container or by printing as part of the product label the refund value of the container and the words "New York" or the letters "NY"[; provided, however, in the case of private label beverages such information may be embossed or printed on a label which is securely or permanently affixed to the beverage container. Private label beverages shall be defined as beverages purchased from a beverage manufacturer in beverage containers bearing a brand name or trademark for sale at retail directly by the owner or licensee of such brand name or trademark; or through retail dealers affiliated with such owner or licensee by a cooperative or franchise agreement].

b. Such embossing or permanent imprinting on the beverage container shall be the responsibility of the person, firm or corporation which bottles, cans or otherwise fills or packages a beverage container or a brand owner for whose exclusive account private label beverages are bottled, canned or otherwise packaged; provided, however, that the duly authorized agent of any such person, firm or corporation may indicate such refund value by a label securely affixed on any beverage container containing beverages imported into the United States. PRIVATE LABEL BEVERAGES SHALL BE DEFINED AS BEVERAGES PURCHASED FROM A BOTTLER IN BEVERAGE CONTAINERS BEARING A BRAND NAME OR TRADEMARK FOR SALE AT RETAIL DIRECTLY BY THE OWNER OR LICENSEE OF SUCH BRAND NAME OR TRADEMARK; OR THROUGH RETAIL DEALERS AFFILIATED WITH SUCH OWNER OR LICENSEE BY A COOPERATIVE OR FRANCHISE AGREEMENT.

S 6. Subdivision 5, paragraph b of subdivision 9 and subdivision 12 of section 27-1012 of the environmental conservation law, as added by section 8 of part SS of chapter 59 of the laws of 2009, are amended to read as follows:

5. All monies collected or received by the department of taxation and finance pursuant to this title shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected, the comptroller shall retain the amount determined by the commissioner of taxation and finance to be necessary for refunds out of which the comptroller must pay any refunds to which a deposit initiator may be entitled. After reserving the amount to pay refunds, the comptroller must, by the tenth day of each month, pay into the state treasury to the credit of the general fund the revenue deposited under this subdivision during the preceding calendar month and remaining to the comptroller's credit on the last day of that preceding month[.]; PROVIDED, HOWEVER, THAT, BEGINNING APRIL

FIRST, TWO THOUSAND THIRTEEN, AND ALL FISCAL YEARS THEREAFTER, FIFTEEN MILLION DOLLARS PLUS ALL FUNDS RECEIVED FROM THE PAYMENTS DUE EACH FISCAL YEAR PURSUANT TO SUBDIVISION FOUR OF THIS SECTION IN EXCESS OF THE AMOUNT RECEIVED FROM APRIL FIRST, TWO THOUSAND TWELVE THROUGH MARCH THIRTY-FIRST, TWO THOUSAND THIRTEEN, SHALL BE DEPOSITED TO THE CREDIT OF THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINE-TY-TWO-S OF THE STATE FINANCE LAW.

b. Any deposit initiator who fails to FILE REPORTS, MAKE QUARTERLY PAYMENTS OR maintain accounts or records pursuant to this section, unless it is shown that such failure was due to reasonable cause and not due to negligence or willful neglect, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance of not more than one thousand dollars for each quarter during which such failure occurred, and an additional penalty of not more than one thousand dollars for each quarter such failure continues.

12. [Beginning on June first, two thousand nine each deposit initiator shall register the container label of any beverage offered for sale in the state on which it initiates a deposit. Any such registered container label shall bear a universal product code. Such universal product code shall be New York state specific, in order to identify the beverage container as offered for sale exclusively in New York state, and as a means of preventing illegal redemption of beverage containers purchased out-of-state. Registration must be on forms as prescribed by the department and must include the universal product code for each combination of beverage and container manufactured. The commissioner may require that such forms be filed electronically. The deposit initiator shall renew a label registration whenever that label is revised by altering the universal product code or whenever the container on which it appears is changed in size, composition or glass color.] A. EACH DEPOSIT INITIATOR SHALL PROVIDE A REPORT TO THE DEPARTMENT DESCRIBING ALL THE TYPES OF BEVERAGE CONTAINERS ON WHICH IT INITIATES DEPOSITS. THE REPORT SHALL INCLUDE THE PRODUCT NAME, TYPE OF BEVERAGE, SIZE AND COMPOSITION OF THE BEVERAGE CONTAINER, UNIVERSAL PRODUCT CODE, AND ANY OTHER INFORMATION THE DEPARTMENT MAY REQUIRE. UPON REQUEST, A DEPOSIT INITIATOR SHALL ALSO PROVIDE TO THE DEPARTMENT A COPY OF THE CONTAINER LABEL OR A PICTURE OF ANY BEVERAGE CONTAINER SOLD OR OFFERED FOR SALE IN THIS STATE ON WHICH IT INITIATES A DEPOSIT. SUCH INFORMATION SHALL BE PROVIDED IN A FORM AS PRESCRIBED BY THE DEPARTMENT. THE DEPARTMENT MAY REQUIRE THAT SUCH FORMS BE FILED ELECTRONICALLY.

B. A BOTTLER MAY PLACE ON A BEVERAGE CONTAINER A UNIVERSAL PRODUCT CODE OR OTHER DISTINCTIVE MARKING THAT IS SPECIFIC TO THE STATE OR USED ONLY IN THE STATE AND ANY OTHER STATES WITH LAWS SUBSTANTIALLY SIMILAR TO THIS TITLE AS A MEANS OF PREVENTING REDEMPTION OF BEVERAGE CONTAINERS ON WHICH A DEPOSIT WAS NOT PAID.

C. A BOTTLER OR DEPOSIT INITIATOR SHALL NOTIFY THE DEPARTMENT, IN A FORM PRESCRIBED BY THE DEPARTMENT, WHENEVER A BEVERAGE CONTAINER OR BEVERAGE CONTAINER LABEL IS REVISED BY ALTERING THE UNIVERSAL PRODUCT CODE, OR WHENEVER THE CONTAINER ON WHICH A UNIVERSAL PRODUCT CODE APPEARS IS CHANGED IN SIZE, COMPOSITION OR GLASS COLOR, OR WHENEVER THE CONTAINER OR CONTAINER LABEL ON WHICH A UNIVERSAL PRODUCT CODE APPEARS IS CHANGED TO INCLUDE A UNIVERSAL PRODUCT CODE THAT IS UNIQUE TO THE STATE OR USED ONLY IN THE STATE AND ANY OTHER STATES WITH LAWS SUBSTANTIALLY SIMILAR TO THIS TITLE.

1 S 7. Section 27-1013 of the environmental conservation law, as amended
2 by section 9 of part SS of chapter 59 of the laws of 2009, is amended to
3 read as follows:

4 S 27-1013. Redemption centers AND DEALERS.

5 The commissioner is hereby empowered to promulgate rules and regu-
6 lations governing (1) THE REGISTRATION OR PERMITTING OF REDEMPTION
7 CENTERS INCLUDING BUT NOT LIMITED TO CONDITIONS FOR GRANTING A REGISTRA-
8 TION OR PERMIT, GROUNDS FOR REVOCATION OF A REGISTRATION OR PERMIT AND
9 THE PROCESS FOR THE REVOCATION OF A REGISTRATION OR PERMIT; (2) the
10 circumstances in which DEPOSIT INITIATORS, dealers and distributors,
11 individually or collectively, are required to accept the return of empty
12 beverage containers, and make payment therefor; [(2)] (3) the sorting of
13 the containers which a deposit initiator or distributor may require of
14 dealers and redemption centers; [(3)] (4) the collection of returned
15 beverage containers by deposit initiators or distributors, including the
16 party to whom such expense is to be charged, the frequency of such pick
17 ups THAT SHALL ALSO ALLOW A SCHEDULE MEETING THE MINIMUM REQUIREMENTS OF
18 SUCH REGULATIONS AND AGREED TO IN WRITING BY THE DEPOSIT INITIATOR OR
19 DISTRIBUTOR AND THE REDEMPTION CENTER AND THAT SHALL ALSO TAKE INTO
20 ACCOUNT A MINIMUM VOLUME OF CONTAINERS NECESSARY FOR SUCH A PICK UP and
21 the payment for refunds and handling fees thereon; [(4)] (5) the right
22 of dealers to restrict or limit the number of containers redeemed, the
23 rules for redemption at the dealers' place of business, and the redemp-
24 tion of containers from a beverage for which sales have been discontin-
25 ued, and to issue REGISTRATIONS OR permits to persons, firms or corpo-
26 rations which establish redemption centers, subject to applicable
27 provisions of local and state laws, at which redeemers and dealers may
28 return empty beverage containers and receive payment of the refund value
29 of such beverage containers; (6) THE ASSIGNMENT OF A SPECIFIC REGISTRA-
30 TION OR PERMIT IDENTIFICATION NUMBER TO EACH REDEMPTION CENTER; SUCH
31 REGISTRATION OR PERMIT NUMBER, ALONG WITH THE NUMBER OF CONTAINERS
32 CONTAINED THEREIN, SHALL BE AFFIXED TO ANY BOX OR BAG PROFFERED BY A
33 REDEMPTION CENTER TO A DEPOSIT INITIATOR OR DISTRIBUTOR FOR REDEMPTION
34 IN A MANNER MANDATED BY THE COMMISSIONER; AND (7) THE OPERATION OF
35 MOBILE REDEMPTION CENTERS IN ORDER TO ENSURE THAT TO THE BEST EXTENT
36 PRACTICABLE CONTAINERS ARE NOT PROFFERED FOR REDEMPTION TO A DEPOSIT
37 INITIATOR OR DISTRIBUTOR OUTSIDE OF THE GEOGRAPHIC AREA WHERE SUCH
38 DEPOSIT INITIATOR SELLS CONTAINERS AND INITIATES DEPOSITS. No dealer or
39 distributor, as defined in section 27-1003 of this title, shall be
40 required to obtain a permit to operate a redemption center at the same
41 location as the dealer's or distributor's place of business. Operators
42 of such redemption centers shall receive payment of the refund value of
43 each beverage container from the appropriate deposit initiator or
44 distributor as provided under section 27-1007 of this title.

45 S 8. Section 27-1014 of the environmental conservation law, as amended
46 by section 10 of part SS of chapter 59 of the laws of 2009, is amended
47 to read as follows:

48 S 27-1014. Authority to promulgate rules and regulations.

49 In addition to the authority of the commissioner, under sections
50 27-1007, 27-1009 and 27-1013 of this title, the commissioner shall have
51 the power to promulgate rules and regulations necessary and appropriate
52 for the administration of this title AND TO PREVENT FRAUD.

53 S 9. Section 27-1015 of the environmental conservation law, as amended
54 by section 11 of part SS of chapter 59 of the laws of 2009, is amended
55 to read as follows:

56 S 27-1015. Violations.

1 1. [A violation of this title, except as otherwise provided in this
2 section and section 27-1012 of this title, shall be a public nuisance.
3 In addition, except] CIVIL AND ADMINISTRATIVE SANCTIONS. A. EXCEPT as
4 otherwise provided in this section and section 27-1012 of this title,
5 any person who [shall violate] VIOLATES any [provision] OF THE
6 PROVISIONS of, OR FAILS TO PERFORM A DUTY IMPOSED BY, THIS TITLE OR ANY
7 RULE OR REGULATION PROMULGATED PURSUANT THERETO, OR ANY TERM OR CONDI-
8 TION OF ANY REGISTRATION OR PERMIT ISSUED PURSUANT THERETO, OR ANY FINAL
9 DETERMINATION OR ORDER OF THE COMMISSIONER MADE PURSUANT TO this title
10 shall be liable [to the state of New York] for a civil penalty of not
11 more than five hundred dollars FOR EACH VIOLATION, and an additional
12 civil penalty of not more than five hundred dollars for each day during
13 which each such violation continues. Any civil penalty may be assessed
14 BY THE COMMISSIONER following a hearing or opportunity to be heard
15 PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS CHAPTER OR BY THE
16 COURT IN ANY ACTION OR PROCEEDING PURSUANT TO SECTION 71-2727 OF THIS
17 CHAPTER. IN ADDITION, SUCH PERSON MAY BY SIMILAR PROCESS BE ENJOINED
18 FROM CONTINUING SUCH VIOLATION AND ANY PERMIT OR REGISTRATION ISSUED TO
19 SUCH PERSON MAY BE REVOKED OR SUSPENDED OR A PENDING RENEWAL APPLICATION
20 DENIED.

21 [2. Any] B. IN ADDITION TO ANY PENALTIES IMPOSED BY THE DEPARTMENT OF
22 TAXATION AND FINANCE AS PROVIDED IN SECTION 27-1012 OF THIS TITLE, ANY
23 distributor or deposit initiator who violates any provision of this
24 title, [except as provided in section 27-1012 of this title,] OR FAILS
25 TO PERFORM A DUTY IMPOSED BY THIS TITLE, OR ANY RULE OR REGULATION
26 PROMULGATED PURSUANT THERETO, OR ANY TERM OR CONDITION OF ANY REGISTRA-
27 TION OR PERMIT ISSUED PURSUANT THERETO, OR ANY FINAL DETERMINATION OR
28 ORDER OF THE COMMISSIONER MADE PURSUANT TO THIS TITLE shall be liable
29 [to the state of New York] for a civil penalty of not more than one
30 thousand dollars FOR EACH VIOLATION, and an additional civil penalty of
31 not more than one thousand dollars for each day during which each such
32 violation continues. Any civil penalty may be assessed BY THE COMMIS-
33 SIONER following a hearing or opportunity to be heard PURSUANT TO THE
34 PROVISIONS OF SECTION 71-1709 OF THIS CHAPTER, OR BY THE COURT IN ANY
35 ACTION OR PROCEEDING PURSUANT TO SECTION 71-2727 OF THIS CHAPTER. IN
36 ADDITION, SUCH DEPOSIT INITIATOR OR DISTRIBUTOR MAY BY SIMILAR PROCESS
37 BE ENJOINED FROM CONTINUING SUCH VIOLATION AND ANY PERMIT OR REGISTRA-
38 TION ISSUED TO SUCH PERSON MAY BE REVOKED OR SUSPENDED OR A PENDING
39 RENEWAL APPLICATION DENIED.

40 2. CRIMINAL SANCTIONS. A. ANY PERSON WHO, HAVING ANY OF THE CULPABLE
41 MENTAL STATES DEFINED IN SECTION 15.05 OF THE PENAL LAW, VIOLATES ANY
42 PROVISION OF OR WHO FAILS TO PERFORM ANY DUTY IMPOSED BY THIS TITLE, OR
43 ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, OR ANY FINAL DETER-
44 MINATION OR ORDER OF THE COMMISSIONER MADE PURSUANT TO THIS TITLE SHALL
45 BE GUILTY OF A VIOLATION AND, UPON CONVICTION, SHALL BE PUNISHED BY A
46 FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION; EACH DAY
47 ON WHICH SUCH VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE VIOLATION;
48 AND FOR EACH SUCH VIOLATION THE PERSON SHALL BE SUBJECT, UPON
49 CONVICTION, TO IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR TO A FINE
50 OF NOT MORE THAN FIVE HUNDRED DOLLARS, OR TO BOTH IMPRISONMENT AND FINE.

51 B. IN ADDITION TO ANY PENALTIES IMPOSED BY THE DEPARTMENT OF TAXATION
52 AND FINANCE AS PROVIDED IN SECTION 27-1012 OF THIS TITLE, ANY DISTRI-
53 BUTOR OR DEPOSIT INITIATOR WHO, HAVING ANY OF THE CULPABLE MENTAL STATES
54 DEFINED IN SECTION 15.05 OF THE PENAL LAW, VIOLATES ANY PROVISION OF OR
55 WHO FAILS TO PERFORM ANY DUTY IMPOSED BY THIS TITLE, OR ANY RULE OR
56 REGULATION PROMULGATED PURSUANT THERETO, OR ANY FINAL DETERMINATION OR

ORDER OF THE COMMISSIONER MADE PURSUANT TO THIS TITLE SHALL BE GUILTY OF A VIOLATION AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION; EACH DAY ON WHICH SUCH VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE VIOLATION; AND FOR EACH SUCH VIOLATION THE PERSON SHALL BE SUBJECT, UPON CONVICTION, TO IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR TO A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR TO BOTH SUCH IMPRISONMENT AND SUCH FINE.

[3.] C. It shall be unlawful for [a distributor or deposit initiator] ANY PERSON, acting alone or aided by another, to return any empty beverage container to a dealer or redemption center for its refund value if [the] A distributor or deposit initiator had previously accepted such beverage container from any dealer or operator of a redemption center, OR IF SUCH CONTAINER WAS PREVIOUSLY ACCEPTED BY A REVERSE VENDING MACHINE. A violation of this [subdivision] PARAGRAPH shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than one thousand dollars and an amount equal to two times the amount of money received as a result of such violation, OR IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR TO BOTH SUCH IMPRISONMENT AND SUCH FINES.

D. IN ADDITION TO ANY OTHER PENALTY PROVIDED BY THIS TITLE, ANY PERSON WHO VIOLATES SUBDIVISION ELEVEN OF SECTION 27-1007 OF THIS TITLE, OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, OR ANY FINAL DETERMINATION OR ORDER OF THE COMMISSIONER MADE PURSUANT TO THIS TITLE SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS PER DAY OF VIOLATION, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT.

E. IN ADDITION TO ANY OTHER PENALTY PROVIDED BY THIS TITLE, ANY DEALER, DISTRIBUTOR OR DEPOSIT INITIATOR, WHO KNOWINGLY OR INTENTIONALLY VIOLATES ANY PROVISION OF OR FAILS TO PERFORM ANY DUTY IMPOSED BY SECTION 27-1005 OR 27-1012 OF THIS TITLE, OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, OR ANY FINAL DETERMINATION OR ORDER OF THE COMMISSIONER MADE PURSUANT TO THIS TITLE SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS PER DAY OF VIOLATION, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT.

[4.] 3. Any person who [willfully] tenders to a dealer, distributor, redemption center or deposit initiator more than forty-eight empty beverage containers for which such person knows or should reasonably know that no deposit was paid in New York state may be assessed [by the department] a civil penalty of up to one hundred dollars for each container or up to twenty-five thousand dollars for each such tender of containers. At each location where a person tenders containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering for redemption containers on which a deposit was never paid in this state may be subject to a civil penalty of up to one hundred dollars per container or up to twenty-five thousand dollars for each such tender of containers." Any civil penalty may be assessed BY THE COMMISSIONER following a hearing or opportunity to be heard PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS CHAPTER, OR BY THE COURT IN ANY ACTION OR PROCEEDING PURSUANT TO SECTION 71-2727 OF THIS CHAPTER. IN ADDITION, SUCH PERSON MAY BY SIMILAR PROCESS BE ENJOINED FROM CONTINUING SUCH VIOLATION AND ANY PERMIT OR REGISTRATION ISSUED TO SUCH PERSON MAY BE REVOKED OR SUSPENDED OR A PENDING RENEWAL APPLICATION DENIED.

1 [5.] 4. A. The department, the department of agriculture and markets,
2 the department of taxation and finance and the attorney general are
3 hereby authorized to enforce the provisions of this title AND ALL MONIES
4 COLLECTED SHALL BE DEPOSITED TO THE CREDIT OF THE ENVIRONMENTAL
5 PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE
6 STATE FINANCE LAW. In addition, the provisions of section 27-1005 of
7 this title and subdivisions one, two, three, four, five, ten and eleven
8 of section 27-1007 of this title may be enforced by a county, city, town
9 or village, and the local legislative body thereof may adopt local laws,
10 ordinances or regulations consistent with this title providing for the
11 enforcement of such provisions AND ALL MONIES COLLECTED BY THE ENFORCING
12 COUNTY, CITY, TOWN OR VILLAGE AS FINES OR PENALTIES PURSUANT TO THIS
13 SECTION SHALL BE PAYABLE TO AND BE THE PROPERTY OF THE COUNTY, CITY,
14 TOWN OR VILLAGE.

15 B. IN ADDITION, A VIOLATION OF THIS TITLE, EXCEPT AS OTHERWISE
16 PROVIDED IN THIS SECTION, SHALL BE A PUBLIC NUISANCE, AND WITHOUT LIMIT-
17 ING THE RIGHTS OF THE DEPARTMENT, OR ANY PERSON, FIRM OR CORPORATION
18 UNDER THIS SUBDIVISION OR ANY OTHER PROVISION OF THIS SECTION, A DEALER,
19 OWNER OR OPERATOR OF A REDEMPTION CENTER, DISTRIBUTOR, OR DEPOSIT INITI-
20 ATOR SHALL HAVE A CIVIL RIGHT OF ACTION TO ENFORCE THE PROVISIONS OF
21 SECTION 27-1009 OF THIS TITLE AND SUBDIVISIONS FOUR, FIVE, SIX, AND
22 EIGHT OF SECTION 27-1007 OF THIS TITLE.

23 S 10. Section 27-1017 of the environmental conservation law is
24 REPEALED.

25 S 11. Subdivision 3 of section 92-s of the state finance law, as
26 amended by section 2 of part T of chapter 59 of the laws of 2009, is
27 amended to read as follows:

28 3. Such fund shall consist of the amount of revenue collected within
29 the state from the amount of revenue, interest and penalties deposited
30 pursuant to section fourteen hundred twenty-one of the tax law, the
31 amount of fees and penalties received from easements or leases pursuant
32 to subdivision fourteen of section seventy-five of the public lands law
33 and the money received as annual service charges pursuant to section
34 four hundred four-1 of the vehicle and traffic law, all moneys required
35 to be deposited therein from the contingency reserve fund pursuant to
36 section two hundred ninety-four of chapter fifty-seven of the laws of
37 nineteen hundred ninety-three, all moneys required to be deposited
38 pursuant to section thirteen of chapter six hundred ten of the laws of
39 nineteen hundred ninety-three, repayments of loans made pursuant to
40 section 54-0511 of the environmental conservation law, all moneys to be
41 deposited from the Northville settlement pursuant to section one hundred
42 twenty-four of chapter three hundred nine of the laws of nineteen
43 hundred ninety-six, provided however, that such moneys shall only be
44 used for the cost of the purchase of private lands in the core area of
45 the central Suffolk pine barrens pursuant to a consent order with the
46 Northville industries signed on October thirteenth, nineteen hundred
47 ninety-four and the related resource restoration and replacement plan,
48 the amount of penalties required to be deposited therein by section
49 71-2724 of the environmental conservation law, all moneys required to be
50 deposited pursuant to article thirty-three of the environmental conser-
51 vation law, all fees collected pursuant to subdivision eight of section
52 70-0117 of the environmental conservation law, [as added by a chapter of
53 the laws of two thousand nine,] all moneys collected pursuant to title
54 thirty-three of article fifteen of the environmental conservation law,
55 [as added by a chapter of the laws of two thousand nine] BEGINNING WITH
56 THE FISCAL YEAR COMMENCING ON APRIL FIRST, TWO THOUSAND THIRTEEN, AND

ALL FISCAL YEARS THEREAFTER, FIFTEEN MILLION DOLLARS PLUS ALL FUNDS RECEIVED BY THE STATE EACH FISCAL YEAR IN EXCESS OF THE AMOUNT RECEIVED FROM APRIL FIRST, TWO THOUSAND TWELVE THROUGH MARCH THIRTY-FIRST, TWO THOUSAND THIRTEEN, FROM THE PAYMENTS COLLECTED PURSUANT TO SUBDIVISION FOUR OF SECTION 27-1012 OF THE ENVIRONMENTAL CONSERVATION LAW, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision five of this section.

S 12. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013.

PART G

Section 1. Subdivisions 1 and 2 of section 27-1905 of the environmental conservation law, as amended by section 1 of part DD of chapter 59 of the laws of 2010, are amended to read as follows:

1. [Until December thirty-first, two thousand thirteen, accept] ACCEPT from a customer, waste tires of approximately the same size and in a quantity equal to the number of new tires purchased or installed by the customer; and

2. [Until December thirty-first, two thousand thirteen, post] POST written notice in a prominent location, which must be at least eight and one-half inches by fourteen inches in size and contain the following language:

"New York State law requires us to accept and manage waste tires from vehicles in exchange for an equal number of new tires that we sell or install. Tire retailers are required to charge a separate and distinct waste tire management and recycling fee of \$2.50 for each new tire sold.

The retailers in addition are authorized, at their sole discretion, to pass on waste tire management and recycling costs to tire purchasers. Such costs may be included as part of the advertised price of the new tire, or charged as a separate per-tire charge in an amount not to exceed \$2.50 on each new tire sold."

The written notice shall also contain one of the following statements at the end of the aforementioned language and as part of the notice, which shall accurately indicate the manner in which the tire service charges for waste tire management and recycling costs, and the amount of any charges that are separately invoiced for such costs:

"Our waste tire management and recycling costs are included in the advertised price of each new tire.", or

"We charge a separate per-tire charge of \$_____ on each new tire sold that will be listed on your invoice to cover our waste tire management and recycling costs."

S 2. Subdivisions 1, 2 and 3 and paragraph (a) of subdivision 6 of section 27-1913 of the environmental conservation law, subdivisions 1, 2, the opening paragraph of subdivision 3 and paragraph (a) of subdivision 6 as amended by section 4 of part DD of chapter 59 of the laws of 2010 and subdivision 3 as amended by section 2 of part E1 of chapter 63 of the laws of 2003, are amended to read as follows:

1. [Until December thirty-first, two thousand thirteen, a] A waste tire management and recycling fee of two dollars and fifty cents shall be charged on each new tire sold. The fee shall be paid by the purchaser to the tire service at the time the new tire or new motor vehicle is purchased.

The waste tire management and recycling fee does not apply to:

1 (a) recapped or resold tires;

2 (b) mail-order sales; or

3 (c) the sale of new motor vehicle tires to a person solely for the
4 purpose of resale provided the subsequent retail sale in this state is
5 subject to such fee.

6 2. [Until December thirty-first, two thousand thirteen, the] THE tire
7 service shall collect the waste tire management and recycling fee from
8 the purchaser at the time of the sale and shall [remit] PAY such fee to
9 the department of taxation and finance with the quarterly [report]
10 RETURN filed pursuant to subdivision three of this section. THE COMMIS-
11 SIONER OF TAXATION AND FINANCE MAY REQUIRE THAT THE TIRE SERVICE PAY THE
12 FEE ELECTRONICALLY.

13 (a) The fee imposed shall be stated as an invoice item separate and
14 distinct from the selling price of the tire.

15 (b) The tire service shall be entitled to retain an allowance of twen-
16 ty-five cents per tire from fees collected.

17 3. [Until March thirty-first, two thousand fourteen, each] EACH tire
18 service maintaining a place of business in this state shall make a
19 return to the department of taxation and finance on a quarterly basis[,
20 with the return for December, January, and February being due on or
21 before the immediately following March thirty-first; the return for
22 March, April, and May being due on or before the immediately following
23 June thirtieth; the return for June, July, and August being due on or
24 before the immediately following September thirtieth; and the return for
25 September, October, and November being due on or before the immediately
26 following December thirty-first] IN THE FORM AND MANNER PRESCRIBED BY
27 THE COMMISSIONER OF TAXATION AND FINANCE. THE COMMISSIONER OF TAXATION
28 AND FINANCE MAY REQUIRE SUCH RETURNS TO BE FILED ELECTRONICALLY. THE
29 QUARTERLY RETURNS REQUIRED BY THIS SUBDIVISION SHALL BE FILED FOR THE
30 QUARTERLY PERIODS ENDING ON THE LAST DAY OF FEBRUARY, MAY, AUGUST AND
31 NOVEMBER OF EACH YEAR, AND EACH SUCH RETURN SHALL BE FILED WITHIN TWENTY
32 DAYS AFTER THE END OF THE QUARTERLY PERIOD COVERED THEREBY.

33 (a) Each return shall include:

34 (i) the name of the tire service;

35 (ii) the address of the tire service's principal place of business and
36 the address of the principal place of business (if that is a different
37 address) from which the tire service engages in the business of making
38 retail sales of tires;

39 (iii) the name and signature of the person preparing the return;

40 (iv) the total number of new tires sold at retail for the preceding
41 quarter and the total number of new tires placed on motor vehicles prior
42 to original retail sale;

43 (v) the amount of waste tire management and recycling fees due; and

44 (vi) such other reasonable information as the department of taxation
45 and finance may require.

46 (b) Copies of each [report] RETURN shall be retained by the tire
47 service for three years.

48 If a tire service ceases business, it shall file a final return and
49 [remit] PAY all fees due under this title [with] TO the department of
50 taxation and finance not more than one month after discontinuing that
51 business.

52 (a) [Until December thirty-first, two thousand thirteen, any] ANY
53 additional waste tire management and recycling costs of the tire service
54 in excess of the amount authorized to be retained pursuant to paragraph

55 (b) of subdivision two of this section may be included in the published
56 selling price of the new tire, or charged as a separate per-tire charge

on each new tire sold. When such costs are charged as a separate per-tire charge: (i) such charge shall be stated as an invoice item separate and distinct from the selling price of the tire; (ii) the invoice shall state that the charge is imposed at the sole discretion of the tire service; and (iii) the amount of such charge shall reflect the actual cost to the tire service for the management and recycling of waste tires accepted by the tire service pursuant to section 27-1905 of this title, provided however, that in no event shall such charge exceed two dollars and fifty cents on each new tire sold.

S 3. This act shall take effect immediately, and shall apply to the quarterly periods provided for in the opening paragraph of subdivision three of section 27-1913 of the environmental conservation law, as amended by section two of this act, beginning on or after the date this act shall have become a law.

PART H

Section 1. Section 2 of chapter 393 of the laws of 1994, amending the New York state urban development corporation act, relating to the powers of the New York state urban development corporation to make loans, as amended by section 1 of part R of chapter 58 of the laws of 2012, is amended to read as follows:

S 2. This act shall take effect immediately [provided, however, that section one of this act shall expire on July 1, 2013, at which time the provisions of subdivision 26 of section 5 of the New York state urban development corporation act shall be deemed repealed; provided, however, that neither the expiration nor the repeal of such subdivision as provided for herein shall be deemed to affect or impair in any manner any loan made pursuant to the authority of such subdivision prior to such expiration and repeal].

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013.

PART I

Section 1. Section 2 of part BB of chapter 58 of the laws of 2012 amending the public authorities law relating to authorizing the dormitory authority to enter into certain design and construction management agreements is amended to read as follows:

S 2. This act shall take effect immediately and shall expire and be deemed repealed April 1, [2013] 2015.

S 2. This act shall take effect immediately and shall be deemed to have been in effect on and after April 1, 2013.

PART J

Section 1. Subdivisions 27, 28, 29 and 30 of section 5 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, subdivisions 28 and 29 as renumbered by chapter 686 of the laws of 1986, are renumbered subdivisions 28, 29, 30 and 31 and a new subdivision 27 is added to read as follows:

(27) TO MAKE GRANTS USING FUNDS FROM ANY SOURCE ON SUCH TERMS AND CONDITIONS AS THE CORPORATION MAY DEEM ADVISABLE, IN FURTHERANCE OF THE LEGISLATIVE FINDINGS AND PURPOSES OF THIS ACT, TO ANY PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, PROVIDED THAT SUCH GRANTS ARE MADE OR ISSUED IN COMPLIANCE WITH GUIDELINES ESTABLISHED BY THE CORPORATION.

1 S 2. This act shall take effect immediately.

2 PART K

3 Section 1. Notwithstanding any law to the contrary, the comptroller is
4 hereby authorized and directed to receive for deposit to the credit of
5 the general fund the amount of up to \$913,000 from the New York state
6 energy research and development authority.

7 S 2. This act shall take effect immediately and shall be deemed to
8 have been in full force and effect on and after April 1, 2013.

9 PART L

10 Section 1. Expenditures of moneys appropriated in a chapter of the
11 laws of 2013 to the energy research and development authority, under the
12 research, development and demonstration program, from the special reven-
13 ue funds - other/state operations, miscellaneous special revenue fund -
14 339, energy research and planning account, and special revenue funds -
15 other/aid to localities, miscellaneous special revenue fund - 339, ener-
16 gy research and planning account shall be subject to the provisions of
17 this section. Notwithstanding the provisions of subdivision 4-a of
18 section 18-a of the public service law, all moneys committed or expended
19 shall be reimbursed by assessment against gas corporations and electric
20 corporations as defined in section 2 of the public service law, and the
21 total amount which may be charged to any gas corporation and any elec-
22 tric corporation shall not exceed one cent per one thousand cubic feet
23 of gas sold and .010 cent per kilowatt-hour of electricity sold by such
24 corporations in their intrastate utility operations in calendar year
25 2011. Such amounts shall be excluded from the general assessment
26 provisions of subdivision 2 of section 18-a of the public service law,
27 but shall be billed and paid in the manner set forth in such subdivision
28 and upon receipt shall be paid to the state comptroller for deposit in
29 the state treasury for credit to the miscellaneous special revenue fund.
30 The director of the budget shall not issue a certificate of approval
31 with respect to the commitment and expenditure of moneys hereby appro-
32 priated until the chair of such authority shall have submitted, and the
33 director of the budget shall have approved, a comprehensive financial
34 plan encompassing all moneys available to and all anticipated commit-
35 ments and expenditures by such authority from any source for the oper-
36 ations of such authority. Copies of the approved comprehensive financial
37 plan shall be immediately submitted by the director of the budget to the
38 chairs and secretaries of the legislative fiscal committees.

39 S 2. This act shall take effect immediately and shall be deemed to
40 have been in full force and effect on and after April 1, 2013.

41 PART M

42 Section 1. Notwithstanding any other law, rule or regulation to the
43 contrary, expenses of the department of health public service education
44 program incurred pursuant to appropriations from the cable television
45 account of the state miscellaneous special revenue funds shall be deemed
46 expenses of the department of public service.

47 S 2. This act shall take effect immediately and shall be deemed to
48 have been in full force and effect on and after April 1, 2013.

49 PART N

Section 1. Paragraph (a) of subdivision 6 of section 18-a of the public service law, as added by section 4 of part NN of chapter 59 of the laws of 2009, is amended to read as follows:

(a) Notwithstanding any provision of law to the contrary, and subject to the exceptions provided for in paragraph (b) of this subdivision, for the state fiscal year beginning on April first, two thousand nine and [four] NINE state fiscal years thereafter, a temporary annual assessment (hereinafter "temporary state energy and utility service conservation assessment") is hereby imposed on public utility companies (including for the purposes of this subdivision municipalities other than municipalities as defined in section eighty-nine-1 of this chapter), corporations (including for purposes of this subdivision the Long Island power authority), and persons subject to the commission's regulation (hereinafter such public utility companies, corporations, and persons are referred to collectively as the "utility entities") to encourage the conservation of energy and other resources provided through utility entities, to be assessed in the manner provided in this subdivision; provided, however, that such assessment shall not be imposed upon telephone corporations as defined in subdivision seventeen of section two of this article.

S 2. Section 6 of part NN of chapter 59 of the laws of 2009, amending the public service law relating to financing the operations of the department of public service, the public service commission, department support and energy management services provided by other state agencies, increasing the utility assessment cap and the minimum threshold for collection thereunder, and establishing a temporary state energy and utility service conservation assessment and providing for the collection thereof, is amended to read as follows:

S 6. This act shall take effect immediately; provided, however, that subdivision 6 of section 18-a of the public service law, as added by section four of this act shall take effect April 1, 2009 and shall expire and be deemed repealed March 31, [2014] 2019; and provided, further, that if section four of this act shall become law after April 1, 2009, it shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2009.

S 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013; provided, however, that the amendments to subdivision 6 of section 18-a of the public service law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed to be repealed therewith.

PART O

Section 1. Sections 24 and 25 of the public service law are REPEALED and a new section 24 is added to read as follows:

S 24. ADMINISTRATIVE SANCTIONS; RECOVERY OF PENALTIES. 1. EVERY PUBLIC UTILITY COMPANY, CORPORATION OR PERSON AND THE OFFICERS, AGENTS AND EMPLOYEES THEREOF SHALL ADHERE TO EVERY PROVISION OF THIS CHAPTER AND EVERY ORDER OR REGULATION ADOPTED UNDER AUTHORITY OF THIS CHAPTER SO LONG AS THE SAME SHALL BE IN FORCE.

2. (A) THE COMMISSION SHALL HAVE THE AUTHORITY TO ASSESS A CIVIL PENALTY AGAINST A PUBLIC UTILITY COMPANY, CORPORATION, OR PERSON AND THE OFFICERS, AGENTS AND EMPLOYEES THEREOF SUBJECT TO THE JURISDICTION, SUPERVISION, OR REGULATION PURSUANT TO THIS CHAPTER IN AN AMOUNT AS SET FORTH IN THIS SECTION. IN DETERMINING THE AMOUNT OF ANY PENALTY TO BE ASSESSED PURSUANT TO THIS SECTION, THE COMMISSION SHALL CONSIDER: (I)

1 THE SERIOUSNESS OF THE VIOLATION FOR WHICH A PENALTY IS SOUGHT; (II) THE
2 NATURE AND EXTENT OF ANY PREVIOUS VIOLATIONS FOR WHICH PENALTIES HAVE
3 BEEN ASSESSED AGAINST THE PUBLIC UTILITY COMPANY, CORPORATION OR PERSON;
4 (III) THE GROSS REVENUES AND FINANCIAL STATUS OF THE PUBLIC UTILITY
5 COMPANY, CORPORATION OR PERSON; AND (IV) SUCH OTHER FACTORS AS THE
6 COMMISSION MAY DEEM APPROPRIATE AND RELEVANT. THE REMEDIES PROVIDED BY
7 THIS SUBDIVISION ARE IN ADDITION TO ANY OTHER REMEDIES PROVIDED IN LAW.

8 (B) WHENEVER THE COMMISSION HAS REASON TO BELIEVE THAT A PUBLIC UTILI-
9 TY COMPANY, CORPORATION OR PERSON AND SUCH OFFICERS, AGENTS AND EMPLOY-
10 EES THEREOF MAY BE SUBJECT TO IMPOSITION OF A CIVIL PENALTY AS SET FORTH
11 IN THIS SUBDIVISION, IT SHALL NOTIFY SUCH PUBLIC UTILITY COMPANY, CORPO-
12 RATION OR PERSON. SUCH NOTICE SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO
13 (I) THE DATE AND A BRIEF DESCRIPTION OF THE FACTS AND NATURE OF EACH ACT
14 OR FAILURE TO ACT FOR WHICH SUCH PENALTY IS PROPOSED; (II) A LIST OF
15 EACH STATUTE, REGULATION OR ORDER THAT THE COMMISSION ALLEGES HAS BEEN
16 VIOLATED; (III) THE AMOUNT OF EACH PENALTY THAT THE COMMISSION PROPOSES
17 TO ASSESS; AND (IV) THE OPTION TO REQUEST A HEARING TO DEMONSTRATE WHY
18 THE PROPOSED PENALTY OR PENALTIES SHOULD NOT BE ASSESSED AGAINST SUCH
19 PUBLIC UTILITY COMPANY, CORPORATION, OR SUCH PERSON.

20 3. ANY PUBLIC UTILITY COMPANY OR CORPORATION THAT VIOLATES A PROVISION
21 OF THIS CHAPTER, REGULATION OR AN ORDER ADOPTED UNDER AUTHORITY OF THIS
22 CHAPTER SO LONG AS THE SAME SHALL BE IN FORCE, OR WHO FAILS TO PROVIDE
23 SAFE AND ADEQUATE SERVICE SHALL FORFEIT A SUM NOT EXCEEDING THE GREATER
24 OF ONE HUNDRED THOUSAND DOLLARS OR TWO ONE-HUNDREDTHS OF ONE PERCENT OF
25 THE ANNUAL INTRASTATE GROSS OPERATING REVENUE OF THE UTILITY, CONSTITUT-
26 ING A CIVIL PENALTY FOR EACH AND EVERY OFFENSE AND, IN THE CASE OF A
27 CONTINUING VIOLATION, EACH DAY SHALL BE DEEMED A SEPARATE AND DISTINCT
28 OFFENSE.

29 4. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF THIS
30 SECTION, ANY SUCH PUBLIC UTILITY COMPANY OR CORPORATION THAT VIOLATES A
31 PROVISION OF THIS CHAPTER, OR AN ORDER OR REGULATION ADOPTED UNDER THE
32 AUTHORITY OF THIS CHAPTER SPECIFICALLY FOR THE PROTECTION OF HUMAN SAFE-
33 TY OR PREVENTION OF SIGNIFICANT DAMAGE TO REAL PROPERTY, INCLUDING, BUT
34 NOT LIMITED TO, THE COMMISSION'S CODE OF GAS SAFETY REGULATIONS SHALL,
35 IF IT IS DETERMINED BY THE COMMISSION THAT SUCH SAFETY VIOLATION CAUSED
36 OR CONSTITUTED A CONTRIBUTING FACTOR IN BRINGING ABOUT: (A) A DEATH OR
37 PERSONAL INJURY; OR (B) DAMAGE TO REAL PROPERTY IN EXCESS OF FIFTY THOU-
38 SAND DOLLARS, FORFEIT A SUM NOT TO EXCEED THE GREATER OF:

39 (I) TWO HUNDRED FIFTY THOUSAND DOLLARS OR THREE ONE-HUNDREDTHS OF ONE
40 PERCENT OF THE ANNUAL INTRASTATE GROSS OPERATING REVENUE OF THE UTILITY,
41 WHICHEVER IS GREATER, CONSTITUTING A CIVIL PENALTY FOR EACH SEPARATE AND
42 DISTINCT OFFENSE; PROVIDED, HOWEVER, THAT FOR PURPOSES OF THIS PARA-
43 GRAPH, EACH DAY OF A CONTINUING VIOLATION SHALL NOT BE DEEMED A SEPARATE
44 AND DISTINCT OFFENSE. THE TOTAL PERIOD OF A CONTINUING VIOLATION, AS
45 WELL AS EVERY DISTINCT VIOLATION, SHALL BE SIMILARLY TREATED AS A SEPA-
46 RATE AND DISTINCT OFFENSE FOR PURPOSES OF THIS PARAGRAPH; OR

47 (II) THE MAXIMUM FORFEITURE DETERMINED IN ACCORDANCE WITH SUBDIVISION
48 THREE OF THIS SECTION.

49 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OR FOUR OF THIS
50 SECTION, A PUBLIC UTILITY COMPANY OR CORPORATION THAT VIOLATES A
51 PROVISION OF THIS CHAPTER, OR AN ORDER OR REGULATION ADOPTED UNDER
52 AUTHORITY OF THIS CHAPTER, DESIGNED TO PROTECT THE OVERALL RELIABILITY
53 AND CONTINUITY OF ELECTRIC SERVICE, INCLUDING BUT NOT LIMITED TO THE
54 RESTORATION OF ELECTRIC SERVICE FOLLOWING A MAJOR OUTAGE EVENT OR EMER-
55 GENCY, SHALL FORFEIT A SUM NOT TO EXCEED THE GREATER OF:

(A) FIVE HUNDRED THOUSAND DOLLARS OR FOUR ONE-HUNDREDTHS OF ONE PERCENT OF THE ANNUAL INTRASTATE GROSS OPERATING REVENUE OF THE UTILITY, WHICHEVER IS GREATER, CONSTITUTING A CIVIL PENALTY FOR EACH SEPARATE AND DISTINCT OFFENSE; PROVIDED, HOWEVER, THAT FOR PURPOSES OF THIS PARAGRAPH EACH DAY OF A CONTINUING VIOLATION SHALL NOT BE DEEMED A SEPARATE AND DISTINCT OFFENSE. THE TOTAL PERIOD OF A CONTINUING VIOLATION, AS WELL AS EVERY DISTINCT VIOLATION SHALL BE SIMILARLY TREATED AS A SEPARATE AND DISTINCT OFFENSE FOR PURPOSES OF THIS PARAGRAPH; OR

(B) THE MAXIMUM FORFEITURE DETERMINED IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION.

6. ANY OFFICER, AGENT, OR EMPLOYEE OF ANY CORPORATION DETERMINED BY THE COMMISSION TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION THREE, FOUR, OR FIVE OF THIS SECTION, AND WHO KNOWINGLY VIOLATES A PROVISION OF THIS CHAPTER, REGULATION OR AN ORDER ADOPTED UNDER AUTHORITY OF THIS CHAPTER SO LONG AS THE SAME SHALL BE IN FORCE, INCLUDING A FAILURE TO PROVIDE SAFE AND ADEQUATE SERVICE, SHALL FORFEIT A SUM NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS CONSTITUTING A CIVIL PENALTY FOR EACH AND EVERY OFFENSE AND, IN THE CASE OF A CONTINUING VIOLATION, EACH DAY SHALL BE DEEMED A SEPARATE AND DISTINCT OFFENSE.

7. ANY SUCH ASSESSMENT MAY BE COMPROMISED OR DISCONTINUED BY THE COMMISSION. ALL MONEYS RECOVERED PURSUANT TO THIS SECTION, TOGETHER WITH THE COSTS THEREOF, SHALL BE REMITTED TO, OR FOR THE BENEFIT OF, THE RATEPAYERS IN A MANNER TO BE DETERMINED BY THE COMMISSION.

8. UPON A FAILURE BY A PUBLIC UTILITY COMPANY, CORPORATION, OR PERSON TO REMIT ANY PENALTY ASSESSED BY THE COMMISSION PURSUANT TO THIS SECTION, THE COMMISSION, THROUGH ITS COUNSEL, MAY INSTITUTE AN ACTION OR SPECIAL PROCEEDING TO COLLECT THE PENALTY IN A COURT OF COMPETENT JURISDICTION.

9. ANY PAYMENT MADE BY A PUBLIC UTILITY COMPANY, CORPORATION OR PERSON AND THE OFFICERS, AGENTS AND EMPLOYEES THEREOF AS A RESULT OF AN ASSESSMENT AS PROVIDED IN THIS SECTION, AND THE COST OF LITIGATION AND INVESTIGATION RELATED TO ANY SUCH ASSESSMENT, SHALL NOT BE RECOVERABLE FROM RATEPAYERS.

10. IN CONSTRUING AND ENFORCING THE PROVISIONS OF THIS CHAPTER RELATING TO PENALTIES, THE ACT OF ANY DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF A PUBLIC UTILITY COMPANY, CORPORATION OR PERSON ACTING WITHIN THE SCOPE OF HIS OR HER OFFICIAL DUTIES OR EMPLOYMENT SHALL BE DEEMED TO BE THE ACT OF SUCH PUBLIC UTILITY COMPANY OR CORPORATION.

S 2. Section 26 of the public service law is renumbered section 25.

S 3. Section 65 of the public service law is amended by adding two new subdivisions 14 and 15 to read as follows:

14. IN CONJUNCTION WITH A MANAGEMENT AND OPERATIONS AUDIT UNDERTAKEN PURSUANT TO SUBDIVISION NINETEEN OF SECTION SIXTY-SIX OF THIS ARTICLE OR UPON ITS OWN MOTION, THE COMMISSION SHALL REVIEW THE CAPABILITY, INCLUDING BUT NOT LIMITED TO, THE CAPABILITY TO IMPLEMENT EMERGENCY RESPONSE PLANS AND RESTORATION, OF EACH GAS CORPORATION AND ELECTRIC CORPORATION TO PROVIDE SAFE, ADEQUATE, AND RELIABLE SERVICE. UPON GOOD CAUSE SHOWN, THE COMMISSION MAY DIRECT SUCH CORPORATION TO COMPLY WITH ADDITIONAL AND MORE STRINGENT TERMS AND CONDITIONS OF SERVICE THAN EXISTED PRIOR TO THE COMMENCEMENT OF THE MANAGEMENT AND OPERATIONS AUDIT, OR CAUSE SUCH CORPORATION TO DIVEST SOME OR ALL OF ITS STATE-BASED UTILITY ASSETS, INCLUDING FRANCHISE TERRITORIES, BASED UPON STANDARDS AND PROCEDURES ESTABLISHED BY THE COMMISSION TO ENSURE CONTINUITY OF SAFE AND ADEQUATE SERVICE, DUE PROCESS, AND FAIR AND JUST COMPENSATION; PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION LIMITS THE COMMISSION'S AUTHORITY TO UNDERTAKE THE ACTIONS SET FORTH PURSUANT TO SECTIONS TWENTY-FOUR AND

TWENTY-FIVE OF THIS CHAPTER. IN THE CASE WHERE THE COMMISSION DIRECTS A FULL OR PARTIAL DIVESTMENT OF A CORPORATION'S ASSETS, THE COMMISSION SHALL FIRST PROCEED IN SUCH MANNER AS TO FACILITATE THE VOLUNTARY TRANSFER OF SUCH ASSETS.

15. THE CHIEF EXECUTIVE OFFICER OF EACH GAS CORPORATION AND ELECTRIC CORPORATION SHALL CERTIFY TO THE COMMISSION ON OR BEFORE MARCH FIFTEENTH OF EACH YEAR THAT SUCH CORPORATION IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER AND ANY RULES, REGULATIONS, ORDERS AND PROCEDURES ADOPTED THERETO, INCLUDING THE OBLIGATION THAT SUCH CORPORATION PROVIDE SAFE AND ADEQUATE SERVICE.

S 4. Subdivisions 19 and 21 of section 66 of the public service law, subdivision 19 as added by chapter 556 of the laws of 1976 and the closing paragraph as added by chapter 586 of the laws of 1986 and subdivision 21 as added by chapter 718 of the laws of 1980, are amended and a new subdivision 1-a is added to read as follows:

1-A. REVIEW THE ANNUAL CAPITAL EXPENDITURE OF EACH GAS OR ELECTRIC CORPORATION AND MAY ORDER SUCH IMPROVEMENT IN THE MANUFACTURE, CONVEYING, TRANSPORTATION, DISTRIBUTION OR SUPPLY OF GAS, IN THE MANUFACTURE, TRANSMISSION OR SUPPLY OF ELECTRICITY, OR IN THE METHODS EMPLOYED BY SUCH CORPORATION AS IN THE COMMISSION'S JUDGMENT IS ADEQUATE, JUST AND REASONABLE.

19. (A) The commission shall have power to provide for management and operations audits of gas corporations and electric corporations. Such audits shall be performed at least once every five years for combination gas and electric companies, as well as for straight gas corporations having annual gross revenues in excess of two hundred million dollars. The audit shall include, but not be limited to, an investigation of the company's construction program planning in relation to the needs of its customers for reliable service [and], an evaluation of the efficiency of the company's operations, RECOMMENDATIONS WITH RESPECT TO SAME, AND THE TIMING WITH RESPECT TO THE IMPLEMENTATION OF SUCH RECOMMENDATIONS. The commission shall have discretion to have such audits performed by its staff, or by independent auditors.

In every case in which the commission chooses to have the audit provided for in this subdivision OR PURSUANT TO SUBDIVISION FOURTEEN OF SECTION SIXTY-FIVE OF THIS ARTICLE performed by independent auditors, it shall have authority to select the auditors, and to require the company being audited to enter into a contract with the auditors providing for their payment by the company. Such contract shall provide further that the auditors shall work for and under the direction of the commission according to such terms as the commission may determine are necessary and reasonable.

[The commission shall have authority to direct the company to implement any recommendations resulting from such audits that it finds to be necessary and reasonable.]

(B) EACH GAS AND ELECTRIC CORPORATION SUBJECT TO AN AUDIT UNDER THIS SUBDIVISION SHALL FILE A REPORT WITH THE COMMISSION WITHIN THIRTY DAYS AFTER ISSUANCE OF SUCH AUDIT DETAILING ITS PLAN TO IMPLEMENT THE RECOMMENDATIONS MADE IN THE AUDIT. AFTER REVIEW OF SUCH PLAN, THE COMMISSION MAY REQUIRE THAT SUCH CORPORATION AMEND THE PLAN IN A PARTICULAR MANNER. SUCH PLAN SHALL THEREAFTER BECOME ENFORCEABLE UPON APPROVAL BY THE COMMISSION. THE COMMISSION SHALL HAVE POWER TO COMMENCE A PROCEEDING TO EXAMINE ANY SUCH CORPORATION'S COMPLIANCE WITH THE RECOMMENDATIONS OF SUCH AUDIT.

(C) Upon the application of a gas or electric corporation for a major change in rates as defined in subdivision twelve of this section, the

1 commission shall review that corporation's compliance with the
2 directions and recommendations made previously by the commission, as a
3 result of the most recently completed management and operations audit.
4 The commission shall incorporate the findings of such review in its
5 opinion or order, AND SUCH FINDINGS SHALL BE ENFORCEABLE BY THE COMMIS-
6 SION.

7 21. [The commission shall require every electric corporation to submit
8 storm plans to the commission for review and approval at such times and
9 in such detail and form as the commission shall require, provided,
10 however, that the same shall be filed at least annually.] (A) EACH ELEC-
11 TRIC CORPORATION SHALL ANNUALLY, ON OR BEFORE DECEMBER FIFTEENTH, SUBMIT
12 TO THE COMMISSION AN EMERGENCY RESPONSE PLAN FOR REVIEW AND APPROVAL.
13 THE EMERGENCY RESPONSE PLAN SHALL BE DESIGNED FOR THE REASONABLY PROMPT
14 RESTORATION OF SERVICE IN THE CASE OF AN EMERGENCY EVENT, DEFINED FOR
15 PURPOSES OF THIS SUBDIVISION AS AN EVENT WHERE WIDESPREAD OUTAGES HAVE
16 OCCURRED IN THE SERVICE TERRITORY OF THE COMPANY DUE TO STORMS OR OTHER
17 CAUSES BEYOND THE CONTROL OF THE COMPANY. THE EMERGENCY RESPONSE PLAN
18 SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING: (I) THE IDEN-
19 TIFICATION OF MANAGEMENT STAFF RESPONSIBLE FOR COMPANY OPERATIONS DURING
20 AN EMERGENCY; (II) A COMMUNICATIONS SYSTEM WITH CUSTOMERS DURING AN
21 EMERGENCY THAT EXTENDS BEYOND NORMAL BUSINESS HOURS AND BUSINESS CONDI-
22 TIONS; (III) IDENTIFICATION OF AND OUTREACH PLANS TO CUSTOMERS WHO HAD
23 DOCUMENTED THEIR NEED FOR ESSENTIAL ELECTRICITY FOR MEDICAL NEEDS; (IV)
24 IDENTIFICATION OF AND OUTREACH PLANS TO CUSTOMERS WHO HAD DOCUMENTED
25 THEIR NEED FOR ESSENTIAL ELECTRICITY TO PROVIDE CRITICAL TELECOMMUNI-
26 CATIONS, CRITICAL TRANSPORTATION AND CRITICAL FUEL DISTRIBUTION
27 SERVICES; (V) DESIGNATION OF COMPANY STAFF TO COMMUNICATE WITH LOCAL
28 OFFICIALS AND APPROPRIATE REGULATORY AGENCIES; (VI) PROVISIONS REGARDING
29 HOW THE COMPANY WILL ASSURE THE SAFETY OF ITS EMPLOYEES AND CONTRACTORS;
30 (VII) PROCEDURES FOR DEPLOYING COMPANY AND MUTUAL AID CREWS TO WORK
31 ASSIGNMENT AREAS; (VIII) IDENTIFICATION OF ADDITIONAL SUPPLIES AND
32 EQUIPMENT NEEDED DURING AN EMERGENCY; (IX) THE MEANS OF OBTAINING ADDI-
33 TIONAL SUPPLIES AND EQUIPMENT; (X) PROCEDURES TO PRACTICE THE EMERGENCY
34 RESPONSE PLAN; AND (XI) SUCH OTHER ADDITIONAL INFORMATION AS THE COMMIS-
35 SION MAY REQUIRE. THE FILING WITH THE COMMISSION SHALL ALSO INCLUDE A
36 COPY OF ALL WRITTEN MUTUAL ASSISTANCE AGREEMENTS AMONG UTILITIES. THE
37 COMMISSION SHALL ACCORD PROTECTED TREATMENT OF CONFIDENTIAL, COMPETI-
38 TIVELY SENSITIVE OR OTHER PROPRIETARY INFORMATION CONTAINED IN ANY EMER-
39 GENCY RESPONSE PLAN. EACH SUCH CORPORATION SHALL, ON AN ANNUAL BASIS,
40 UNDERTAKE DRILLS IMPLEMENTING PROCEDURES TO PRACTICE ITS EMERGENCY
41 MANAGEMENT PLAN. THE DEPARTMENT MAY ADOPT ADDITIONAL REQUIREMENTS
42 CONSISTENT WITH ENSURING THE REASONABLY PROMPT RESTORATION OF SERVICE IN
43 THE CASE OF AN EMERGENCY EVENT.

44 (B) AFTER REVIEW OF A CORPORATION'S EMERGENCY RESPONSE PLAN, THE
45 COMMISSION MAY REQUIRE SUCH CORPORATION TO AMEND THE PLAN. THE COMMIS-
46 SION MAY ALSO OPEN AN INVESTIGATION OF THE CORPORATION'S PLAN TO DETER-
47 MINE ITS SUFFICIENCY TO RESPOND ADEQUATELY TO AN EMERGENCY EVENT. IF,
48 AFTER HEARINGS, THE COMMISSION FINDS A MATERIAL DEFICIENCY IN THE PLAN,
49 IT MAY ORDER THE COMPANY TO MAKE SUCH MODIFICATIONS THAT IT DEEMS
50 REASONABLY NECESSARY TO REMEDY THE DEFICIENCY.

51 (C) THE COMMISSION IS AUTHORIZED TO OPEN AN INVESTIGATION TO REVIEW
52 THE PERFORMANCE OF ANY CORPORATION IN RESTORING SERVICE OR OTHERWISE
53 MEETING THE REQUIREMENTS OF THE EMERGENCY RESPONSE PLAN DURING AN EMER-
54 GENCY EVENT. IF, AFTER EVIDENTIARY HEARINGS OR OTHER INVESTIGATORY
55 PROCEEDINGS, THE COMMISSION FINDS THAT THE CORPORATION FAILED TO REASON-
56 ABLY IMPLEMENT ITS EMERGENCY RESPONSE PLAN OR THE LENGTH OF SUCH CORPO-

1 RATION'S OUTAGES WERE MATERIALLY LONGER THAN THEY WOULD HAVE BEEN BUT
2 FOR SUCH FAILURE TO REASONABLY IMPLEMENT ITS EMERGENCY RESPONSE PLAN,
3 THE COMMISSION MAY DENY THE RECOVERY OF ALL, OR ANY PART OF, THE SERVICE
4 RESTORATION COSTS, COMMENSURATE WITH THE DEGREE AND IMPACT OF THE
5 SERVICE OUTAGE; PROVIDED, HOWEVER, THAT NOTHING HEREIN LIMITS THE
6 COMMISSION'S AUTHORITY TO OTHERWISE COMMENCE A PROCEEDING PURSUANT TO
7 SECTIONS TWENTY-FOUR AND TWENTY-FIVE OF THIS CHAPTER.

8 (D) THE COMMISSION SHALL CERTIFY TO THE DEPARTMENT OF HOMELAND SECURI-
9 TY AND EMERGENCY SERVICES THAT EACH SUCH CORPORATION'S EMERGENCY
10 RESPONSE PLAN IS SUFFICIENT TO ENSURE TO THE GREATEST EXTENT FEASIBLE
11 THE TIMELY AND SAFE RESTORATION OF ENERGY SERVICES AFTER AN EMERGENCY.

12 S 5. Section 68 of the public service law, as amended by chapter 52 of
13 the laws of 1940, is amended to read as follows:

14 S 68. [Approval of incorporation and franchises; certificate] CERTIF-
15 ICATE OF PUBLIC CONVENIENCE AND NECESSITY. 1. CERTIFICATE REQUIRED. No
16 gas corporation or electric corporation shall begin construction of a
17 gas plant or electric plant without first having obtained the permission
18 and approval of the commission. No such corporation shall exercise any
19 right or privilege under any franchise hereafter granted, or under any
20 franchise heretofore granted but not heretofore actually exercised, or
21 the exercise of which shall have been suspended for more than one year,
22 without first having obtained [the permission and approval of] A CERTIF-
23 ICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED BY the commission.
24 Before such certificate shall be issued a certified copy of the charter
25 of such corporation shall be filed in the office of the commission,
26 together with a verified statement of the president and secretary of the
27 corporation, showing that it has received the required consent of the
28 proper municipal authorities. The commission shall have power to grant
29 the permission and approval herein specified whenever it shall after due
30 hearing determine that such construction or such exercise of the right,
31 privilege or franchise is [necessary or] convenient AND NECESSARY for
32 the public service. IN MAKING SUCH A DETERMINATION, THE COMMISSION SHALL
33 CONSIDER THE ECONOMIC FEASIBILITY OF THE CORPORATION, THE CORPORATION'S
34 ABILITY TO FINANCE IMPROVEMENTS OF A GAS PLANT OR ELECTRIC PLANT, RENDER
35 SAFE, ADEQUATE AND RELIABLE SERVICE, AND PROVIDE JUST AND REASONABLE
36 RATES, AND WHETHER ISSUANCE OF A CERTIFICATE IS IN THE PUBLIC INTEREST.
37 Except as provided in article [fourteen-a] FOURTEEN-A of the general
38 municipal law, no municipality shall build, maintain and operate for
39 other than municipal purposes any works or systems for the manufacture
40 and supplying of gas or electricity for lighting purposes without a
41 certificate of authority granted by the commission. If the certificate
42 of authority is refused, no further proceedings shall be taken by such
43 municipality before the commission, but a new application may be made
44 therefor after one year from the date of such refusal.

45 2. REVOCATION OR MODIFICATION OF CERTIFICATE. THE COMMISSION MAY
46 COMMENCE A PROCEEDING TO REVOKE OR MODIFY SUCH CERTIFICATE AS IT RELATES
47 TO SUCH CORPORATION'S SERVICE TERRITORY OR ANY PORTION THEREOF BASED ON
48 GOOD CAUSE SHOWN, WITH THE INQUIRY INFORMED BY CONSIDERATION OF THE
49 FOLLOWING FACTORS:

50 (A) THE FACTORS IDENTIFIED IN SUBDIVISION ONE OF THIS SECTION FOR
51 ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY;

52 (B) WHETHER ANOTHER PERSON, FIRM OR CORPORATION IS QUALIFIED, AVAIL-
53 ABLE, AND PREPARED TO PROVIDE ALTERNATIVE SERVICE THAT IS ADEQUATE TO
54 SERVE THE PUBLIC CONVENIENCE AND NECESSITY, AND THAT THE TRANSITION TO
55 SUCH ALTERNATIVE PERSON, FIRM OR CORPORATION IS IN THE PUBLIC INTEREST;
56 AND

(C) UPON ANY OTHER STANDARDS AND PROCEDURES DEEMED NECESSARY BY THE COMMISSION TO ENSURE CONTINUITY OF SAFE AND ADEQUATE SERVICE, AND DUE PROCESS.

S 6. Paragraph d of subdivision 1 of section 119-b of the public service law, as amended by chapter 445 of the laws of 1995, is amended to read as follows:

d. "Underground facilities" means pipelines, conduits, ducts, cables, wires, GAS PRODUCTION AND GATHERING PIPELINE SYSTEMS DESIGNED TO OPERATE AT THREE HUNDRED POUNDS PER SQUARE INCH GAUGE OR HIGHER, manholes, vaults or other such facilities or their attachments[, which have been] installed underground by an operator to provide services or materials. Such term shall not include oil [and gas] production and gathering pipeline systems used primarily to collect oil [or gas] production from wells.

S 7. Subdivision 4 of section 760 of the general business law, as amended by chapter 685 of the laws of 1994, is amended to read as follows:

4. "Underground facilities" means pipelines, conduits, ducts, cables, wires, GAS PRODUCTION AND GATHERING PIPELINE SYSTEMS DESIGNED TO OPERATE AT THREE HUNDRED POUNDS PER SQUARE INCH GAUGE OR HIGHER, manholes, vaults or other such facilities or their attachments[, which have been] installed underground by an operator to provide services or materials. Such term shall not include oil [and gas] production and gathering pipeline systems used primarily to collect oil [or gas] production from wells.

S 8. Paragraphs a and b of subdivision 1 of section 765 of the general business law, as amended by chapter 685 of the laws of 1994, are amended to read as follows:

a. Failure to comply with any provision of this article shall subject an excavator or an operator to a civil penalty of up to [one] TWO thousand FIVE HUNDRED dollars for the first violation and up to an additional [seven] TEN thousand [five hundred] dollars for each succeeding violation [which] THAT occurs [in connection with the entire self-same excavation or demolition activity] within a [two] TWELVE month period.

b. The penalties provided for by this article shall not apply to an excavator who damages an underground facility due to the failure of the operator to comply with any of the provisions of this article nor shall in such instance the excavator be liable for repairs as prescribed in subdivision [five] FOUR of this section.

S 9. This act shall take effect immediately.

PART P

Section 1. Section 2 of chapter 21 of the laws of 2003, amending the executive law relating to permitting the secretary of state to provide special handling for all documents filed or issued by the division of corporations and to permit additional levels of such expedited service, as amended by section 1 of part L of chapter 60 of the laws of 2011, is amended to read as follows:

S 2. This act shall take effect immediately, provided however, that section one of this act shall be deemed to have been in full force and effect on and after April 1, 2003 and shall expire March 31, [2013] 2014.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 31, 2013.

1

PART Q

2 Section 1. This act enacts into law major components of legislation
3 which are necessary to implement the state fiscal plan for the 2013-2014
4 state fiscal year. Each component is wholly contained within a Subpart
5 identified as Subparts A through F. The effective date for each partic-
6 ular provision contained within such Subpart is set forth in the last
7 section of such Subpart. Any provision in any section contained within a
8 Subpart, including the effective date of the Subpart, which makes a
9 reference to a section "of this act", when used in connection with that
10 particular component, shall be deemed to mean and refer to the corre-
11 sponding section of the Subpart in which it is found. Section three of
12 this Part sets forth the general effective date of this Part.

13

SUBPART A

14 Section 1. Section 579 of the banking law, as amended by chapter 629
15 of the laws of 2002, is amended to read as follows:

16 S 579. Doing business without license prohibited. Only a [type B]
17 not-for-profit corporation [as defined in section two hundred one of the
18 not-for-profit corporation law of this state,] or an entity incorporated
19 in another state and having a similar not-for-profit status, shall
20 engage in the business of budget planning as defined in subdivision one
21 of section four hundred fifty-five of the general business law [of this
22 state] except as authorized by this article and without first obtaining
23 a license from the superintendent.

24 S 2. The opening paragraph of paragraph 1 of section 5 of the cooper-
25 ative corporations law, as amended by chapter 158 of the laws of 1978,
26 is amended to read as follows:

27 The business corporation law applies to every corporation heretofore
28 or hereafter formed under this chapter, or under any other statute or
29 special act of this state, or under laws other than the statutes of this
30 state, [which] THAT has as its purpose or among its purposes the cooper-
31 ative rendering of mutual help and service to its members and which, if
32 formed under laws other than the statutes of this state, would, if it
33 were to be formed currently under the laws of this state, be formed
34 under this chapter except a membership cooperative as defined in section
35 three of this chapter, to which the not-for-profit corporation law shall
36 apply. Any corporation to which the business corporation law is made
37 applicable by this section shall be treated as a "corporation," "domes-
38 tic corporation," or "foreign corporation," as such terms are used in
39 the business corporation law; provided, however, that neither the
40 purposes for which any such corporation may be formed under this chapter
41 nor its classification as a non-profit corporation shall thereby be
42 extended or affected. Any corporation to which the not-for-profit corpo-
43 ration law is made applicable by this section shall be [a type D not-
44 for-profit corporation] SUBJECT TO PROVISIONS GOVERNING CORPORATIONS
45 FORMED UNDER SUBPARAGRAPH FOUR OF PARAGRAPH (B) OF SECTION TWO HUNDRED
46 ONE OF THE NOT-FOR-PROFIT CORPORATION LAW.

47 S 3. Subdivision 4 of section 455 of the general business law, as
48 amended by chapter 456 of the laws of 2006, is amended to read as
49 follows:

50 4. Person or entity as used in this article shall not include a [type
51 B] not-for-profit corporation as defined in section two hundred one of
52 the not-for-profit corporation law of this state, or an entity incorpo-
53 rated in another state and having a similar not-for-profit status,

1 licensed by the superintendent OF FINANCIAL SERVICES, to engage in the
2 business of budget planning as defined in this section.

3 S 4. Paragraphs (a) and (c) of section 103 of the not-for-profit
4 corporation law, paragraph (a) as amended by chapter 807 of the laws of
5 1973 and paragraph (c) as amended by chapter 961 of the laws of 1972,
6 are amended to read as follows:

7 (a) Except as otherwise provided in this section, this chapter
8 applies to every domestic corporation as herein defined, and to every
9 foreign corporation as herein defined which is authorized to conduct or
10 which conducts any activities in this state. This chapter also applies
11 to any other domestic corporation or foreign corporation of any type or
12 kind to the extent, if any, provided under this chapter or any law
13 governing such corporation and, if no such provision for application is
14 made, to the extent, if any, that the membership corporations law
15 applied to such corporation as of the effective date of this chapter. A
16 corporation formed by a special act of this state which has as its prin-
17 cipal purpose an education purpose and which is a member of the univer-
18 sity of the state of New York, is an "education corporation" under
19 section two hundred sixteen-a of the education law.

20 To the extent that the membership corporations law or the general
21 corporation law applied to it as of the effective date of this chapter,
22 the corresponding provisions of this chapter apply to a corporation
23 heretofore formed by or pursuant to a special act of this state other
24 than a religious corporation or an "education corporation" under clause
25 (b) of subdivision one of section two hundred sixteen-a of the education
26 law, if (1) its principal purpose is a religious, charitable or educa-
27 tion purpose, and (2) it is operated, supervised or controlled by or in
28 connection with a religious organization. Any such corporation may
29 elect hereunder at any time after the effective date of this chapter to
30 file a RESTATED certificate of [type] INCORPORATION under section [one]
31 EIGHT hundred [thirteen (Certificate of type of not-for-profit corpo-
32 ration)] FIVE (RESTATED CERTIFICATE OF INCORPORATION). SUCH RESTATED
33 CERTIFICATE OF INCORPORATION SHALL MEET THE REQUIREMENTS OF SECTION 402
34 (CERTIFICATE OF INCORPORATION; CONTENTS). Upon the filing of such
35 certificate by the department of state, this chapter shall apply in all
36 respects to such corporation.

37 This chapter also applies to any other corporation of any type or
38 kind, formed not for profit under any other chapter of the laws of this
39 state except a chapter of the consolidated laws, to the extent that
40 provisions of this chapter do not conflict with the provisions of such
41 unconsolidated law. If an applicable provision of such unconsolidated
42 law relates to a matter embraced in this chapter but is not in conflict
43 therewith, both provisions shall apply. Any corporation to which this
44 chapter is made applicable by this paragraph shall be treated as a
45 "corporation" or "domestic corporation" as such terms are used in this
46 chapter, except that the purposes of any such corporation formed or
47 formable under such unconsolidated law shall not thereby be extended.
48 For the purpose of this paragraph, the effective date of this chapter as
49 to corporations to which this chapter is made applicable by this para-
50 graph shall be September one, nineteen hundred seventy-three.

51 (c) If any provision in articles one to thirteen inclusive of this
52 chapter conflicts with a provision of any subsequent articles or of any
53 special act under which a corporation to which this chapter applies is
54 formed, the provision in such subsequent article or special act
55 prevails. A provision of any such subsequent article or special act
56 relating to a matter referred to in articles one to thirteen inclusive

1 and not in conflict therewith is supplemental and both shall apply.
2 Whenever the board of a [Type B] corporation FORMED FOR THE PURPOSES
3 SPECIFIED IN SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SECTION TWO HUNDRED
4 ONE OF THIS CHAPTER, formed under a special act, reasonably makes an
5 interpretation as to whether a provision of the special act or this
6 chapter prevails, or both apply, such interpretation shall govern unless
7 and until a court determines otherwise, if such board has acted in good
8 faith for a purpose which it reasonably believes to be in the best
9 interests of the corporation, provided however, that such interpretation
10 shall not bind any governmental body or officer.

11 S 5. Paragraph (e) of section 104 of the not-for-profit corporation
12 law, as amended by chapter 833 of the laws of 1982, is amended to read
13 as follows:

14 (e) If an instrument which is delivered to the department of state
15 for filing complies as to form with the requirements of law [and there
16 has been attached to it the consent or approval of the supreme court
17 justice, governmental body or officer, or, other person or body, if any,
18 whose consent to or approval of such instrument or the filing thereof is
19 required by any statute of this state] and the filing fee and tax, if
20 any, required by any statute of this state in connection therewith have
21 been paid, the instrument shall be filed and indexed by the department
22 of state. No certificate of authentication or conformity or other proof
23 shall be required with respect to any verification, oath or acknowledg-
24 ment of any instrument delivered to the department of state under this
25 chapter, if such verification, oath or acknowledgment purports to have
26 been made before a notary public, or person performing the equivalent
27 function, of one of the states, or any subdivision thereof, of the
28 United States or the District of Columbia. Without limiting the effect
29 of section four hundred three of this chapter, filing and indexing by
30 the department of state shall not be deemed a finding that a certificate
31 conforms to law, nor shall it be deemed to constitute an approval by the
32 department of state of the name of the corporation or the contents of
33 the certificate, nor shall it be deemed to prevent any person with
34 appropriate standing from contesting the legality thereof in an appro-
35 priate forum. UPON THE WRITTEN NOTIFICATION TO THE DEPARTMENT OF STATE
36 BY ANY STATE OFFICIAL, DEPARTMENT, BOARD, AGENCY OR OTHER BODY THAT A
37 DOMESTIC CORPORATION OR FOREIGN AUTHORIZED CORPORATION HAS FAILED TO
38 OBTAIN THE CONSENT OR APPROVAL OF SUCH STATE OFFICIAL, DEPARTMENT,
39 BOARD, AGENCY OR OTHER BODY FOR ANY CERTIFICATE OR INSTRUMENT, THE
40 CORPORATION'S AUTHORITY TO CARRY ON, CONDUCT OR TRANSACT ACTIVITIES IN
41 THIS STATE SHALL BE SUSPENDED. SUCH SUSPENSION SHALL BE ANNULLED UPON
42 THE FILING OF A CERTIFICATE OF AMENDMENT WITH THE REQUIRED CONSENT OR
43 APPROVAL ANNEXED THERETO.

44 S 6. Subparagraph 7 of paragraph (a) of section 112 of the not-for-
45 profit corporation law, as amended by chapter 1058 of the laws of 1971,
46 is amended to read as follows:

47 (7) To enforce any right given under this chapter to members, a
48 director or an officer of a [Type B or Type C] corporation FORMED FOR
49 THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO, THREE OR FOUR OF PARAGRAPH
50 (B) OF SECTION TWO HUNDRED ONE OF THIS CHAPTER. The attorney-general
51 shall have the same status as such members, director or officer.

52 S 7. Section 113 of the not-for-profit corporation law is REPEALED.

53 S 8. Section 114 of the not-for-profit corporation law, as added by
54 chapter 847 of the laws of 1970, is amended to read as follows:

55 S 114. Visitation of supreme court.

1 [Type B and Type C corporations] CORPORATIONS FORMED FOR THE PURPOSES
2 SPECIFIED IN SUBPARAGRAPH TWO, THREE OR FOUR OF PARAGRAPH (B) OF SECTION
3 TWO HUNDRED ONE OF THIS CHAPTER, whether formed under general or special
4 laws, with their books and vouchers, shall be subject to the visitation
5 and inspection of a justice of the supreme court, or of any person
6 appointed by the court for that purpose. If it appears by the verified
7 petition of a member or creditor of any such corporation, that it, or
8 its directors, officers or agents, have misappropriated any of the funds
9 or property of the corporation, or diverted them from the purpose of its
10 incorporation, or that the corporation has acquired property in excess
11 of the amount which it is authorized by law to hold, or has engaged in
12 any business other than that stated in its certificate of incorporation,
13 the court may order that notice of at least eight days, with a copy of
14 the petition, be served on the corporation and the persons charged with
15 misconduct, requiring them to show cause at a time and place specified,
16 why they should not be required to make and file an inventory and
17 account of the property, effects and liabilities of such corporation
18 with a detailed statement of its transactions during the twelve months
19 next preceding the granting of such order. On the hearing of such
20 application, the court may make an order requiring such inventory,
21 account and statement to be filed, and proceed to take and state an
22 account of the property and liabilities of the corporation, or may
23 appoint a referee for that purpose. When such account is taken and
24 stated, after hearing all the parties to the application, the court may
25 enter a final order determining the amount of property so held by the
26 corporation, its annual income, whether any of the property or funds of
27 the corporation have been misappropriated or diverted to any other
28 purpose than that for which such corporation was incorporated, and
29 whether such corporation has been engaged in any activity not covered by
30 its certificate of incorporation. An appeal may be taken from the order
31 by any party aggrieved to the appellate division of the supreme court,
32 and to the court of appeals, as in a civil action. No corporation shall
33 be required to make and file more than one inventory and account in any
34 one year, nor to make a second account and inventory, while proceedings
35 are pending for the statement of an account under this section.

36 S 9. Paragraph (b) of section 201 of the not-for-profit corporation
37 law, as amended by chapter 847 of the laws of 1970, is amended to read
38 as follows:

39 (b) A corporation, [of a type and] for a purpose or purposes as
40 follows, may be formed under this chapter, provided consents required
41 under any other statute of this state have been obtained:

42 [Type A - A not-for-profit corporation of this type may be formed] (1)
43 for any lawful non-business purpose or purposes including, but not
44 limited to, any one or more of the following non-pecuniary purposes:
45 civic, patriotic, political, social, fraternal, athletic, agricultural,
46 horticultural, animal husbandry, and for a professional, commercial,
47 industrial, trade or service association.

48 [Type B - A not-for-profit corporation of this type may be formed] (2)
49 for any one or more of the following non-business purposes: charitable,
50 educational, religious, scientific, literary, cultural or for the
51 prevention of cruelty to children or animals.

52 [Type C - A not-for-profit corporation of this type may be formed] (3)
53 for any lawful business purpose to achieve a lawful public or quasi-
54 public objective.

55 [Type D - A not-for-profit corporation of this type may be formed
56 under this chapter] (4) when such formation is authorized by any other

1 corporate law of this state for any business or non-business, or pecuni-
2 ary or non-pecuniary, purpose or purposes specified by such other law,
3 whether such purpose or purposes are also within [types A, B, C] SUBPAR-
4 AGRAPHS ONE, TWO OR THREE above or otherwise.

5 S 10. Paragraph (c) of section 201 of the not-for-profit corporation
6 law, as amended by chapter 1058 of the laws of 1971, is amended to read
7 as follows:

8 (c) If a corporation is formed for purposes which are [within both
9 type A and type B above, it is a type B corporation] SPECIFIED IN
10 SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (B) OF THIS SECTION, ALL
11 PROVISIONS GOVERNING CORPORATIONS FORMED FOR PURPOSES SPECIFIED IN
12 SUBPARAGRAPH TWO OF PARAGRAPH (B) OF THIS SECTION SHALL APPLY TO SUCH
13 CORPORATION. [If a corporation has among its purposes any purpose which
14 is within type C, such corporation is a type C corporation.] A [type D]
15 corporation [is subject to all provisions of this chapter which are
16 applicable to a type B corporation under this chapter] FORMED PURSUANT
17 TO SUBPARAGRAPH FOUR OF PARAGRAPH (B) OF THIS SECTION SHALL BE GOVERNED
18 BY ALL PROVISIONS GOVERNING CORPORATIONS FORMED FOR PURPOSES SPECIFIED
19 IN PARAGRAPH TWO OF SUBDIVISION (B) OF THIS SECTION unless provided to
20 the contrary in, and subject to the contrary provisions of, the other
21 corporate law authorizing formation under this chapter of [the type D]
22 SUCH corporation.

23 S 11. Subparagraph 3 of paragraph (a) of section 301 of the not-for-
24 profit corporation law is amended to read as follows:

25 (3) Shall not contain any word or phrase, or any abbreviation or
26 derivative thereof, the use of which is prohibited or restricted by
27 [section 404 (Approvals and consents) or] any other statute of this
28 state, [unless in the latter case the] EXCEPT IN COMPLIANCE WITH SUCH
29 restrictions [have been complied with].

30 S 12. Subparagraphs 2 and 4 of paragraph (a) of section 402 of the
31 not-for-profit corporation law, subparagraph 2 as amended by chapter 847
32 of the laws of 1970 and subparagraph 4 as amended by chapter 679 of the
33 laws of 1985, are amended to read as follows:

34 (2) That the corporation is a corporation as defined in subparagraph
35 (a) (5) of section 102 (Definitions); the purpose or purposes for which
36 it is formed [and the type of corporation it shall be under section 201
37 (Purposes)]; and in the case of a [Type C] corporation FORMED FOR
38 PURPOSES SPECIFIED IN SUBPARAGRAPH THREE OF PARAGRAPH (B) OF SECTION 201
39 (PURPOSES), the lawful public or quasi-public objective [which] each
40 business purpose will achieve.

41 (4) [In the case of a Type A, Type B, or Type C corporation, the] THE
42 names and addresses of the initial directors. In the case of a [Type D]
43 corporation FORMED UNDER SUBPARAGRAPH FOUR OF PARAGRAPH (B) OF SECTION
44 201, the names and addresses of the initial directors, if any, may but
45 need not be set forth.

46 S 13. Paragraph (d) of section 502 of the not-for-profit corporation
47 law is amended to read as follows:

48 (d) A member's capital contribution shall be evidenced by a capital
49 certificate which shall be non-transferable, except that the certificate
50 of incorporation of a [Type A] corporation FORMED FOR THE PURPOSES SPEC-
51 IFIED IN SUBPARAGRAPH ONE OF PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF
52 THIS CHAPTER may provide that its capital certificates, or some of them,
53 may be transferable to other members with the consent of the corporation
54 upon specified terms and conditions.

1 S 14. Paragraph (b) of section 503 of the not-for-profit corporation
2 law, subparagraph 1 as amended by chapter 847 of the laws of 1970, is
3 amended to read as follows:

4 (b) Each capital certificate shall when issued state upon the face
5 thereof:

6 [(1) That the corporation is a Type corporation under section
7 113 or section 402 of the New York Not-for-Profit Corporation Law.

8 (2)] (1) The name of the member to whom issued.

9 [(3)] (2) The amount of the member's capital contribution evidenced by
10 such certificate.

11 [(4)] (3) If appropriate, [that the corporation is a Type A corpo-
12 ration, and] IN THE CASE OF A CORPORATION FORMED FOR THE PURPOSES OF
13 SUBPARAGRAPH (1) OF PARAGRAPH (B) OF SECTION 201 (PURPOSES), that its
14 certificate of incorporation provides that the capital certificate is
15 transferable to other members with the consent of the corporation.

16 S 15. Subparagraph 1 of paragraph (b) of section 505 of the not-for-
17 profit corporation law, as amended by chapter 847 of the laws of 1970,
18 is REPEALED, and subparagraphs 2, 3, 4, 5 and 6 are renumbered subpara-
19 graphs 1, 2, 3, 4, and 5.

20 S 16. Subparagraph 3 of paragraph (a) of section 510 of the not-for-
21 profit corporation law, as amended by chapter 847 of the laws of 1970,
22 is amended to read as follows:

23 (3) If the corporation is, or would be if formed under this chapter[,
24 classified as a Type B or Type C corporation under] FOR PURPOSES SPECI-
25 FIED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH (B) OF section 201,
26 (Purposes) such a sale, lease, exchange or other disposition shall in
27 addition require leave of the supreme court in the judicial district or
28 of the county court of the county in which the corporation has its
29 office or principal place of carrying out the purposes for which it was
30 formed.

31 S 17. Paragraph (a) of section 513 of the not-for-profit corporation
32 law, as amended by chapter 690 of the laws of 1978, is amended to read
33 as follows:

34 (a) [A] UNLESS OTHERWISE PROVIDED BY LAW OR IN THE CERTIFICATE OF
35 INCORPORATION, A corporation [which is, or would be if formed under this
36 chapter, classified as a Type B corporation shall] MAY hold full owner-
37 ship rights in any assets consisting of funds or other real or personal
38 property of any kind, that may be given, granted, bequeathed or devised
39 to or otherwise vested in such corporation in trust for, or with a
40 direction to apply the same to, any purpose specified in its certificate
41 of incorporation, and shall not be deemed a trustee of an express trust
42 of such assets, EXCEPT FOR CORPORATIONS FORMED FOR PURPOSES SPECIFIED IN
43 SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SECTION 201 (PURPOSES). [Any other
44 corporation subject to this chapter may similarly hold assets so
45 received, unless otherwise provided by law or in the certificate of
46 incorporation.]

47 S 18. Paragraph (a) of section 601 of the not-for-profit corporation
48 law, as amended by chapter 1058 of the laws of 1971, is amended to read
49 as follows:

50 (a) A corporation [shall] MAY have one or more classes of members, or,
51 [in the case of a Type B corporation,] may have no members[, in which
52 case any such provision for classes of members or for no members]. A
53 CORPORATION WHICH HAS ONE OR MORE CLASSES OF MEMBERS shall [be] set
54 forth in the certificate of incorporation or the by-laws PROVISIONS FOR
55 SUCH CLASSES OF MEMBERS. Corporations, joint-stock associations, unin-

1 corporated associations and partnerships, as well as any other person
2 without limitation, may be members.

3 S 19. Subparagraph 3 of paragraph (a) of section 803 of the not-for-
4 profit corporation law, as added by chapter 168 of the laws of 1982, is
5 amended to read as follows:

6 (3) That the corporation is a corporation as defined in subparagraph
7 (a) (5) of section 102 (Definitions)[; the type of corporation it is
8 under section 201 (Purposes); and if the corporate purposes are
9 enlarged, limited or otherwise changed, the type of corporation it shall
10 thereafter be under section 201].

11 S 20. Subparagraph (ii) of paragraph (a) of section 804 of the not-
12 for-profit corporation law, as amended by chapter 139 of the laws of
13 1993, is amended to read as follows:

14 (ii) Every certificate of amendment of a corporation [classified as
15 type B or type C under section 201 (Purposes)] FORMED FOR THE PURPOSES
16 SPECIFIED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH (B) OF SECTION 201
17 which seeks to change or eliminate a purpose or power enumerated in the
18 corporation's certificate of incorporation, or to add a power or purpose
19 not enumerated therein, shall have endorsed thereon or annexed thereto
20 the approval of a justice of the supreme court of the judicial district
21 in which the office of the corporation is located. Ten days' written
22 notice of the application for such approval shall be given to the attor-
23 ney-general.

24 S 21. Paragraphs (a) and (c) of section 907 of the not-for-profit
25 corporation law are amended to read as follows:

26 (a) [Where any constituent corporation or the consolidated corporation
27 is, or would be if formed under this chapter, a Type B or a Type C
28 corporation under section 201 (Purposes) of this chapter, no] NO certif-
29 icate shall be filed pursuant to section 904 (Certificate of merger or
30 consolidation; contents) or section 906 BY CORPORATIONS (Merger or
31 consolidation of domestic and foreign corporations) FORMED FOR THE
32 PURPOSES SPECIFIED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH (B) OF
33 SECTION 201 until an order approving the plan of merger or consolidation
34 and authorizing the filing of the certificate has been made by the
35 supreme court, as provided in this section. A certified copy of such
36 order shall be annexed to the certificate of merger or consolidation.
37 Application for the order may be made in the judicial district in which
38 the principal office of the surviving or consolidated corporation is to
39 be located, or in which the office of one of the domestic constituent
40 corporations is located. The application shall be made by all the
41 constituent corporations jointly and shall set forth by affidavit (1)
42 the plan of merger or consolidation, (2) the approval required by
43 section 903 (Approval of plan) or paragraph (b) of section 906 (Merger
44 or consolidation of domestic and foreign corporations) for each constit-
45 uent corporation, (3) the objects and purposes of each such corporation
46 to be promoted by the consolidation, (4) a statement of all property,
47 and the manner in which it is held, and of all liabilities and of the
48 amount and sources of the annual income of each such corporation, (5)
49 whether any votes against adoption of the resolution approving the plan
50 of merger or consolidation were cast at the meeting at which the resol-
51 ution as adopted by each constituent corporation, and (6) facts showing
52 that the consolidation is authorized by the laws of the jurisdictions
53 under which each of the constituent corporations is incorporated.

54 (c) If the court shall find that any of the assets of any of the
55 constituent corporations are held for [a] ANY purpose specified [as Type
56 B] in SUBPARAGRAPH TWO OR THREE OF paragraph (b) of section 201

(PURPOSES) or are legally required to be used for a particular purpose, but not upon a condition requiring return, transfer or conveyance by reason of the merger or consolidation, the court may, in its discretion, direct that such assets be transferred or conveyed to the surviving or consolidated corporation subject to such purpose or use, or that such assets be transferred or conveyed to the surviving or consolidated corporation or to one or more other domestic or foreign corporations or organizations engaged in substantially similar activities, upon an express trust the terms of which shall be approved by the court.

S 22. Paragraphs (a) and (f) of section 908 of the not-for-profit corporation law are amended to read as follows:

(a) One or more domestic or foreign corporations [which is, or would be if formed under this chapter, a type A or type C corporation under section 201 (Purposes)] may be merged or consolidated into a domestic or foreign corporation which is, or would be if formed under the laws of this state, a corporation formed under the business corporation law of this state if such merger or consolidation is not contrary to the law of the state of incorporation of any constituent corporation. With respect to such merger or consolidation, any reference in paragraph (b) of section 901 [of this article] (POWER OF MERGER OR CONSOLIDATION) or paragraph (b) of section 901 of the business corporation law to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations.

(f) [Where any constituent corporation is, or would be if formed under this chapter, a Type C corporation under section 201 (Purposes), no] NO certificate shall be filed pursuant to this section BY CORPORATIONS FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH (B) OF SECTION 201 until an order approving the plan of merger or consolidation and authorizing the filing of the certificate has been made by the supreme court, as provided in section 907 (Approval by the supreme court).

S 23. Paragraphs (b) and (c) and subparagraph 3 of paragraph (d) of section 1001 of the not-for-profit corporation law, as amended by chapter 434 of the laws of 2006, are amended to read as follows:

(b) If [the] A corporation [is a Type B, C or D corporation and] FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO, THREE OR FOUR OF PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THIS CHAPTER has no assets to distribute and no liabilities at the time of dissolution, the plan of dissolution shall include a statement to that effect.

(c) If [the] A corporation [is a Type B, C or D corporation and] FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO, THREE OR FOUR OF PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THIS CHAPTER has no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of adoption of the plan of dissolution, the plan of dissolution shall include a statement to that effect.

(3) if there are assets received and held by the corporation [either] for a purpose specified [as Type B] in SUBPARAGRAPH TWO OR THREE OF paragraph (b) of section 201 (Purposes) or [which] THAT are legally required to be used for a particular purpose, a statement that the assets owned by the corporation, subject to any unpaid liabilities of the corporation, shall be distributed as required by any gift instrument or to a charitable organization or organizations exempt from taxation pursuant to federal and state laws and engaged in activities substan-

1 tially similar to those of the dissolved corporation. Each such recipi-
2 ent organization shall be identified and the governing instrument and
3 amendments thereto of each of the proposed recipient organizations shall
4 be annexed to such statement, along with the financial reports of each
5 recipient organization for the last three years and a sworn affidavit
6 from a director and officer of each recipient organization stating the
7 purposes of the organization, and that it is currently exempt from
8 federal income taxation.

9 S 24. Paragraphs (a) and (d) of section 1002 of the not-for-profit
10 corporation law, as amended by chapter 434 of the laws of 2006, are
11 amended to read as follows:

12 (a) Upon adopting a plan of dissolution and distribution of assets,
13 the board shall submit it to a vote of the members, if any, and such
14 plan shall be approved at a meeting of members by two-thirds vote as
15 provided in paragraph (c) of section 613 (Vote of members); provided,
16 however, that if the corporation is [a Type B, C or D corporation]
17 FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO, THREE OR FOUR OF
18 PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THIS CHAPTER, other than a
19 corporation incorporated pursuant to article 15 (Public cemetery corpo-
20 rations), [and] has no assets to distribute, other than a reserve not to
21 exceed twenty-five thousand dollars for the purpose of paying ordinary
22 and necessary expenses of winding up its affairs including attorney and
23 accountant fees, and liabilities not in excess of ten thousand dollars
24 at the time of adoption of the plan of dissolution, the vote required by
25 the corporation's board of directors for adoption of the plan of dissol-
26 ution of such a corporation or by the corporation's members for the
27 authorization thereof shall be:

28 (1) In the case of a vote by the board of directors: (i) the number of
29 directors required under the certificate of incorporation, by-laws, this
30 chapter and any other applicable law; or

31 (ii) if the number of directors actually holding office as such at the
32 time of the vote to adopt the plan is less than the number required to
33 constitute a quorum of directors under the certificate of incorporation,
34 the by-laws, this chapter or any other applicable law, the remaining
35 directors unanimously;

36 (2) In the case of a vote by the members, (i) the number of members
37 required under the certificate of incorporation, by-laws, this chapter
38 and any other applicable law; or (ii) by the vote of members authorized
39 by an order of the supreme court pursuant to section 608 [of this chap-
40 ter] (QUORUM AT MEETING OF MEMBERS) permitting the corporation to
41 dispense with the applicable quorum requirement.

42 Notice of a special or regular meeting of the board of directors or of
43 the members entitled to vote on adoption and authorization or approval
44 of the plan of dissolution shall be sent to all the directors and
45 members of record entitled to vote. Unless otherwise directed by order
46 of the supreme court pursuant to section 608 [of this chapter] (QUORUM
47 AT MEETING OF MEMBERS), the notice shall be sent by certified mail,
48 return receipt requested, to the last known address of record of each
49 director and member not fewer than thirty, and not more than sixty days
50 before the date of each meeting provided, however, that if the last
51 known address of record of any director or member is not within the
52 United States, the notice to such director shall be sent by any other
53 reasonable means.

54 (d) The plan of dissolution and distribution of assets shall have
55 annexed thereto the approval of a justice of the supreme court in the
56 judicial district in which the office of the corporation is located in

1 the case of a [Type B, C or D] corporation FORMED FOR THE PURPOSES SPECI-
2 FIED IN SUBPARAGRAPH TWO, THREE OR FOUR OF PARAGRAPH (B) OF SECTION TWO
3 HUNDRED ONE OF THIS CHAPTER, and in the case of any other corporation
4 which holds assets at the time of dissolution legally required to be
5 used for a particular purpose, except that no such approval shall be
6 required with respect to the plan of dissolution of a corporation, other
7 than a corporation incorporated pursuant to article 15 (Public cemetery
8 corporations), which has no assets to distribute at the time of dissol-
9 ution, other than a reserve not to exceed twenty-five thousand dollars
10 for the purpose of paying ordinary and necessary expenses of winding up
11 its affairs including attorney and accountant fees, and liabilities not
12 in excess of ten thousand dollars, and which has complied with the
13 requirements of section 1001 (Plan of dissolution and distribution of
14 assets) and this section applicable to such a corporation. Application
15 to the supreme court for an order for such approval shall be by verified
16 petition, with the plan of dissolution and distribution of assets and
17 certified copies of the consents prescribed by this section annexed
18 thereto, and upon ten days written notice to the attorney general accom-
19 panied by copies of such petition, plan and consents. In such case where
20 approval of a justice of the supreme court is not required for a [Type
21 B, C or D] corporation FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH
22 TWO, THREE OR FOUR OF PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THIS
23 CHAPTER, a copy of such plan certified under penalties of perjury shall
24 be filed with the attorney general within ten days after its authori-
25 zation.

26 S 25. Subparagraph 1 of paragraph (c) of section 1002-a of the not-
27 for-profit corporation law, as amended by chapter 434 of the laws of
28 2006, is amended to read as follows:

29 (1) assets received and held by the corporation [either] for a purpose
30 specified [as Type B] in SUBPARAGRAPH TWO OR THREE OF paragraph (b) of
31 section 201 (Purposes) or which are legally required to be used for a
32 particular purpose, shall be distributed to one or more domestic or
33 foreign corporations or other organizations engaged in activities
34 substantially similar to those of the dissolved corporation pursuant to
35 the plan of dissolution and distribution or, if applicable, as ordered
36 by the court to which such plan is submitted for approval under section
37 1002 (Authorization of plan). Any disposition of assets contained in a
38 will or other instrument, in trust or otherwise, made before or after
39 the dissolution, to or for the benefit of any corporation so dissolved
40 shall inure to or for the benefit of the corporation or organization
41 acquiring such assets of the dissolved corporation as provided in this
42 section, and so far as is necessary for that purpose the corporation or
43 organization acquiring such disposition shall be deemed a successor to
44 the dissolved corporation with respect to such assets; provided, howev-
45 er, that such disposition shall be devoted by the acquiring corporation
46 or organization to the purposes intended by the testator, donor or gran-
47 tor.

48 S 26. Subparagraph 4 of paragraph (a) of section 1003 of the not-for-
49 profit corporation law is REPEALED and subparagraphs 5, 6, 7 and 8 are
50 renumbered subparagraphs 4, 5, 6 and 7.

51 S 27. Subparagraph 2 of paragraph (b) of section 1003 of the not-for-
52 profit corporation law, as amended by chapter 434 of the laws of 2006,
53 is amended to read as follows:

54 (2) By the attorney general in the case of a [Type B, C or D] corpo-
55 ration FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO, THREE OR
56 FOUR OF PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THIS CHAPTER, or any

1 other corporation that holds assets at the time of dissolution legally
2 required to be used for a particular purpose.

3 S 28. Subparagraph 15 of paragraph (a) of section 1008 of the not-for-
4 profit corporation law, as amended by chapter 434 of the laws of 2006,
5 is amended to read as follows:

6 (15) Where assets were received and held by the corporation either for
7 a purpose specified [as Type B] in SUBPARAGRAPH TWO OR THREE OF para-
8 graph (b) of section 201 (Purposes), or were legally required to be used
9 for a particular purpose, the distribution of such assets to one or more
10 domestic or foreign corporations or other organizations engaged in
11 activities substantially similar to those of the dissolved corporation,
12 on notice to the attorney general and to such other persons, and in such
13 manner, as the court may deem proper.

14 S 29. Subparagraph 6 of paragraph (a) of section 1012 of the not-for-
15 profit corporation law is REPEALED.

16 S 30. Section 1302 of the not-for-profit corporation law, as amended
17 by chapter 847 of the laws of 1970, is amended to read as follows:

18 S 1302. Application to existing authorized foreign corporations.

19 Every foreign corporation which on the effective date of this chapter
20 is authorized to conduct activities in this state under a certificate of
21 authority heretofore issued to it by the secretary of state shall
22 continue to have such authority. Such foreign corporation, its members,
23 directors, and officers shall have the same rights, franchises, and
24 privileges and shall be subject to the same limitations, restrictions,
25 liabilities, and penalties as a foreign corporation authorized under
26 this chapter, its members, directors, and officers respectively. A
27 foreign corporation [may by amendment to its certificate of authority
28 set forth the type of corporation it is under section 201 (Purposes);
29 and in the absence of such amendment an authorized foreign corporation
30 shall be a Type B corporation] SHALL BE SUBJECT TO PROVISIONS GOVERNING
31 CORPORATIONS FORMED UNDER SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SECTION
32 201, UNLESS OTHERWISE REQUIRED BY LAW. Reference in this chapter to an
33 application for authority shall, unless the context otherwise requires,
34 include the statement and designation and any amendment thereof required
35 to be filed by the secretary of state under prior statutes to obtain a
36 certificate of authority.

37 S 31. Subparagraph 4 of paragraph (a) of section 1304 of the not-for-
38 profit corporation law, as amended by chapter 847 of the laws of 1970
39 and as renumbered by chapter 590 of the laws of 1982, is amended to read
40 as follows:

41 (4) That the corporation is a foreign corporation as defined in
42 subparagraph (a) (7) of section 102 (Definitions); [the type of corpo-
43 ration it shall be under section 201 (Purposes);] a statement of its
44 purposes to be pursued in this state and of the activities which it
45 proposes to conduct in this state; a statement that it is authorized to
46 conduct those activities in the jurisdiction of its incorporation; and
47 in the case of a [Type C] corporation FORMED FOR THE PURPOSES SPECIFIED
48 IN SUBPARAGRAPH THREE OF PARAGRAPH (B) OF SECTION 201, the lawful public
49 or quasi-public objective which each business purpose will achieve.

50 S 32. Paragraph (a) of section 1321 of the not-for-profit corporation
51 law, subparagraphs 1, 2 and 3 as amended by chapter 847 of the laws of
52 1970, are amended to read as follows:

53 (a) Notwithstanding any other provision of this chapter, a foreign
54 corporation conducting activities in this state which is authorized
55 under this article, its directors, officers and members, shall be exempt
56 from the provisions of paragraph (e) of section 1317 (Voting trust

records), subparagraph (a) (1) of section 1318 (Liabilities of directors and officers of foreign corporations), and subparagraph (a) (2) of section 1320 (Applicability of other provisions) if when such provision would otherwise apply[:

(1) The corporation is a Type A corporation under this chapter; its] THE CORPORATION'S principal activities are conducted outside this state; the greater part of its property is located outside this state; and (1) less than one third of its members are residents of this state; or

(2) [The corporation is a Type B corporation under this chapter; its principal activities are conducted outside this state; the greater part of its property is located outside this state; and] less than ten per cent of its annual revenues is derived from solicitation of funds within this state; or

(3) [The corporation is a Type C corporation under this chapter; its principal activities are conducted outside this state; the greater part of its property is located outside this state; and] less than one half of its revenues for the preceding three fiscal years, or such portion thereof as the foreign corporation was in existence, was derived from sources within this state.

S 33. Paragraph (d) of section 1401 of the not-for-profit corporation law is REPEALED and paragraph (e) is relettered paragraph (d).

S 34. Paragraph (b) of section 1402 of the not-for-profit corporation law is REPEALED and paragraphs (c), (d), (e), (f), (g), (h) and (i) are relettered paragraphs (b), (c), (d), (e), (f), (g) and (h).

S 35. Paragraph (c) of section 1403 of the not-for-profit corporation law is REPEALED.

S 36. Paragraph (b) of section 1404 of the not-for-profit corporation law is REPEALED and paragraphs (c), (d) and (e) are relettered paragraphs (b), (c) and (d).

S 37. Paragraph (b) of section 1405 of the not-for-profit corporation law is REPEALED and paragraphs (c), (d), (e) and (f) are relettered paragraphs (b), (c) (d) and (e).

S 38. Paragraph (b) of section 1406 of the not-for-profit corporation law is REPEALED and paragraphs (c), (d), (e) and (f) are relettered paragraphs (b), (c), (d) and (e).

S 39. Paragraph (b) of section 1407 of the not-for-profit corporation law is REPEALED and paragraphs (c) and (d) are relettered paragraphs (b) and (c).

S 40. Paragraph (b) of section 1408 of the not-for-profit corporation law is REPEALED and paragraph (c) is relettered paragraph (b).

S 41. Paragraph (b) of section 1409 of the not-for-profit corporation law is REPEALED and paragraphs (c), (d), (e), (f), (g), (h), (i), (j) and (k) are relettered paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j).

S 42. Paragraph (b) of section 1410 of the not-for-profit corporation law is REPEALED and paragraph (c) is relettered paragraph (b).

S 43. Paragraph (b) of section 1411 of the not-for-profit corporation law is REPEALED and paragraphs (c), (d), (e), (f), (g), (h) and (i) are relettered paragraphs (b), (c), (d), (e), (f), (g) and (h).

S 44. Paragraph (d) of section 1412 of the not-for-profit corporation law is REPEALED and paragraphs (e), (f) and (g) are relettered paragraphs (d), (e) and (f), respectively.

S 45. Paragraph (c) of section 1505 of the not-for-profit corporation law is REPEALED and paragraph (d) is relettered paragraph (c).

1 S 46. Subdivision 2 of section 2-b of the religious corporations law
2 is REPEALED and subdivisions 3 and 4 are renumbered subdivisions 2 and
3 3.

4 S 47. This act shall take effect on the sixtieth day after it shall
5 have become a law.

6 SUBPART B

7 Section 1. Paragraph (e) of section 104 of the business corporation
8 law, as amended by chapter 832 of the laws of 1982, is amended to read
9 as follows:

10 (e) If an instrument which is delivered to the department of state for
11 filing complies as to form with the requirements of law and WHERE
12 REQUIRED BY STATUTE there has been attached to it the consent or
13 approval of the state official, [department, board,] agency or other
14 body, if any, whose consent to or approval of such instrument or the
15 filing thereof is required by any statute of this state and the filing
16 fee and tax, if any, required by any statute of this state in connection
17 therewith have been paid, the instrument shall be filed and indexed by
18 the department of state. No certificate of authentication or conformity
19 or other proof shall be required with respect to any verification, oath
20 or acknowledgment of any instrument delivered to the department of state
21 under this chapter, if such verification, oath or acknowledgment
22 purports to have been made before a notary public, or person performing
23 the equivalent function, of one of the states, or any subdivision there-
24 of, of the United States or the District of Columbia. Without limiting
25 the effect of section four hundred three of this chapter, filing and
26 indexing by the department of state shall not be deemed a finding that a
27 certificate conforms to law, nor shall it be deemed to constitute an
28 approval by the department of state of the name of the corporation or
29 the contents of the certificate, nor shall it be deemed to prevent any
30 person with appropriate standing from contesting the legality thereof in
31 an appropriate forum. UPON THE WRITTEN NOTIFICATION TO THE DEPARTMENT OF
32 STATE BY ANY STATE OFFICIAL, DEPARTMENT, BOARD, AGENCY OR OTHER BODY
33 THAT A DOMESTIC CORPORATION OR FOREIGN AUTHORIZED CORPORATION HAS FAILED
34 TO OBTAIN THE CONSENT OR APPROVAL OF SUCH STATE OFFICIAL, DEPARTMENT,
35 BOARD, AGENCY OR OTHER BODY FOR ANY CERTIFICATE OR INSTRUMENT, THE
36 CORPORATION'S AUTHORITY TO CARRY ON, CONDUCT OR TRANSACT BUSINESS IN
37 THIS STATE SHALL BE SUSPENDED. SUCH SUSPENSION SHALL BE ANNULLED UPON
38 THE FILING OF A CERTIFICATE OF AMENDMENT WITH THE REQUIRED CONSENT OR
39 APPROVAL ANNEXED THERETO.

40 S 2. Paragraphs (b) and (e) of section 201 of the business corporation
41 law, paragraph (b) as amended by chapter 182 of the laws of 1981, and
42 paragraph (e) as amended by section 71 of part A of chapter 58 of the
43 laws of 2010, are amended to read as follows:

44 (b) [The] CERTIFICATION THAT approval of the industrial board of
45 appeals HAS BEEN OBTAINED is required for the filing with the department
46 of state of any certificate of incorporation, certificate of merger or
47 consolidation or application of a foreign corporation for authority to
48 do business in this state which states as the purpose or one of the
49 purposes of the corporation the formation of an organization of groups
50 of working men or women or wage earners, or the performance, rendition
51 or sale of services as labor consultant or as advisor on labor-manage-
52 ment relations or as arbitrator or negotiator in labor-management
53 disputes.

(e) A corporation may not include as its purpose or among its purposes the establishment or maintenance of a hospital or facility providing health related services, as those terms are defined in article twenty-eight of the public health law unless its certificate of incorporation shall so state and such certificate [shall have annexed thereto the] INCLUDES A CERTIFICATION THAT approval of the public health and health planning council OF SUCH PURPOSE HAS BEEN OBTAINED.

S 3. Clause (B) of subparagraph 5 of paragraph (a) of section 301 of the business corporation law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

(B) Shall not contain any of the following words, or any abbreviation or derivative thereof:

acceptance	endowment	loan
annuity	fidelity	mortgage
assurance	finance	savings
bank	guaranty	surety
benefit	indemnity	title
bond	insurance	trust
casualty	investment	underwriter
doctor	lawyer	

unless the [approval of the superintendent of financial services is attached to the] certificate of incorporation, or application for authority or amendment thereof INCLUDES A CERTIFICATION THAT APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES HAS BEEN OBTAINED; or [that] UNLESS the word "doctor" or "lawyer" or an abbreviation or derivation thereof is used in the name of a university faculty practice corporation formed pursuant to section fourteen hundred twelve of the not-for-profit corporation law or a professional service corporation formed pursuant to article fifteen of this chapter, or a foreign professional service corporation authorized to do business in this state pursuant to article fifteen-A of this chapter, the members or shareholders of which are composed exclusively of doctors or lawyers, respectively, or are used in a context which clearly denotes a purpose other than the practice of law or medicine.

S 4. Subparagraphs 6, 7 and 11 of paragraph (a) of section 301 of the business corporation law, subparagraph 7 as amended by chapter 555 of the laws of 1978 and subparagraph 11 as added by chapter 316 of the laws of 2005, are amended to read as follows:

(6) Shall not, unless [the approval of the state board of standards and appeals is attached to] the certificate of incorporation, or application for authority or amendment thereof INCLUDES A CERTIFICATION THAT THE APPROVAL OF THE STATE BOARD OF STANDARDS AND APPEALS HAS BEEN OBTAINED, contain any of the following words or phrases, or any abbreviation or derivative thereof: union, labor, council, industrial organization, in a context which indicates or implies that the domestic corporation is formed or the foreign corporation authorized as an organization of working men or women or wage earners or for the performance, rendition or sale of services as labor or management consultant, adviser or specialist, or as negotiator or arbitrator in labor-management disputes.

(7) Shall not, unless [the approval of the state department of social services is attached to] the certificate of incorporation, or application for authority or amendment thereof INCLUDES A CERTIFICATION THAT THE APPROVAL OF THE STATE DEPARTMENT OF SOCIAL SERVICES HAS BEEN OBTAINED, contain the word "blind" or "handicapped". Such approval shall be granted by the state department of social services, if in its opinion

1 the word "blind" or "handicapped" as used in the corporate name proposed
2 will not tend to mislead or confuse the public into believing that the
3 corporation is organized for charitable or non-profit purposes related
4 to the blind or the handicapped.

5 (11) Shall not, unless [the consent of the commissioner of education
6 is endorsed on or annexed to] the certificate of incorporation INCLUDES
7 A CERTIFICATION THAT THE CONSENT OF THE COMMISSIONER OF EDUCATION HAS
8 BEEN OBTAINED, contain the words "school;" "education;" "elementary;"
9 "secondary;" "kindergarten;" "prekindergarten;" "preschool;" "nursery
10 school;" "museum;" "history;" "historical;" "historical society;"
11 "arboretum;" "library;" "college;" "university" or other term restricted
12 by section two hundred twenty-four of the education law; "conservatory,"
13 "academy," or "institute," or any abbreviation or derivative of such
14 terms. Such consent shall not be granted by the commissioner of educa-
15 tion, if in the commissioner's opinion, the use of such terms in the
16 corporate name is likely to mislead or confuse the public into believing
17 that the corporation is organized for non-profit educational purposes or
18 for educational business purposes that are not specified in the corpo-
19 rate purposes and powers contained in its certificate of incorporation.

20 S 5. Section 406 of the business corporation law, as amended by chap-
21 ter 558 of the laws of 1999, is amended to read as follows:

22 S 406. Filing of a certificate of incorporation; facility for alcoholism
23 or alcohol abuse, substance abuse, substance dependence, or
24 chemical abuse or dependence.

25 Every certificate of incorporation which includes among its corporate
26 purposes the establishment or operation of a program of services for
27 alcoholism or alcohol abuse, substance abuse, substance dependence, or
28 chemical abuse or dependence shall [have endorsed thereon or annexed
29 thereto] INCLUDE A CERTIFICATION THAT the approval of the commissioner
30 of the state office of alcoholism and substance abuse services OF THE
31 PURPOSES HAS BEEN OBTAINED.

32 S 6. Paragraph (a) of section 806 of the business corporation law is
33 amended to read as follows:

34 (a) The department of state shall not file a certificate of amendment
35 reviving the existence of a corporation unless THE CERTIFICATE OF AMEND-
36 MENT INCLUDES A CERTIFICATION THAT the consent of the state tax commis-
37 sion to the revival [is delivered to the department] HAS BEEN OBTAINED.
38 If the name of the corporation being revived is not available under
39 section 301 (Corporate name; general) for use by a corporation then
40 being formed under this chapter, the certificate of amendment shall
41 change the name to one which is available for such use.

42 S 7. Paragraph (a) of section 1003 of the business corporation law is
43 amended by adding two new subparagraphs 6 and 7 to read as follows:

44 (6) A CERTIFICATION THAT CONSENT OF THE DEPARTMENT OF TAXATION AND
45 FINANCE TO THE DISSOLUTION HAS BEEN OBTAINED.

46 (7) WITH RESPECT TO ANY CORPORATION THAT HAS DONE BUSINESS IN THE CITY
47 OF NEW YORK AND INCURRED LIABILITY FOR ANY TAX OR CHARGE UNDER CHAPTER
48 SIX, SEVEN, EIGHT, TEN, ELEVEN, TWELVE, THIRTEEN, FOURTEEN, TWENTY-ONE,
49 TWENTY-FOUR, TWENTY-FIVE OR TWENTY-SEVEN OF TITLE ELEVEN OF THE ADMINIS-
50 TRATIVE CODE OF THE CITY OF NEW YORK, A CERTIFICATION THAT CONSENT OF
51 THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK TO THE DISSOLUTION
52 HAS BEEN OBTAINED.

53 S 8. Paragraph (a) of section 1004 of the business corporation law, as
54 amended by chapter 201 of the laws of 2009, is amended to read as
55 follows:

1 (a) [The department shall not file such certificate unless the consent
2 of the state department of taxation and finance to the dissolution is
3 attached thereto.] Upon [such] filing SUCH CERTIFICATE, the corporation
4 is dissolved.

5 S 9. Paragraph (b) of section 1004 of the business corporation law is
6 REPEALED.

7 S 10. Subparagraph 8 of paragraph (a) of section 1304 of the business
8 corporation law, as amended by chapter 684 of the laws of 1963 and as
9 renumbered by chapter 590 of the laws of 1982, is amended to read as
10 follows:

11 (8) A statement that the foreign corporation has not since its incor-
12 poration or since the date its authority to do business in this state
13 was last surrendered, engaged in any activity in this state, except as
14 set forth in paragraph (b) of section 1301 (Authorization of foreign
15 corporations), or in lieu thereof A CERTIFICATION THAT the consent of
16 the state tax commission to the filing of the application[, which
17 consent shall be attached thereto] HAS BEEN OBTAINED.

18 S 11. Paragraph (a) of section 1310 of the business corporation law is
19 amended by adding a new subparagraph 7 to read as follows:

20 (7) A CERTIFICATION THAT CONSENT OF THE DEPARTMENT OF TAXATION AND
21 FINANCE TO THE SURRENDER OF AUTHORITY HAS BEEN OBTAINED.

22 S 12. Paragraph (b) of section 1310 of the business corporation law is
23 REPEALED, and paragraphs (c) and (d) are relettered (b) and (c).

24 S 13. Section 216 of the education law, as amended by chapter 901 of
25 the laws of 1972, and the closing paragraph as added by chapter 316 of
26 the laws of 2005, is amended to read as follows:

27 S 216. Charters. Under such name, with such number of trustees or
28 other managers, and with such powers, privileges and duties, and subject
29 to such limitations and restrictions in all respects as the regents may
30 prescribe in conformity to law, they may, by an instrument under their
31 seal and recorded in their office, incorporate any university, college,
32 academy, library, museum, or other institution or association for the
33 promotion of science, literature, art, history or other department of
34 knowledge, or of education in any way, associations of teachers,
35 students, graduates of educational institutions, and other associations
36 whose approved purposes are, in whole or in part, of educational or
37 cultural value deemed worthy of recognition and encouragement by the
38 university. No institution or association which might be incorporated by
39 the regents under this chapter shall, without their consent, be incorpo-
40 rated under any other general law. An institution or association which
41 might be incorporated by the regents under this chapter may, with the
42 consent of the commissioner of education, be formed under the business
43 corporation law or pursuant to the not-for-profit corporation law if
44 [such consent of the commissioner of education is attached to] its
45 certificate of incorporation INCLUDES A CERTIFICATION THAT CONSENT OF
46 THE COMMISSIONER OF EDUCATION TO THE INCORPORATION OF SUCH INSTITUTION
47 OR ASSOCIATION HAS BEEN OBTAINED. No individual, association, partner-
48 ship, company or corporation not authorized by special charter from the
49 legislature of this state or by charter from the regents to operate a
50 museum, or arboretum shall knowingly use, advertise or transact business
51 under the names "museum," or "arboretum," or any name, title or descrip-
52 tive material indicating or tending to imply that said individual, asso-
53 ciation, partnership, company or corporation conducts, carries on, or is
54 such a business when it is not, or that it is authorized to operate as
55 such, unless the right to do so has been granted by the regents or the
56 commissioner in writing. Any violation of this paragraph shall be a

1 misdemeanor. Notwithstanding any other provision of this section, an
2 individual, association, partnership, company or corporation doing busi-
3 ness under any of such names on the effective date of this paragraph may
4 come into compliance with this paragraph by obtaining consent of the
5 regents or the commissioner within one year of such effective date.

6 S 14. Paragraph (c) of subdivision 2 of section 130 of the general
7 business law, as amended by chapter 316 of the laws of 2005, is amended
8 to read as follows:

9 (c) No corporation, limited partnership or limited liability company
10 shall use or file a certificate for the use of any name or designation
11 to carry on or conduct or transact business in this state which consists
12 of or includes a word or words the use of which is prohibited or
13 restricted by subparagraphs three through eleven of paragraph (a) of
14 section three hundred one of the business corporation law or subpara-
15 graphs three through nine of paragraph (a) of section three hundred one
16 and paragraph (w) of section four hundred four of the not-for-profit
17 corporation law, or paragraph three of subdivision (a) of section
18 121-102 of the partnership law, or subdivisions (d) through (i) of
19 section two hundred four of the limited liability company law, respec-
20 tively, [without having obtained any necessary] UNLESS SUCH CERTIFICATE
21 INCLUDES A CERTIFICATION THAT SUCH consents or approvals which would
22 permit the use of the word or words pursuant to such laws HAS BEEN
23 OBTAINED, OR WHERE REQUIRED BY STATUTE, SUCH CERTIFICATE HAS CONSENTS OR
24 APPROVALS ENDORSED THEREON OR ARE ANNEXED THERETO.

25 S 15. Subdivision 11 of section 130 of the general business law, as
26 added by chapter 316 of the laws of 2005, is amended to read as follows:

27 11. Notwithstanding any other provision of this section, an education
28 corporation may not file a certificate under this section with the
29 secretary of state, unless SUCH CERTIFICATE INCLUDES A CERTIFICATION
30 THAT the consent of the board of regents [is endorsed on or annexed
31 thereto] HAS BEEN OBTAINED. Nothing in this subdivision shall invali-
32 date a certificate lawfully filed by an education corporation pursuant
33 to this section prior to the effective date of this subdivision.

34 S 16. Subdivision (f) of section 204 of the limited liability company
35 law, as amended by chapter 155 of the laws of 2012, is amended to read
36 as follows:

37 (f) shall not contain the following words, or any abbreviation
38 or derivative thereof:

39 acceptance	guaranty
40 annuity	indemnity
41 assurance	insurance
42 attorney	investment
43 bank	lawyer
44 benefit	loan
45 bond	mortgage
46 casualty	savings
47 doctor	surety
48 endowment	title
49 fidelity	trust
50 finance	underwriter

51 unless the [approval of the superintendent of financial services is
52 attached to the] articles of organization INCLUDE A CERTIFICATION THAT
53 APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES HAS BEEN OBTAINED
54 or unless the word "doctor" or "lawyer" or an abbreviation or derivative
55 thereof is used in a context that clearly denotes a purpose other than
56 the practice of law or medicine;

1 S 17. Subdivisions (g) and (i) of section 204 of the limited liability
2 company law, subdivision (i) as added by chapter 316 of the laws of
3 2005, are amended to read as follows:

4 (g) shall not, unless [the approval of the state department of social
5 services is attached to] the articles of organization or application for
6 authority INCLUDE A CERTIFICATION THAT THE APPROVAL OF THE STATE DEPART-
7 MENT OF SOCIAL SERVICES HAS BEEN OBTAINED, contain the word "blind" or
8 "handicapped." Such approval shall be granted by the state department of
9 social services if in its opinion the word "blind" or "handicapped" as
10 used in the limited liability company's proposed name will not tend to
11 mislead or confuse the public into believing that the limited liability
12 company is organized for charitable or nonprofit purposes related to the
13 blind or the handicapped; and

14 (i) shall not, UNLESS THE ARTICLES OF ORGANIZATION OR APPLICATION FOR
15 AUTHORITY INCLUDE A CERTIFICATION THAT THE CONSENT OF THE COMMISSIONER
16 OF EDUCATION HAS BEEN OBTAINED, contain the following terms: "school,"
17 "education," "elementary," "secondary," "kindergarten," "prekindergar-
18 ten," "preschool," "nursery school," "museum," "history," "historical,"
19 "historical society," "arboretum," "library," "college," "university" or
20 other term restricted by section two hundred twenty-four of the educa-
21 tion law; "conservatory," "academy," or "institute" or any abbreviation
22 or derivative of such terms[, shall have endorsed thereon or annexed
23 thereto the consent of the commissioner of education].

24 S 18. Section 209 of the limited liability company law is amended to
25 read as follows:

26 S 209. Filing with the department of state. A signed articles of
27 organization and any signed certificate of amendment or other certif-
28 icates filed pursuant to this chapter or of any judicial decree of
29 amendment or cancellation shall be delivered to the department of state.
30 If the instrument that is delivered to the department of state for
31 filing complies as to form with the requirements of law and the filing
32 fee required by any statute of this state in connection therewith has
33 been paid, the instrument shall be filed and indexed by the department
34 of state. The department of state shall not review such articles or
35 certificates for legal sufficiency; its review shall be limited to
36 determining that the form has been completed. UPON THE WRITTEN NOTIFICA-
37 TION TO THE DEPARTMENT OF STATE BY ANY STATE OFFICIAL, DEPARTMENT,
38 BOARD, AGENCY OR OTHER BODY THAT A DOMESTIC LIMITED LIABILITY COMPANY OR
39 FOREIGN AUTHORIZED LIMITED LIABILITY COMPANY HAS FAILED TO OBTAIN THE
40 CONSENT OR APPROVAL OF SUCH STATE OFFICIAL, DEPARTMENT, BOARD, AGENCY OR
41 OTHER BODY FOR ANY CERTIFICATE OR INSTRUMENT, THE LIMITED LIABILITY
42 COMPANY'S AUTHORITY TO CARRY ON, CONDUCT OR TRANSACT BUSINESS IN THIS
43 STATE SHALL BE SUSPENDED. SUCH SUSPENSION SHALL BE ANNULLED UPON THE
44 FILING OF A CERTIFICATE OF AMENDMENT WITH THE REQUIRED CONSENT OR
45 APPROVAL ANNEXED THERETO.

46 S 19. Clause (B) of subparagraph 5 of paragraph (a) of section 301 of
47 the not-for-profit corporation law, as amended by chapter 155 of the
48 laws of 2012, is amended to read as follows:

49 (B) Shall not contain any of the following words, or any abbreviation
50 or derivative thereof:

51 acceptance	fidelity	mortgage
52 annuity	finance	savings
53 assurance	guaranty	surety

1	bank	indemnity	title
2	bond	insurance	trust
3	casualty	investment	underwriter
4	doctor	lawyer	
5	endowment	loan	

6 unless [the approval of the superintendent of financial services is
7 attached to] the certificate of incorporation, or application for
8 authority or amendment thereof[;] INCLUDES A CERTIFICATION THAT THE
9 APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES HAS BEEN OBTAINED,
10 or [that] UNLESS the word "doctor", OR "lawyer", or the phrase "state
11 police" or "state trooper" or an abbreviation or derivation thereof,
12 [may be] IS used ONLY in the name of a corporation the membership of
13 which is composed exclusively of doctors, lawyers, state policemen or
14 state troopers, respectively.

15 S 20. Section 404 of the not-for-profit corporation law, as amended by
16 chapter 139 of the laws of 1993, paragraph (b) as amended by section 4
17 of part D of chapter 58 of the laws of 2006, paragraphs (c), (k) and (l)
18 as further amended by section 104 of part A of chapter 62 of the laws of
19 2011, paragraphs (a), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l),
20 (m), (n) and (r) as relettered by chapter 431 of the laws of 1993, para-
21 graph (g) as separately amended by chapter 201 of the laws of 1993,
22 paragraphs (o), (p) and (t) as amended by section 79 of part A of chap-
23 ter 58 of the laws of 2010, paragraph (q) as amended by chapter 198 of
24 the laws of 2010, paragraph (u) as amended by chapter 558 of the laws of
25 1999, paragraph (v) as added by chapter 598 of the laws of 2000 and as
26 further amended by section 104 of part A of chapter 62 of the laws of
27 2011, paragraph (w) as amended by chapter 316 of the laws of 2005, is
28 amended to read as follows:

29 S 404. Approvals and consents.

30 (a) Every certificate of incorporation which includes among its
31 purposes the formation of a trade or business association shall have
32 endorsed thereon or annexed thereto the consent of the attorney-general.

33 (b) (1) Every certificate of incorporation which includes among its
34 purposes the care of destitute, delinquent, abandoned, neglected or
35 dependent children; the establishment or operation of any adult care
36 facility, or the establishment or operation of a residential program for
37 victims of domestic violence as defined in subdivision four of section
38 four hundred fifty-nine-a of the social services law, or the placing-out
39 or boarding-out of children or a home or shelter for unmarried mothers,
40 excepting the establishment or maintenance of a hospital or facility
41 providing health-related services as those terms are defined in article
42 twenty-eight of the public health law and a facility for which an oper-
43 ating certificate is required by articles sixteen, nineteen, twenty-two
44 and thirty-one of the mental hygiene law; or the solicitation of
45 contributions for any such purpose or purposes, shall [have endorsed
46 thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the approval of
47 the commissioner of the office of children and family services, or with
48 respect to any adult care facility, the commissioner of health, OF SUCH
49 PURPOSE HAS BEEN OBTAINED.

50 (2) A corporation whose statement of purposes specifically includes
51 the establishment or operation of a child day care center, as that term

1 is defined in section three hundred ninety of the social services law,
2 shall provide a certified copy of the certificate of incorporation, each
3 amendment thereto, and any certificate of merger, consolidation or
4 dissolution involving such corporation to the office of children and
5 family services within thirty days after the filing of such certificate,
6 amendment, merger, consolidation or dissolution with the department of
7 state. This requirement shall also apply to any foreign corporation
8 filing an application for authority under section thirteen hundred four
9 of this chapter, any amendments thereto, and any surrender of authority
10 or termination of authority in this state of such corporation.

11 (c) Every certificate of incorporation which includes among the
12 purposes of the corporation, the establishment, maintenance and opera-
13 tion of a hospital service or a health service or a medical expense
14 indemnity plan or a dental expense indemnity plan as permitted in arti-
15 cle forty-three of the insurance law, shall [have endorsed thereon or
16 annexed thereto] INCLUDE A CERTIFICATION THAT the approval of the super-
17 intendent of financial services and the commissioner of health OF SUCH
18 PURPOSE HAS BEEN OBTAINED.

19 (d) Every certificate of incorporation which includes a purpose for
20 which a corporation might be chartered by the regents of the university
21 of the State of New York shall [have endorsed thereon or annexed there-
22 to] INCLUDE A CERTIFICATION THAT the consent of the commissioner of
23 education TO SUCH PURPOSE HAS BEEN OBTAINED.

24 (e) Every certificate of incorporation of a cemetery corporation,
25 except those within the exclusionary provisions of section 1503 (Ceme-
26 tery corporations) shall [have endorsed thereon or annexed thereto]
27 INCLUDE A CERTIFICATION THAT the approval of the cemetery board OF SUCH
28 PURPOSE HAS BEEN OBTAINED.

29 (f) Every certificate of incorporation of a fire corporation shall
30 [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT
31 the approval, signed and acknowledged, of the authorities of each city,
32 village, town or fire district in which the corporation proposes to act,
33 OF SUCH PURPOSE HAS BEEN OBTAINED. Such authorities shall be: in a city,
34 the mayor; in a village, a majority of the trustees; in a town, a major-
35 ity of the members of the town board; in a fire district, a majority of
36 the fire commissioners. The members of the town board of a town, or the
37 trustees of a village, shall not consent to the formation of a fire
38 corporation as hereinbefore provided, until such board shall have held a
39 public hearing on the question of whether the fire company should be
40 incorporated. The notice shall be published at least once in each week
41 for two successive weeks in the official newspaper published in the
42 county in which such fire corporation intends to locate, prior to the
43 regular meeting of such board designated by the chairman of the board to
44 consider the matter. Such notice shall contain the name of the proposed
45 company, the names of the persons signing the certificate of incorpo-
46 ration, a brief description of the territory to be protected by the fire
47 company and that all persons interested shall be heard. If no newspaper
48 is published in the county the publication of the notice shall be in a
49 newspaper in an adjoining county selected by the chairman of such board.
50 All expenses in connection with such publication shall be borne by the
51 parties making the application and paid before the hearing.

52 (g) Every certificate of incorporation of a corporation for prevention
53 of cruelty to animals shall [have endorsed thereon or annexed thereto]
54 INCLUDE A CERTIFICATION THAT the approval of the American Society for
55 the Prevention of Cruelty to Animals OF SUCH PURPOSE HAS BEEN OBTAINED,
56 or, if such approval be withheld thirty days after application therefor,

1 a certified copy of an order of a justice of the supreme court of the
2 judicial district in which the office of the corporation is to be
3 located, dispensing with such approval, granted upon eight days' notice
4 to such society.

5 (h) Every certificate of incorporation of a Young Men's Christian
6 Association shall [have endorsed thereon or annexed thereto] INCLUDE A
7 CERTIFICATION THAT the approval of the chairman of the national board of
8 Young Men's Christian Associations OF SUCH PURPOSE HAS BEEN OBTAINED.

9 (i) Every certificate of incorporation which indicates that the
10 proposed corporation is to solicit funds for or otherwise benefit the
11 armed forces of the United States or of any foreign country, or their
12 auxiliaries, or of this or any other state or any territory, shall [have
13 endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the
14 approval of the chief of staff OF SUCH PURPOSE HAS BEEN OBTAINED.

15 (j) Every certificate of incorporation which includes among its
16 purposes the organization of wage-earners for their mutual betterment,
17 protection and advancement; the regulation of hours of labor, working
18 conditions, or wages; or the performance, rendition or sale of services
19 as labor consultant, labor-management advisor, negotiator, arbitrator,
20 or specialist; and every certificate of incorporation in which the name
21 of the proposed corporation includes "union", "labor", "council" or
22 "industrial organization", or any abbreviation or derivative thereof in
23 a context that indicates or implies that the corporation is formed for
24 any of the above purposes, shall [have endorsed thereon or annexed ther-
25 eto] INCLUDE A CERTIFICATION THAT the approval of the industrial board
26 of appeals OF SUCH PURPOSE HAS BEEN OBTAINED. The board shall make such
27 inquiry into the purposes of the proposed corporation as it shall deem
28 advisable and shall order a hearing if necessary to determine whether or
29 not such purposes are in all respects consistent with public policy and
30 the labor law. Notice of the time and place of hearing shall be given to
31 the applicants and such other persons as the board may determine.

32 (k) Every certificate of incorporation for a corporation which has as
33 its exclusive purpose the promotion of the interests of savings bank
34 life insurance or the promotion of the interests of member banks may, if
35 the CERTIFICATE INCLUDES A CERTIFICATION THAT approval of the super-
36 intendent of financial services [is endorsed thereon or annexed thereto]
37 HAS BEEN OBTAINED, use as a part of the corporate name any of the words
38 or phrases, or any abbreviation or derivative thereof, set forth in
39 subparagraph (5) of paragraph (a) of section 301 (Corporate name; gener-
40 al).

41 (l) Every certificate of incorporation for a corporation which has as
42 its exclusive purpose the creation of an association of licensed insur-
43 ance agents, licensed insurance brokers, or licensed insurance under-
44 writers and every application for authority of a foreign corporation
45 which is an independent laboratory engaged in testing for public safety,
46 or which has as its purpose the advancement of corporate, governmental,
47 and institutional risk and insurance management, or which has as its
48 exclusive purpose the creation of an association of insurers, each of
49 which is duly licensed in this state or, if it does no business or is
50 not licensed in this state, is duly licensed in another state or foreign
51 jurisdiction may, if the CERTIFICATE INCLUDES A CERTIFICATION THAT
52 approval of the superintendent of financial services [is endorsed there-
53 on or annexed thereto] HAS BEEN OBTAINED, use as a part of the corporate
54 name any of the words or phrases, or any abbreviation or derivative
55 thereof, set forth in subparagraph (5) of paragraph (a) of section 301
56 (Corporate name; general).

1 (m) Every certificate of incorporation in which the name of the
2 proposed corporation includes the name of a political party shall [have
3 endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the
4 consent of the chairman of the county committee of such political party
5 of the county in which the office of the corporation is to be located
6 HAS BEEN OBTAINED, except in cases where the supreme court finds that
7 the withholding of such consent of the county chairman is unreasonable.

8 (n) Every certificate of incorporation in which the name of the
9 proposed corporation includes the words "American Legion," shall [have
10 endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the
11 approval of the Department of New York, the American Legion, duly
12 acknowledged by its commander or adjutant HAS BEEN OBTAINED.

13 (o) Every certificate of incorporation which includes among its corpo-
14 rate purposes or powers the establishment or maintenance of any hospi-
15 tal, as defined in article twenty-eight of the public health law, or the
16 solicitation of contributions for any such purpose, or purposes, shall
17 [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT
18 the approval of the public health and health planning council OF SUCH
19 PURPOSE HAS BEEN OBTAINED.

20 (p) Every certificate of incorporation of a medical corporation as
21 defined in article forty-four of the public health law and organized
22 pursuant thereto and pursuant to this chapter, shall [have endorsed
23 thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the consent of
24 the commissioner of health TO and the approval of the public health and
25 health planning council OF SUCH PURPOSE HAS BEEN OBTAINED.

26 (q) Every certificate of incorporation which includes among its corpo-
27 rate purposes or powers the establishment, or operation of a facility
28 for which an operating certificate from the commissioner of mental
29 health is required by article thirty-one of the mental hygiene law, or
30 the solicitation of contributions for any such purpose, shall [have
31 endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the
32 approval of the commissioner of mental health OF SUCH PURPOSE HAS BEEN
33 OBTAINED.

34 (r) Every certificate of incorporation of a health maintenance organ-
35 ization as defined in article forty-four of the public health law and
36 organized pursuant thereto and pursuant to this chapter, shall [have
37 endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the
38 consent of the commissioner of health TO SUCH PURPOSE HAS BEEN OBTAINED.

39 (t) Every certificate of incorporation which includes among its
40 purposes and powers the establishment or maintenance of a hospital or
41 facility providing health related services, as those terms are defined
42 in article twenty-eight of the public health law, or the solicitation of
43 contributions for any such purpose or two or more of such purposes,
44 shall [have endorsed thereon] INCLUDE A CERTIFICATION THAT the approval
45 of the public health and health planning council OF SUCH PURPOSE HAS
46 BEEN OBTAINED.

47 (u) Every certificate of incorporation which includes among the
48 purposes of the corporation, the establishment or operation of a
49 substance abuse, substance dependence, alcohol abuse, alcoholism, or
50 chemical abuse or dependence program, or the solicitation of contrib-
51 utions for any such purpose, shall [have endorsed thereon or annexed
52 thereto] INCLUDE A CERTIFICATION THAT the consent of the commissioner of
53 the office of alcoholism and substance abuse services to its filing by
54 the department of state TO SUCH PURPOSE HAS BEEN OBTAINED.

55 (v) Every certificate of incorporation which includes among the
56 purposes of the corporation, the establishment, maintenance and opera-

tion of a nonprofit property/casualty insurance company, pursuant to article sixty-seven of the insurance law, shall [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the approval of the superintendent of financial services OF SUCH PURPOSE HAS BEEN OBTAINED.

(w) Every certificate of incorporation in which the name of the proposed corporation includes the terms: "school," "education," "elementary," "secondary," "kindergarten," "prekindergarten," "preschool," "nursery school," "museum," "history," "historical," "historical society," "arboretum," "library," "college," "university" or other term restricted by section two hundred twenty-four of the education law; "conservatory," "academy," or "institute," or any abbreviation or derivative of such terms, shall [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the consent of the commissioner of education HAS BEEN OBTAINED.

S 21. Paragraphs (a) and (b) of section 804 of the not-for-profit corporation law, as amended by chapter 139 of the laws of 1993, subparagraph (i) of paragraph (a) as amended by chapter 198 of the laws of 2010, are amended to read as follows:

(a) (i) A certificate of amendment shall not be filed if the amendment adds, changes or eliminates a purpose, power or provision the inclusion of which in a certificate of incorporation requires consent or approval of a governmental body or officer or any other person or body, or if the amendment changes the name of a corporation whose certificate of incorporation had such consent or approval endorsed thereon or annexed thereto, unless such consent or approval is no longer required, or AS REQUIRED BY STATUTE, SUCH CONSENT OR APPROVAL is endorsed on or annexed to OR the certificate of amendment INCLUDES A CERTIFICATION THAT SUCH CONSENT OR APPROVAL HAS BEEN OBTAINED.

(ii) Every certificate of amendment of a corporation [classified as type B or type C under section 201 (Purposes)] FORMED FOR THE PURPOSES SPECIFIED IN SUBPARAGRAPH TWO OR THREE OF PARAGRAPH (B) OF SECTION 201 which seeks to change or eliminate a purpose or power enumerated in the corporation's certificate of incorporation, or to add a power or purpose not enumerated therein, shall [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the approval of a justice of the supreme court of the judicial district in which the office of the corporation is located HAS BEEN OBTAINED. Ten days' written notice of the application for such approval shall be given to the attorney-general.

(b) The department of state shall not file a certificate of amendment reviving the existence of a corporation unless THE CERTIFICATE INCLUDES A CERTIFICATION THAT the REQUIRED consent or approval of a governmental body or officer or any other person or body [required to be endorsed on or annexed to the certificate of incorporation of a corporation formed for similar purposes, is attached thereto] HAS BEEN OBTAINED, or, if notice to the attorney-general was required prior to the filing of its certificate of incorporation, the certificate of amendment should indicate that such notice has been given as required by law.

S 22. Section 909 of the not-for-profit corporation law, as amended by section 6 of part D of chapter 58 of the laws of 2006, is amended to read as follows:

S 909. Consent to filing.

If the purposes of any constituent or consolidated corporation would require the approval or consent of any governmental body or officer or any other person or body under section 404 (Approvals and consents) no certificate of merger or consolidation shall be filed pursuant to this article unless THE CERTIFICATE INCLUDES A CERTIFICATION THAT such

1 approval OF or consent [is endorsed thereon or annexed thereto] TO SUCH
2 PURPOSE HAS BEEN OBTAINED OR WHERE REQUIRED BY STATUTE, SUCH APPROVAL OR
3 CONSENT IS ENDORSED THEREON OR ANNEXED THERETO. A corporation whose
4 statement of purposes specifically includes the establishment or opera-
5 tion of a child day care center, as that term is defined in section
6 three hundred ninety of the social services law, shall provide a certi-
7 fied copy of any certificate of merger or consolidation involving such
8 corporation to the office of children and family services within thirty
9 days after the filing of such merger or consolidation with the depart-
10 ment of state.

11 S 23. Paragraph (a) of section 1003 of the not-for-profit corporation
12 law is amended by adding two new subparagraphs 8 and 9 to read as
13 follows:

14 (8) A CERTIFICATION THAT THE CONSENT OF THE DEPARTMENT OF TAXATION AND
15 FINANCE TO THE DISSOLUTION HAS BEEN OBTAINED.

16 (9) WITH RESPECT TO ANY CORPORATION THAT HAS DONE BUSINESS IN THE CITY
17 OF NEW YORK AND INCURRED LIABILITY FOR ANY TAX OR CHARGE UNDER CHAPTER
18 SIX, SEVEN, EIGHT, TEN, ELEVEN, TWELVE, THIRTEEN, FOURTEEN, TWENTY-ONE,
19 TWENTY-FOUR, TWENTY-FIVE OR TWENTY-SEVEN OF TITLE ELEVEN OF THE ADMINIS-
20 TRATIVE CODE OF THE CITY OF NEW YORK, A CERTIFICATION THAT CONSENT OF
21 THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK TO THE DISSOLUTION
22 HAS BEEN OBTAINED.

23 S 24. Paragraph (a) of section 1004 of the not-for-profit corporation
24 law, as amended by chapter 201 of the laws of 2009, is amended to read
25 as follows:

26 (a) [The department of state shall not file a certificate of dissol-
27 ution unless the consent of the state department of taxation and finance
28 to the dissolution is attached thereto.] Upon filing the certificate,
29 the corporation is dissolved.

30 S 25. Paragraph (b) of section 1004 of the not-for-profit corporation
31 law is REPEALED.

32 S 26. Subparagraph 8 of paragraph (a) and paragraph (c) of section
33 1304 of the not-for-profit corporation law, subparagraph 8 of paragraph
34 (a) as renumbered by chapter 590 of the laws of 1982, are amended to
35 read as follows:

36 (8) A statement that the foreign corporation has not, since its incor-
37 poration or since the date its authority to conduct activities in this
38 state was last surrendered, done any act in this state, except as set
39 forth in paragraph (b) of section 1301 (Authorization of foreign corpo-
40 rations); or in lieu of such statement A CERTIFICATION THAT the consent
41 of the state tax commission to the filing of the application [shall be
42 attached thereto] HAS BEEN OBTAINED.

43 (c) If the application for authority sets forth any purpose or activ-
44 ity for which a domestic corporation could be formed only with the
45 consent or approval of any governmental body or officer, or other person
46 or body under section 404 (Approvals and consents), such APPLICATION
47 SHALL INCLUDE A CERTIFICATION THAT THE consent TO or approval [shall be
48 endorsed thereon or annexed thereto] OF SUCH PURPOSE HAS BEEN OBTAINED,
49 OR WHERE REQUIRED BY STATUTE, SUCH APPROVAL OR CONSENT IS ENDORSED THER-
50 EON OR ANNEXED THERETO.

51 S 27. Paragraph (c) of section 1309 of the not-for-profit corporation
52 law, as added by chapter 961 of the laws of 1972, is amended to read as
53 follows:

54 (c) A certificate of amendment of application for authority shall not
55 be filed, if the amendment adds, changes or eliminates a purpose, power
56 or provision the inclusion of which in an application for authority

requires consent or approval of any governmental body or officer or other person or body, or if the amendment changes the name of a corporation whose application for authority had such consent or approval endorsed thereon or annexed thereto, unless such AMENDMENT INCLUDES A CERTIFICATION THAT SUCH consent TO or approval [is endorsed on or annexed to the certificate of amendment] of application for authority HAS BEEN OBTAINED, OR WHERE REQUIRED BY STATUTE, SUCH APPROVAL OR CONSENT IS ENDORSED THEREON OR ANNEXED THERETO.

S 28. Paragraph (a) of section 1311 of the not-for-profit corporation law is amended by adding a new paragraph 7 to read as follows:

(7) A CERTIFICATION THAT CONSENT OF THE DEPARTMENT OF TAXATION AND FINANCE TO THE SURRENDER OF AUTHORITY HAS BEEN OBTAINED.

S 29. Paragraph (c) of section 1311 of the not-for-profit corporation law is REPEALED and paragraph (d) is relettered paragraph (c).

S 30. Paragraph (b) of section 1505 of the not-for-profit law, as added by chapter 871 of the laws of 1977, is amended to read as follows:

(b) Cemetery board endorsement. Every certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section fifteen hundred three, shall [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the approval of the cemetery board as required in subdivision (e) of section four hundred four of this chapter HAS BEEN OBTAINED.

S 31. Subparagraphs (A) and (B) of paragraph 3 of subdivision (a) of section 121-102 of the partnership law, subparagraph (A) as amended by chapter 316 of the laws of 2005, subparagraph (B) as amended by chapter 155 of the laws of 2012, are amended to read as follows:

(A) may not contain the following phrases or any abbreviation or derivative thereof:

board of trade	state trooper
chamber of commerce	tenant relocation
community renewal	urban development
state police	urban relocation

Every certificate of limited partnership in which the name of the proposed limited partnership includes the terms: "school," "education," "elementary," "secondary," "kindergarten," "prekindergarten," "preschool," "nursery school," "museum," "history," "historical," "historical society," "arboretum," "library," "college," "university" or other term restricted by section two hundred twenty-four of the education law; "conservatory," "academy," or "institute," or any abbreviation or derivative of such terms, shall [have endorsed thereon or annexed thereto] INCLUDE A CERTIFICATION THAT the consent of the commissioner of education HAS BEEN OBTAINED.

(B) may not contain the following words, or any abbreviation or derivative thereof:

acceptance	indemnity
annuity	insurance
assurance	investment
bank	lawyer
benefit	loan
bond	mortgage
casualty	savings
doctor	surety
endowment	title
fidelity	trust
finance	underwriter
guaranty	

1 unless the [approval of the superintendent of financial services is
2 attached to the] certificate of limited partnership INCLUDES A CERTIF-
3 ICATION THAT THE APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES
4 HAS BEEN OBTAINED; or unless the word "doctor" or "lawyer" or an abbre-
5 viation or derivative thereof is used in a context which clearly denotes
6 a purpose other than the practice of law or medicine.

7 S 32. Subparagraph (C) of paragraph 3 of subdivision (a) of section
8 121-102 of the partnership law, as added by chapter 264 of the laws of
9 1991, is amended to read as follows:

10 (C) shall not, unless [the approval of the state department of social
11 services is attached to] the certificate of limited partnership or
12 application for authority or amendment thereof INCLUDES A CERTIFICATION
13 THAT THE APPROVAL OF THE STATE DEPARTMENT OF SOCIAL SERVICES HAS BEEN
14 OBTAINED, contain the word "blind" or "handicapped". Such approval shall
15 be granted by the state department of social services if in its opinion
16 the word "blind" or "handicapped" as used in the limited partnership
17 name proposed will not tend to mislead or confuse the public into
18 believing that the limited partnership is organized for charitable or
19 nonprofit purposes related to the blind or the handicapped.

20 S 33. Section 121-206 of the partnership law, as added by chapter 950
21 of the laws of 1990, is amended to read as follows:

22 S 121-206. Filing with the department of state. A signed certificate
23 of limited partnership and any signed certificates of amendment or other
24 certificates filed pursuant to this article or of any judicial decree of
25 amendment or cancellation shall be delivered to the department of state.
26 If the instrument which is delivered to the department of state for
27 filing complies as to form with the requirements of law and the filing
28 fee required by any statute of this state in connection therewith has
29 been paid, the instrument shall be filed and indexed by the department
30 of state. UPON THE WRITTEN NOTIFICATION TO THE DEPARTMENT OF STATE BY
31 ANY STATE OFFICIAL, DEPARTMENT, BOARD, AGENCY OR OTHER BODY THAT A
32 DOMESTIC LIMITED PARTNERSHIP OR FOREIGN AUTHORIZED LIMITED PARTNERSHIP
33 HAS FAILED TO OBTAIN THE CONSENT OR APPROVAL OF SUCH STATE OFFICIAL,
34 DEPARTMENT, BOARD, AGENCY OR OTHER BODY FOR ANY CERTIFICATE OR INSTRU-
35 MENT, THE LIMITED PARTNERSHIP'S AUTHORITY TO CARRY ON, CONDUCT OR TRANS-
36 ACT BUSINESS IN THIS STATE SHALL BE SUSPENDED. SUCH SUSPENSION SHALL BE
37 ANNULLED UPON THE FILING OF A CERTIFICATE OF AMENDMENT WITH THE REQUIRED
38 CONSENT OR APPROVAL ANNEXED THERETO.

39 S 34. Section 14 of the private housing finance law, as amended by
40 chapter 544 of the laws of 1961, is amended to read as follows:

41 S 14. Consent of commissioner to incorporation. Whenever any such
42 certificate shall be presented to the secretary of state, [he] THE
43 SECRETARY shall not file such certificate unless [there shall accompany
44 the same a] THE CERTIFICATE INCLUDES A CERTIFICATION THAT A certificate
45 of the commissioner that he consents to the filing of such certificate
46 HAS BEEN OBTAINED; nor shall any amendment to the certificate of incor-
47 poration be filed unless it [is accompanied by] INCLUDES A CERTIFICATION
48 THAT a certificate of the commissioner consenting thereto HAS BEEN
49 OBTAINED. If a company has entered into a contract with a municipality
50 for the construction of a municipally aided project, the commissioner
51 shall not issue a certificate consenting to an amendment of the certif-
52 icate of incorporation of such company, unless the supervising agency
53 has given its written consent to such amendment.

54 S 35. Subdivision 5 of section 573 of the private housing finance law,
55 as amended by chapter 410 of the laws of 1984, is amended to read as
56 follows:

1 5. The secretary of state shall not file the certificate of incorpo-
2 ration of any such corporation or any amendment thereto unless THE
3 CERTIFICATE INCLUDES A CERTIFICATION THAT the consent or approval of the
4 commissioner or the supervising agency, as the case may be, [is affixed
5 thereon or attached thereto] HAS BEEN OBTAINED. Consent to the filing of
6 such certificate of incorporation shall be based upon findings by the
7 commissioner or supervising agency as to the character and competence of
8 the sponsor.

9 S 36. Subdivision 1 of section 2801-a of the public health law, as
10 amended by section 57 of part A of chapter 58 of the laws of 2010, is
11 amended to read as follows:

12 1. No hospital, as defined in this article, shall be established
13 except with the written approval of the public health and health plan-
14 ning council. No certificate of incorporation of a business membership
15 or not-for-profit corporation shall hereafter be filed which includes
16 among its corporate purposes or powers the establishment or operation of
17 any hospital, as defined in this article, or the solicitation of
18 contributions for any such purpose, or two or more of such purposes,
19 except with the written approval of the public health and health plan-
20 ning council, and when otherwise required by law of a justice of the
21 supreme court, [endorsed on or annexed to] the certificate of incorpo-
22 ration INCLUDES A CERTIFICATION THAT SUCH WRITTEN APPROVAL HAS BEEN
23 OBTAINED. No articles of organization of a limited liability company
24 established pursuant to the New York limited liability company law which
25 includes among its powers or purposes the establishment or operation of
26 any hospital as defined in this article, shall be filed with the depart-
27 ment of state except [upon] WHEN THE ARTICLES OF ORGANIZATION INCLUDE A
28 CERTIFICATION THAT the approval of the public health and health planning
29 council HAS BEEN OBTAINED.

30 S 37. Section 41 of the transportation corporations law, as amended by
31 chapter 782 of the laws of 1969, is amended to read as follows:

32 S 41. Municipal consent to incorporation. No certificate of incorpo-
33 ration of a water-works corporation shall be filed unless [there be
34 annexed thereto a] THE CERTIFICATE INCLUDES A CERTIFICATION THAT consent
35 to the formation of the corporation, signed and acknowledged by the
36 local authorities of each municipality named in such certificate HAS
37 BEEN OBTAINED. Such authorities shall be: in a city, a majority of the
38 members of the board or body having charge of the water supply, or if
39 there be no such board or body, a majority of the members of the local
40 legislative body; in a village, a majority of the members of the board
41 of trustees; in a town outside of a village, the town superintendent of
42 highways and a majority of the members of the town board. Such consent
43 to the formation of the corporation shall not be granted by said local
44 authorities until ten days prior notice in writing of the application
45 for such consent and until an engineering plan for proposed water system
46 specifying location and size and type of wells, pumps, distribution
47 mains and other facilities of the water supply and/or distribution
48 system is furnished by the water works corporation to the local authori-
49 ties and to the county water authority, and to the county water district
50 if there be such authority or district where the proposed corporation
51 seeks to operate; and until said authority or district has reported in
52 writing to the municipality named in the certificate of incorporation
53 its recommendations as to whether or not such consent should be granted,
54 setting forth the reasons for such recommendation and a finding as to
55 whether the proposed water supply and/or distribution system is reason-
56 ably comparable to standards of a county-wide water system and suitable

1 for eventual integration with such county-wide water system. Said report
2 shall be filed with such municipality on or before the tenth day after
3 the giving of the notice aforesaid.

4 S 38. Subdivision 1 of section 116 of the transportation corporations
5 law, as amended by chapter 828 of the laws of 1970, is amended to read
6 as follows:

7 1. No certificate of incorporation of a sewage-works corporation shall
8 be filed unless [there be annexed thereto] THE CERTIFICATE INCLUDES A
9 CERTIFICATION THAT a certificate or certificates duly executed in behalf
10 of the local governing bodies of the city, town or village, as the case
11 may be, in which any part of a sewer system provided by such corporation
12 is situate and, in the county of Suffolk, an additional certificate duly
13 executed in behalf of the county sewer agency, consenting to the forma-
14 tion of the corporation for the area described in such certificate HAS
15 BEEN OBTAINED.

16 S 39. This act shall take effect immediately; provided however that
17 section twenty-three of this act shall take effect on the sixtieth day
18 after it shall have become a law.

19 SUBPART C

20 Section 1. Paragraph (a) of section 602 of the business corporation
21 law is amended to read as follows:

22 (a) Meetings of shareholders may be held at such place, within or
23 without this state, as may be fixed by or under the by-laws, or if not
24 so fixed, at the office of the corporation in this state. EXCEPT AS
25 PROVIDED IN THE BY-LAWS, SHAREHOLDERS MAY PARTICIPATE IN A MEETING BY
26 MEANS OF CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT BY
27 MEANS OF WHICH ALL PERSONS PARTICIPATING IN THE MEETING CAN HEAR EACH
28 OTHER. SUCH PARTICIPATION SHALL CONSTITUTE PRESENCE IN PERSON AT THE
29 MEETING.

30 S 2. Paragraph (b) of section 402 of the limited liability company law
31 is amended to read as follows:

32 (b) Except as provided in the operating agreement, any member may vote
33 in person [or], by proxy, OR BY ELECTRONIC MEANS.

34 S 3. Paragraphs (a) and (c) of section 603 of the not-for-profit
35 corporation law, paragraph (c) as amended by chapter 961 of the laws of
36 1972, are amended to read as follows:

37 (a) Meetings of members may be held at such place, within or without
38 this state, as may be fixed by or under the by-laws or, if not so fixed,
39 at the office of the corporation in this state. EXCEPT AS PROVIDED IN
40 THE BY-LAWS, MEMBERS MAY PARTICIPATE IN A MEETING BY MEANS OF CONFERENCE
41 TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT BY MEANS OF WHICH ALL
42 PERSONS PARTICIPATING IN THE MEETING CAN HEAR EACH OTHER. SUCH PARTIC-
43 IPATION SHALL CONSTITUTE PRESENCE IN PERSON AT THE MEETING.

44 (c) Special meetings of the members may be called by the board and by
45 such person or persons as may be authorized by the certificate of incor-
46 poration or the by-laws. In any case, such meetings may be convened by
47 the members entitled to cast ten per cent of the total number of votes
48 entitled to be cast at such meeting, who may, in writing, demand the
49 call of a special meeting specifying the date and month thereof, which
50 shall not be less than two nor more than three months from the date of
51 such written demand. The secretary of the corporation upon receiving the
52 written demand shall promptly give notice of such meeting, or if he
53 fails to do so within five business days thereafter, any member signing
54 such demand may give such notice. The meeting shall be held at the place

fixed in the by-laws or, if not so fixed, at the office of the corporation. EXCEPT AS PROVIDED IN THE BY-LAWS, MEMBERS MAY PARTICIPATE IN A MEETING BY MEANS OF CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT BY MEANS OF WHICH ALL PERSONS PARTICIPATING IN THE MEETING CAN HEAR EACH OTHER. SUCH PARTICIPATION SHALL CONSTITUTE PRESENCE IN PERSON AT THE MEETING.

S 4. Paragraph (b) of section 121-405 of the partnership law, as added by chapter 950 of the laws of 1990, is amended to read as follows:

(b) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any general partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person [or], by proxy, OR BY ELECTRONIC MEANS or any other matter with respect to the exercise of any such right to vote.

S 5. This act shall take effect immediately.

SUBPART D

Section 1. Section 401 of the business corporation law, as amended by chapter 900 of the laws of 1974, is amended to read as follows:

S 401. Incorporators.

One or more natural persons [of the age of] AT LEAST eighteen years [or over] OF AGE OR ANY PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION, SINGLY OR JOINTLY WITH OTHERS, may act as incorporators of a corporation to be formed under this chapter.

S 2. Subdivisions (a) and (b) of section 203 of the limited liability company law, subdivision (a) as amended by chapter 470 of the laws of 1997, is amended to read as follows:

(a) One or more NATURAL persons AT LEAST EIGHTEEN YEARS OF AGE OR ANY PARTNERSHIP, LIMITED LIABILITY COMPANY, SINGLY OR JOINTLY WITH OTHERS, may act as an organizer or organizers to form a limited liability company by (i) preparing the articles of organization of such limited liability company in accordance with subdivision (e) of this section, (ii) executing such articles of organization in accordance with section two hundred seven of this article and (iii) filing such articles, entitled "Articles of organization of... (name of limited liability company) under section two hundred three of the Limited Liability Company Law," in accordance with section two hundred nine of this article.

(b) An organizer may, but need not be, a member of the limited liability company that he [or], she OR IT forms.

S 3. Section 401 of the not-for-profit corporation law, as amended by chapter 901 of the laws of 1974, is amended to read as follows:

S 401. Incorporators.

One or more natural persons at least eighteen years of age OR ANY PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION, SINGLY OR JOINTLY WITH OTHERS, may act as incorporators of a corporation to be formed under this chapter.

S 4. This act shall take effect immediately.

SUBPART E

Section 1. Section 19 of the general associations law, as amended by chapter 166 of the laws of 1991, is amended to read as follows:

S 19. Service of process. Service of process against an association upon the secretary of state shall be made by personally delivering to

1 and leaving with [him] THE SECRETARY OF STATE or a deputy [secretary of
2 state or an associate attorney, senior attorney or attorney in the
3 corporation division of the department of state, duplicate copies of
4 such process], OR WITH ANY PERSON AUTHORIZED BY THE SECRETARY OF STATE
5 TO RECEIVE SUCH SERVICE at the office of the department of state in the
6 city of Albany, DUPLICATE COPIES OF SUCH PROCESS TOGETHER WITH THE STAT-
7 UTORY FEE, WHICH FEE SHALL BE A TAXABLE DISBURSEMENT. [At the time of
8 such service the plaintiff shall pay a fee of forty dollars to the
9 secretary of state which shall be a taxable disbursement. If the cost of
10 registered mail for transmitting a copy of the process shall exceed two
11 dollars, an additional fee equal to such excess shall be paid at the
12 time of the service of such process.] The secretary of state shall
13 [forthwith] PROMPTLY send by CERTIFIED registered mail one of such
14 copies OF SUCH PROCESS to the association at the address fixed for that
15 purpose, as herein provided. If the action or proceeding is instituted
16 in a court of limited jurisdiction, service of process may be made in
17 the manner provided in this section if the cause of action arose within
18 the territorial jurisdiction of the court and the office of the defend-
19 ant, as set forth in its statement filed pursuant to section eighteen of
20 this chapter, is within such territorial jurisdiction.

21 S 2. This act shall take effect immediately.

22

SUBPART F

23 Section 1. Subdivision 1 of section 180 of the tax law, as amended by
24 section 42 of part A of chapter 389 of the laws of 1997, is amended to
25 read as follows:

26 1. (a) Imposition. Every stock corporation incorporated under any law
27 of this state and every corporation formed under the business corpo-
28 ration law of this state shall pay a tax of [one-twentieth of one per
29 centum] TEN DOLLARS upon [the amount of the par value of all] the shares
30 [with a par value] which it is authorized to issue [and a tax of five
31 cents on each share without a par value which it is authorized to
32 issue], and a like tax upon any shares subsequently authorized[, except
33 as hereinafter provided] OR CHANGED.

34 (b) [Changes with respect to shares. (1) Every corporation which shall
35 change shares with par value into shares without par value shall pay a
36 tax of five cents for each share without par value resulting from such
37 change, less one-twentieth of one per centum of the par value on the
38 shares with par value so changed.

39 (2) Every corporation which shall change shares without par value into
40 shares with par value shall pay a tax of one-twentieth of one per centum
41 upon the amount of the par value of the shares resulting from such
42 change, less five cents with respect to each share without par value so
43 changed.

44 (3) Every corporation which shall change shares without par value into
45 shares without par value shall pay a tax of five cents for each share
46 without par value resulting from such change, less five cents with
47 respect to each share without par value so changed, and less five cents
48 with respect to each share without par value not authorized previous to
49 such change but resulting from such change and issued pursuant to the
50 terms upon which such change is made, provided such change is effected
51 after the expiration of five years from the date of the filing of a
52 certificate of incorporation pursuant to the stock corporation law or
53 the business corporation law or a certificate of amendment to effect the
54 change provided for in subparagraph five of paragraph c of subdivision

two of section thirty-five of the stock corporation law or in subparagraph eleven of paragraph (b) of section eight hundred one of the business corporation law.

(4) Every corporation which shall change shares with par value into both shares with par value and shares without par value shall pay a tax of one-twentieth of one per centum upon the amount of the par value of the shares with par value resulting from such change plus five cents for each share without par value resulting from such change, less one-twentieth of one per centum of the par value of the shares with par value so changed.

(5) Every corporation which shall change shares without par value into both shares with par value and shares without par value shall pay a tax of one-twentieth of one per centum upon the amount of the par value of the shares with par value resulting from such change plus five cents for each share without par value resulting from such change, less five cents with respect to each share without par value so changed.

(c) Minimum tax. Provided, that in no case shall a tax under this section be less than ten dollars.

(d)] Payment. Such tax shall be due and payable upon the incorporation of such corporation and upon any subsequent authorization, increase of par value or change of shares. [Except in the case of a railroad corporation, neither the secretary of state nor county clerk shall file any certificate of incorporation, or of amendment increasing capital stock, or the number of par value of shares, or a certificate of merger or consolidation, or certificate of change or authorization of shares, or give any certificate to any such corporation until such tax has been paid, and no stock corporation or corporation formed under the business corporation law shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid.

(e)] (C) Mergers and consolidations. In case of the merger or the consolidation of existing corporations into a single corporation, a new corporation resulting from such consolidation or a constituent corporation surviving such merger or consolidation shall be required to pay the tax hereinbefore provided for, only if it is incorporated under the laws of this state[, and then only upon the taxable amount of its capital stock or shares in excess of the aggregate amount of capital stock or shares of such of the constituent corporations as were organized under the laws of this state].

[(f)] (D) Special corporations. This section shall not apply to state and national banks and trust companies or to building, mutual loan, accumulating fund and cooperative associations. [A railroad corporation need not pay such tax at the time of filing its certificate of incorporation, but shall pay the same before the public service commission shall grant a certificate, as required by the railroad law, authorizing the construction of the road as proposed in its articles of association, and such certificate shall not be granted by the public service commission until it is furnished with a receipt for such tax from the secretary of state. If the board of railroad commissioners or public service commission shall have heretofore granted, or the public service commission shall hereafter grant, such certificate and upon an appeal from the determination of such board of railroad commissioners or public service commission, such certificate has been or may hereafter be denied, the state treasurer shall refund the amount of tax so paid to the railroad corporation or corporations by which such tax was paid, upon proof of payment being presented and appropriation being made therefor.]

1 S 2. Subdivision 2 of section 180 of the tax law, as amended by chap-
2 ter 685 of the laws of 1938, is amended to read as follows:

3 2. The tax imposed by this section shall be collected by the state
4 officer in whose office the original certificate of incorporation or
5 [certificate of increase of amount of capital stock or certificate of
6 increase of number or par value of shares or consolidation agreement,
7 or] certificate changing or authorizing shares, as the case may be, is
8 required by law to be filed, and such state officer shall[, except in
9 the case of the certificate of incorporation of a railroad corporation,]
10 collect such tax before filing such certificate and shall note the
11 payment of such tax thereon and shall issue a receipt therefor.

12 S 3. Subdivision 1 of section 181 of the tax law, as amended by
13 section 43 of part A of chapter 389 of the laws of 1997, is amended to
14 read as follows:

15 1. (a) Definition. As used in this section, the term "corporation"
16 includes a joint-stock company or association and any business conducted
17 by a trustee or trustees wherein interest or ownership is evidenced by
18 certificate or other written instrument.

19 (b) Imposition. Every foreign corporation, except banking corporations
20 as defined in paragraph one, two, three, four, five, six, seven or eight
21 of subsection (a) of section fourteen hundred fifty-two of this chapter,
22 fire, marine, casualty and life insurance companies, co-operative
23 fraternal insurance companies, and building and loan associations, doing
24 business in this state, shall pay a license fee of [one-twentieth of one
25 per centum] TEN DOLLARS on its issued [par value] capital stock employed
26 within this state [and five cents on each share of its capital stock
27 without par value employed within this state] AND A LIKE TAX UPON ANY
28 CAPITAL STOCK SUBSEQUENTLY AUTHORIZED OR CHANGED for the privilege of
29 exercising its corporate franchises or carrying on its business in such
30 corporate or organized capacity in this state. [The first payment
31 pursuant to this section shall not be less than ten dollars.]

32 (c) [Recomputation based on changes. In any case where a change is
33 made in the capital share structure of a corporation, or the amount of
34 capital stock employed in this state is increased, the fee shall be
35 recomputed on the basis of such change or increase, and there shall be
36 credited against the fee, as recomputed, the amount of any fee that may
37 have been previously paid pursuant to this section, but, if the fee
38 previously paid exceeds the fee as recomputed, there shall be no refund.

39 (d) Apportionment. The measure of the amount of capital stock employed
40 in this state shall be such a portion of the issued capital stock as the
41 gross assets, exclusive of obligations issued by the United States and
42 cash on hand and on deposit, employed in business by such corporation
43 within this state, bear to the gross assets, exclusive of obligations
44 issued by the United States and cash on hand and on deposit, wherever
45 employed in business by such corporation, except that the amount of
46 capital stock employed in this state by a corporation subject to tax
47 under article nine-A of this chapter shall be that proportion of its
48 capital stock which is equal to the proportion of its business, invest-
49 ment and subsidiary capital allocable within the state pursuant to the
50 provisions of said article. The capital of a corporation invested in the
51 stock of another corporation shall be deemed to be assets located where
52 the assets of the issuing corporation, other than patents, copyrights,
53 trade-marks, contracts and good will, are located.

54 (e) Procedures and collection. The amount of capital upon which such
55 license fees shall be paid shall be fixed by the commissioner, who shall
56 have the same authority to examine the books and records in this state

1 of such foreign corporations, and the employees thereof as such commis-
2 sioner has in the case of domestic corporations, and the commissioner
3 shall have the same power to issue a warrant for the collection of such
4 license fees, as now exists with regard to domestic corporations.

5 (f)] Article nine-A taxpayers. Notwithstanding any other provision of
6 this section, every foreign corporation subject to tax under article
7 nine-A of this chapter shall also be subject to the license fee imposed
8 by this section for the privilege of exercising its corporate franchise,
9 or of doing business, or of employing capital, or of owning or leasing
10 property in this state in a corporate or organized capacity, or of main-
11 taining an office in this state.

12 S 4. This act shall take effect immediately.

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

22 S 3. This act shall take effect immediately provided, however, that
23 the applicable effective date of Subparts A through F of this act shall
24 be as specifically set forth in the last section of such Subparts.

25 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
26 sion, section or part of this act shall be adjudged by any court of
27 competent jurisdiction to be invalid, such judgment shall not affect,
28 impair, or invalidate the remainder thereof, but shall be confined in
29 its operation to the clause, sentence, paragraph, subdivision, section
30 or part thereof directly involved in the controversy in which such judg-
31 ment shall have been rendered. It is hereby declared to be the intent of
32 the legislature that this act would have been enacted even if such
33 invalid provisions had not been included herein.

34 S 3. This act shall take effect immediately provided, however, that
35 the applicable effective date of Parts A through Q of this act shall be
36 as specifically set forth in the last section of such Parts.