S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. THIELE, CAHILL, WALKER -- read once and referred to the Committee on Education

AN ACT to amend the education law, the real property tax law and the tax law, in relation to abolishing certain school taxes, providing for alternative taxes and state distribution to school districts, and repealing certain provisions of the real property tax law and the tax law relating to school taxes

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

Section 1. Title 5 of the education law is amended by adding a new article 71 to read as follows:

ARTICLE 71

FINANCING OF SCHOOL DISTRICTS

SECTION 3501. LEGISLATIVE INTENT.
3502. BASIC QUALITY EDUCATION.
3503. MINIMUM APPORTIONMENT.
3504. LOCAL ENRICHMENT OPTIONS.
3505. COLLECTION AND DISTRIBUTION.
3506. CONSTRUCTION WITH OTHER LAWS.
3507. SEVERABILITY.

S 3501. LEGISLATIVE INTENT. IT IS THE INTENT OF THIS LEGISLATURE TO FULFILL ITS OBLIGATIONS UNDER ARTICLE ELEVEN OF THE STATE CONSTITUTION WITH RESPECT TO THE FINANCING OF PUBLIC SCHOOLS WITHIN THIS STATE AND, AT THE SAME TIME, ELIMINATE THE INEQUITABLE AND REGRESSIVE REAL ESTATE TAX AS THE SUPPORT OF SUCH SCHOOLS. THE LEGISLATURE HEREBY FURTHER INTENDS TO GUARANTEE THE QUALITY AND EQUALITY OF EDUCATION FOR ALL OUR CHILDREN, WHILE LEAVING WITH THE INDIVIDUAL SCHOOL DISTRICTS THE PRESENT LEVEL OF LOCAL CONTROL INCLUDING THE AUTHORITY TO PERMIT OR PROHIBIT THE TRANSFER OF STUDENTS INTO OR OUT OF SUCH DISTRICTS IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER. PRIOR TO THE IMPLEMENTATION OF THIS ARTICLE, IT IS IMPORTANT TO REVIEW ITS IMPACT ON MUNICIPALITIES AND

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

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TAXPAYERS. IT IS NECESSARY TO DEVELOP A SYSTEM WHEREBY BOTH MUNICIPALITIES AND TAXPAYERS CAN COMPARE THEIR REVENUE AND COSTS UNDER THE CURRENT LAW TO SUCH REVENUES AND COSTS UNDER THIS ARTICLE.

S 3502. BASIC QUALITY EDUCATION. 1. THE STATE SHALL ASSUME ALL COSTS OF BASIC QUALITY EDUCATION, IN ACCORDANCE WITH SECTION THIRTY-FIVE HUNDRED FIVE OF THIS ARTICLE, INCLUDING ALL GENERAL AND SPECIAL EDUCATIONAL SERVICES WHICH THE COMMISSIONER, UNDER GUIDELINES ESTABLISHED BY THE LEGISLATURE, SHALL DEFINE AS NECESSARY. BASIC QUALITY EDUCATION, AS DEFINED BY THE COMMISSIONER, SHALL ALLOW SUFFICIENT LATITUDE SO THAT CHOICES MAY BE MADE BY LOCAL SCHOOL DISTRICTS WITH RESPECT TO THEIR INDIVIDUAL NEEDS. AS USED IN THIS ARTICLE "BASIC" SHALL MEAN EQUAL SERVICES TO ALL PUPILS REGARDLESS OF DIFFERENCES IN COST IN DIFFERENT DISTRICTS FOR SUCH SERVICES.

2. SUCH COSTS SHALL BE FUNDED AS PROVIDED FOR BY THE LEGISLATURE, IN CONJUNCTION WITH THE ELIMINATION OF REAL ESTATE TAXES FOR THE SUPPORT OF EDUCATION. WITHIN THE CITIES OF NEW YORK, BUFFALO, ROCHESTER, SYRACUSE AND YONKERS, THE TAX ON REAL PROPERTY SHALL BE REDUCED BY THE DOLLAR AMOUNT OF SUCH CITY'S SHARE OF THE COST OF PUBLIC SCHOOL EDUCATION. SUCH REDUCTION SHALL BE APPORTIONED TO ALL REAL PROPERTY TAXPAYERS ON A PRO-RATA BASIS, AND TENANTS SHALL RECEIVE TAX CREDITS, TAX REBATES, OR REDUCTIONS IN RENT AS PROVIDED IN SECTION FOUR HUNDRED SIXTY-SEVEN-G OF THE REAL PROPERTY TAX LAW.

3. EACH SCHOOL DISTRICT SHALL SUBMIT A BASIC BUDGET TO THE DEPARTMENT FOR APPROVAL BY THE COMMISSIONER AS PROVIDED BY LAW.

4. THE DEPARTMENT, UNDER DIRECTION OF THE BOARD OF REGENTS, SHALL ESTABLISH A SCHEDULE OF MANDATORY BASIC SERVICES AND AUTHORIZED COSTS THEREFOR RELATED TO DIFFERING COSTS THROUGHOUT THE STATE. SUCH BASIC SCHEDULE SHALL REFLECT GUIDELINES ESTABLISHED FOR THIS PURPOSE BY THE LEGISLATURE.

S 3503. MINIMUM APPORTIONMENT. IN ANY SCHOOL YEAR A DISTRICT MAY ELECT TO RECEIVE AS ITS BASIC BUDGET THE HIGHEST OF:

1. THE DISTRICT BUDGET OF THE SCHOOL YEAR DURING WHICH THIS ARTICLE SHALL TAKE EFFECT, EXCEPT THAT THIS APPORTIONMENT OPTION SHALL EXIST ONLY FOR THE PERIOD NOT EXCEEDING THE FIVE SCHOOL YEARS IMMEDIATELY AFTER THIS ARTICLE SHALL TAKE EFFECT.

2. THE PRODUCT OF (A) THE DISTRICT BUDGET OF THE SCHOOL YEAR DURING WHICH THIS ARTICLE SHALL TAKE EFFECT DIVIDED BY THE ENROLLMENT AT THE START OF SUCH YEAR AND (B) THE ENROLLMENT AT THE START OF THE SCHOOL YEAR FOR WHICH THE BUDGET IS BEING DETERMINED. THIS APPORTIONMENT OPTION SHALL EXIST ONLY FOR THE PERIOD NOT EXCEEDING THE FIVE SCHOOL YEARS IMMEDIATELY AFTER THIS ARTICLE SHALL BECOME LAW.

3. THE BASIC BUDGET SUBMITTED IN ACCORDANCE WITH SUBDIVISION THREE OF SECTION THIRTY-FIVE HUNDRED TWO OF THIS ARTICLE, EXCEPT THAT IN NO CASE SHALL THE PER PUPIL APPORTIONMENT EXCEED THE PER PUPIL APPORTIONMENT OF THE PREVIOUS YEAR BY MORE THAN THE AVERAGE STATEWIDE INCREASE OF PER PUPIL BUDGETS PLUS TEN PER CENTUM OF THE PER PUPIL APPORTIONMENT OF THE PREVIOUS YEAR.

S 3504. LOCAL ENRICHMENT OPTIONS. 1. ANY SCHOOL DISTRICT, INCLUDING THE CITY SCHOOL DISTRICTS OF THE CITIES OF NEW YORK, BUFFALO, ROCHESTER, SYRACUSE AND YONKERS, MAY ELECT A LOCAL ENRICHMENT OPTION FOR SERVICES NOT COVERED BY THE BASIC STATE SUPPORT. SUCH LOCAL ENRICHMENT OPTION BUDGET SHALL BE APPROVED BY THE VOTERS OF THE DISTRICT.

2. THE LOCAL ENRICHMENT OPTION BUDGET SHALL BE FUNDED AS PROVIDED FOR BY THE LEGISLATURE AS A SUPPLEMENTARY EDUCATION TAX ON INDIVIDUALS, ESTATES, TRUSTS, UNINCORPORATED BUSINESSES AND CORPORATIONS HAVING A RESIDENCE OR SITUS WITHIN EACH SCHOOL DISTRICT ELECTING SUCH OPTION.

3. THE LOCAL ENRICHMENT OPTION BUDGET SHALL NOT EXCEED TWENTY PER CENTUM OF THE BASIC BUDGET FOR EACH DISTRICT ELECTING SUCH OPTION.

S 3505. COLLECTION AND DISTRIBUTION. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, CODE, RULE OR REGULATION, THE STATE SHALL, WITHIN FIVE YEARS FROM THE EFFECTIVE DATE OF THIS ARTICLE, COLLECT AND DISTRIBUTE TO SCHOOL DISTRICTS ALL MONEYS RELATING TO THE FINANCING OF PUBLIC EDUCATION, EXCLUSIVE OF HIGHER EDUCATION, WITHIN THIS STATE, AS PROVIDED BY THE LEGISLATURE. THIS ASSUMPTION BY THE STATE OF ALL COSTS OF BASIC QUALITY EDUCATION SHALL BE ACCOMPLISHED IN APPROXIMATELY EQUAL INCREMENTS OVER A FIVE YEAR PERIOD FROM THE EFFECTIVE DATE OF THIS ARTICLE. DURING THIS PERIOD, THE AMOUNT OF MONEY DERIVED BY EACH SCHOOL DISTRICT FROM REAL PROPERTY TAXES SHALL BE REDUCED ACCORDINGLY. AFTER FIVE YEARS FROM THE EFFECTIVE DATE OF THIS ARTICLE, MONEYS DISTRIBUTED TO ANY SCHOOL DISTRICT SHALL BE REDUCED BY THE AMOUNT OF ANY REVENUES RECEIVED BY SUCH SCHOOL DISTRICT FROM TAXES IMPOSED ON REAL PROPERTY BY OR ON BEHALF OF SUCH SCHOOL DISTRICT.

S 3506. CONSTRUCTION WITH OTHER LAWS. THE PROVISIONS OF THIS ARTICLE SHALL BE CONTROLLING, NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, CODE, RULE OR REGULATION TO THE CONTRARY. HOWEVER, NO EXISTING RIGHT OR REMEDY OF ANY CHARACTER SHALL BE LOST, IMPAIRED OR AFFECTED BY REASON OF THIS ARTICLE, NOR SHALL THE VALIDITY OF ANY ACTION TAKEN BY ANY PUBLIC OFFICIAL UNDER THE LAW IN FORCE IMMEDIATELY PRIOR TO THE TIME THIS ARTICLE SHALL TAKE EFFECT BE AFFECTED BY THE ENACTMENT OF THIS ARTICLE. COLLECTION OF ALL OUTSTANDING TAX LIENS SHALL BE PURSUANT TO THE PROVISIONS OF THE REAL PROPERTY TAX LAW.

S 3507. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED.

S 2. Article 13 of the real property tax law is REPEALED.

S 3. The real property tax law is amended by adding a new section 467-g to read as follows:

S 467-G. PROVISIONS FOR TENANTS. IN EVERY CASE WHERE TAXES ON REAL PROPERTY ARE REDUCED DUE TO THE REDUCTION OF SCHOOL TAXES ON SUCH PROPERTY, THE AMOUNT OF SUCH REDUCTION SHALL BE PRO-RATED AMONG THE TENANTS, IF ANY, OF SUCH REAL PROPERTY, AND THE TOTAL RENTS REDUCED IN AN AMOUNT EQUAL TO SUCH REAL PROPERTY TAX REDUCTION. WHERE SUCH RENT REDUCTION IS PRECLUDED BY A LEASE OR OTHER AGREEMENT, SUCH REAL PROPERTY TAX REDUCTION SHALL ENTITLE SUCH TENANTS TO A TAX CREDIT IN THAT AMOUNT AGAINST INCOME TAXES DUE, OR TO A REBATE FOR ANY AMOUNT IN EXCESS OF INCOME TAXES DUE, UNTIL THE EXPIRATION OF SUCH LEASE OR AGREEMENT, AT WHICH TIME THE RENT SHALL BE REDUCED ACCORDINGLY.

S 4. The tax law is amended by adding two new sections 601-a and 601-b to read as follows:

S 601-A. ADDITIONAL TAXES FOR EDUCATION. 1. IN ADDITION TO THE TAXES ON INCOME IMPOSED BY THIS CHAPTER FOR TAXABLE YEARS OR PERIODS ENDING ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND NINE, THERE SHALL BE IMPOSED A TAX EQUAL TO A PERCENT OF THE TAXES IMPOSED BY SUCH SECTIONS AND ARTICLES AS IS NECESSARY TO FULFILL THE REQUIREMENTS OF SECTION THIRTY-FIVE HUNDRED TWO OF THE EDUCATION LAW. SUCH A TAX MAY BE LEVIED EITHER AS A SURTAX, OR BY READJUSTMENT OF THE APPROPRIATE TAX SCHEDULES.

2. THE COMMISSIONER SHALL ESTABLISH A SEPARATE ACCOUNT OR ACCOUNTS TO RECEIVE THE ADDITIONAL TAX IMPOSED BY SUBSECTION ONE OF THIS SECTION AND SHALL PAY INTO SUCH ACCOUNT OR ACCOUNTS THE TOTAL OF ALL SUCH TAXES WHEN RECEIVED AND RETAIN THE SAME SUBJECT TO DISBURSEMENT IN ACCORDANCE WITH THE PROVISIONS OF THE EDUCATION LAW.

S 601-B. ENRICHMENT OPTION TAX. IN ADDITION TO THE TAX IMPOSED BY SECTION SIX HUNDRED ONE-A OF THIS ARTICLE FOR TAXABLE YEARS OR PERIODS ENDING ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND NINE, THERE SHALL BE IMPOSED ON INDIVIDUALS, ESTATES, TRUSTS, UNINCORPORATED BUSINESSES AND CORPORATIONS, HAVING A RESIDENCE OR SITUS WITHIN EACH SCHOOL DISTRICT ELECTING A LOCAL ENRICHMENT OPTION PURSUANT TO THE EDUCATION LAW, A TAX EQUAL TO A PERCENT OF THE TAX IMPOSED BY SECTION SIX HUNDRED ONE-A OF THIS ARTICLE AS IS NECESSARY TO FULFILL THE REQUIREMENTS OF SECTION THIRTY-FIVE HUNDRED FOUR OF THE EDUCATION LAW. THIS TAX SHALL NOT EXCEED THIRTY PERCENT OF THE TAX IMPOSED BY SECTION SIX HUNDRED ONE-A OF THIS ARTICLE. IN ANY DISTRICT WHERE SUCH TAX IS INSUFFICIENT TO SATISFY BUDGET REQUIREMENTS AS PROVIDED IN SECTION THIRTY-FIVE HUNDRED FOUR OF THE EDUCATION LAW, SUCH DEFICIENCY SHALL BE PAID BY THE STATE IN ACCORDANCE WITH THE EDUCATION LAW.

S 5. Sections 1204, 1211 and 1212 of the tax law are REPEALED.

S 6. The tax law is amended by adding a new section 1200 to read as follows:

S 1200. CERTAIN TAXES REDUCED. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER SECTION OF THIS ARTICLE, ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, THE PROVISIONS OF THIS ARTICLE RELATING TO TAXES FOR THE BENEFIT OF SCHOOL DISTRICTS OR SCHOOL PURPOSES SHALL BE DEEMED REDUCED IN ACCORDANCE WITH SECTION THIRTY-FIVE HUNDRED FIVE OF THE EDUCATION LAW.

S 7. Section 1213 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

S 1213. Deliveries outside the jurisdiction where sale is made. Where a sale of tangible personal property or services, including prepaid telephone calling services, but not including other services described in subdivision (b) of section eleven hundred five, including an agreement therefor, is made in any city[,] OR county [or school district], but the property sold, the property upon which the services were performed or prepaid telephone calling or other service is or will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city[,] OR county [or school district]. However, if delivery occurs or will occur in a city[,] OR county [or school district] imposing a tax on the sale or use of such property, prepaid telephone calling or other services, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four OF THIS ARTICLE, the aggregate sales or compensating use taxes imposed by the city, if any, AND county [and school district] in which delivery occurs or will occur, for distribution by the commissioner to such taxing jurisdiction or jurisdictions. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property or of the service, including prepaid telephone calling service, by the purchaser.

S 8. Section 1220 of the tax law, as amended by section 39 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

S 1220. Territorial limitations. Any tax imposed under the authority of this article shall apply only within the territorial limits of the city[,] OR county [or school district] imposing the tax, except that where the taxes described in subdivision (b) of section eleven hundred five and clauses (E), (G) and (H) of subdivision (a) of section eleven

hundred ten or the tax described in subdivision (e) of section eleven hundred five is imposed by a city, as provided in section twelve hundred ten [or twelve hundred eleven] of this chapter, any establishment located partially within such city and partially within a town or towns and receiving or using any services or utilities provided by the city shall be deemed to be wholly within such city for the purposes of such taxes.

S 9. Section 1222 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

S 1222. Taxes to be in addition to others. Except as expressly otherwise provided in this article, any tax imposed under the authority of this article shall be in addition to any and all other taxes authorized or imposed under any other provision of law. This article shall not be construed as limiting the power of any city[,] OR county [or school district] to impose any other tax which it is authorized to impose under any other provision of law.

S 10. Section 1256 of the tax law, as amended by chapter 575 of the laws of 1965, is amended to read as follows:

S 1256. Cooperation by localities. Every city[,] AND county [and school district] shall cooperate with the [state tax commission] COMMISSIONER to enable [it] HIM OR HER to carry out [its] HIS OR HER duties under articles twenty-eight and twenty-nine of this chapter. Every such locality shall furnish to such [commission] COMMISSIONER those returns, reports and other information which the [tax commission] COMMISSIONER deems necessary to carry out such duties, except that cities having a population of one million or more, may, in their discretion, furnish instead copies of such returns, reports and other information. Such copies shall be furnished at the [tax commission's] COMMISSIONER'S expense, such expenses to be charged to the cost of administration. Notwithstanding any other law to the contrary, the duty to furnish returns, reports and other information or copies thereof shall apply to [those returns and reports filed under taxes authorized under chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as amended, chapter three hundred forty-one of the laws of nineteen hundred forty-six, as amended, article two-B of the general city law and chapter two hundred seventy-eight of the laws of nineteen hundred forty-seven, as amended, and to] such other information which is relevant to the duties of the [tax commission] COMMISSIONER under such articles twenty-eight and twenty-nine OF THIS CHAPTER.

S 11. In order to provide for continuity of funding to school districts, fifty percent of the school taxes due on July first in the second year preceding the effective date of this act shall be paid as heretofore required by law.

S 12. The commissioners of education and taxation and finance and the chairman of the state board of real property services shall present to the legislature a report stating the methodology for implementing the provisions of this act. The report shall include a system for demonstrating the impact of the act on municipalities and taxpayers for a one year period preceding the implementation of the act. Such report shall be due 90 days after this act becomes law.

S 13. This act shall take effect on the first of January next succeeding the date on which it shall have become a law provided, however, that sections two, five, seven, eight, nine and ten of this act shall take effect 3 years after such effective date.