

7259

I N S E N A T E

March 26, 2010

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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

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

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

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

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experts, other state governments, and/or academic research on performance-management and performance-budgeting. The intent of the legislature in creating this commission is to have legislation ready for passage in 2011 that implements a performance-management and performance-budgeting system starting with the 2012-2013 budget.

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

ARTICLE 51

EMPIRE STATE PERFORMANCE COMMISSION

SECTION 1010. EMPIRE STATE PERFORMANCE COMMISSION; PURPOSE.

1011. MEMBERSHIP; TERMS; CHAIRMAN AND VICE CHAIRMAN.

1012. DUTIES OF THE COMMISSION.

1013. DELIBERATIONS OF THE COMMISSION; ADVISORY COMMITTEES.

1014. STAFF; COOPERATION AND ASSISTANCE.

S 1010. EMPIRE STATE PERFORMANCE COMMISSION; PURPOSE. THE EMPIRE STATE PERFORMANCE COMMISSION (THE COMMISSION) IS ESTABLISHED AS A BLUE RIBBON COMMISSION IN THE EXECUTIVE DEPARTMENT. THE PURPOSE OF THE COMMISSION IS TO DESIGN AND ADVISE THE GOVERNOR AND THE LEGISLATURE ON THE IMPLEMENTATION OF A PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM. WHEN USED IN THIS ARTICLE, THE TERM "PERFORMANCE-MANAGEMENT" MEANS A MANAGEMENT SYSTEM CONSISTING OF STRATEGIC PLANNING, STRATEGIC PERFORMANCE AND PRODUCTIVITY MEASUREMENT, PROGRAM EVALUATION, AND PERFORMANCE BUDGETING, AND THE TERM "PERFORMANCE-BUDGETING" MEANS A SYSTEMIC INCORPORATION OF PLANNING, STRATEGIC PERFORMANCE AND PRODUCTIVITY MEASUREMENT, AND PROGRAM EVALUATION INFORMATION INTO THE BUDGETARY PROCESS.

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

(A) THE GOVERNOR;

(B) THE COMPTROLLER;

(C) THE SPEAKER OF THE ASSEMBLY;

(D) THE MINORITY LEADER OF THE ASSEMBLY;

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

(F) THE TEMPORARY PRESIDENT OF THE SENATE;

(G) THE MINORITY LEADER OF THE SENATE;

(H) THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE;

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

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

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

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

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

2. THE LEGISLATIVE LEADERS SHALL SUBMIT THEIR APPOINTMENTS TO THE GOVERNOR, AND THE GOVERNOR SHALL MAKE HIS OR HER APPOINTMENTS, NO LATER THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE. IF ANY SUCH APPOINTMENT IS NOT MADE BY SUCH DATE, THE APPOINTING OFFICER MAY MAKE THE APPOINTMENT AFTER THAT DATE, BUT THE VACANT APPOINTMENT SHALL NOT COUNT FOR CALCULATION OF A QUORUM UNTIL IT IS FILLED. THE GOVERNOR AND THE COMPTROLLER SHALL SERVE ON THE COMMISSION COINCIDENT WITH THEIR TERMS OF OFFICE. LEGISLATIVE MEMBERS, THE DIRECTOR OF THE DIVISION OF THE BUDGET, AND THE TWO EXECUTIVE DEPARTMENT HEADS APPOINTED BY THE GOVERNOR SHALL SERVE ON THE COMMISSION COINCIDENT WITH THEIR HOLDING THEIR RESPECTIVE POSITIONS. IN THE EVENT THAT A LEGISLATIVE MEMBER HOLDS MORE THAN ONE OF THE POSITIONS LISTED IN SUBDIVISION ONE OF THIS SECTION, SUCH LEGISLATIVE MEMBER SHALL DESIGNATE ANOTHER LEGISLATIVE

1 MEMBER OR MEMBERS, AS APPLICABLE, TO SERVE AS THE REPRESENTATIVE FOR THE
2 OTHER POSITION OR POSITIONS. NON-LEGISLATIVE CITIZEN MEMBERS SHALL BE
3 APPOINTED FOR A TERM ENDING ONE YEAR SUBSEQUENT TO THE EFFECTIVE DATE OF
4 THIS ARTICLE, OR JUNE FIRST, TWO THOUSAND ELEVEN, WHICHEVER IS LATER.
5 VACANCIES SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINT-
6 MENTS. THE GOVERNOR SHALL SERVE AS THE CHAIRMAN OF THE COMMISSION. THE
7 COMMISSION SHALL ELECT A VICE CHAIRMAN FROM ITS MEMBERSHIP.

8 3. THE MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR
9 THEIR SERVICES AS MEMBERS, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECES-
10 SARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. MEMBERS OF
11 THE COMMISSION SHALL BE CONSIDERED PUBLIC OFFICERS FOR PURPOSES OF
12 SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW.

13 S 1012. DUTIES OF THE COMMISSION. THE COMMISSION SHALL HAVE THE
14 FOLLOWING DUTIES:

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

- 17 (A) STRATEGIC PLANNING;
- 18 (B) PERFORMANCE MEASUREMENT;
- 19 (C) PROGRAM EVALUATION;
- 20 (D) UNIFORM STANDARDS FOR MEASURING, COMPILING, AND REPORTING PERFORM-
21 ANCE INFORMATION;
- 22 (E) A WEBSITE OR OTHER APPROPRIATE MEANS FOR DISSEMINATING INFORMATION
23 ABOUT THE PERFORMANCE-MANAGEMENT AND PERFORMANCE-BUDGETING SYSTEM TO THE
24 PUBLIC; AND

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

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

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

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

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

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

44 S 1013. DELIBERATIONS OF THE COMMISSION; ADVISORY COMMITTEES. 1. THE
45 COMMISSION SHALL MEET AT LEAST FOUR TIMES. THE MEETINGS OF THE COMMIS-
46 SION SHALL BE HELD AT THE CALL OF THE CHAIRMAN OR WHENEVER FIVE OR MORE
47 MEMBERS SO REQUEST. A MAJORITY OF MEMBERS OF THE COMMISSION SHALL
48 CONSTITUTE A QUORUM. APPROVAL OF ANY MATTER SHALL REQUIRE THE AFFIRMA-
49 TIVE VOTE OF A MAJORITY OF THE MEMBERS VOTING THEREON. MEMBERS MAY
50 DESIGNATE AND AUTHORIZE ANOTHER PERSON TO ACT FOR HIM OR HER BY PROXY.
51 PROXIES SHALL BE REVOCABLE AT THE PLEASURE OF THE MEMBER EXECUTING IT.

52 2. THE DELIBERATIONS, MEETINGS AND OTHER PROCEEDINGS OF THE COMMISSION
53 AND ANY COMMITTEE THEREOF SHALL BE GOVERNED BY ARTICLE SEVEN OF THE
54 PUBLIC OFFICERS LAW. ANY ONE OR MORE MEMBERS MAY PARTICIPATE IN A MEET-
55 ING BY MEANS OF A CONFERENCE TELEPHONE, CONFERENCE VIDEO OR SIMILAR
56 COMMUNICATIONS EQUIPMENT ALLOWING ALL PERSONS PARTICIPATING IN THE MEET-

1 ING TO HEAR EACH OTHER AT THE SAME TIME. PARTICIPATION BY SUCH MEANS
2 SHALL CONSTITUTE PRESENCE IN PERSON AT A MEETING. AT ANY MEETINGS OF THE
3 COMMISSION CONDUCTED BY MEANS OF A CONFERENCE TELEPHONE, CONFERENCE
4 VIDEO OR SIMILAR COMMUNICATIONS EQUIPMENT, OTHER THAN EXECUTIVE
5 SESSIONS, THE PUBLIC SHALL BE GIVEN AN OPPORTUNITY TO LISTEN. IF A MEET-
6 ING OTHER THAN AN EXECUTIVE SESSION IS TO BE CONDUCTED BY MEANS OF A
7 CONFERENCE TELEPHONE, CONFERENCE VIDEO OR SIMILAR COMMUNICATIONS EQUIP-
8 MENT, THE PUBLIC NOTICE FOR THE MEETING SHALL INFORM THE PUBLIC THAT
9 SUCH EQUIPMENT WILL BE USED, AND IDENTIFY THE MEANS BY WHICH THE PUBLIC
10 MAY LISTEN TO SUCH MEETING.

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

14 S 1014. STAFF; COOPERATION AND ASSISTANCE. 1. THE DIVISION OF THE
15 BUDGET SHALL PROVIDE STAFF ASSISTANCE TO THE COMMISSION. ADDITIONAL
16 ASSISTANCE AS NEEDED SHALL BE PROVIDED BY THE STAFFS OF THE ASSEMBLY
17 WAYS AND MEANS COMMITTEE AND THE SENATE FINANCE COMMITTEE. ALL AGENCIES,
18 AUTHORITIES, AND INSTITUTIONS OF THE STATE SHALL COOPERATE AND PROVIDE
19 SUCH ASSISTANCE TO THE COMMISSION AS THE COMMISSION MAY REQUEST.

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

22 S 4. This act shall take effect immediately.