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

S. 11--A A. 11--A

Second Extraordinary Session

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

August 3, 2010

IN SENATE -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged and said bill committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to establishing the FMAP contingency fund and providing for the repeal of such provisions upon expiration thereof (Part A); and to amend chapter 100 of the laws of 2010 relating to making appropriations for the support of government, in relation to the effectiveness thereof; and to repeal certain provisions of such chapter relating thereto and relating to state aid payment dates to school districts (Part B)

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

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2010-2011 state fiscal year. Each component is wholly contained within a Part identified as Parts A through B. 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 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.

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

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PART A

Section 1. Notwithstanding any other provision of law to the contrary, to maintain a balanced budget in the event that the federal government does not enact an extension of enhanced Federal Medical Assistance Percentages ("FMAP") for the state of New York in the amount assumed in the 2010--2011 financial plan, the individual payments from all undisbursed general fund and state special revenue fund aid to localities appropriations, commencing on September 16, 2010, shall be uniformly reduced by the percentage set forth in the written allocation plan required by this section and such reduction shall be applied, to the extent practicable, in equal amounts during the fiscal year. Such percent reduction to payments shall be calculated on the amounts that were undisbursed as of September 16, 2010 to provide for a maximum annual reduction of $1,085,000,000 by the end of the 2010--2011 state fiscal year. Beginning on September 16, 2010, all payments from non-exempt appropriations shall be reduced by the percentage set forth in the written allocation plan required by this section. The following types of appropriations shall be exempt from uniform reduction: (a) public assistance payments for families and individuals and payments for eligible aged, blind and disabled persons related to supplemental social security; (b) any reductions that would violate federal law; (c) payments of debt service and related expenses for which the state is constitutionally obligated to pay debt service or is contractually obligated to pay debt service, subject to an appropriation, including where the state has a contingent contractual obligation; (d) payments the state is obligated to make pursuant to court orders or judgments; (e) payments for CUNY senior colleges; and (f) payments to the metropolitan transportation authority related to the mobility tax. With regard to Medicaid payments, such reductions shall be subject to the receipt of all necessary federal approvals. Reductions under this section shall commence on September 16, 2010 and be made in accordance with a written allocation plan prepared by the director of the budget, which shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such written allocation plan shall include a summary of the methodology for calculating the percentage reductions to the payments from non-exempt appropriations and cash disbursements and the reasons for any exemptions, and a detailed schedule of the reductions and exemptions. The director of the budget shall prepare appropriately reduced certificates, which shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Upon request of the director of the budget, the comptroller shall transfer the cash equal to the uniform appropriation reduction to the FMAP contingency fund established pursuant to section 99-r of the state finance law to the extent such cash is available. If an extension of enhanced FMAP is not enacted by November 15, 2010, the governor, temporary president of the senate, and the speaker of the assembly shall cause their respective appropriate personnel to meet to review the impact of the uniform reductions and discuss potential alternative reductions.

S 2. The payment reductions shall be subject to the following conditions: (a) if at any time after the effective date of this section an extension of enhanced FMAP has been enacted by the Federal government in an amount equal to or greater than $1,085,000,000 in the fiscal year two thousand ten--two thousand eleven financial plan, no further reductions

shall occur and all payment amounts withheld pursuant to this section shall be paid to the recipients from which they were withheld by March 31, 2011 or in the case of Medicaid payments, as soon as practicable following receipt of all necessary federal approvals; (b) if an extension of enhanced FMAP is not enacted by March 31, 2011, the reductions authorized by this section shall continue until the total amount of such reductions is equal to $1,085,000,000; or (c) if an extension of enhanced FMAP is enacted in an amount less than the $1,085,000,000 assumed in the fiscal year two thousand ten--two thousand eleven financial plan, the reductions authorized by this section shall continue until the total amount of such reductions is equal to the difference between $1,085,000,000 and the amount of enhanced FMAP provided, however, if an extension of enhanced FMAP is enacted in an amount less than the $1,085,000,000 and at the time of the enactment the total amount of the reductions is equal to or greater than the amount by which the extension differs from the amount in the fiscal year two thousand ten--two thousand eleven financial plan, no further reductions shall be made and the amount of the reductions previously made that exceeds the difference between $1,085,000,000 and the amount of the extension shall be paid to the recipients subject to reduced payments in proportion to those reductions, and such payments shall be made by March 31, 2011. Notwithstanding any other provision of law to the contrary, liability for amounts due under any appropriation or other applicable provision of law subject to uniform reduction pursuant to this act shall be reduced by March 31, 2011 in the amounts equal to any payment reduction up to $1,085,000,000, and the appropriation shall be reduced by a commensurate amount pursuant to subdivisions (b) and (c) of this section, as appropriate. Notwithstanding any inconsistent provision of law, rule or regulation, the effectiveness of the provisions of sections 2807 and 3614 of the public health law, section 18 of chapter 2 of the laws of 1988, and 18 NYCRR S 505.14(h), as they relate to time frames for notice, approval or certification of rates of payment, are hereby suspended and without force or effect for purposes of implementing the provisions of this act.

S 3. On March 31, 2011, the director of the budget shall calculate the difference, if any, between the actual closing balance in the general fund on March 31, 2011 and the closing balance projected by the division of the budget in the 2010-11 enacted budget financial plan. If the actual closing balance is in excess of the projected balance, the amount of the difference shall be disbursed by April 15, 2011 or, in the case of Medicaid, as soon as practicable following the receipt of all necessary federal approvals, to uniformly mitigate the uniform reductions made pursuant to section one of this act, provided, however, that no such amount shall be available for disbursement until the director of the budget certifies that (a) the general fund made all planned payments anticipated in the 2010-11 financial plan including tax refunds, without the issuance of deficit bonds or notes or extraordinary cash management actions, (b) the balances in the tax stabilization reserve and rainy day reserve (together, the "rainy day reserves") have been restored to a level equal to the level as of the start of the fiscal year, and (c) other designated balances have been maintained, as provided by law.

S 4. The state finance law is amended by adding a new section 99-r to read as follows:

S 99-R. FMAP CONTINGENCY FUND. 1. THERE IS HEREBY ESTABLISHED IN THE STATE TREASURY AN ACCOUNT IN THE GENERAL FUND KNOWN AS THE "FMAP CONTINGENCY FUND".

2. THE FUND SHALL CONSIST OF ALL MONIES REQUIRED BY LAW TO BE TRANSFERRED TO THE FUND.

3. MONIES IN THE FUND SHALL BE DISBURSED, WHEN ALLOCATED, FOR THE PURPOSE OF MAKING PAYMENTS THAT HAD PREVIOUSLY BEEN SUBJECT TO REDUCTION PURSUANT TO LAW AS A RESULT OF FEDERAL GOVERNMENT FAILURE TO ENACT AN EXTENSION OF ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES ("FMAP").

4. IF BY FEBRUARY FIFTEENTH, TWO THOUSAND ELEVEN, ENHANCED FMAP IS NOT EXTENDED OR IS EXTENDED IN AN AMOUNT THAT IS LESS THAN THE $1,085,000,000 IN THE FISCAL YEAR TWO THOUSAND TEN--TWO THOUSAND ELEVEN FINANCIAL PLAN AS DETERMINED BY THE DIRECTOR OF THE BUDGET, MONIES IN THE FUND ON SUCH DATE NOT REQUIRED TO BE PAID PURSUANT TO THE PROVISIONS OF SECTION TWO OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN WHICH ADDED THIS SECTION MAY BE TRANSFERRED TO THE GENERAL FUND AND ANY AMOUNTS DEPOSITED IN THE FUND AFTER SUCH DATE MAY BE TRANSFERRED TO THE GENERAL FUND UPON THE REQUEST OF THE DIRECTOR OF THE BUDGET.

S 5. This act shall take effect immediately; provided, however, that section three of this act shall take effect upon the enactment of the 2010-2011 budget, and provided further, that this act shall expire and be deemed repealed April 15, 2011, except in the case of Medicaid, when such act shall expire and be deemed repealed July 1, 2011.

PART B

Section 1. Sections 1 and 4 of chapter 100 of the laws of 2010, relating to making appropriations for the support of government, are REPEALED.

S 2. Section 5 of chapter 100 of the laws of 2010, relating to making appropriations for the support of government, is amended to read as follows:

S 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2010[; provided, however, that upon the transfer of expenditures and disbursements by the comptroller as provided in section four of this act, the appropriations made by this act and subject to such section shall be deemed repealed].

S 3. Notwithstanding any provision of the law to the contrary, any payment otherwise due and payable during the month of September pursuant to: subparagraph (1) of paragraph a of subdivision 1 of section 3609-a of the education law, subparagraph (2) of paragraph a of subdivision 1 of section 3609-a of the education law, subparagraph (3) of paragraph a of subdivision 1 of section 3609-a of the education law, clause (vii) of subparagraph (3) of paragraph b of subdivision 1 of section 3609-a of the education law, subparagraph (5) of paragraph a of subdivision 2 of section 3609-b of the education law, subdivision 1 of section 3609-d of the education law, and paragraph (a) of subdivision 1 of section 3609-f of the education law for the 2010-11 school year shall be due and payable on or before September 30, 2010.

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2010, provided however that notwithstanding any inconsistent provision of law, sections one and two of this act shall be deemed to have been in full force and effect on and after the effective date of chapter 100 of the laws of 2010.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act 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, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

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