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

3115

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. CLARK, ORTIZ -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED, J. RIVERA -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the education law, in relation to education tax surcharge

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

Section 1. Legislative intent. The legislature hereby finds and declares that an omnibus education financing plan is essential to effectively and comprehensively provide a sound basic education to public school students in the city of New York. The "emergency in education" surcharge tax, grounded in the need to provide immediate, adequate support for public education in the city of New York, is such a plan. The plan recognizes and addresses several factors: (1) that increased operating aid is necessary to ensure New York city students are prepared to achieve the higher standards implemented by the New York state board of regents, (2) that the city of New York is committed to shouldering its "fair share" of the cost of educating students in its public schools, and (3) that students currently attending public schools in the city of New York cannot afford to wait as litigation concerning the state of New York's education financing system is decided by the courts. The mayor and the city council have agreed that the financing program provided for in this act will provide the funds necessary to implement the "emergency in education" plan. The state must authorize the new revenue sources requested by the city of New York to enable the city to effectively educate public school students.

S 2. The tax law is amended by adding a new section 1304-e to read as follows:

S 1304-E. EMERGENCY IN EDUCATION TAX SURCHARGE. (A) IN ADDITION TO THE TAXES AUTHORIZED BY ANY OTHER SECTION OF THIS ARTICLE, ANY CITY IMPOSING SUCH TAXES IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL

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

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LAWS IMPOSING IN ANY SUCH CITY TAX SURCHARGES ON (1) THE NEW YORK CITY ADJUSTED GROSS INCOME, AND (2) THE TAX DUE UNDER SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE OF EVERY CITY RESIDENT INDIVIDUAL, ESTATE AND TRUST, AS SET FORTH IN SUBSECTIONS (B), (C), (D), (E), (F) AND (G) OF THIS SECTION.

(B) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND ELEVEN, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF ONE PERCENT ON THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND DOLLARS, (2) A TAX OF ONE PERCENT ON THE PORTION OF SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF TWELVE AND ONE-HALF PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE.

(C) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND TWELVE, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF NINE-TENTHS OF ONE PERCENT ON THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND DOLLARS, (2) A TAX OF NINE-TENTHS OF ONE PERCENT ON THE PORTION OF SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF ELEVEN AND ONE-QUARTER PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE.

(D) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND THIRTEEN, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF EIGHT-TENTHS OF ONE PERCENT ON THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND DOLLARS, (2) A TAX OF EIGHT-TENTHS OF ONE PERCENT ON THE PORTION OF SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF TEN PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE.

(E) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND FOURTEEN, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF SEVEN-TENTHS OF ONE PERCENT ON THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND DOLLARS, (2) A TAX OF SEVEN-TENTHS OF ONE PERCENT ON THE PORTION OF SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF EIGHT AND THREE-QUARTERS PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE.

(F) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND FIFTEEN, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF SIX-TENTHS OF ONE PERCENT ON THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR

RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND DOLLARS, (2) A TAX OF SIX-TENTHS OF ONE PERCENT ON THE PORTION OF SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF SEVEN AND ONE-HALF PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE.

(G) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND SIXTEEN AND THEREAFTER, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF ONE-HALF OF ONE PERCENT ON THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND DOLLARS, (2) A TAX OF ONE-HALF OF ONE PERCENT ON THE PORTION OF SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF SIX AND ONE-QUARTER PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE.

(H) THE COMMISSIONER IN COOPERATION WITH THE COMPTROLLER SHALL MAINTAIN SUCH RECORDS AS ARE NECESSARY TO DETERMINE WHAT PORTION OF THE INCOME TAX REVENUES COLLECTED ON BEHALF OF A CITY IMPOSING TAXES PURSUANT TO THIS ARTICLE ARE ATTRIBUTABLE TO THE EMERGENCY IN EDUCATION TAX SURCHARGE ESTABLISHED BY THIS SECTION AND SHALL TRANSMIT SUCH FUNDS TO SUCH CITY IN A MANNER THAT ALLOWS SUCH FUNDS TO BE CLEARLY SEGREGATED FROM ALL OTHER FUNDS AND ACCOUNTED FOR SEPARATELY. SUCH CITY SHALL MAINTAIN SUCH FUNDS IN A SEPARATE FUND TO BE CALLED THE EMERGENCY IN EDUCATION TAX SURCHARGE REVENUE ACCOUNT AND SHALL PUBLISH MONTHLY REPORTS ON SUCH FUND'S RECEIPTS, DISBURSEMENTS AND BALANCES IN A MANNER THAT WILL ALLOW FOR A CLEAR UNDERSTANDING OF THE FINANCIAL CONDITION OF SUCH FUND AND OF THE USES THAT HAVE BEEN MADE OF THE FUND'S RESOURCES. DISBURSEMENTS FROM THIS FUND SHALL BE IN ADDITION TO THE FUNDS THAT SUCH CITY IS REQUIRED TO MAKE FOR EDUCATIONAL PURPOSES PURSUANT TO SUBDIVISION FIVE-B OF SECTION TWENTY-FIVE HUNDRED SEVENTY-SIX OF THE EDUCATION LAW AND NO DISBURSEMENTS FROM THIS FUND OR OTHER FINANCIAL TRANSACTIONS INVOLVING THIS FUND SHALL BE TAKEN INTO CONSIDERATION IN ANY MANNER WHATSOEVER IN DETERMINING SUCH CITY'S COMPLIANCE WITH THE REQUIREMENTS OF SUCH SUBDIVISION FIVE-B OF SECTION TWENTY-FIVE HUNDRED SEVENTY-SIX OF THE EDUCATION LAW.

(I) ANY MONIES GENERATED BY THIS SECTION SHALL BE USED FOR PUBLIC EDUCATION PURPOSES ONLY, INCLUDING HIRING AND RETAINING TEACHERS, TEACHER TRAINING, DECREASING CLASS SIZES, AND EQUIPPING AND BUILDING FACILITIES.

S 3. The education law is amended by adding a new section 2589 to read as follows:

S 2589. EMERGENCY IN EDUCATION OPERATING AID. 1. IN ADDITION TO THE GENERAL OPERATING AID AUTHORIZED BY ANY OTHER SECTION OF LAW, ANY CITY IMPOSING AN EMERGENCY IN EDUCATION TAX SURCHARGE PURSUANT TO SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW SHALL RECEIVE ADDITIONAL APPORTIONMENTS OF PUBLIC MONEY FOR GENERAL OPERATING AID PURPOSES, TO BE KNOWN AS EMERGENCY IN EDUCATION OPERATING AID, FOR SCHOOL YEARS COMMENCING ON AND AFTER JULY FIRST, TWO THOUSAND TWELVE AS SET FORTH IN SUBDIVISIONS TWO, THREE, FOUR, FIVE, SIX AND SEVEN OF THIS SECTION. SUCH APPORTIONMENTS SHALL BE IN ADDITION TO AND NOT IN LIEU OF THE APPORTIONMENTS OF PUBLIC MONEY TO SUCH CITY FOR GENERAL OPERATING AID PURPOSES MADE AVAILABLE TO SUCH CITY PURSUANT TO OTHER SECTIONS OF LAW AND

PROVIDED THAT THE AMOUNTS MADE AVAILABLE TO SUCH CITY PURSUANT TO SUCH OTHER PROVISIONS OF LAW SHALL NOT IN ANY SCHOOL YEAR COMMENCING ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE BE LESS THAN THE AMOUNT MADE AVAILABLE TO SUCH CITY FOR SUCH PURPOSES, WITH THE CATEGORIES OF AID TO BE COVERED BY THIS REQUIREMENT TO BE DETERMINED BY THE COMMISSIONER, DURING THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND ELEVEN TIMES A NUMBER DETERMINED BY DIVIDING THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE CALENDAR YEAR PRECEDING THE COMMENCEMENT OF THE SCHOOL YEAR FOR WHICH SUCH APPORTIONMENT IS BEING PROVIDED BY THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE TWO THOUSAND NINE CALENDAR YEAR.

2. FOR THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND TWELVE, SUCH EMERGENCY IN EDUCATION OPERATING AID SHALL BE AN AMOUNT EQUAL TO TWENTY PERCENT OF THE AMOUNT TRANSMITTED TO SUCH A CITY PURSUANT TO SUBSECTION (H) OF SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW DURING THE TWO THOUSAND NINE CALENDAR YEAR.

3. FOR THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND THIRTEEN, SUCH EMERGENCY IN EDUCATION OPERATING AID SHALL BE AN AMOUNT EQUAL TO TWENTY PERCENT OF THE AMOUNT TRANSMITTED TO SUCH A CITY PURSUANT TO SUBSECTION (H) OF SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW DURING THE TWO THOUSAND TEN CALENDAR YEAR.

4. FOR THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND FOURTEEN, SUCH EMERGENCY IN EDUCATION OPERATING AID SHALL BE AN AMOUNT EQUAL TO FORTY PERCENT OF THE AMOUNT TRANSMITTED TO SUCH A CITY PURSUANT TO SUBSECTION (H) OF SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW DURING THE TWO THOUSAND ELEVEN CALENDAR YEAR.

5. FOR THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND FIFTEEN, SUCH EMERGENCY IN EDUCATION OPERATING AID SHALL BE AN AMOUNT EQUAL TO SIXTY PERCENT OF THE AMOUNT TRANSMITTED TO SUCH A CITY PURSUANT TO SUBSECTION (H) OF SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW DURING THE TWO THOUSAND TWELVE CALENDAR YEAR.

6. FOR THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND SIXTEEN, SUCH EMERGENCY IN EDUCATION OPERATING AID SHALL BE AN AMOUNT EQUAL TO EIGHTY PERCENT OF THE AMOUNT TRANSMITTED TO SUCH A CITY PURSUANT TO SUBSECTION (H) OF SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW DURING THE TWO THOUSAND THIRTEEN CALENDAR YEAR.

7. FOR THE SCHOOL YEAR COMMENCING ON AND AFTER JULY FIRST, TWO THOUSAND SEVENTEEN, SUCH EMERGENCY IN EDUCATION OPERATING AID SHALL BE AN AMOUNT EQUAL TO THE AMOUNT TRANSMITTED TO SUCH A CITY PURSUANT TO SUBSECTION (H) OF SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW DURING THE PRECEDING CALENDAR YEAR.

8. THE MONEYS GENERATED BY THIS SECTION SHALL BE USED FOR PUBLIC EDUCATION PURPOSES ONLY, INCLUDING HIRING AND RETAINING TEACHERS, TEACHER TRAINING, DECREASING CLASS SIZES AND EQUIPPING AND BUILDING CLASSROOMS.

S 4. Section 2576 of the education law is amended by adding a new subdivision 5-c to read as follows:

5-C. A. IF THE TOTAL AMOUNT REQUESTED IN SUCH ESTIMATE IS NOT APPROPRIATED, EACH CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS SHALL APPROPRIATE AN AMOUNT NOT LESS THAN THE GREATER OF:

(I) THE PRODUCT OF THE CITY SHARE IN THE BASE YEAR AND THE PUPIL CHANGE INDEX, AS SUCH TERMS ARE DEFINED IN PARAGRAPH C OF THIS SUBDIVISION, OR

(II) AN AMOUNT EQUAL TO THE AVERAGE PROPORTION OF THE TOTAL EXPENSE BUDGET OF SUCH CITY, AS AMENDED, NOT INCLUDING THE PORTION OF SUCH EXPENSE BUDGET EQUAL TO THE TOTAL STATE AND FEDERAL AID APPROPRIATED FOR

EDUCATION PURPOSES, APPROPRIATED FOR THE PURPOSES OF SUCH CITY SCHOOL DISTRICT IN THE THREE FISCAL YEARS OF SUCH CITY IMMEDIATELY PRECEDING THE YEAR FOR WHICH SAID ESTIMATE IS FILED.

B. IF THE TOTAL AMOUNT REQUESTED IN THE ESTIMATE EXCEEDS THE GREATER OF THE TWO AMOUNTS COMPUTED IN PARAGRAPH A OF THIS SUBDIVISION, SUCH EXCESS SHALL BE SUBJECT TO SUCH CONSIDERATION AND SUCH ACTION BY THE APPROPRIATE CITY LEGISLATIVE BODY AND/OR CITY OFFICER AS THAT TAKEN UPON OTHER DEPARTMENTAL ESTIMATES. THE CITY IS AUTHORIZED TO MAKE ADDITIONAL APPROPRIATIONS FOR EDUCATIONAL PURPOSES AUTHORIZED BY THIS CHAPTER.

C. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERMS:

(I) "CITY SHARE" SHALL MEAN: THE TOTAL APPROPRIATION OF ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS FOR ELEMENTARY AND SECONDARY EDUCATION PURPOSES AS DEFINED BY THE COMMISSIONER MINUS THE TOTAL AMOUNT OF FEDERAL AND STATE AID APPROPRIATED FOR ELEMENTARY AND SECONDARY EDUCATION PURPOSES;

(II) "BASE YEAR" SHALL MEAN: THE FISCAL YEAR IMMEDIATELY PRECEDING THE FISCAL YEAR FOR WHICH THE ESTIMATE IS FILED;

(III) "PUPIL CHANGE INDEX" SHALL MEAN: THE RATIO COMPUTED BY DIVIDING THE TOTAL PUBLIC SCHOOL ENROLLMENT OF THE CITY SCHOOL DISTRICT, INCLUDING ALL STUDENTS WHOLLY OR PARTIALLY SUPPORTED BY SUCH CITY'S FUNDS, IN THE YEAR IN WHICH THE ESTIMATE IS FILED BY THE ENROLLMENT OF SUCH CITY SCHOOL DISTRICT IN THE YEAR IMMEDIATELY PRECEDING THE YEAR IN WHICH THE ESTIMATE IS FILED.

S 5. This act shall take effect immediately.