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

4013--A

I N A S S E M B L Y

February 1, 2011

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to gubernatorial reorganization of governmental agencies and functions; and to amend the legislative law, in relation to formulation of a concurrent resolution; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. The executive law is amended by adding a new article 3-A to read as follows:

ARTICLE 3-A

EXECUTIVE REORGANIZATION ACT OF 2011

SECTION 33. SHORT TITLE.
34. DUTY OF GOVERNOR TO EXAMINE AGENCIES; LEGISLATIVE PURPOSE.
35. DEFINITIONS.
36. FINDINGS BY GOVERNOR; ISSUANCE OF REORGANIZATION PLAN.
37. CONTENTS OF REORGANIZATION PLAN.
38. PROVISIONS NOT TO BE INCLUDED IN A REORGANIZATION PLAN.
39. EFFECTIVE DATE OF REORGANIZATION PLAN.
39-A. EFFECT ON ACTIONS OR PROCEEDINGS.
39-B. SEVERABILITY.

S 33. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "EXECUTIVE REORGANIZATION ACT OF 2011".

S 34. DUTY OF GOVERNOR TO EXAMINE AGENCIES; LEGISLATIVE PURPOSE. 1. THE GOVERNOR, FROM TIME TO TIME, SHALL EXAMINE THE ORGANIZATION OF ALL AGENCIES AND SHALL DETERMINE WHAT CHANGES THEREIN ARE NECESSARY TO ACCOMPLISH ONE OR MORE OF THE FOLLOWING PURPOSES:

(A) TO PROMOTE THE BETTER EXECUTION OF THE LAWS, THE MORE EFFECTIVE MANAGEMENT OF THE GOVERNMENT AND OF ITS AGENCIES AND FUNCTIONS, AND THE EXPEDITIOUS ADMINISTRATION OF PUBLIC BUSINESS;

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

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(B) TO REDUCE EXPENDITURES AND PROMOTE ECONOMY TO THE FULLEST EXTENT CONSISTENT WITH THE EFFICIENT OPERATION OF THE GOVERNMENT;
(C) TO INCREASE THE EFFICIENCY OF THE OPERATIONS OF THE GOVERNMENT TO THE FULLEST EXTENT PRACTICABLE;
(D) TO GROUP, CONSOLIDATE, COORDINATE AND MERGE AGENCIES AND FUNCTIONS OF THE GOVERNMENT;
(E) TO REDUCE THE NUMBER OF AGENCIES BY CONSOLIDATING THOSE HAVING SIMILAR FUNCTIONS, AND TO ABOLISH SUCH AGENCIES OR FUNCTIONS THEREOF AS MAY NOT BE NECESSARY FOR THE EFFICIENT CONDUCT OF THE GOVERNMENT; AND
(F) TO ELIMINATE OVERLAP AND DUPLICATION OF EFFORT.
2. THE LEGISLATURE DECLARES THAT THE PUBLIC INTEREST IS BEST SERVED BY FULFILLING THE PURPOSES SET FORTH IN THIS SECTION AND THAT SUCH PURPOSES MAY BE ACCOMPLISHED MORE SPEEDILY AND EFFECTIVELY UNDER THIS ARTICLE.
S 35. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
1. "AGENCY" MEANS:
(A) ANY ADMINISTRATIVE UNIT OF STATE GOVERNMENT, INCLUDING, BUT NOT LIMITED TO, ANY AGENCY, BOARD, BUREAU, COMMISSION, DEPARTMENT, DIVISION, INSTITUTION, OFFICE, STATE PUBLIC AUTHORITY, STATE TASK FORCE, OR OTHER BODY, OR PARTS THEREOF, HOWEVER DESIGNATED, WHETHER OR NOT IT RECEIVES LEGISLATIVE APPROPRIATIONS, BUT DOES NOT INCLUDE ANY ENTITY WHOSE PRIMARY FUNCTION IS SERVICE TO THE LEGISLATIVE OR JUDICIAL BRANCHES OF STATE GOVERNMENT, THE DEPARTMENT OF LAW, THE DEPARTMENT OF AUDIT AND CONTROL OR THE BOARD OF REGENTS;
(B) ANY OFFICE OR OFFICER IN ANY AGENCY, EXCEPT THE DEPARTMENT OF LAW AND DEPARTMENT OF AUDIT AND CONTROL; AND
(C) ANY STATE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION CREATED BY OR EXISTING UNDER ANY STATE LAW, OR PARTS THEREOF, HOWEVER DESIGNATED, WITH ONE OR MORE OF ITS MEMBERS APPOINTED BY THE GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A CIVIL OFFICE OF THE STATE, OTHER THAN AN INTERSTATE OR INTERNATIONAL AUTHORITY OR PUBLIC BENEFIT CORPORATION, INCLUDING ANY SUBSIDIARIES OF SUCH PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION.
PROVIDED THAT "AGENCY" SHALL NOT INCLUDE ANY DEPARTMENT, BOARD, BUREAU, COMMISSION, DIVISION, OFFICE, COUNCIL, COMMITTEE OR OFFICER OF A MUNICIPALITY OR A LOCAL INDUSTRIAL DEVELOPMENT AGENCY OR LOCAL PUBLIC AUTHORITY OR LOCAL PUBLIC BENEFIT CORPORATION AS THAT TERM IS DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW.
2. "ASSEMBLY" MEANS THE NEW YORK STATE ASSEMBLY.
3. "FUNCTION" MEANS ANY ACTIVITY, ASSIGNMENT, DUTY, POWER, RESPONSIBILITY, RIGHT, SET OF OPERATIONS OR OTHER ACTIVITY.
4. "GOVERNOR" MEANS THE GOVERNOR OF THE STATE OF NEW YORK.
5. "LEGISLATURE" MEANS THE LEGISLATURE OF THE STATE OF NEW YORK.
6. "OFFICER" MEANS EVERY OFFICER APPOINTED BY ONE OR MORE STATE OFFICERS, OR BY THE LEGISLATURE, AND AUTHORIZED TO EXERCISE THEIR OFFICIAL FUNCTIONS THROUGHOUT THE ENTIRE STATE, OR WITHOUT LIMITATION TO ANY POLITICAL SUBDIVISION OF THE STATE, AND IS NOT LIMITED TO PERSONS RECEIVING COMPENSATION FOR THEIR SERVICES.
7. "REGULATION OR OTHER ACTION" MEANS ANY REGULATION, RULE, ORDER, POLICY, DETERMINATION, DIRECTIVE, AUTHORIZATION, PERMIT, PRIVILEGE, REQUIREMENT, DESIGNATION, OR OTHER ACTION.
8. "REORGANIZATION" OR "REORGANIZE" MEANS:
(A) THE TRANSFER OF THE WHOLE OR ANY PART OF ANY AGENCY, OR OF THE WHOLE OR ANY PART OF THE FUNCTIONS THEREOF, TO THE JURISDICTION AND CONTROL OF ANY OTHER AGENCY;
(B) THE ABOLITION OF ALL OR ANY PART OF THE FUNCTIONS OF ANY AGENCY;

(C) THE CONSOLIDATION, COORDINATION OR MERGER OF THE WHOLE OR ANY PART OF ANY AGENCY, OR OF THE WHOLE OR ANY PART OF THE FUNCTIONS THEREOF, WITH THE WHOLE OR ANY PART OF ANY OTHER AGENCY OR THE FUNCTIONS THEREOF;

(D) THE CONSOLIDATION, COORDINATION OR MERGER, OF ANY PART OF ANY AGENCY OR THE FUNCTIONS THEREOF WITH ANY OTHER PART OF THE SAME AGENCY OR THE FUNCTIONS THEREOF;

(E) THE AUTHORIZATION OF ANY NON-ELECTIVE OFFICER TO DELEGATE ANY OF THEIR FUNCTIONS;

(F) THE ABOLITION OF THE WHOLE OR ANY PART OF ANY AGENCY WHICH DOES NOT HAVE, OR UPON THE TAKING EFFECT OF REORGANIZATION WILL NOT HAVE, ANY FUNCTIONS; OR

(G) THE ESTABLISHMENT OF A NEW AGENCY TO PERFORM THE WHOLE OR ANY PART OF THE FUNCTIONS OF ANY EXISTING AGENCY OR AGENCIES.

9. "REORGANIZATION PLAN" OR "PLAN" SHALL MEAN THE BILL PREPARED BY THE GOVERNOR, AND SUBMITTED TO THE LEGISLATURE AS A PROGRAM BILL, THAT CONTAINS TERMS AND INFORMATION REGARDING THE REORGANIZATION OF ONE OR MORE AGENCIES PURSUANT TO THIS ARTICLE WHICH, WHEN ENACTED, SHALL ACCOMPLISH SUCH REORGANIZATION.

10. "SENATE" MEANS THE NEW YORK STATE SENATE.

S 36. FINDINGS BY GOVERNOR; ISSUANCE OF REORGANIZATION PLAN. 1. WHENEVER THE GOVERNOR FINDS IT IN THE PUBLIC INTEREST, HE OR SHE MAY REORGANIZE ONE OR MORE AGENCIES.

2. NOTHING IN THIS ARTICLE SHALL PROHIBIT OR LIMIT THE AUTHORITY OF THE GOVERNOR OR LEGISLATURE TO IMPLEMENT OR ENACT A REORGANIZATION PLAN PURSUANT TO ANY OTHER LAWFUL PROCESS.

S 37. CONTENTS OF REORGANIZATION PLAN. 1. A REORGANIZATION PLAN SHALL:

(A) SET FORTH A DESCRIPTION OF THE NATURE AND PURPOSES OF THE REORGANIZATION, TOGETHER WITH AN EXPLANATION OF THE ADVANTAGES THAT WILL RESULT FROM ITS IMPLEMENTATION;

(B) SPECIFY WITH RESPECT TO EACH FUNCTION THAT IS EITHER ABOLISHED OR MERGED WITH ANOTHER FUNCTION INCLUDED IN THE PLAN THE STATUTORY AUTHORITY FOR THE EXERCISE OF THE FUNCTION;

(C) PROVIDE FOR THE UNINTERRUPTED CONDUCT OF THE GOVERNMENTAL SERVICES AND FUNCTIONS AFFECTED BY BUT NOT ABSORBED BY THE PLAN;

(D) PROVIDE FOR THE TRANSFER, ASSUMPTION OR OTHER DISPOSITION OF THE RECORDS, PROPERTY, AND PERSONNEL AFFECTED BY A REORGANIZATION, FURTHER PROVIDED, SHOULD ANY EMPLOYEES BE TRANSFERRED FROM ONE AGENCY TO ANOTHER, THAT SUCH TRANSFER WILL BE WITHOUT FURTHER EXAMINATION OR QUALIFICATION AND SUCH EMPLOYEES SHALL RETAIN THEIR RESPECTIVE CIVIL SERVICE CLASSIFICATIONS, STATUS AND COLLECTIVE BARGAINING UNIT DESIGNATIONS AND BE GOVERNED BY APPLICABLE COLLECTIVE BARGAINING AGREEMENTS;

(E) PROVIDE FOR TERMINATING THE AFFAIRS OF AN AGENCY ABOLISHED;

(F) SET FORTH EVERY LAW AND CHAPTER THAT WILL BE DIRECTLY IMPACTED PURSUANT TO THE REORGANIZATION PLAN;

(G) PROVIDE FOR THE TRANSFER OF SUCH UNEXPENDED BALANCES OF APPROPRIATIONS AND REAPPROPRIATION OF REMAINING EXPENDED OR UNEXPENDED FUNDS WHETHER ALLOCATED OR UNALLOCATED AND WHETHER OBLIGATED OR UNOBLIGATED, AVAILABLE FOR USE IN CONNECTION WITH A FUNCTION OR AGENCY AFFECTED BY A REORGANIZATION, AS NECESSARY BY REASON OF THE REORGANIZATION FOR USE IN CONNECTION WITH THE FUNCTIONS AFFECTED BY THE REORGANIZATION, OR FOR THE USE OF THE AGENCY WHICH SHALL HAVE THE FUNCTIONS AFTER THE REORGANIZATION PLAN IS EFFECTIVE. HOWEVER, THE UNEXPENDED BALANCES SO TRANSFERRED MAY BE USED ONLY FOR THE PURPOSES FOR WHICH THE APPROPRIATION WAS ORIGINALLY MADE;

(H) PROVIDE THAT NO EXISTING RIGHT OR REMEDY SHALL BE LOST, IMPAIRED OR AFFECTED BY ANY REORGANIZATION PLAN;

(I) PROVIDE THAT NO ACTION OR PROCEEDING PENDING AT ANY TIME WHEN SUCH REORGANIZATION PLAN TAKES EFFECT, BROUGHT BY OR AGAINST ANY AGENCY WHICH IS SUBJECT TO SUCH PLAN, SHALL BE AFFECTED BY ANY PROVISION OF THE PLAN, BUT THE SAME MAY BE PROSECUTED OR DEFENDED IN THE NAME OF SUCH AGENCY. IN ALL SUCH ACTIONS AND PROCEEDINGS, IF AN AGENCY IS ELIMINATED AND ITS FUNCTIONS AND RESPONSIBILITIES ARE TRANSFERRED, THEN THE HEAD OF THE SURVIVING AGENCY, UPON APPLICATION OF THE COURT, SHALL BE SUBSTITUTED AS A PARTY;

(J) DESCRIBE IN DETAIL:

(I) OTHER ACTIONS, IF ANY, NECESSARY TO PLAN TO COMPLETE THE REORGANIZATION;

(II) THE ANTICIPATED NATURE AND SUBSTANCE OF ANY ORDERS, DIRECTIVES, AND OTHER ADMINISTRATIVE AND OPERATIONAL ACTIONS WHICH ARE EXPECTED TO BE REQUIRED FOR COMPLETING OR IMPLEMENTING THE REORGANIZATION; AND

(III) ANY PRELIMINARY ACTIONS WHICH HAVE BEEN TAKEN IN THE IMPLEMENTATION PROCESS;

(K) PROVIDE A PROJECTED TIMETABLE FOR COMPLETION OF THE IMPLEMENTATION PROCESS; AND

(L) INCLUDE PROVISIONS FOR THE APPOINTMENT AND COMPENSATION OF THE HEAD AND ONE OR MORE OFFICERS OF AN AGENCY (INCLUDING AN AGENCY RESULTING FROM A CONSOLIDATION OR OTHER TYPE OF REORGANIZATION) IF THE GOVERNOR FINDS AND DECLARES THAT BY REASON OF A REORGANIZATION MADE BY THE PLAN THE PROVISIONS ARE IN THE PUBLIC INTEREST. THE AGENCY HEAD MAY BE AN INDIVIDUAL OR MAY BE A COMMISSION OR BOARD WITH MORE THAN ONE MEMBER. IN ANY CASE, THE TERM OF OFFICE MAY NOT BE FIXED FOR A PERIOD IN EXCESS OF THE TERM REMAINING TO BE SERVED BY THE THEN GOVERNOR, THE PAY MAY NOT BE AT A RATE IN EXCESS OF THAT FOUND BY THE GOVERNOR TO BE APPLICABLE TO COMPARABLE OFFICERS IN THE STATE GOVERNMENT, AND, IF THE APPOINTMENT IS NOT TO A POSITION IN THE COMPETITIVE SERVICE, IT SHALL BE MADE BY THE COMMISSIONER OR OTHER CHIEF EXECUTIVE OFFICER, BOARD OR COMMISSION OF THE AGENCY AFFECTED.

2. A REORGANIZATION PLAN MAY CHANGE THE NAME OF AN AGENCY AFFECTED BY A REORGANIZATION AND THE TITLE OF ITS HEAD, AND SHALL DESIGNATE THE NAME OF AN AGENCY RESULTING FROM A REORGANIZATION AND THE TITLE OF ITS HEAD.

S 38. PROVISIONS NOT TO BE INCLUDED IN A REORGANIZATION PLAN. 1. NO REORGANIZATION PLAN SHALL PROVIDE FOR, AND NO REORGANIZATION UNDER THIS ARTICLE SHALL HAVE THE EFFECT OF:

(A) ABOLISHING OR MODIFYING ANY AGENCY OR ENTITY CREATED OR ESTABLISHED BY THE NEW YORK STATE CONSTITUTION, INCLUDING WITHOUT LIMITATION, THE BOARD OF REGENTS, LEGISLATURE, JUDICIARY, COMPTROLLER AND ATTORNEY GENERAL, OR ABOLISHING OR MODIFYING ANY AGENCY OR ENTITY ADMINISTERED BY SUCH CONSTITUTIONALLY ESTABLISHED AGENCY OR ENTITY THAT IS NOT SUBJECT TO DIRECT GUBERNATORIAL CONTROL, OR ABOLISHING OR TRANSFERRING TO OR FROM THE JURISDICTION AND CONTROL OF ANY SUCH AGENCY ANY FUNCTION CONFERRED BY THE NEW YORK STATE CONSTITUTION ON AN AGENCY AUTHORIZED BY SUCH CONSTITUTION, OR AFFECTING OR CHANGING ANY IMPLEMENTING STATUTES RELATED TO SUCH AGENCIES OR ENTITIES;

(B) ABOLISHING ANY FUNCTION REQUIRED BY FEDERAL LAW OR INTERSTATE COMPACTS;

(C) VIOLATING ANY COVENANT WITH BONDHOLDERS; OR

(D) ABOLISHING STATUTORILY PRESCRIBED FUNCTIONS, PROVIDED THAT SUCH FUNCTIONS MAY BE ASSIGNED TO A DIFFERENT AGENCY THAN THE ONE TO WHICH THEY WERE ORIGINALLY ASSIGNED BY THE STATUTE.

2. NO REORGANIZATION PLAN SHALL HAVE THE EFFECT OF LIMITING IN ANY WAY THE VALIDITY OF ANY STATUTE ENACTED, OR ANY REGULATION OR OTHER ACTION MADE, PRESCRIBED, ISSUED, GRANTED OR PERFORMED IN RESPECT TO OR BY ANY AGENCY BEFORE THE EFFECTIVE DATE OF THE PLAN EXCEPT TO THE EXTENT THAT THE PLAN SPECIFICALLY SO PROVIDES NOR SHALL SUCH PLAN HAVE THE EFFECT OF LIMITING OR ALTERING THE ROLE OF THE SENATE IN THE ADVICE AND CONSENT TO THE SELECTION OF PUBLIC OFFICIALS.

S 39. EFFECTIVE DATE OF REORGANIZATION PLAN. 1. A REORGANIZATION PLAN SHALL BE VOTED ON BY EACH HOUSE OF THE LEGISLATURE, WITHOUT AMENDMENT AS SUBMITTED BY THE GOVERNOR, WITHIN THIRTY DAYS AFTER SUCH SUBMISSION. THE GOVERNOR MAY SUBMIT ONLY ONE SUCH PLAN ANNUALLY AND MAY AMEND THAT PLAN ONE TIME WITHIN SUCH THIRTY DAY PERIOD. BOTH HOUSES OF THE LEGISLATURE SHALL THEN HAVE THIRTY DAYS FROM THE SUBMISSION OF SUCH AMENDMENT TO VOTE ON THE AMENDED REORGANIZATION PLAN. WITHOUT THE CONSENT OF BOTH HOUSES OF THE LEGISLATURE, NEITHER A PLAN NOR AN AMENDMENT MAY BE SUBMITTED BY THE GOVERNOR AFTER THE THIRTIETH DAY OF MAY IN ANY YEAR.

2. UNDER PROVISIONS CONTAINED IN A REORGANIZATION PLAN, A PROVISION OF THE PLAN MAY BE EFFECTIVE AT A TIME LATER THAN THE DATE ON WHICH THE PLAN OTHERWISE IS EFFECTIVE.

S 39-A. EFFECT ON ACTIONS OR PROCEEDINGS. THIS ARTICLE SHALL NOT AFFECT ACTIONS OR PROCEEDINGS, CIVIL OR CRIMINAL, BROUGHT BY OR AGAINST ANY AGENCY OR OFFICER, THE FUNCTIONS, POWERS AND DUTIES OF WHICH HAVE BEEN TRANSFERRED OR ABOLISHED PURSUANT TO THIS ARTICLE; NOR SHALL ANY REORGANIZATION AFFECT ANY ORDER OR RECOMMENDATION MADE BY, OR OTHER MATTERS OR PROCEEDINGS BEFORE, ANY AGENCY OR OFFICER, THE FUNCTIONS, POWERS AND DUTIES OF WHICH HAVE BEEN TRANSFERRED OR ABOLISHED PURSUANT TO A REORGANIZATION PLAN UNDER THIS ARTICLE.

S 39-B. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SUBDIVISION, 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, 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 ARTICLE WOULD HAVE BEEN ENACTED EVEN IF SUCH INVALID PROVISIONS HAD NOT BEEN INCLUDED IN THIS SECTION.

S 2. The legislative law is amended by adding a new section 54-b to read as follows:

S 54-B. REORGANIZATION PLAN. THE LEGISLATURE MAY BY CONCURRENT RESOLUTION PRESCRIBE RULES FOR THE CONSIDERATION AND DISPOSITION OF A REORGANIZATION PLAN, AS DEFINED IN ARTICLE THREE-A OF THE EXECUTIVE LAW.

S 3. This act shall take effect immediately and shall be deemed repealed May 31, 2014.