

3208--A

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that an omnibus education financing plan is essential to effec-
3 tively and comprehensively provide a sound basic education to public
4 school students in the city of New York. The "emergency in education"
5 surcharge tax, grounded in the need to provide immediate, adequate
6 support for public education in the city of New York, is such a plan.
7 The plan recognizes and addresses several factors: (1) that increased
8 operating aid is necessary to ensure New York city students are prepared
9 to achieve the higher standards implemented by the New York state board
10 of regents, (2) that the city of New York is committed to shouldering
11 its "fair share" of the cost of educating students in its public
12 schools, and (3) that students currently attending public schools in the
13 city of New York cannot afford to wait as litigation concerning the
14 state of New York's education financing system is decided by the courts.
15 The mayor and the city council have agreed that the financing program
16 provided for in this act will provide the funds necessary to implement
17 the "emergency in education" plan. The state must authorize the new
18 revenue sources requested by the city of New York to enable the city to
19 effectively educate public school students.
20 S 2. The tax law is amended by adding a new section 1304-e to read as
21 follows:

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

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1 S 1304-E. EMERGENCY IN EDUCATION TAX SURCHARGE. (A) IN ADDITION TO THE
2 TAXES AUTHORIZED BY ANY OTHER SECTION OF THIS ARTICLE, ANY CITY IMPOSING
3 SUCH TAXES IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL
4 LAWS IMPOSING IN ANY SUCH CITY TAX SURCHARGES ON (1) THE NEW YORK CITY
5 ADJUSTED GROSS INCOME, AND (2) THE TAX DUE UNDER SECTION THIRTEEN
6 HUNDRED FOUR OF THIS ARTICLE OF EVERY CITY RESIDENT INDIVIDUAL, ESTATE
7 AND TRUST, AS SET FORTH IN SUBSECTIONS (B), (C), (D), (E), (F) AND (G)
8 OF THIS SECTION.

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

20 (C) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND FIFTEEN, THE TAX
21 SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE
22 DETERMINED AS FOLLOWS: (1) A TAX OF NINE-TENTHS OF ONE PERCENT ON THE
23 PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESI-
24 DENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR
25 RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND
26 DOLLARS, (2) A TAX OF NINE-TENTHS OF ONE PERCENT ON THE PORTION OF SUCH
27 INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF ELEVEN
28 AND ONE-QUARTER PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDI-
29 VIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT
30 INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF
31 THIS ARTICLE.

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

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

55 (F) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND EIGHTEEN, THE TAX
56 SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL BE

1 DETERMINED AS FOLLOWS: (1) A TAX OF SIX-TENTHS OF ONE PERCENT ON THE
2 PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY RESI-
3 DENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR
4 RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOUSAND
5 DOLLARS, (2) A TAX OF SIX-TENTHS OF ONE PERCENT ON THE PORTION OF SUCH
6 INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF SEVEN
7 AND ONE-HALF PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT INDIVID-
8 UAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESIDENT
9 INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF
10 THIS ARTICLE.

11 (G) FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND NINETEEN AND THEREAFT-
12 ER, THE TAX SURCHARGES IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION
13 SHALL BE DETERMINED AS FOLLOWS: (1) A TAX OF ONE-HALF OF ONE PERCENT ON
14 THE PORTION OF THE NEW YORK CITY SOURCE ADJUSTED GROSS INCOME OF EVERY
15 RESIDENT INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR
16 PART-YEAR RESIDENT INDIVIDUAL, ESTATE OR TRUST, ABOVE ONE HUNDRED THOU-
17 SAND DOLLARS, (2) A TAX OF ONE-HALF OF ONE PERCENT ON THE PORTION OF
18 SUCH INCOME ABOVE TWO HUNDRED THOUSAND DOLLARS, AND (3) A SURCHARGE OF
19 SIX AND ONE-QUARTER PERCENT ON THE AMOUNT OF TAX DUE BY EVERY RESIDENT
20 INDIVIDUAL, ESTATE OR TRUST AND OF EVERY NONRESIDENT OR PART-YEAR RESI-
21 DENT INDIVIDUAL, ESTATE OR TRUST PURSUANT TO SECTION THIRTEEN HUNDRED
22 FOUR OF THIS ARTICLE.

23 (H) THE COMMISSIONER IN COOPERATION WITH THE COMPTROLLER SHALL MAIN-
24 TAIN SUCH RECORDS AS ARE NECESSARY TO DETERMINE WHAT PORTION OF THE
25 INCOME TAX REVENUES COLLECTED ON BEHALF OF A CITY IMPOSING TAXES PURSU-
26 ANT TO THIS ARTICLE ARE ATTRIBUTABLE TO THE EMERGENCY IN EDUCATION TAX
27 SURCHARGE ESTABLISHED BY THIS SECTION AND SHALL TRANSMIT SUCH FUNDS TO
28 SUCH CITY IN A MANNER THAT ALLOWS SUCH FUNDS TO BE CLEARLY SEGREGATED
29 FROM ALL OTHER FUNDS AND ACCOUNTED FOR SEPARATELY. SUCH CITY SHALL MAIN-
30 TAIN SUCH FUNDS IN A SEPARATE FUND TO BE CALLED THE EMERGENCY IN EDUCA-
31 TION TAX SURCHARGE REVENUE ACCOUNT AND SHALL PUBLISH MONTHLY REPORTS ON
32 SUCH FUND'S RECEIPTS, DISBURSEMENTS AND BALANCES IN A MANNER THAT WILL
33 ALLOW FOR A CLEAR UNDERSTANDING OF THE FINANCIAL CONDITION OF SUCH FUND
34 AND OF THE USES THAT HAVE BEEN MADE OF THE FUND'S RESOURCES. DISBURSE-
35 MENTS FROM THIS FUND SHALL BE IN ADDITION TO THE FUNDS THAT SUCH CITY IS
36 REQUIRED TO MAKE FOR EDUCATIONAL PURPOSES PURSUANT TO SUBDIVISION FIVE-B
37 OF SECTION TWENTY-FIVE HUNDRED SEVENTY-SIX OF THE EDUCATION LAW AND NO
38 DISBURSEMENTS FROM THIS FUND OR OTHER FINANCIAL TRANSACTIONS INVOLVING
39 THIS FUND SHALL BE TAKEN INTO CONSIDERATION IN ANY MANNER WHATSOEVER IN
40 DETERMINING SUCH CITY'S COMPLIANCE WITH THE REQUIREMENTS OF SUCH SUBDI-
41 VISION FIVE-B OF SECTION TWENTY-FIVE HUNDRED SEVENTY-SIX OF THE EDUCA-
42 TION LAW.

43 (I) ANY MONIES GENERATED BY THIS SECTION SHALL BE USED FOR PUBLIC
44 EDUCATION PURPOSES ONLY, INCLUDING HIRING AND RETAINING TEACHERS, TEACH-
45 ER TRAINING, DECREASING CLASS SIZES, AND EQUIPPING AND BUILDING FACILI-
46 TIES.

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

49 S 2589. EMERGENCY IN EDUCATION OPERATING AID. 1. IN ADDITION TO THE
50 GENERAL OPERATING AID AUTHORIZED BY ANY OTHER SECTION OF LAW, ANY CITY
51 IMPOSING AN EMERGENCY IN EDUCATION TAX SURCHARGE PURSUANT TO SECTION
52 THIRTEEN HUNDRED FOUR-E OF THE TAX LAW SHALL RECEIVE ADDITIONAL APPOR-
53 TIONMENTS OF PUBLIC MONEY FOR GENERAL OPERATING AID PURPOSES, TO BE
54 KNOWN AS EMERGENCY IN EDUCATION OPERATING AID, FOR SCHOOL YEARS COMMENC-
55 ING ON AND AFTER JULY FIRST, TWO THOUSAND FIFTEEN AS SET FORTH IN SUBDI-
56 VISIONS TWO, THREE, FOUR, FIVE, SIX AND SEVEN OF THIS SECTION. SUCH

1 APPORTIONMENTS SHALL BE IN ADDITION TO AND NOT IN LIEU OF THE APPORTION-
2 MENTS OF PUBLIC MONEY TO SUCH CITY FOR GENERAL OPERATING AID PURPOSES
3 MADE AVAILABLE TO SUCH CITY PURSUANT TO OTHER SECTIONS OF LAW AND
4 PROVIDED THAT THE AMOUNTS MADE AVAILABLE TO SUCH CITY PURSUANT TO SUCH
5 OTHER PROVISIONS OF LAW SHALL NOT IN ANY SCHOOL YEAR COMMENCING ON OR
6 AFTER JULY FIRST, TWO THOUSAND FIFTEEN BE LESS THAN THE AMOUNT MADE
7 AVAILABLE TO SUCH CITY FOR SUCH PURPOSES, WITH THE CATEGORIES OF AID TO
8 BE COVERED BY THIS REQUIREMENT TO BE DETERMINED BY THE COMMISSIONER,
9 DURING THE SCHOOL YEAR COMMENCING ON JULY FIRST, TWO THOUSAND FOURTEEN
10 TIMES A NUMBER DETERMINED BY DIVIDING THE CONSUMER PRICE INDEX FOR ALL
11 URBAN CONSUMERS FOR THE CALENDAR YEAR PRECEDING THE COMMENCEMENT OF THE
12 SCHOOL YEAR FOR WHICH SUCH APPORTIONMENT IS BEING PROVIDED BY THE
13 CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE TWO THOUSAND ELEVEN
14 CALENDAR YEAR.

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

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

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

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

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

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

45 8. THE MONEYS GENERATED BY THIS SECTION SHALL BE USED FOR PUBLIC
46 EDUCATION PURPOSES ONLY, INCLUDING HIRING AND RETAINING TEACHERS, TEACH-
47 ER TRAINING, DECREASING CLASS SIZES AND EQUIPPING AND BUILDING CLASS-
48 ROOMS.

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

51 5-C. A. IF THE TOTAL AMOUNT REQUESTED IN SUCH ESTIMATE IS NOT APPRO-
52 PRIATED, EACH CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABIT-
53 ANTS SHALL APPROPRIATE AN AMOUNT NOT LESS THAN THE GREATER OF:

54 (I) THE PRODUCT OF THE CITY SHARE IN THE BASE YEAR AND THE PUPIL
55 CHANGE INDEX, AS SUCH TERMS ARE DEFINED IN PARAGRAPH C OF THIS SUBDIVI-
56 SION, OR

1 (II) AN AMOUNT EQUAL TO THE AVERAGE PROPORTION OF THE TOTAL EXPENSE
2 BUDGET OF SUCH CITY, AS AMENDED, NOT INCLUDING THE PORTION OF SUCH
3 EXPENSE BUDGET EQUAL TO THE TOTAL STATE AND FEDERAL AID APPROPRIATED FOR
4 EDUCATION PURPOSES, APPROPRIATED FOR THE PURPOSES OF SUCH CITY SCHOOL
5 DISTRICT IN THE THREE FISCAL YEARS OF SUCH CITY IMMEDIATELY PRECEDING
6 THE YEAR FOR WHICH SAID ESTIMATE IS FILED.

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

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

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

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

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

27 S 5. This act shall take effect immediately.