Memorandum in Support

A Bill Submitted by the Governor
in relation to the
1999-2000 Executive Budget

In Accordance with Article VII of the Constitution

January 27, 1999

MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT (A) to amend the insurance law, in relation to the property casualty insurance security fund; (B) to amend the executive law, in relation to permitting the secretary of state to provide special handling for all documents filed or issued by the division of corporations and to permit additional levels of such expedited service; (C) to amend the state finance law, the executive law, the general business law and the real property law, in relation to merging the corporations, state records and uniform commercial code account and the licensing examination services account; and to repeal section 97-aa of the state finance law relating thereto; (D) to amend the executive law, in relation to the community services block grant program for distribution of funds; and chapters 728 of the laws of 1982 and 710 of the laws of 1983 amending the executive law relating to community services block grant programs, in relation to the effectiveness thereof; (E) to amend the executive law, the energy law and the state finance law, in relation to the state uniform fire prevention and building code and the state energy conservation construction code and the adoption of model codes; and to repeal certain provisions of the executive law and the state finance law relating thereto; (F) to amend the state finance law, in relation to financing consultant services for millennium compliance with state certificates of participation and providing for the repeal of such provisions upon expiration thereof; (G) to amend the retirement and social security law, in relation to employer contributions to the New York state and local retirement systems; (H) to amend the state finance law, in relation to providing for the administration of certain funds and accounts related to the 1999-2000 budget; to amend the state finance law, chapter 389 of the laws of 1997, relating to the financing of the correctional facilities improvement fund and the youth facility improvement fund, the private housing finance law, the education law, chapter 432 of the laws of 1997, relating to authorizing the authority to issue bonds or notes in one or more series for the purpose of funding project costs or making grants, loans or combinations thereof for community enhancement facilities projects, in relation to provisions necessary to implement the 1999-2000 budget and in relation to the duties of the office of general services and the division of the budget, to amend the state finance law, in relation to establishing the tobacco settlement fund, to repeal section 97-ddd of the state finance law relating to the federal revenue maximization contract fund, to repeal section 87 of the state finance law, relating to the farmland protection trust fund, to repeal section 123-h of the state finance law relating to the citizen and taxpayer suit fund, to repeal section 92-l of the state finance law relating to the homeless housing and assistance fund and the state aid and local assist- ance revenue withholding fund, to repeal section 97-m of the state finance law relating to the clean oceans fund, to repeal section 97-ii of the state finance law relating to the trust accounts for special anti-crime lottery, to repeal chapter 110 of the laws of 1983 relating to the city of Lackawanna debt service assistance reserve fund, to repeal section 92-t of the state finance law relating to the Niagara Falls sales tax fund, to repeal chapter 256 of the laws of 1984 relating to school district state aid reserve fund, to repeal chapter 139 of the laws of 1985 relating to school district state aid reserve fund, to repeal chapter 408 of the laws of 1988 relating to school district state aid reserve fund, to repeal subdivision 3 of section 227-a of the executive law relating to death benefits, to repeal section 2867 of the public health law relating to the nursing home development fund, to repeal section 97-k of the state finance law relating to the New York state supply support system revolving fund, to repeal section 5 of chap- ter 211 of the laws of 1990 relating to bond authorizations for the youth opportunity centers program and providing for the repeal of certain provisions upon expiration thereof; (End of Parts A-H) (I) to provide for the use of petroleum overcharge restitution funds; (J) to amend the state finance law and the environmental conservation law, in relation to the environmental protection fund and repealing subdivision 7 of section 92-s of the state finance law relating to the application of certain state assistance payments; (K) to amend the real property tax law, in relation to state reimbursement for forest tax exemptions; (L) to amend the environmental conservation law, in relation to pesticide product registration fees, and to amend chapter 67 of the laws of 1992 amending the environmental conservation law relating to pesticide product registration timetables and fees, in relation to the effectiveness thereof; (M) to amend the environmental conservation law, in relation to air pollution control programs and fees and to repeal subdivisions 6 and 7 of section 19-0319 of the environmental conservation law, relating to fees under the clean air act for air pollution sources and certain heavy duty clean fuel fleet requirements; (N) to amend the environmental conservation law, in relation to increasing the petroleum tank facility registration fee, to amend the navigation law, in relation to increasing the license fee imposed to operate a major facility, and to amend chapter 83 of the laws of 1995, amending the environmental conservation law and other laws relating to the registration of petroleum bulk storage facilities, in relation to the effectiveness thereof; (O) to provide for the utilization of utility assessment funds and the reporting of expenditures from such funds; (P) to amend the racing, pari-mutuel wagering and breeding law and the state finance law, in relation to funding for regulation of racing activities, and to repeal subdivision 2 of section 902 of the racing, pari-mutuel wagering and breeding law, relating to equine drug testing; (Q) to authorize the dormitory authority of the state of New York to provide funding for the Cornell university theory center; (R) making an appropriation in relation to authorizing the financing of local highway and bridge programs; to amend chapter 58 of the laws of 1998 relating to the authorization of local highway and bridge programs; and to amend chapter 637 of the laws of 1996 amending the transportation law and other laws relating to transportation, in relation to authorizing the financing of local highway and bridge programs; (End of Parts I-R) (S) to amend the executive law, in relation to reimbursement for community services for the elderly; (T) to amend the correction law, in relation to eligibility for the shock incarceration program; (U) to amend the correction law, in relation to reimbursing localities for the cost of low-level felony prisoners; (V) to amend the executive law, in relation to the interstate compact act; (W) to amend the correction law, in relation to the registration of sex offenders; (X) to amend the county law, in relation to the state aid for district attorney salaries; (Y) to amend the social services law, in relation to treatment of income and resources for legally responsible relatives; to re-institute the pharmacy co-pay requirement; to amend chapter 41 of the laws of 1992 amending the public health law and other laws relating to health care providers, in relation to extending the expirations thereof; to amend chapter 474 of the laws of 1996 amending the education law and other laws relating to rates for residential health care facilities, in relation to extending effectiveness of such rates; and to amend the public health law, in relation to provider assessments; and repealing certain provisions of the public health law relating thereto; (Z) to repeal chapter 174 of the laws of 1990, relating to establishing the youth opportunity program; (AA) to amend the mental hygiene law, the social services law, the not-for-profit corporation law, the business corporation law, the correction law, the insurance law, and the public health law, in relation to the provision of chemical dependence services, and to repeal articles 21, 23, sections 19.39, 31.15, 31.24, subdivision (d) of section 31.23 of the mental hygiene law and section 407 of the business corporation law relating thereto; (BB) to amend the vehicle and traffic law, in relation to reimbursement of county clerks for services rendered on the basis of a percentage of gross receipts; (CC) to amend chapter 533 of the laws of 1993, amending the vehicle and traffic law relating to the suspension of driver's licenses upon conviction of certain drug-related offenses, in relation to extending the effectiveness of such provisions; (DD) to amend the vehicle and traffic law, in relation to the mailing of suspension and revocation orders; (EE) to amend the vehicle and traffic law and the transportation law, in relation to sanctions for violations of out of service orders; (FF) to amend chapter 886 of the laws of 1972 amending the correction law and the penal law relating to prisoner furloughs in certain cases and the crime of absconding therefrom; to amend chapter 261 of the laws of 1987, amending chapters 50, 53 and 54 of the laws of 1987, the correction law, the penal law and other chapters and laws relating to correctional facilities; to amend chapter 55 of the laws of 1992, amending the tax law and other laws relating to taxes, surcharges, fees and funding; to amend chapter 339 of the laws of 1972, amending the correction law and the penal law relating to inmate work release, furlough and leave; to amend chapter 60 of the laws of 1994 relating to certain provisions which impact upon expenditure of certain appropriations made by chapter 50 of the laws of 1994 enacting the state operations budget; to amend chapter 554 of the laws of 1986, amending the correction law and the penal law relating to providing for community treatment facilities and establishing the crime of absconding from a community treatment facility; to amend chapter 3 of the laws of 1995 relating to the incarceration fee; to amend chapter 79 of the laws of 1989, amending the correction law and other laws relating to release and supervision of persons serving a definite sentence; to amend chapter 907 of the laws of 1984 amending the correction law, the New York city criminal court act and the executive law relating to prison and jail housing and alternatives to detention and incarceration programs; to amend 713 of the laws of 1988 amending the vehicle and traffic law relating to the ignition interlock device program, in relation to extending the expiration thereof; (GG) to amend the state finance law, in relation to establishing the New York state public safety communications account; (End of Parts S-GG) (HH) to amend the education law, in relation to the calculation and payment of state aid to school districts and boards of cooperative educational services, and repealing certain provisions of such law relating thereto; to amend the education law in relation to the review of preliminary building plans and specifications in certain school districts, the closure of school buildings, literacy programs, and the use of absentee ballots in small city school districts; to amend the local finance law, in relation to the financing of special act school districts; to amend chapter 58 of the laws of 1998, amending the education law and certain other laws relating to the calculation and payment of state aid to school districts and boards of cooperative educational services, in relation to making technical corrections thereto; to amend chapter 221 of the laws of 1998, relating to adjusting certain state aid payments to certain school districts, in relation to making technical corrections thereto; to amend chapter 82 of the laws of 1995 amending the education law and certain other laws relating to state aid to school districts and the appropriation of funds for the support of government, in relation to special education class size; to amend chapter 169 of the laws of 1994, relating to certain provisions related to the 1994-95 state operations, aid to localities, capital projects and debt service budgets, in relation to making technical corrections thereto; and to amend chapter 756 of the laws of 1992, relating to funding a program for workforce education conducted by the consortium for worker education in New York city, in relation to the consortium for workforce education; (II) to amend the real property tax law, the tax law, and the education law, in relation to improving the administration of the school tax relief (STAR) program, providing state assistance for improved real property tax administration, and restricting increases in school district tax levies; (JJ) to amend the education law, in relation to the administration of educational opportunity programs, the regents master plan for higher education, the general oversight of higher education; to repeal section 137 of chapter 82 of the laws of 1995 amending the education law and other laws relating to streamlining the regents higher education master planning process, and to repeal certain provisions of the education law relating thereto; (KK) to amend chapter 83 of the laws of 1995, amending the state finance law and other laws relating to block grants for family and children's services, in relation to extending the family and children's services block grant, to amend the social services law, in relation to fiscal sanctions, and to repeal subdivision 6 of section 153-i of the social services law relating to the maintenance of effort requirement for preventive services; (LL) to amend the executive law, in relation to clarifying certain sections related to housing and conciliation in the human rights law, providing the right to an action in a civil court following a determination of probable cause to any party to a housing discrimination complaint with complaint to be presented by an attorney provided by the division of human rights, providing for awards of attorney's fees in cases of housing discrimination only, permitting the assessment of civil fines and penalties in cases of housing discrimination only and permitting the courts to award punitive damages in cases of housing discrimination only; and to repeal certain provisions of such law relating thereto; (MM) to amend the education law and the mental hygiene law, in relation to establishing the research institute on addictions at the state university of New York; (End of Parts HH-MM) (NN) to amend the tax law and the administrative code of the city of New York, in relation to increasing the dependent exemption under the state and city personal income taxes; and to amend the tax law, in relation to expansion of the rate bracket of the article 22 personal income tax; (OO) to amend the tax law, in relation to eliminating the personal income tax filing requirement for residents having no tax liability because income does not exceed the New York standard deduction; (PP) to amend the tax law and the administrative code of the city of New York, in relation to the income tax liability of spouses filing joint tax returns and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto; (QQ) to amend the tax law, the general city law and the public authorities law, in relation to sales and compensating use taxes on certain utility services imposed by article 28 of the tax law and pursuant to the authority of article 29 thereof; repealing certain provisions of the tax law relating to providing transition rules for taxpayers removed from taxation under section 186 of such law; and providing for the repeal of certain provisions upon expiration thereof; (RR) to amend the tax law, in relation to providing a transitional basis under the real property tax law for certain moveable machinery and equipment, and in relation to reduction of the rate of the alternative minimum tax under the article 9-A corporation franchise tax, to increase of the credit under such tax for investment in qualified emerging technology companies; (SS) to amend the tax law, in relation to establishing a credit, in articles 9, 9-A, 22, 32 and 33 thereof, for increased urban employment; (TT) to amend the tax law and the administrative code of the city of New York, in relation to exclusion under the article 9-A franchise tax and state and city income taxes of gain on the sale of New York capital assets; (UU) to amend the tax law, in relation to reducing the basic tax imposed upon banking corporations under article 32 thereof, the tax on entire net income imposed upon insurance corporations under article 33 thereof, and the limitation on tax applicable for certain insurance corporations under article 33 thereof, and to repeal certain provisions of the tax law relating to the calculation of franchise taxes by the state insurance fund; (VV) to amend the public health law and the social services law, in relation to provider of services assessments; (WW) to amend the tax law, in relation to property tax relief for certain agricultural land; (XX) to amend the tax law, in relation to establishing a tax credit for certain agricultural cooperative corporations subject to the tax imposed under section 185 of such law, to eliminating the fixed dollar minimum tax under article 9-A of such law for certain homeowners associations, to eliminating the minimum tax imposed under article 13-A of such law, to calculating the amount of tax required to be prepaid for purposes of the prepayment of sales tax on cigarettes; and to extending section 1142-A of such law, which sets forth special requirements relating to the service of providing parking, garaging or storing for motor vehicles; (YY) to amend the tax law and chapter 1013 of the laws of 1962 amending the tax law relating to the imposition of a tax on the transfer of estates of certain decedents, in relation to conforming the estate and generation skipping transfer tax laws to provisions of the internal revenue code; and to repeal section 954-c of the tax law, section 38 of part A of chapter 56 of the laws of 1998 amending the tax law and other laws relating to implementing the state 1998-1999 fiscal plan, and section 2057 contained in section 2 of chapter 1013 of the laws of 1962 amending the tax law relating to the imposition of a tax on the transfer of estates of certain decedents, in relation to an exclusion from gross estate for certain family-owned business interests; (ZZ) to amend the tax law and the administrative code of the city of New York, in relation to extending the tax rate reductions under the New York state real estate transfer tax and the New York city real property transfer tax for conveyances of real property to existing real estate investment trusts; (AAA) to amend chapter 166 of the laws of 1991, amending the tax law and other laws relating to taxes, in relation to the expiration of certain provisions contained therein, and to amend the vehicle and traffic law, in relation to making certain technical corrections and to repeal subdivision 8 of section 1809 of the vehicle and traffic law, relating to the expiration of the provisions of such section; (BBB) to amend the tax law, in relation to the instant cash and quick draw lottery games; to amend chapter 2 of the laws of 1995 amending the tax law and other laws relating to a new lottery game and the expiration thereof, in relation to the effectiveness of such chapter; and to repeal section 152 of chapter 166 of the laws of 1991 amending the tax law and other laws relating to taxes

PURPOSE:

This bill contains various provisions needed to implement the 1999-2000 Executive Budget.

SUMMARY OF PROVISIONS, EXISTING LAW AND STATEMENT IN SUPPORT:

The provisions of this bill, the relevant existing law and the justification for the proposed provisions are presented together in this section. Moreover, this presentation, like the bill itself, mirrors the functional organization of the appropriation bills to which this bill's provisions are related.

GENERAL GOVERNMENT

Part A. Property/Casualty Insurance Security Fund. Effective April 1, 1999, the bill extends until July 1, 2000, provisions relating to advances permitted to be made by the Superintendent of Insurance from the Property/Casualty Insurance Security Fund, for the purpose of rehabilitation of a domestic property/casualty insurer. The bill would permit the use of the Fund`s assets, under precise circumstances, to save a financially troubled insurer which the court has determined has strong potential for being successfully rehabilitated. The successful rehabilitation of an insurer, prior to insolvency, prevents a disruption of the insurance market, permits insurers to continue coverage in the voluntary market and preserves the assets of the Property/Casualty Insurance Security Fund which would otherwise be disbursed if the insurer were placed in liquidation.

Part B. Expedited Department of State (DOS) services to business. Effective April 1, 1999, the bill creates two new levels of expedited filing and record search services offered by DOS and establishes additional fees for these new service options: “same day expedited handling,” which guarantees same day completion of a request; and “two hour priority handling," which guarantees completion of a request within two hours on the same day as the day of the request. For same day service a new $75 surcharge would be charged and for two hour service a $150 surcharge would apply.

Additionally, the bill replaces references to the “Bureau of Corporations” with the correct designation “Division of Corporations.”

In many instances businesses and lawyers require searches or filings to be performed on an expedited basis in order to complete a business transaction. In recognition of this need, the Executive Law currently permits requests for such services to be submitted under “special handling.” These services are completed within twenty-four hours, and a $25 surcharge is imposed for them.

However, only services related to corporations are currently permitted to be completed under “special handling.” This bill will permit “special handling” for all services provided by the Division of Corporations and allow entities other than corporations to request services under “special handling.” The current fee for “special handling” is not increased by this proposal.

Additionally, filers frequently need to have their requests for services completed on an even more timely basis. This bill, therefore, provides for two higher levels of special handling to meet the needs of the legal and business community. Allowing the DOS to offer expedited services and recover associated costs meets the needs of corporations for swift completion of time-sensitive business transactions.

The levels of expedited services created by this bill parallel the current system offered by the State of Delaware; however, the fees proposed by this bill would be substantially lower than those charged by the Delaware Department of State. Delaware charges $100 and $500 for same day and 2 hour service, respectively.

Part C. Consolidation of two Department of State revenue accounts. Effective April 1, 1999, this bill amends various sections of the State Finance Law to create a Business and Licensing Services account and amends various sections of the Executive Law, General Business Law and the Real Property Law to reflect this account.

State Finance Law sections 97-aa and 97-y established the Licensing Examination Service Account and the Corporations, State Records and Uniform Commercial Code Account. Various other provisions of the State Finance Law, Executive Law, General Business Law and Real Property Law provide authorization for funds and for the deposit of revenue generated by the occupational licensing activities of the Department of State.

To simplify administrative procedures and provide fiscal flexibility, these two accounts will be replaced by the Business & Licensing Services Account.

Part D. Distribution of Community Services Block Grant (CSBG) funds. Effective April 1, 1999, the bill makes permanent the provisions of law relating to the Community Services Block Grant program that would otherwise sunset on September 30, 1999.

The CSBG program, which is administered by the Department of State, is a federally funded anti-poverty program that provides families and individuals with the resources necessary to achieve self-sufficiency. The formula used to distribute these funds has been authorized annually since 1982. Making the distribution formula permanent will eliminate the annual uncertainty that grantees confront over their annual apportionment from the Federal grant.

Part E. New Fire Prevention and Building Code and Energy Conservation Code. Effective immediately upon enactment, the bill authorizes the Secretary of State to adopt, by regulation, a new New York Fire Prevention and Building Code based upon a national or international model code or codes and a new New York Energy Conservation Code based upon the standards for residential and commercial buildings contained in the Model Energy Code prepared by the International Code Commission.

Prior to the adoption of either of these codes, the Secretary must certify through publication in the State Register that they meet certain standards. The new Fire Prevention and Building Code must substantially meet or exceed the level of protection afforded under the current code. The Secretary must also certify that adequate training has been provided to State and local officials responsible for the administration and enforcement of the provisions of such code. The new New York Energy Conservation Code must be cost-effective with respect to building construction in the State.

The State Fire Prevention and Building Code Council (Code Council) is authorized to revise the new fire prevention and building code for any subsequent amendments developed to the base model code, and the Code Council is authorized to update the energy code with the consultation of the New York State Energy Research and Development Authority.

A "transitional technical advisory committee," appointed by the Secretary of State, may develop criteria for adding or deleting elements to the base fire prevention and building code. This committee would sunset on January 1, 2000.

Local governments that were enforcing the State Code as of July 1, 1998 are prohibited from passing that responsibility to the Department of State (i.e., opting out), and are required to petition the Code Council before imposing more restrictive energy efficiency standards within their jurisdictions. In addition, local governments must notify the Secretary of State within 120 days of the adoption of the new New York Fire Prevention and Building Code or a new Energy Conservation Code of their intent to retain some, all, or none of their local code standards that exist as of the date this bill becomes a law.

The bill repeals section 54-g of the State Finance Law and adds a new section 54-g which provides financial assistance of up to $3 million to local governments for support of specific activities related to the fire prevention and building code and the energy code.

The current Fire Prevention and Building Code was enacted in January of 1984. Under the existing law, the Building Codes Council has the sole authority to modify the existing code. The Department of State, through the Uniform Fire Prevention and Building Code, establishes uniform standards for fire prevention and building construction outside of New York City. Localities administer and enforce the Code unless they opt out. If a locality opts out, then the county or the Department of State administers the Building Code in that locality.

Article 11 of the New York State Energy Law authorizes the State Fire Prevention and Building Code Council to promulgate, administer, amend and provide training and technical support for the Energy Code. Chapter 292 of the Laws of 1998 transferred the powers and duties related to the State Energy Conservation Code from the Division of Housing and Community Renewal to the Department of State.

New York is one of only two states that writes its own building code. The current Uniform Fire Prevention and Building Code is the work of many authors and its methodology and format are outdated and difficult to use. Because the current code is unique and less uniform than its "uniform" title would suggest, it may discourage the construction of new facilities and the creation of new jobs for the people of New York State by adding unnecessary costs to construction. It may also serve as a significant obstacle to the renovation of older buildings, preventing many cities from improving deteriorated downtown structures.

Model codes such as those of the Building Officials and Code Administration and National Fire Prevention Association are available for regulatory use by state and local government jurisdictions exercising authority over the construction of buildings. These codes are established and updated on a regular basis to ensure that they are consistent with new developments in the construction industry, in terms of both construction techniques and new materials. At a time when major changes in international building codes and standards are occurring, a public policy to adopt a model code would enable New York to join the majority of states, which use a model code, and eliminate a competitive disadvantage which may impair the State's ability to attract new jobs. All of this can be undertaken without compromising the safety of those who use the structures, or of firefighters if their services are required.

Like the building code, the New York Energy Conservation Code has become outdated. The Model Energy Code, which is used in the majority of states, utilizes newer technology and provides for greater energy efficiency standards.

Part F. Use of Certificates of Participation (COPs) for Year 2000 (Y2K) compliance. Effective April 1, 1999 and expiring on March 31, 2000, the bill amends the State Finance Law to add a new subparagraph (a) to Section 66-b specifically authorizing the use of COPs to finance consultant services needed to make critical State computer systems millennium-compliant, and to make a technical change in Section 66-c regarding security for COPs financing.

Currently, the State Finance Law authorizes the use of Certificates of Participation for consultant services if they are part of a larger acquisition involving computer hardware and/or software. Current law does not, however, specifically permit the use of COPs to finance “stand-alone” consultant services.

Ensuring that the State’s critical computers can accommodate the Year 2000 date change is the State’s top technology priority. While many Year 2000 projects can be funded under existing statutory provisions, many projects require the use of consultants only to analyze, re-write and test millions of lines of computer code. Because these projects do not involve the purchase of hardware and software, they cannot currently be funded with COPs. The proposed amendments to the State Finance Law would complete the State’s Year 2000 financing plan by allowing these expenses to be funded with Certificates of Participation. Further, because the Year 2000 issue is a unique problem, the proposed amendments to the State Finance Law would sunset on March 31, 2000.

Part G. Administrative expenses of the New York State and Local Retirement Systems. Effective immediately, the bill reflects a joint initiative of the State Comptroller and the Executive to reform billing policies of the New York State and Local Retirement Systems (NYSLRS).

Sections 23 and 323 of the Retirement and Social Security Law are amended to change the deficiency contribution requirements of new employers from the current antiquated and complicated formula which sometimes results in excessive payments to a simple and sound twenty-five year level dollar amortization schedule, and to authorize payment of NYSLRS administrative expenses from pension fund reserves. Changing the current law requirement of billing pension system administrative costs to the State and local governments will eliminate a financial burden on taxpayers.

Part H. Miscellaneous fiscal provisions. This bill provides statutory authorization necessary for the administration of funds/accounts included in the 1999-2000 Executive Budget. The bill authorizes temporary loans to specific funds/accounts and provides for the deposit of certain revenues. In addition, the bill continues or extends various provisions of Chapter 57 of the Laws of 1998 in relation to capital projects and certain certifications; authorizes the issuance of certificates of participation; increases existing bond caps for various capital programs; creates a Tobacco Settlement Fund; and amends the State Finance Law in relation to certain provisions related to issuing general obligation bonds and the Debt Reduction Reserve Fund. The bill also provides the statutory authorization for the Office of General Services and the Division of Budget to carry out certain administrative and programmatic functions. The bill also repeals statutory authorization relating to dormant funds.

Specific provisions of the bill are as follows:

- section 1 of the bill authorizes specific fund and accounts to receive temporary loans for the 1999-2000 fiscal year;

- section 2 authorizes the transfer of moneys between accounts in the Hudson River Valley Greenway fund;

- section 3 authorizes reimbursement to the General Fund for administrative costs related to the operation of the Correctional Facilities Improvement Fund;

- section 4 amends the State Finance Law to authorize the deposit into the General Fund of the uncollected balance of the seven million dollars in delinquent surrogate court tax proceedings fees through 1999-2000;

- section 5 authorizes the deposit of funds into the School Tax Relief Fund (STAR);

- section 6 amends the State Finance Law to create the Federal Revenue Maximization Contract Fund for the Department of Health;

- section 7 authorizes Capital Projects Funds appropriation transfers and requires certification of certain capital spending by the Comptroller and by designated State authorities and agencies;

- sections 8 through 11 authorize the Comptroller to deposit reimbursements for certain capital spending from new capital appropriations contained in various chapters of the Laws of 1996 through 1999 into the Capital Projects Fund;

- section 12 authorizes the Comptroller to determine the process and which moneys may be used to make rebates to the Federal government;

- section 13 authorizes the issuance of certificates of participation for financing various portions of the 1999-2000 budget;

- section 14 authorizes the issuance of certificates of participation for financing portions of the 1999-2000 budget for the Office of Children and Family Services, the Office of Temporary and Disability Assistance, and the Department of Labor;

- section 15 increases the bonding limit for correctional facilities to ensure that the State is reimbursed for all Department of Correctional Services capital expenditures from the Correctional Facilities Capital Improvement Fund;

- section 16 increases the bond cap for the Office of Children and Family Services. This is consistent with the agency's recommended appropriations from the Youth Facility Improvement Fund and is necessary to reimburse construction costs;

- section 17 extends previous authorizations in section 24 of Chapter 57 of the Laws of 1998 regarding disbursements for hazardous waste site remediation projects;

- sections 18 and 19 amend paragraphs (a) of subdivisions 2 and 5 respectively of section 47-e of the Private Housing Finance Law, as amended by Chapter 57 of the Laws of 1998, to continue the issuance of bonds and notes for housing programs;

- section 20 amends Chapter 432 of the Laws of 1997 to reduce the amount of bonds authorized to be issued under the Community Enhancement Facilities Assistance Program;

- sections 21 and 22 amend the State Finance Law to increase the authorization to issue variable rate general obligation bonds and make such authorization permanent;

-- section 23 amends the Public Authorities Law to authorize alternative payment dates for bonds issued for City University of New York facilities;

-- section 24 amends the State Finance Law to make certain technical amendments to the Clean Water/Clean Air Fund, relating to certifications of debt service requirements;

-- section 25 amends the authorized purposes of Section 97-rrr of State Finance Law, the Debt Reduction Reserve Fund, to permit the payment of cash for previously authorized bond-financed projects;

-- sections 26 through 39 repeal the statutory authorization for the following funds: section 87 of the State Finance Law, relating to the Farmland Protection Trust Fund, section 123-h of the State Finance Law relating to the Citizen and Taxpayer Suit Fund, section 92-l of the State Finance Law relating to the Homeless Housing and Assistance Fund, section 97-m of the State Finance Law relating to the Clean Oceans Fund, section 97-ii of the State Finance Law relating to the trust accounts for special anti-crime lottery, Chapter 110 of the Laws of 1983 relating to the City of Lackawanna Debt Service Assistance Reserve Fund, section 92-l of the State Finance Law relating to the State Aid and Local Assistance Revenue Withholding Fund, section 92-t of the State Finance Law relating to the Niagara Falls Sales Tax Fund, Chapter 256 of the Laws of 1984 relating to the School District State Aid Reserve Fund, Chapter 139 of the Laws of 1985 relating to the School District State Aid Reserve Fund, Chapter 408 of the Laws of 1988 relating to the School District State Aid Reserve Fund, section 227-a(3) of Executive Law relating to the Special Education Fund, section 2867 of the Public Health Law relating to the Nursing Home Development Fund, and section 97-k of the State Finance Law relating to the New York State Supply Support System Revolving Fund;

-- section 40 eliminates authorization for the Empire State Development Corporation to raise bond proceeds to reimburse spending for the Youth Opportunity Centers Program;

-- section 41 amends the State Finance Law to create the Tobacco Settlement Fund; and,

-- section 42 makes the act effective April 1, 1999.

The State Finance Law requires that the transfer of moneys between different funds and/or accounts be authorized in law. Statutory authorization is also required for funds and/or accounts to receive temporary loans from the State Treasury. Similar provisions were enacted to implement the 1998-1999 budget and need to be extended to implement the 1999-2000 budget.

Legislation is enacted each year to authorize transfers and loans that are assumed in the Financial Plan and which do not have permanent statutory authorization. This bill is required to implement the 1999-2000 budget and to maintain the balance of the State's Financial Plan by ensuring that required reimbursements, certifications, and disbursements are accomplished. The provisions of this bill relating to the Division of Budget's and the Office of General Services' performance of basic administrative and programmatic functions have been enacted in prior years and are needed to implement the Budget this year.

TRANSPORTATION, ECONOMIC DEVELOPMENT and ENVIRONMENTAL CONSERVATION

Part I. Funding energy efficiency and conservation programs. These sections direct the Comptroller to transfer $3 million of Petroleum Overcharge Restitution (POCR) moneys contained in the Federal operating grants fund to the statewide energy improvement account on or before March 31, 2000. The State Comptroller will transfer these moneys to the New York Power Authority (PASNY), and PASNY shall then transfer $3 million to New York State's General Fund. The bill also ensures that the use of these funds does not contravene existing PASNY bond covenants or contractual obligations.

POCR funds became available to New York State in the 1980s as a result of Federal court settlements with energy producers who were overcharging consumers. This bill allows these moneys to be expended on energy efficiency and conservation purposes which will benefit New York State consumers. In addition, the State will realize additional revenue as a result of this transaction.

Part J. Environmental Protection Fund (EPF). This bill amends the Environmental Protection Act of 1993 to create a new EPF program category of State parks and lands infrastructure and stewardship, to expand the purposes for which the EPF can be used, and to make the funding eligibility requirements for certain municipal landfill closure projects under the EPF consistent with the funding eligibility requirements of the Clean Water/Clean Air Bond Act of 1996.

Effective April 1, 1999, this bill:

- amends section 92-s of the State Finance Law, which established the EPF, to create a new title 14 entitled "State Parks and Lands Infrastructure and Stewardship". The new section defines State parks and lands infrastructure and stewardship projects and makes such projects eligible for funding from the EPF. These projects include activities related to preserving, improving or rehabilitating State parks and lands resources;

- establishes the Hudson River Estuary Trust Account that will support the implementation of the Hudson River Estuary Management Plan;

- authorizes the EPF to be used for certain additional purposes, including assessment of natural resource damages in the Hudson River, the Forest Property Tax Reimbursement Program, implementation of the Hudson

River Estuary Management Plan, county Soil and Water Conservation District activities, and the Hudson River Park project;

-- makes the Albany Pine Bush Preserve Commission permanently eligible to receive funding from the EPF; and,

-- increases the reimbursement rate for EPF landfill closure grants from 75 percent to 90 percent for municipalities with populations of fewer than 3,500, consistent with funding eligibility requirements under the 1996 Clean Water/Clean Air Bond Act.

The Environmental Protection Act of 1993 established the EPF, a dedicated fund comprising revenues from: (1) proceeds from the sale/lease of certain State lands; (2) annual service charges on conservation license plates; (3) proceeds from the settlement of a lawsuit brought by the State for an oil spill on Long Island; (4) interest earnings; and (5) a portion of the State's revenues from the Real Estate Transfer Tax (RETT). Existing law requires the deposit of $112 million annually in RETT revenues to the EPF.

Under current law, the EPF may be used for the following purposes, pursuant to appropriation:

-- non-hazardous municipal landfill closure projects;

-- municipal waste reduction and recycling;

-- secondary materials marketing grants;

-- local solid waste management planning grants;

-- municipal park, recreation and historic preservation projects;

-- waterfront revitalization plans and projects;

-- coastal rehabilitation projects;

-- open space protection projects;

-- the Long Island Pine Barrens Commission, the Albany Pine Bush Preserve Commission and the Long Island South Shore Estuary Reserve;

-- biodiversity stewardship and research;

-- county agricultural and farmland protection plans and projects;

-- non-point source water pollution control and abatement projects; and,

-- development of the Pesticide Database Registry.

Existing law limits the use of the EPF for the Hudson River Park project to recreational purposes only and does not allow EPF funds to be directed to a public authority, public benefit corporation or not-for-profit corporation, including the Hudson River Park Trust, for the purpose of developing the Park.

The EPF is currently authorized to reimburse up to 75 percent of the total costs for eligible landfill closure projects in municipalities with populations of fewer than 3,500. However, the Clean Water/Clean Air Bond Act provides reimbursement for up to 90 percent for this same type of project.

Permanent authorization of funding from the EPF for State parks and lands infrastructure and stewardship projects will make clear the State's commitment to the proper care and management of its lands and parks. These investments will enhance the public's enjoyment of and access to New York's unparalleled environmental and recreational assets.

Expansion of the programs eligible for funding from the EPF to include Hudson River Estuary Management Plan projects, county Soil and Water Conservation District activities, the Forest Property Tax Reimbursement Program, the Albany Pine Bush Preserve Commission and the Hudson River Park ensures continued support for important environmental efforts that will preserve water supplies and protect valuable shorelines and water bodies, including the Hudson River.

This bill eliminates existing inconsistencies between landfill closure grants made from the EPF and the 1996 Clean Water/Clean Air Bond Act. Specifically, the bill increases the reimbursement rate, from 75 percent to 90 percent, for EPF landfill closure grants made to communities with populations of fewer than 3,500, consistent with grants made from the Bond Act.

Part K. Forest property tax exemptions. Effective April 1, 1999, this bill establishes a new section 480-b of the Real Property Tax Law (RPTL) which authorizes the State Board of the Office of Real Property Services to reimburse local governments which suffer a loss of greater than one percent of their property tax revenues as a result of property tax exemptions provided under sections 480 and 480-a of the RPTL.

Currently, RPTL sections 480 and 480-a establish tax exempt programs for owners of land which is being devoted to forest crop production.

Although forest tax exemptions benefit both the forest landowner and the general public, they can be a fiscal burden on the local governments in which the exempted lands are located. This bill would address that issue by providing State assistance payments to those local governments which experience a greater than one percent reduction in their tax base due to the forest tax exemptions under Sections 480 and 480-a of the RPTL.

Part L. Pesticide registration fees. Effective April 1, 1999, this bill permanently extends the requirement for the Department of Environmental Conservation (DEC) to review applications to register pesticide products within specific time frames and continues registration fees at current levels.

Under existing law, DEC is required to review applications for pesticide product registration within specific time tables and is authorized to charge a pesticide product registration fee of $100 or $300 per product, depending upon the applicant's gross annual sales. Effective July 1, 1999, application review requirements are to expire and the registration fee is to revert to $50 for each pesticide proposed to be registered.

Current pesticide product registration review time frames ensure that the review of applications to register pesticides with new active ingredients or with major new use patterns are completed in a timely manner without compromising the scientific integrity of such reviews. Further, the time frames provide greater certainty to pesticide manufacturers about which products can be used in New York, and, at the same time, allow adequate time for a thorough review by DEC.

The revenues generated by a $50 per product registration fee that would take effect under existing law after July 1,1999 would be inadequate to support the Department's cost to conduct an effective and responsive pesticide regulatory program. A reduction in the current fees, which are comparable to those charged in other states, would require significant reductions in pesticide program staff which would make it difficult for DEC to complete reviews in a timely manner.

Part M. Clean Air Operating Permit fees. This bill amends the Environmental Conservation Law (ECL) to increase Clean Air Operating Permit fees from the scheduled fee of $33.20 per ton to $48 dollars per ton of regulated air contaminants and eliminate the requirement that a Clean Fuel Fleet program be implemented for heavy duty vehicles. These changes are necessary to provide the State with sufficient resources to ensure successful implementation of the federally-mandated Title V facility permit program, and to allow the State to adopt the most cost-effective measures to reduce air pollution from mobile sources.

Effective April 1, 1999, this bill amends the ECL to:

- raise the annual fee on regulated air contaminants from the current maximum of $25 per ton as adjusted annually by the Consumer Price Index (CPI) to a flat fee of $48 per ton without an annual CPI adjustment. The fee is currently $32.64 per ton and would grow to $33.20 per ton in 1999 under existing law; and,

- repeal the requirement that the Department of Environmental Conservation (DEC) develop a Clean Fuel Fleet program for heavy duty vehicles beginning with the model year 2000 and, instead, allow DEC to substitute an alternative program which will produce equivalent air pollution reductions.

The 1990 Federal Clean Air Act amendments require states to establish programs to reduce air pollution from stationary (e.g., factories, power plants) and mobile sources (vehicles). The primary component of the stationary source pollution reduction requirement is the Title V Operating Permit program for facilities which emit large amounts of air pollution.

Under the Federal act, states are required to finance all direct and indirect costs of the permit program from permit fees and must demonstrate to the Federal Environmental Protection Agency (EPA) that the fee generates sufficient resources to support the program costs.

New York's failure to comply with the Clean Air Act requirements could result in the application of sanctions by the EPA, including the withholding of Federal highway funds for affected nonattainment areas (e.g., over $1 billion in the New York City area) and a 2 for 1 air pollution emissions offset in nonattainment areas for new or modified sources of emissions. This would result in a virtual ban on industrial expansion and would place New York State at a severe competitive disadvantage with other states.

The ECL sets forth New York State's Clean Air programs, including those needed to meet Federal Clean Air requirements. Among other provisions, the ECL institutes a Title V Operating Permit program for stationary sources of air pollution, establishes a maximum $25 fee per ton of regulated air contaminants as adjusted by the Consumer Price Index (CPI) to support the costs of the Operating Permit program, and requires the issuance of all permits within three years.

Existing State law also requires the adoption of a Clean Fuel Fleet program for heavy duty vehicles beginning in model year 2000. Under this program, public and private operators with ten or more heavy duty vehicles that are capable of being centrally fueled must begin purchasing clean fueled vehicles in 2000. From 30 percent to 50 percent of the vehicles purchased by an operator in 2000 must be alternatively fueled. This requirement grows from 50 percent to 70 percent in 2002. The program must be implemented in areas that do not meet existing clean air standards, including New York City, and the counties of Nassau, Suffolk, Westchester, and Rockland as well as parts of Orange County. Further, the ECL required DEC to issue a report by December 1, 1998 on the costs and benefits of a heavy duty Clean Fuel Fleet program.

This bill is necessary to provide sufficient resources to ensure the State's successful implementation of the federally-mandated Clean Air operating permit program. Under the Federal Clean Air Act, states are required to finance all costs of the operating permit program from permit fee revenues. The cost of New York State's program in 1999-00 is projected to exceed program revenue by approximately $5 million. Accordingly, a fee increase from the scheduled 1999 level of $33.20 per ton to $48 per ton is required to finance the program's costs. Further, this bill is necessary for New York State to make the mandatory demonstration to the EPA that it has adequate resources to implement the Title V operating permit program, a demonstration that could not be made without the fee increase.

The Federal Clean Air Act does not require states to implement heavy duty Clean Fuel Fleet programs. The report on the costs and benefits of a heavy duty Clean Fuel Fleet program prepared by DEC concluded that there would be little benefit to such a program and that the costs of alternative programs to achieve comparable pollution reductions would be significantly less. Consequently, there is no justification for imposing such a costly requirement on operators of heavy duty vehicle fleets.

Part N. Environmental Protection and Spill Compensation Fund. This bill increases the per barrel license fee charged on petroleum imports from a maximum of four cents to eight cents, and doubles Petroleum Bulk Storage (PBS) facility registration fees to ensure that the Environmental Protection and Spill Compensation Fund will have the necessary resources to finance the cleanup of oil spills and inspections of petroleum tank facilities.

Effective April 1, 1999, this bill:

a. increases the per barrel license fee on non-transshipped oil (i.e., imported into the State for use solely within the State) that is deposited into the Environmental Protection and Spill Compensation Fund from the current fee of up to four cents to up to eight cents. The per barrel fee on transshipped oil (one and one half cents) is not increased and the license fee surcharge of four and one quarter cents (which is in addition to the per barrel fee) is also not increased;

b. increases the existing facility registration fee schedule from the current range of $50 to $250 for five years to $100 to $500 for five years, according to facility size; and,

c. permanently provides for the deposit of revenue from registration fees into the Environmental Protection and Spill Compensation Fund.

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Currently, section 174 of the Navigation Law establishes a fee of eight and one quarter cents per barrel on non-transshipped oil. This amount comprises: (1) a four cent license fee which is deposited into the Environmental Protection and Spill Compensation Fund to finance the clean up costs of approximately 10,500 oil spills per year and petroleum facility registrations and inspections; and (2) a four and one quarter cent fee surcharge which is deposited into the Hazardous Waste Remedial Fund to offset debt service costs on the 1986 Environmental Quality Bond Act (EQBA) hazardous waste bonds. Such section also establishes a fee of one and one half cents per barrel on transshipped oil (i.e., oil brought into the State for immediate export) pursuant to legislation enacted in 1998. That legislation eliminated the four cent license fee (effective September 1998) and reduced the four and one quarter cent fee surcharge to one and one half cents per barrel (effective September 1999). Effective September 1999, this section requires the Oil Spill Fund to reimburse the Hazardous Waste Remedial Fund for the foregone revenue resulting from the reduction of the fee surcharge to one and one half cents.

Section 17-1009 of the Environmental Conservation Law establishes PBS facility registration requirements and authorizes the Department of Environmental Conservation (DEC) to assess a facility registration fee. The rules and regulations adopted pursuant to the statute specify a $250 maximum fee per five year PBS facility registration cycle as follows:

Combined Storage Capacity at Facility	5-Year Fee
From 1,101 to 2,000 gallons	$50 per facility
From 2,001 to 4,999 gallons	$150 per facility
From 5,000 gallons to 400,000 gallons	$250 per facility

Section 17-1009 of the Environmental Conservation Law, which provides for all registration fees collected to be deposited into the Environmental Protection and Spill Compensation Fund, is scheduled to expire on April 1, 2001.

Increasing the per barrel license fee and facility registration fee will provide additional revenues to offset a projected 1999-00 deficit in the Oil Spill Fund of $10 million to $15 million and will provide for the Fund's ongoing operational requirements.

The Oil Spill Fund is supported by the four cent license fee, petroleum facility registration fees and cost recoveries/penalties. The license fee generates $15 million of the $20 million in annual Fund revenues with the balance primarily from cost recoveries. The deficit is due to a structural imbalance where costs ($30-$35 million) exceed revenues by $10-$15 million annually. Cash balances, which allowed the Fund to remain solvent in previous years, are exhausted for this year and the Fund is currently in a deficit status.

The PBS Program, established in 1985, serves an important environmental protection function through its tank registration and inspection efforts. Tank registration fees are assessed on a five year cycle and have not been increased since 1985. Doubling the registration fees for petroleum storage tanks will enhance the State’s ability to protect the environment and mitigate funding deficiencies for those efforts. Moreover, the Department of Environmental Conservation recently calculated New York’s average annual fees at $17 per tank. This fee is far below that of other states and the national average of $62 per tank per year.

These measures address the concerns raised by the State Comptroller, who administers the Oil Spill Fund and has called for a resolution to the financial crisis facing the Fund.

Part O. Utility assessments. This bill authorizes the New York State Energy Research and Development Authority (NYSERDA) to obtain revenue for certain of its programs through assessments against gas corporations and electric corporations, pursuant to section 18-a of the Public Service Law, and specifies reporting requirements for several State agencies (the departments of Health, Economic Development, Environmental Conservation, Agriculture and Markets, the Consumer Protection Board, and the Office of Parks, Recreation and Historic Preservation) which utilize assessment revenues to finance certain program activities related to the regulation of public utilities, pursuant to section 18-a of the Public Service Law. These provisions are scheduled to expire on March 31, 1999, pursuant to Chapter 58 of the Laws of 1998.

Effective April 1, 1999, NYSERDA is authorized to finance its Research, Development and Demonstration Program and its Policy and Planning Program with revenues from assessments against gas corporations and electric corporations. The State agencies receiving utility assessment funding under Section 18-a of the Public Service Law must report the following information to the Director of the Division of the Budget, Chairs of the Senate and Assembly Energy Committees, the Senate Finance Committee and the Assembly Ways and Means Committee on the first of February each year:

- A list of all chargeable activities conducted during the previous fiscal year;

- A list of all regulatory proceedings in which the agency participated related to the regulation of utilities; and,

- A list of all the positions involved in these activities and the percentage of chargeable time.

Absent this legislation, NYSERDA could not continue operating necessary energy programs in the 1999-2000 State Fiscal Year. The reporting requirements are necessary to effectively monitor the spending of utility assessment revenues, ensuring that the assessments are accurate and used solely for the programs specified in the budgets of each agency, and that such spending is appropriate and consistent with the responsibilities of each agency under the Public Service Law.

Part P. Financing racing regulation activities. This bill increases the take out on exotic and super exotic bets by 2 percent to provide a financing mechanism to support activities of the Racing and Wagering Board that are related to the regulation of horse racing. Presently, these activities are supported by general taxpayer dollars. Take out is the percentage of the total betting handle that is not returned to the bettor as winnings, and is used to support track and Off Track Betting (OTB) operations, State and local governments, and horse breeding programs.

Effective April 1, 1999 this bill:

- repeals the requirement that all costs associated with equine drug testing and research be supported by the State General Fund;,

- increases the take out on exotic and super exotic bets by 2 percent, which will support Racing and Wagering Board expenses, such as equine drug testing, seasonal employees at the thoroughbred and harness tracks, legal hearings to suspend or fine violators of racing regulations, and investigations and review of financial statements of OTBs;

- establishes a Regulation of Racing Account to receive monthly revenues generated by the 2 percent increase in take out on exotic and super exotic bets; and,

- authorizes up to 12.5 percent of the amounts deposited in the regulation of racing account (or the rate of .25 percent of the 2 percent increase in exotic and super exotic bets) to be used for purposes that benefit the racing industry in New York State.

At present, section 902(2) of the Racing, Pari-Mutuel Wagering, and Breeding Law requires all expenses associated with equine drug testing and research to be supported by the General Fund.   Sections 228, 229, 318, 418, and 527 of the Racing, Pari-Mutuel Wagering and Breeding Law establish the take out for exotic and super exotic bets placed on races at the Finger Lakes thoroughbred track, thoroughbred tracks operated by the New York Racing Association (NYRA), harness tracks, quarter horse tracks, and OTB facilities, respectively. Section 301 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes NYRA, harness tracks, and OTBs to reduce the take out on super exotic bets to twenty-five percent. Sections 905, 905-a, and 906 of the Racing, Pari-Mutuel Wagering and Breeding Law establish take out for on-track wagers on the Kentucky Derby, Preakness and Breeders' Cup; wagers on simulcast thoroughbred races of special interest; and wagers on the Breeders' Crown and Hambletonian. Sections 1015, 1016, and 1017 of the Racing Law establish the take out for exotic and super exotic bets placed on simulcasted out-of-state thoroughbred races when NYRA tracks are running, simulcasted out-of-state harness races, and simulcasted out-of-state races when NYRA tracks are not running. The authorized take out for exotic and super exotic bets ranges from 25 percent to 36 percent.

New York uses general taxpayer funds to support its regulation of the racing industry, a function which benefits a limited segment of the population. Other states, including Florida, Michigan, New Jersey and Pennsylvania, require the racing industry and/or the betting public to pay all or a portion of the cost of regulation.

Requiring the beneficiaries of horse racing to support its regulation is not dissimilar to New York's current practice of funding its oversight of Indian casinos and not-for-profit charitable gaming through fees derived from these activities.

The increase in take out for exotic and super exotic bets would have a nominal negative impact on a limited segment of the betting public, i.e., those who wager on high stakes, complex bets.

This bill would have no negative impact on the revenues received by the State, local governments, tracks or OTBs.

Part Q. Cornell Theory Center. This bill authorizes the Dormitory Authority to provide up to $1.2 million to Cornell University to support operations of the Cornell Theory Center for fiscal year 1999-2000.

The Cornell Theory Center provides business and academia with affordable access to the latest in supercomputer technology. This bill will enable the Center to continue to deliver these services, while providing the Dormitory Authority with the opportunity to avail itself of the resources of Cornell University to address financial and labor management issues.

Part R. Funding for State and local highways and bridges. This bill provides authorization to fund State and local highway and bridge capital programs in 1999-2000 that are part of a five-year capital plan that ends in 1999-2000. In addition, this bill amends a previous bond authorization for the Multi-modal Program to eliminate $30 million in unnecessary authority.

Effective April 1, 1999, this bill delineates the $327.3 million in annual funding for 1999-2000 to reimburse municipalities or project sponsors for the following programs: $192.3 million for the Consolidated Highway Improvement Program (CHIPS), $35.0 million for the Marchiselli Program and $100 million for the Multi-modal Program. The bill also amends section 41 of Chapter 58 of the Laws of 1998 and section 9 of Chapter 637 of the Laws of 1996 to eliminate $30 million of State bonding authority.

The 1999-2000 Executive Budget provides funding for the fifth and final year of the State and local highway and bridge program and this bill implements the local highway portion of that program. The CHIPS capital and Marchiselli programs have been reduced commensurately with the State highway program to reduce State-supported bonding. Reducing bonding authorization for the Multi-modal Program makes the existing statute consistent with the five-year State and local highway and bridge program.

This bill also eliminates $30 million in unnecessary bonding authority for the Multi-modal Program. This extra authority was added by the Legislature in 1998. However, a veto of the corresponding debt service appropriation negates its use. The remaining authorization of $350 million in Multi-modal bonds will complete funding of this program.

PUBLIC PROTECTION, HEALTH AND MENTAL HYGIENE

Part S. **Community Service for the Elderly.** This bill amends the Executive Law to standardize State-local share provisions relating to the State Office for the Aging's Community Services for the Elderly Program and Expanded In-home Services for the Elderly Program.

Aside from nutrition programs, most State or Federal local grant programs for the elderly require a 25 percent match from localities for planning/administration expenditures. This bill ensures that matching provisions for the State Office for the Aging's Community Services for the Elderly and Expanded In-home Services for the Elderly programs are consistent with other grant programs for the elderly. Specifically, section 541 of the Executive Law would be amended to:

a. change the State reimbursement rate to localities or designated area agencies for planning/administration of the Community Services for the Elderly Program from 100 percent to 75 percent;

b. change the State reimbursement rate to localities or designated area agencies for second-stage community services projects of the Community Services for the Elderly Program from 50 percent to 75 percent;

c. change the State reimbursement rate to localities or designated area agencies for planning/administration of the Expanded In-home Services for the Elderly Program from 100 percent to 75 percent;

d. add language which is drawn from existing statutory provisions for the

Expanded In-Home Services for the Elderly Program, to permit the Director of the State Office for the Aging to make adjustments to local grants necessary to live within, or fully utilize available funding; and,

e. clarify language to have references such as "amount payable" or "reimbursement" conform to a single phrase, "approved expenditures," with no anticipated change in current procedures.

This legislation would bring planning/administration expenditure matching requirements for the Community Services for the Elderly and Expanded In-home Services for the Elderly programs in line with other State and Federal grant programs for the elderly. The additional expense for localities resulting from the imposition of a 25 percent local match for planning/administration would be partially offset by the reduction of the local match (also to 25 percent) for second-stage services grants for the Community Services for the Elderly Program.

The amended language covering fluctuating appropriations levels for the Community Services for the Elderly Program would give the Director the necessary flexibility to protect a statewide grant process that he already enjoys under the Expanded In-home Services for the Elderly Program.

Part T. Shock Incarceration eligibility. Effective April 1, 1999, this section amends section 865(1) of the Correction Law to expand eligibility for the Shock Incarceration Program by raising the age limit from 35 to 39. Current law limits participation to those under 35, providing they meet additional eligibility criteria.

Broadening the eligibility criteria for the Shock Incarceration Program will allow the Department of Correctional Services to expand this successful program and to increase the number of inmates who can participate in it. Such expansion will expose more inmates to the benefits of a regimented program day which is both physically rigorous and programmatically demanding. Additionally, successful participants will leave the Department's custody earlier, thereby allowing the Department to house more violent felons.

Part U. Housing certain felony offenders in local facilities. To better reflect the respective fiscal responsibilities of the State and localities for persons sentenced to periods of incarceration in correctional facilities and jails, this bill amends the Correction Law to eliminate reimbursement to counties for housing low-level felony offenders in local correctional facilities.

Effective April 1, 1999, section 1 of this bill amends subdivision 1 of Correction Law 601-c to eliminate reimbursement to localities for housing low-level felony offenders for costs incurred on and after April 1, 1999. This bill also substitutes “local correctional facility” for “penitentiary” consistent with the current usage as defined by section 2, subdivision 16a of the Correction Law.

Currently, subdivision 1 of Section 601-c of the Correction Law authorizes the State to reimburse counties for housing low-level felony inmates at the actual per day per capita cost, or $20 a day, whichever is less. The Executive Budget includes language to notwithstand this provision for liabilities incurred on or after April 1, 1992, setting the reimbursement rate at $17.

Given the State's commitment of significant resources to construct and operate correctional facilities to house serious violent offenders for longer periods, it is appropriate for localities to assume the cost of incarceration for low-level offenders remanded by local courts to serve short (less than one year) sentences in local jails.

The current reimbursement rate of $17 per day is only nominal assistance toward the actual cost of operating jails in most localities. This mitigates the impact of the change in assistance on any one county, while freeing State funds to support the cost of removing violent felons from communities for longer periods.

Part V. Parolee supervision contract. This bill will ensure uniformity in decisions regarding the interstate transfer of parolees and probationers by transferring authority for administering the out-of-state parolee supervision compact from the Chairman of Parole to the Director of Criminal Justice Services.

Currently, the Chairman of the Board of Parole has authority to promulgate rules and regulations necessary to carry out interstate agreements regarding the transfer of parolees and probationers between New York and other states.

This bill will allow for a more uniform administration of the out-of state parolee supervision compact by placing responsibility for transfer decisions regarding both parolees and probationers with the Commissioner of the State's criminal justice over-sight agency. The single agency approach will also allow a consolidation of review staff currently employed by the Division of Parole and the Division of Probation and Correctional Alternatives, effecting efficiencies required to meet the increasing number of requests for interstate transfers.

Part W. Sex Offender Registration Act. This bill amends the Correction Law to clarify the Sex Offender Registration Act and reference changes to the Penal Law since the original enactment of this act. Specifically, this legislation defines procedures for determining the duration of registration that is required of a convicted sex offender, provides guidelines for the correct assignment of risk level for sex offenders and includes new sex offenses which were added to Penal Law to bring the State into compliance with Federal regulations.

This bill :

-- expands the list of crimes relevant to the Sex Offender Registration Act, including aggravated sexual abuse in the third degree, course of sexual conduct against a child in the first and second degree, and conviction of a sexually violent offense in another jurisdiction which if committed in New York would have required the offender to register as a sex offender;

- -- clarifies existing statue defining sex offender status and actual sex offenses;
- -- clarifies when the obligation of an offender to register begins;
- -- clarifies the obligation of out of state offenders to register;
- -- provides guidelines for obtaining information from other agencies to determine the assigned risk level of an offender;
- -- clarifies the guidelines by which courts determine the risk level of an offender;
- -- clarifies procedures for offenders seeking a lower risk level determination;
- -- clarifies that the Division of Criminal Justice Services can provide the sex offender subdirectory to other law enforcement agencies, including the Division of State Police, county police and all sheriff departments; and,
- -- clarifies requirements of an offender to verify his\her address quarterly or annually, depending on the assigned risk level.

Enactment of this legislation is essential to public safety as it widens the number of sex offenses deemed indicative of continuing criminal behavior after release from prison and removes ambiguity in the implementation of the Sex Offender Registration Act.

Part X. District Attorney salaries. Effective January 1, 1999, this bill amends subdivision 11 of section 700 of the County Law to authorize an increase in state aid to assist counties with the cost of compensating District Attorneys commensurate with the recently enacted legislation increasing judicial salaries. The additional aid will be provided in an amount proportionately consistent with each county's current reimbursement.

This legislation is necessary to direct the payment of additional state aid to offset county costs associated with enacted increases to judicial and the statutorily-linked District Attorney salaries. Without this legislation, counties would have an unfunded mandate to comply with section 183-a of Judiciary Law, which equates District Attorney salaries to that of the increased judiciary salary, effective January 1, 1999.

Part Y. Medicaid. Effective April 1, 1999, this bill continues restructuring of the State's Medicaid program through initiatives which will reduce costs, increase efficiencies and improve the delivery of health care services.

The major provisions of this part are as follows:

- -- legally responsible relatives with sufficient resources and income, who are living with applicants for Medicaid, must provide for the medical needs of the applicant;

-- a co-payment requirement for Medicaid pharmacy services for beneficiaries enrolled in Managed Care plans is instituted;

-- optional co-payments on various services are extended;

-- intergovernmental transfer for hospitals and nursing homes is authorized;

-- electronic funds transfer (EFT) for payments related to the intergovernmental transfer is mandated; and,

-- the cap on provider assessments is eliminated.

Currently, §366.3(a) of the Social Services Law (SSL) permits a person to apply for and receive Medicaid despite the fact that she/he lives with her/his legally responsible relative who has sufficient income/resources to provide the needed medical care.

The Pharmacy Carve-out Bill of 1998 eliminated the pharmacy benefit from the managed care premium and placed the benefit under fee-for-service. The bill did not require recipients enrolled in managed care to share in prescription costs consistent with other recipients in the Medicaid program.

Subdivision (x) of section 165 of Chapter 41 of the Laws of 1992, as amended by sections 30 and 38 of Chapter 433 of the laws of 1997, extends the co-payment requirement for various services.

Subdivision one of section 211 of Chapter 474 of the Laws of 1996, as amended by Chapter 433 of the Laws of 1997, extends the intergovernmental transfer provision as it relates to hospitals.

Subdivision 12 of section 2808 of the Public Health Law, as amended by Chapter 474 of the Laws of 1996, and by Chapter 433 of the Laws of 1997, extends the intergovernmental transfer provision as it relates to nursing homes.

Sections 2807-d, 3614-a, and 3614-b of the Public Health Law impose a cap on the amount of revenue collected from provider assessments.

New York State's Medicaid program is, by far, the costliest in the nation. This bill proposes initiatives that will produce $216 million in new State share savings and continue prior year savings actions.

Enacting "spousal refusal" legislation will close a loophole in current State statute by requiring legally responsible relatives (spouse or parent) to make their income/resources available to pay for the medical care of Medicaid recipients who live with them. It will also bring the State into compliance with Federal regulation.

Requiring recipients in the managed care program to share in the cost of prescription drugs (similar to recipients not enrolled or eligible for the managed care program) will provide necessary utilization controls and assist in assuring that appropriate quantities of medications are provided.

Continuation of the optional co-payment requirement for Medicaid eligible recipients generates revenue for the State and serves as a necessary utilization control.

Continuation of the intergovernmental transfer for both hospitals and nursing homes maximizes Federal participation and is tied to a significant amount of proposed current year cost containment measures.

Elimination of the assessment caps will permit the State to access all revenues generated by the provider assessments prior to their termination.

Part Z. Youth Opportunity Program. Effective July 1, 1999, this bill repeals the Youth Opportunity Program (YOP) Act, Chapter 174 of the Laws of 1990.

Chapter 174 of the Laws of 1990 codified the Youth Opportunity Program, placing full administrative and funding responsibility for the program in the Office of Mental Retardation and Developmental Disabilities (OMRDD). Prior to that, authorization was provided through annual budget appropriations in both OMRDD and the Office of Mental Health (OMH). The current YOP, while funded in OMRDD, serves both agencies.

The bill is necessary to implement the 1999-00 Executive Budget which recommends the elimination of the Youth Opportunity program and related appropriation authority. The YOP has not proven successful in achieving its goal of encouraging minority participants to pursue health and allied health careers in the human services area. While many YOP participants have furthered their education through the program, few participants have pursued secondary health educational opportunities or employment in health-related fields. Particularly, the program’s creators believed that the YOP would provide a pool of trained individuals desirous of establishing careers in the State’s mental hygiene system, which has never materialized. Given the dearth of graduates in OMRDD’s and OMH’s workforce, it is inappropriate for OMRDD to fund and oversee a program of questionable merit and benefit to either agency’s mission to serve their respective populations.

Part AA. Alcoholism and substance abuse treatment systems. This bill will complete the statutory consolidation of the alcoholism and substance abuse treatment systems by establishing a uniform operating license and financing mechanism for chemical dependence providers.

Specifically, the bill:

-- amends the Mental Hygiene Law to define and reference the terms "chemical abuse," "chemical dependence,” and "chemical dependence services;"

-- makes technical changes to the Mental Hygiene Law by amending and repealing various sections and establishing new Articles to create uniform licensing and operating requirements for chemical dependence programs;

-- establishes a net deficit funding mechanism for both new and existing providers of chemical dependence services. Under these provisions, net deficit funding for current services will continue to be financed based on existing State and local funding shares, county by county. However, net deficit support for future expansion of treatment services will require a match of State and local funds based on a single statewide sharing rate;

-- makes technical amendments to the Mental Hygiene Law and Social Services Law to allow Medicaid reimbursement for inpatient chemical dependence programs; and,

-- makes technical amendments to the Correction Law, the Insurance Law, the Mental Hygiene Law, the Public Health Law, the Not-For-Profit Corporation Law and the Business Corporation Law to reflect the consolidation of the chemical dependence system.

Currently, the Mental Hygiene Law has separate operating and licensing requirements, Medicaid rates and net deficit funding formulas for providers of alcoholism and substance abuse services.

The consolidation of the treatment system will break down needless and inappropriate barriers to the delivery of care for addictions, and eliminate duplication and inefficiencies in the current treatment system. Currently, many alcoholism and substance abuse programs provide virtually identical services under two <u>separate</u> licenses. The ability to consolidate these programs will simultaneously improve the effectiveness of treatment while lowering costs. In addition, the uniform net deficit financing mechanism will preserve the existing local funding for treatment services and ensure funding consistency among all counties for any future expansion of treatment services.

Part BB. Reimbursement to county clerks. Effective April 1, 1999, this bill amends subdivision 3 of section 205 of the Vehicle and Traffic Law to change the rate at which county clerks are reimbursed for conducting motor vehicle transactions from 9.3 to 12.7 percent of gross receipts and makes such reimbursement system permanent.

Chapter 309 of the Laws of 1996 amended subdivision 3 of section 205 of the Vehicle and Traffic Law to change the reimbursement of county clerks from a fixed fee system to one based on the percentage of gross receipts accepted by the county clerk for conducting motor vehicle related business. The percentage was initially set in statute at 8.1 percent. Chapter 56 of the Laws of 1998 amended section 205 to increase the reimbursement rate from 8.1 to 9.3 percent. This increase helped offset revenues lost due to a 25 percent reduction in registration fees.

County clerks in all but eleven counties in the State act as agents of the Commissioner of Motor Vehicles, performing a wide-range of motor vehicle related services. A portion of these services involve the processing of mail-in renewals of licenses and registrations.

The Department of Motor Vehicles will establish processing centers that can handle mail-in renewals on a centralized basis much more economically and efficiently than can be done by the county clerks.

These counties, however, rely upon motor vehicle related revenue for a portion of their budgets. A related 1999-00 budget recommendation proposes that DMV process all mail-in license and registration renewals. As a result, the county clerks would lose substantial revenue. To ameliorate this loss, this bill would increase the rate of reimbursement from 9.3 to 12.7 percent of gross receipts.

Part CC. Suspension and revocation of driver's licenses. Effective April 1, 1999, this bill amends section 9 of Chapter 533 of the Laws of 1993 to make permanent certain Vehicle and Traffic Law and Correction Law provisions authorizing the suspension or revocation of a driver's license upon the conviction of an individual for certain drug-related offenses.

Courts are currently authorized to suspend or revoke the driver's license of an individual convicted of a drug-related offense for a six-month period. Youthful offenders and individuals convicted out-of-state under Federal drug laws are subject to the same sanction. If the convicted individual is unlicensed, a license may not be obtained for a similar period. The courts have the discretion not to impose the suspension or revocation only if it is determined that compelling circumstances warrant such an exception.

In 1991, the Federal government enacted the Federal Drug Offenders Driving Privileges Act, which links Federal highway aid to the enactment of State legislation mandating the revocation or suspension of driving privileges following conviction or adjudication in connection with certain drug-related offenses. Beginning October 1, 1993, State compliance with the Federal mandate was necessary to continue to receive Federal highway aid without being subject to withholding.

Enactment of Chapter 533 of the Laws of 1993 and the subsequent extensions of its provisions through October 1, 1999, have enabled New York State to continue to receive all Federal highway funds. If this program is not extended, the State risks a 10 percent withholding (over $42 million per year) of certain Federal highway funds.

Moreover, the driver's license suspension and revocation program provides a method of reducing substance abuse by establishing civil deterrents in addition to the traditional criminal sanctions. As most individuals value the privilege of driving, the threatened loss of this benefit may serve as a strong incentive to comply with existing drug laws.

Part DD. Department of Motor Vehicles (DMV) Notices. Effective April 1, 1999, this bill amends various provisions of the Vehicle and Traffic Law to permit DMV to mail notices of revocation, suspension and other orders to addresses provided by the U.S. Postal Service (USPS), rather than the most recent address provided to DMV by motorists.

Current law requires DMV to send notices to the most recent addresses provided to

DMV by motorists. This conflicts with the requirements of the USPS bulk mail process which employs a system that automatically corrects addresses.

Addresses provided by motorists are often outdated and invalid as compared to addresses provided by the USPS. Use of bulk mail for notices saves DMV approximately $300,000 per year as compared to other rates and substantially increases the likelihood that mail will reach its intended recipient. Current law conflicts with these fiscal and programmatic benefits and could force DMV to discontinue use of bulk mail.

Part EE. Commercial driver's license suspensions. This bill establishes increasingly severe license suspension sanctions for operators of commercial vehicles who repeatedly violate vehicle out-of-service orders and provides for penalties for employers who allow a driver to violate a vehicle out-of-service order.

This bill amends paragraph (d) of subdivision 3 of section 510-a of the Vehicle and Traffic Law to impose increasingly severe license suspensions upon drivers that repeatedly violate out-of-service orders or violate out-of-service orders while transporting hazardous materials, or while operating a vehicle designed to transport more than 15 people. The duration of license suspensions increases from ninety days to three years, depending upon the frequency and nature of current and past violations. It also amends subdivision 2 of section 140 of the Transportation Law to impose a fine of between $2,500 and $10,000 on an entity which permits or requires a driver to operate a vehicle which has been placed out-of-service.

Current law provides for a 90-day suspension of a commercial driver's license if a person is found to have operated a commercial motor vehicle in violation of a vehicle out-of-service order issued by the Department of Transportation, regardless of the number of previous offenses or the type of vehicle being driven. There is no provision for penalizing an entity which permits or requires a driver to operate a vehicle which has been placed out-of-service.

Violation of out-of-service orders represents a serious threat to highway safety. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) mandates that the Federal Highway Administration (FHWA) establish regulations regarding driver license suspensions and employer civil penalties for the operation of commercial vehicles in violation of an out-of-service order. States were required to adopt and enforce the new sanctions by October 1, 1996. Failure to strengthen penalties for drivers and employers that violate vehicle out-of-service orders could result in FHWA withholding up to $59 million in Federal funding to the Department of Transportation (DOT).

Part FF. Criminal justice programs. This bill extends various criminal justice programs and fees, that would otherwise expire in 1999, through 2001, as follows:

- section 3 of Chapter 886 of the Laws of 1972 is amended to extend prisoner furloughs and the crime of absconding from a facility;

- section 20 of Chapter 261 of the Laws of 1987 is amended to extend the Earned Eligibility program;

-- subdivision q of section 427 of Chapter 55 of the Laws of 1992 is amended to extend a provision of the Comprehensive Alcohol and Substance Abuse (CASAT) program which allows inmates to enter a residential treatment facility upon successful completion of the CASAT program;

-- section 10 of Chapter 339 of the Laws of 1972 is amended to extend the Temporary Release program;

-- subdivision c of section 46 of Chapter 60 of the Laws of 1994 is amended to extend provisions which designate the capacity of the CASAT program and limit eligibility for the Temporary Release program;

-- section 5 of Chapter 554 of the Laws of 1986 is amended to extend the provisions related to community treatment facilities and establishing the crime of absconding from a community treatment facility;

-- subdivision h of section 74 of Chapter 3 of the Laws of 1995 is amended to extend the provisions related to the incarceration fee;

-- section 7 of Chapter 79 of the Laws of 1989 is amended to extend the Local Conditional Release Law;

-- subdivision z of section 427 of Chapter 55 of the Laws of 1992 is amended to extend the Parole supervision fee;

-- subdivision aa of section 427 of Chapter 55 of the Laws 1992 is amended to extend the provisions related to the DWI and custody investigation fees;

-- section 12 of Chapter 907 of the Laws of 1984 is amended to extend the provisions of the Classification/Alternatives to Incarceration law; and,

-- section 6 of Chapter 713 of the Laws of 1988 is amended to extend the ignition interlock device program.

Presently, sections one through five and seven through ten of this bill are due to expire on September 1,1999. Sections six and eleven are due to expire on September 30, 1999. Section twelve is due to expire on July 1, 1999.

These criminal justice programs and fees provide incentives for inmate rehabilitation and mitigate the need to expand general confinement space.

Part GG. Statewide Public Safety Communications Account. Effective April 1, 1999, this bill amends the State Finance Law to create a new Statewide Public Safety Communications Account financed primarily through transfers from other funds. It is anticipated that much of this revenue will be cellular surcharges that are initially deposited into the State Police's Seized Assets Account, and will now be transferred annually to the new Statewide Public Safety Communications Account. The bill restricts spending from the account to public safety and emergency 911 related activities, including design and construction of a Statewide Public Safety Communications Network.

Section 309 of the County Law authorizes a $.70 monthly surcharge on cellular telephone bills in New York State to be used for Division of State Police costs related to statewide operation of a cellular 911 emergency communications system. This surcharge revenue is statutorily deposited in the Division of State Police's Seized Assets Account. This account, which supports State Police operations, is governed by Federal and State asset forfeiture statutes and is financed by revenues received from asset forfeitures, cellular telephone surcharges, fees charged for accident reports, and various other miscellaneous revenues sources.

County Law also authorizes localities to impose a surcharge on land lines of up to $.35 per telephone line. This surcharge money is collected by individual counties and generates approximately $34 million annually. The counties are required to use this money to operate their emergency 911 systems.

The current State Police radio system is more than 35 years old, overloaded with recent expansions and needs to be replaced. A new statewide emergency communications system will better serve New York citizens by providing an efficient emergency communications network to be used by the State Police and many other State and local emergency response agencies. Working cooperatively with other agencies, the Division of State Police has been inventorying existing equipment, identifying needs, and developing a strategy to establish a Statewide Public Safety Communications System. An extensive ongoing survey documents that many State agencies and localities are facing serious problems with their outdated communications systems.

Establishment of the new Statewide Public Safety Communications Account will insure that there will be sufficient revenue available to pay for this costly system. This "lock-box" account will not be available for other purposes but will be used exclusively for a project which has cost other states in excess of $200 million.

Cellular surcharge revenues have increased by 30 percent over the past two years and a 25 percent increase is projected for 1999-2000. The Legislature has been aggressive in pursuing this revenue in the past and in attempting to divert a portion of it to localities for operation of their 911 systems. There is no evidence to suggest, however, that the localities need additional funding; they already receive approximately $34 million annually from the land line surcharges imposed under County Law.

EDUCATION, LABOR AND FAMILY ASSISTANCE

Part HH. Education Reforms. These sections enact education reforms accompanying the 1999-00 Executive Budget that would encourage efficiency in the provision of shared services, improve special education programs, enhance cost effectiveness in school construction, and deter the promulgation of costly mandates upon school districts.

This bill would also create new Literacy First summer programs to improve student performance in the early grades.

Boards of Cooperative Educational Services (BOCES)

Effective July 1, 2000, this bill amends the Education Law to:

- Eliminate BOCES aid as a separate aid category beginning in the 2000-01 school year and consolidate the amount of shared services aid paid to school districts in 1999-00 within operating aid;

- Allow future shared services spending increases to be reimbursed within operating aid;

- Provide for continued State reimbursement of BOCES capital projects initiated prior to July 1, 1999;

- Provide school districts with greater flexibility to achieve cost-efficiency by opting out of BOCES and participating in shared services with other school districts or other groups; and,

- Require that individuals seeking to become members of a BOCES board must also be members of a component school district board of education.

Section 1950 of the Education Law provides that shared services purchased by school districts from BOCES are eligible for a separate BOCES aid. The current aid formula rewards school districts with additional aid based on expenditures and includes a minimum State aid share of 36 percent.

The existing BOCES funding formula gives BOCES a monopoly over the provision of shared services and encourages school districts to use BOCES without regard to cost effectiveness. This formula supports nearly 65 percent of approved expenses, artificially reducing the local cost of BOCES shared services even though the total cost is often higher than alternative service arrangements.

The reforms advanced in this bill will provide school districts with greater flexibility to achieve cost-efficiency through sharing services with other school districts or other groups. If BOCES are capable of providing cost-effective services in the absence of aid incentives, school districts will still opt to purchase such services from BOCES. If not, schools will have the option of purchasing services elsewhere or providing them directly.

Special Education

Effective July 1, 1999, this bill amends the Education Law to:

- Continue school district funding for school-aged disabled children under the public excess cost formula at 1998-99 levels in 1999-00. School districts would have broader flexibility in 1999-00 to use excess cost funding for preventive services that would help avert placement of children with minor learning problems in special education;

- Revise the school-age special education funding formula beginning in the 2000-01 year to eliminate existing fiscal incentives that inappropriately encourage placement of children in special education or in overly restrictive settings. Under the new formula, available special education and preventive services funding, including funds provided for summer school special education programs, would be distributed based on a school district's share of Statewide enrollment and poverty. School districts would be given flexibility to use the new "Special Education and Preventive Services Aid" for services, such as speech therapy and counseling, that are necessary to support special needs students in regular classroom settings;

- Continue to provide State reimbursement, in addition to the Special Education and Preventive Services Aid, to school districts to support the higher costs of children with severe disabilities;

- Relieve counties of their current 10 percent local share of summer school special education programs effective with the 2000-01 school year, thereby requiring school districts to effectively assume this cost. This change makes financial responsibility for summer programs more consistent with that of regular school age program funding;

- Require school districts, beginning in the 1999-00 school year, to perform evaluations for preschool children consistent with their evaluation responsibilities for school-age children;

- Continue county fiscal responsibility for the local share of evaluations under the preschool special education program, unless school districts opt to contract with private evaluators to perform evaluations;

- Modify the composition of both school-age and preschool committees on special education to comply with Federal IDEA requirements; and,

- Provide a three-year extension in statutory provisions that limit approval of new segregated preschool programs and a one-year extension to permit school districts flexibility in the number of students who may be enrolled in special education classes.

Section 3602 of the Education Law provides for the payment of excess cost aid to school districts for special education services. The current formula relies in large part on the type of special education setting to determine the school district's payment level for special education. Under existing statute, the greatest amount of funding is available for children who are placed in the most restrictive settings and school districts lose funding if a child is declassified from special education programs to regular classroom settings.

Section 4402 of the Education Law specifies the composition of the membership of school age committees on special education.

Section 4408 of the Education Law sets forth reimbursement provisions for summer school special education programs for school age children. Under this law, reimbursement is provided for approved expenditures and the State is responsible for seventy percent of program costs, while school districts pay twenty percent and counties are responsible for the remaining ten percent.

Section 4410 of Education Law governs the provision of preschool special education services to children, including the preschool committee composition and the evaluations of children seeking such services. Under current law, school districts are permitted, but not required, to perform evaluations. Decision-making authority regarding evaluations is given to the parents of children.

This bill will conform State law to Federal Individuals with Disabilities Education Act (IDEA) provisions that require all states to restructure special education financing formulas that provide additional funding to school districts based upon placement of disabled children in restrictive program settings. By removing both the existing financial incentives to serve children in separate settings apart from their non-disabled peers and the financial disincentives to return children from special education, this fundamental special education financing reform will encourage school districts to serve disabled children in regular classroom settings. Equally important, it will discourage inappropriate referral of children with minor learning problems to special education. Finally, by permitting the use of available funding for special education or prevention services, this bill provides school districts with increased flexibility in meeting the needs of disabled children.

Provisions of this bill related to preschool special education are intended to better meet the needs of over 60,000 disabled preschool children by addressing the inherent conflict of interest that results when private providers perform evaluations which then serve as a basis for referral to special education. This model would more closely align the preschool evaluation process with the school age system where the school district performs all evaluations and help prevent inappropriate over-identification of preschool children needing special education services.

<u>School Facilities/Building Aid</u>

Effective July 1, 1999, this bill amends the Education Law to establish additional incentives and mechanisms to address school facility needs and improve the effectiveness of school construction projects. Specific provisions would authorize the Commissioner of Education to promulgate regulations creating a multi-year capital replacement cost that would encourage improved maintenance of school facilities, and expand the Commissioner's authority to close school facilities that endanger the health and safety of students.

Section 3602 of the Education Law provides for the payment of State building aid for capital construction projects of school districts. Current statute provides for the calculation of project specific allowable costs which do not relate to the probable useful life of facilities and limited circumstances under which the Commissioner may close school facilities due to safety concerns.

The creation of a multi-year cost allowance will eliminate the current incentive for school districts to defer maintenance in favor of more costly capital construction which, due to high building aid ratios, can drive lower local costs than routine maintenance.

Because of the increasing age of school facilities throughout the State and the tendency for school districts to defer necessary maintenance, it is increasingly important that the Commissioner have sufficient authority to close schools that endanger the health and safety of students.

Literacy First Summer School Program

Effective with the 2000-01 school year, this bill creates new summer school programs to improve pupil performance in the early grades. Specific amendments would:

- authorize school districts beginning in the 2000-01 school year to implement six week remedial summer school programs in reading/writing targeted to fourth grade students who fail to demonstrate acceptable performance on the Regents' new English Language Arts test;

- allow school districts beginning in the 2000-01 school year to establish six week summer programs in grades K-2 targeted to children with limited English-speaking skills; and

- provide State grants supporting 80 percent of the cost of the two new summer school initiatives. Grants would be based upon average teacher salaries in participating districts and would also fund ancillary operating and program costs.

Currently, far too many children in New York State progress beyond the early grades without acquiring the basic literacy skills that are essential to their future educational success. While avoiding expensive new local mandates, the authorization of two new summer school initiatives will give school districts significant tools to address this critical issue.

Regents Mandates

Effective July 1, 1999, this bill amends the Education Law to require the Board of Regents to obtain the review and approval of the State Director of Regulatory Reform for proposed regulations that would result in additional costs for the State, local governments or educational institutions. In the absence of specific enabling legislation, such rule or regulation would not be mandatory.

Section 207 of the Education Law gives the Board of Regents broad powers to adopt rules and regulations for matters related to education without legislative or executive approval, notwithstanding the fact that such rules or regulations may have significant fiscal impact upon State government, local governments or educational institutions. In addition, such regulations have been interpreted to have the full force and effect of statute.

Although State statute provides the Regents with sweeping powers and responsibilities in matters of educational policy, these provisions were never intended to empower the Regents to unilaterally impose mandates with significant fiscal implications to State government, local governments or educational institutions. Such matters of fiscal policy are the constitutional responsibilities of elected officials in the legislative and executive branches of State government.

Payments in Lieu of Taxes (PILOTs)

Effective July 1, 1999, this bill amends the Education Law to ensure that significant payments in lieu of taxes (PILOTs) received by school districts are included in the real property wealth of school districts for purposes of school aid calculations.

Section 3602 of the Education Law defines the real property wealth of school districts for use in school aid calculations. Such definition does not reflect the effective real property wealth represented by significant payments in lieu of taxes that school districts receive.

Because properties upon which PILOTs are paid to school districts are exempt from taxation, such properties are not reflected in the assessment rolls of school districts. As a result, the calculation of real property wealth used in school aid formulas is understated relative to the actual taxing capacity of such districts. Therefore, school districts which receive significant PILOTs are likely to be eligible for more school aid than they should.

To remedy this situation, this bill ensures that the real property wealth represented by PILOTs are reflected in the calculation of school aid. Precedent exists for this type of adjustment since a similar statutory provision was made for the PILOTs provided to the Shoreham-Wading River School District pursuant to the LILCO agreement on the Shoreham nuclear power facility.

Efficiency/Reorganization Study Grants

Effective July 1, 1999, this bill amends Education Law to eliminate provisions pertaining to the funding of studies of educational efficiency/reorganization issues.

Section 3602 of the Education Law authorizes State grants to school districts to study potential district reorganizations, shared programs between districts or more efficient administrative and operational practices.

The intent of current statutory provisions was to encourage more efficient delivery of educational services by the almost 700 school districts in the State. However, to date such provisions have not resulted in more than a handful of school district consolidations. Furthermore, it should not be necessary for the State to fund feasibility studies for districts to examine more cost-effective ways of providing services. Improved cost-effectiveness should be its own reward.

Part II. School Tax Relief (STAR). This bill improves the administration of the School Tax Relief (STAR) Program, provides increased State assistance for improved real property tax administration, provides additional budgetary and tax information to school voters through a Property Tax Report Card, and limits school property tax increases in high spending school districts, as follows:

School Tax Relief (STAR) Administrative Improvements and Clarifications

To improve the administration of STAR on a statewide basis, the bill amends section 425 of the Real Property Tax Law to clarify general eligibility requirements and to modify age and income eligibility requirements for the enhanced exemption for seniors to be more consistent with definitions and practices prescribed for the low income senior exemption provided at local option under section 467 of the Real Property Tax Law, effective with STAR administration for 2000-01. Calculation of STAR exemptions using a residential equalization rate would be effective April 1, 1999 for the administration of STAR for 1999-00.

a. Senior Exemption Eligibility Issues

Age and income requirements: To receive the enhanced STAR exemption, the applicants must generally be at least 65 years old by the locally applicable "taxable status date," which varies throughout the State. In addition, an applicant must qualify based on his or her income for the "income tax year immediately preceding the date of making application," which creates problems in jurisdictions which have taxable status dates earlier than April 15 (as most do), and which also leads to unwarranted differentiation among applicants (e.g., some will submit their 1997 income tax returns with their applications for the 1999-2000 school year, and others will file their 1998 returns). The bill would establish clear and uniform standards by specifying that for the 2000-2001 school year, all applicants would have to be 65 years old as of December 31, 2000, and would have to qualify based upon their 1998 incomes. It would further provide that in each succeeding school year, these standards would be advanced by one year.

Siblings: Currently, the only exception to the age requirement is that in the case of property owned by husband and wife, only one of the spouses must satisfy the age requirement. This bill would extend that exception to property owned by siblings, as has already been done for purposes of the senior citizens exemption.

Surviving spouses: Although the enhanced exemption may be granted to a husband and wife when only one spouse is 65 or older, if the older spouse should die, the exemption currently must be removed because the surviving spouse would not be eligible in his or her own right. The bill would provide that in such cases, the exemption may continue if the surviving spouse is less than 65, but at least 62 years of age, as is done for purposes of the senior citizens exemption.

Nursing home residents: Currently, the enhanced exemption may have to be denied when the owner is absent from the residence due to long-term confinement in a nursing home or other health care facility, since the property may no longer be his or her primary residence. This bill would allow the exemption to be granted under such circumstances, as long as the property is not occupied by anyone other than the co-owner or spouse. A similar provision applies to the senior citizens exemption.

Income verification: To ease the burden upon seniors and assessors relative to verifying income eligibility, and to ensure even greater confidentiality of income-related information, the bill would add a new Section 171-k to the Tax Law to permit the State Board of Real Property Services and the Department of Taxation and Finance to enter into an agreement, under which the Department would attempt to verify, to the best of its ability, whether applicants for the enhanced STAR exemption satisfy the applicable income requirements. The implementation of such an agreement may make it unnecessary for most seniors to submit copies of their income tax returns with their STAR applications. Under current law, such an agreement would not be permissible (see, e.g., Tax Law, § 202).

Failure to re-apply for enhanced exemption: Seniors receiving the enhanced exemption must reapply annually to retain that exemption. (Annual applications ensure that the income requirement continues to be satisfied.) The bill would specify that seniors who fail to reapply for the enhanced exemption will at least receive the “basic” exemption.

<u>b. General Eligibility Issues</u>

Property Use: The bill would open the STAR program to property which is not predominantly residential property <u>if</u> the property includes the owner’s primary residence. In such cases, the exemption would only apply to the portion used by the owner as his or her primary residence. A similar provision already applies to the senior citizens exemption (RPTL, §467(3)(c)).

Married couples with two homes: At present, if a husband and wife own two homes, they could seek two separate STAR exemptions by claiming that one home is the husband's primary residence and the other is the wife's. To close this loophole, the bill would provide that a husband and wife may receive no more than one STAR exemption, unless they are legally separated.

Parcels with two homes: The bill would provide that when a parcel contains more than one owner-occupied home, each home may receive a STAR exemption, although the land could only receive one STAR exemption. Currently, such a parcel may receive only one exemption.

Residences split by municipal boundaries: The bill would provide that when a residential structure is located in more than one municipal corporation, the exemption must be apportioned between them in the same manner as the full value of the structure was apportioned. The law is currently silent on this point, although Counsel to the State Board has issued an informal opinion saying that apportionments should be done in such cases.

Mixed-use property in Approved Assessing Units: The bill would clarify that the STAR exemption may apply only to the homestead portion of mixed-use property in an approved assessing unit.

Co-ops and Manufactured Homes: STAR contains special provisions to enable residents of co-operative apartments and owners of manufactured homes (which are referred to in the RPTL as "trailers or mobile homes") to receive the benefit of the STAR exemption. The law allows these persons to apply for the exemption even though co-ops are not individually assessed (the tax bill goes to the co-operative corporation), and the same is generally true for manufactured home communities (the tax bill generally goes to the landowner). To ensure that the correct amounts are credited to the correct parties, this bill would clarify that the assessor must provide a breakdown of the aggregate STAR exemption to the co-operative apartment corporation in the case of co-ops, and to the landowner in the case of manufactured home communities. These requirements are implicit in existing law; the bill would make them explicit.

<u>c. Procedural and Technical Issues</u>

School district notices: The bill would require school districts to notify residents annually about the STAR exemption. The current notice requirement appears to apply only to the first year of the exemption.

Alternative STAR forms: The bill would authorize assessing units to prescribe their own STAR application forms, subject to the approval of the State Office of

Real Property Services (ORPS). There currently is no statutory authorization for the use of forms other than those prescribed by ORPS.

Certiorari orders: The bill would clarify that when a certiorari order is issued which reduces the assessment of property below the STAR exemption which it had received, the exemption shall be reduced accordingly. For example, if property has been assessed at a total assessed value of $52,000 with a $50,000 STAR exemption, and its assessment is reduced to $48,000 as the result of a certiorari proceeding, the STAR exemption would be reduced to $48,000 as well. Current law is silent on this point. It would also clarify that in such cases, the State Board may deduct the excess STAR aid payment from the next school district aid payment. Currently, such adjustments must generally be made within one year from the initial aid payment.

"Big 5" City School Districts: The bill would correct a technical error in the STAR law relating to the description of the levy of school taxes in the Big 5 cities.

Order of application of exemptions: The bill would relocate the language which states that STAR is to be applied to eligible property after the exemptions authorized by sections 459-c and 467 of the RPTL have been applied. The language will be moved from STAR and inserted into those exemption statutes.

New York City local laws: The provisions relating to the revocation of improperly granted STAR exemptions make reference to certain sections of the RPTL which do not otherwise apply to New York City. The bill would clarify that New York City will follow its own local laws for this purpose.

<u>d. Equalization Factor for Calculating STAR Exemptions</u>

Equalization factor: Currently, to account for the fact that different assessing units assess properties at different levels, or percentages of full value, the STAR exemption must be adjusted, or "equalized," using the state equalization rate or special equalization rate -- essentially the average level of assessment for all properties of all types in the assessing unit. This requirement presents two problems:

-- Since the equalization rate applies to all property, but the STAR exemption applies only to residential property, the use of equalization rates for this purpose inflates the STAR exemption in jurisdictions which tend to overassess non-residential property relative to residential property. Such unintended inflation of STAR exemptions and thus savings to homeowners, beyond the levels intended in law, creates an incentive for some assessing units to continue the unlawful practice of assessing residential properties at different levels than other properties.

-- In jurisdictions which have recently implemented a revaluation or update,

> the local “uniform percentage of value” is more meaningful than the equalization rate. In fact, under the appropriate circumstances, the uniform percentage of value is used by the State Board for certain purposes (primarily, to assess special franchise property pursuant to RPTL, §606(3)). It should be used for STAR purposes as well.

Effective for the 1999-00 school year, this bill would address these issues by providing that the equalization factor shall be equal to the ratio of assessed value to market value of residential property in the assessing unit as determined in the latest market value survey, unless the State Board has applied the uniform percentage of value prevailing on the assessment roll for purposes of RPTL, §606(3), in which case the equalization factor shall be equal to the uniform percentage of value so applied.

Increased Local Assistance for Improved Property Tax Administration

Effective April 1, 1999, this bill amends Section 1573 of the Real Property Tax Law to strengthen existing financial incentives for assessing units to improve assessment administration by increasing the annual aid for maintaining accurate and current assessment rolls according to State standards from $2 to $5 per parcel for five years beginning in 1999. Assessing units will continue to be eligible for the existing triennial aid for revaluation and assessment update projects at the rate of $5 per parcel. In addition, the bill establishes a new incentive for assessment reform by authorizing one-time increased revaluation aid of $20 per parcel for assessing units that have not revalued their properties during the last 10 years. This aid will be available through 2004 for most of the eligible revaluation projects and through 2005 for very large revaluation projects (involving more than 175,000 parcels).

Providing More Information to School Budget Voters and Limiting Property Tax Increases in High Spending School Districts

Effective April 1, 1999, this bill amends Sections 1608 and 1716 of the Education Law by adding four new subdivisions to the law, 4-a, 4-b, 4-c, and seven. This bill also amends Real Property Tax Law by adding a new section 1307.

Information to be provided to school district voters. This bill requires fiscally independent school districts to provide voters with additional information about how a proposed budget (including total spending and tax levy) compares with the maximum allowable contingency budget, commencing with the proposed budget for the 1999-2000 school year. School districts must prominently display the comparison in their statement of expenditures and conspicuously post the statement at each polling place where district votes occur. (Sections 1608 and 1716 of the Education Law.)

Additional information to be provided by school districts proposing large budget increases. Effective for budgets proposed for the 1999-00 school year, school districts proposing budget increases, after allowable exclusions, exceeding the lesser of 4% or 140% of the increase in the Consumer Price Index for the previous calendar year must mail a copy of a special notice to all school district residents no later than seven days before the vote on the school district budget. The notice must specify, in plain language, that the proposed budget increase would exceed such percentages. Spending attributable to such purposes as increased enrollment, voter approved capital projects, emergencies certified by the Commissioner of Education and certain other purposes could be excluded from calculating increases. (Section 1608 and 1716 of the Education Law).

Tax Cap on High Spending School Districts. School districts with large spending increases over two years will be subject to a cap on property tax increases for the following year, effective for budgets proposed for the 2000-01 school year. The bill adds a new Section 1307 to the Real Property Tax Law that defines such high spending school districts as those in which two-year average spending increases exceed the lesser of 4% per year or 140% of the CPI increase, less spending increases attributable to allowable exclusions. Excludable items include: increased spending attributable to enrollment increases; expenditures resulting from tax certiorari proceedings; expenditures resulting from a court order or judgment against the school district; necessary emergency expenditures, as certified by the Commissioner of Education, due to the damage or destruction of school property or equipment; capital expenditures, including debt service and lease expenditures, subject to the approval of district voters where required by law; and, non-recurring expenditures in the prior year's school budget.

In such high spending school districts, percentage increases in the property tax levy would be limited to the lesser of 4% or 120% of the increase in the Consumer Price Index for the prior calendar year. Tax levy increases attributable to excludable purposes discussed above could be excluded from the levy increase for purposes of calculating compliance with the cap. School districts subject to the cap must mail a notice to residents stating that they are subject to the cap and whether or not the district will be seeking to exceed the cap in the proposed budget.

Commencing with the proposed budget for the 2000-2001 school year, to override the tax levy cap would require a two-thirds majority vote, unless more than 50 percent of eligible voters actually voted on the school district budget, in which case a majority vote would suffice. If a school district proposed budget failed to achieve the majority vote required to override the cap, the school district could present a proposition to override the cap on one additional occasion.

*School Property Tax Report Card***.** Commencing with the proposed budget for the 1999-2000 school year, the bill requires that school districts publish locally and report to the State Education Department, before school voting days, the details of proposed budgets and tax levy increases in a "Property Tax Report Card." Commencing with the proposed budget for the 2000-2001 school year, this would also include information regarding whether or not the district is a high spending school district and therefore subject to the tax cap. Schools must provide information to the Commissioner of Education no later than fourteen days before the uniform statewide voting day. The Education Department will then publish a compilation of the information reported by the schools in a Property Tax Report Card before school budget votes.

The requirements for providing additional information to voters and limiting property tax increases in high spending school districts would not apply in the fiscally dependent school districts of the “Big Five” cities, which have their own constitutional tax limits and in which residents do not vote directly on school budgets.

Existing law relating to STAR eligibility and administrative issues appears in Section 425 of the Real Property Tax Law. Section 1573 of Real Property Tax Law provides for two programs of financial aid to assessing units as incentives for improving property tax administration: $5 per parcel every three years for revaluation and update projects and $2 per parcel in the intervening years for maintaining assessment rolls according to State standards. Under section 1608 of the Education Law, school districts are required to present a proposed budget or statement of expenditures at a budget hearing that must be held no more than fourteen days nor less than seven days before the school budget voting day. This statement of expenditures must be complete and available upon request to local residents seven days prior to the budget hearing. Under sections 2022 and 2023 of the education law, school boards must adopt a contingency budget if voters fail to approve a school budget after the second submission. A school district's contingency budget may not result in a percentage increase over the prior year that exceeds 120 percent of the increase in the Consumer Price Index for the prior year, or 4 percent, whichever is less. Certain types of expenditures such as emergency expenditures and enrollment-driven cost increases are excluded from the contingency budget limit.

This bill will increase the equity and consistency of the administration of the School Tax Relief (STAR) Program, provide increased state assistance for improved real property tax administration, provide additional budgetary and tax information to school voters, and limit school property tax increases in school districts with a demonstrated history of high spending increases.

The STAR Program has successfully provided senior citizens throughout the State with dramatic reductions in their school tax bills, and non-seniors will soon realize significant savings as well. As expected in any major new program, the need for various improvements and clarifications become apparent after the initial year of experience with administering the program.

The modifications to eligibility requirements included in the bill will make the administration of the STAR program more consistent on a statewide basis and more comparable to the existing low income senior exemption provided by section 467 of the Real Property Tax Law. The amendments would reduce confusion, provide better guidance to local officials and ensure like treatment of similar situations in the nearly one thousand different local assessing units responsible for administering the STAR exemption application process.

Verification of income eligibility through the Department of Taxation and Finance will simplify the senior application process, reduce local processing costs and further protect the confidentiality of income tax returns.

Use of a residential equalization rate will remove an unintended distortion of STAR exemption amounts in assessing units that tend to assess residential properties at lower percentages of full value than other types of properties. This would ensure that homeowners receive the level of benefit originally intended, not an artificially inflated benefit, and will remove an unintended incentive for certain assessing units to continue to assess unevenly.

The magnitude of the STAR program has had the unintended consequence of diverting some local assessment resources from their primary mission. While the State continues to provide financial assistance to cover STAR implementation costs, the initial wave of processing new STAR applications will begin to subside in the year 2000. Increasing State aid for keeping assessments current and in accordance with statewide standards will assist local officials in their primary mission and begin to shift the focus of State assistance back toward the primary assessing functions.

Localities that have not conducted property revaluations in many years face significantly higher costs in attaining equitable assessments. In many municipalities, STAR's "Property Taxpayer Bill of Rights" has increased public awareness of problems in local assessing practices. Increased State assistance to localities to conduct revaluations where property values have not been updated in ten years or more recognizes the increased costs in these situations and offers a one-time opportunity for such communities to become current with their assessments.

This bill will ensure that taxpayers are fully informed of spending and tax increases proposed by their local school districts, in advance of school budget votes.

By capping property tax levy increases in school districts with a demonstrated history of large spending increases, this bill will ensure that excessive spending and taxing do not erode the tax savings from STAR.

Part JJ. **Responsibilities of the State Education Department (SED) and the Higher Education Services Corporation (HESC**). Effective April 1, 1999, this bill amends the Education Law to eliminate SED's mandate to develop statewide Regents Master Plans for higher education and the related requirement for colleges and universities to obtain approval for Regents Master Plans and Master Plan Amendments for new educational programs, and to transfer the responsibility for administering higher education financial aid programs from SED to HESC.

The Education Law requires SED to prepare the Regents Master Plan for higher education in New York (§237), and each higher education institution in the State to submit to SED four-year master plans and interim amendments (§354 and §6206). These provisions were modified by §137 of Chapter 82 of the Laws of 1995 which directs the Regents and the Education Commissioner to streamline the master plan amendment process and increases the length of the planning cycle for master plans from four to eight years.

The roles of the Education Commissioner and the Regents in the establishment and oversight of regional college cooperative services boards are prescribed in §497 and §500 of the Education Law.

The responsibilities of the Education Commissioner and the Regents relating to the administration of various programs of financial aid for students in post-secondary educational institutions (e.g., Tuition Assistance Program and College Aid for Native Americans), are contained in §601, §602, §603, §604, §605-a, §607, and §4118 of the Education Law. In addition, Education Law specifies the role of the Education Commissioner relating to aid programs for higher education institutions such as Liberty Partnerships (§612), Bundy Aid (§6401), Medical and Dental Grants (§6402), Federal College Work Study Assistance (§6405) and the Opportunity programs (§6451, §6452, §6454, §6455).

The Higher Education Services Corporation, and its governance structure, purpose, powers and duties are established in §652 - §653 of Education Law. The structure of the State's various financial aid programs for students administered by HESC, with some involvement of the Commissioner of Education primarily in the area of student eligibility, are detailed in §652, §653, §655, §661,§664, §666, §667, §668, §668-a, §668-b, §669, §669-a, §670, §670-a, §670-b, §671, §672, §672-a, §672-b, §673, §674, §676, §677, §678 and §679 of the Education Law.

At present, observers within and outside of New York have found severe deficiencies in the State's governance of higher education and pointed to the Regents' inability to function as higher education policy makers. A 1998 audit by the State Comptroller concludes that although New York State has an ambitious governance structure for higher education, it has not worked for some time, and that the Regents are too preoccupied with elementary and secondary education to serve effectively as a post-secondary education coordinating body (*New York State's Higher Education Policy Vacuum*, June 1998). These views are reinforced by a comparative study published by the California Higher Education Policy Center which states that because of the excessive demands of elementary and secondary education on their time and energy, the Regents, unlike their counterparts in several other states, "have not initiated proposals for higher education for many years" (Callan and Bowen, *State Structures for the Governance of Higher Education New York Case Study Summary;* Spring 1997). By eliminating the Regents' role in higher education policy-making, this bill recognizes the ineffectiveness of SED's oversight of the State's colleges and universities.

The future direction of the State's private colleges and universities, and the State and the City University systems, are routinely deliberated by their respective boards of trustees. Given the existing responsibilities and commitment of such boards, it is difficult to justify yet another educational board, the Board of Regents, having policy and regulatory responsibilities for institutions of higher education. This bill, by deregulating higher education, offers all institutions the opportunity to manage their programs unfettered by SED's bureaucracy and encourages decentralized decision making, competition and quality.

The consolidation of all higher education financial aid programs in HESC will promote efficient, centralized distribution of Federal and State aid to students and higher education institutions. This action will also address recent concerns over SED's redundant and intrusive rules and costly mandates which make it difficult for colleges and universities to serve their students and maintain the quality of education.

By relieving the Regents, the Commissioner and SED of their policy and regulatory responsibilities related to higher education, this bill allows the agency to focus upon its primary mission, oversight of elementary, middle and secondary education.

SED's supervision and regulation of proprietary schools offering nondegree programs will be continued, given the need for State oversight of the operations of these institutions to protect the interests of students and ensure the appropriate use of student financial aid.

Part KK. Family and Children's Services Block Grant. This bill will maintain local flexibility in providing foster care, foster care prevention, and adoption services while limiting State fiscal liability for local spending decisions. Specifically, this bill, effective April 1, 1999:

- Extends the Family and Children's Services Block Grant (FCSBG) in the Social Services Law through March 31, 2003;
- Repeals the preventive services maintenance of effort requirement;
- Continues until March 31, 2003, the moratorium on fiscal sanctions (pursuant to Section 153-d of the Social Services Law) taken against local districts for noncompliance with child welfare reporting requirements; and,
- Ensures that local districts bear full responsibility for disallowances which result from their failure to comply with Federal law and regulations.

The FCSBG, established by Chapter 83 of the laws of 1995, is scheduled to expire on March 31, 1999. Should it expire, State law provides only for reimbursement of fifty percent of the non-federal share of local foster care expenditures. There is no provision for reimbursement of foster care prevention or adoption administration.

Currently, there is a moratorium on local fiscal sanctions for noncompliance with child welfare reporting requirements. The moratorium is scheduled to sunset in conjunction with the Block Grant.

The FCSBG provides local districts with considerable discretion in allocating funds for foster care, foster care prevention, and adoption administration, while limiting State fiscal liability to appropriated amounts. Moreover, by consolidating funding for related child welfare programs, the Block Grant permits local districts to focus on ensuring the safety and well-being of children rather than meeting the requirements of multiple State funding streams.

The 1999-2000 Executive Budget provides $827 million in State and Federal funding for child welfare services. The $536 million recommended for the Block Grant reflects a $15 million increase over SFY 1998-1999, and a $108 million increase since establishment of the Block Grant. The recommendation also includes $291 million in Federal welfare funding that can be used for child welfare and other supportive services. These resources, together with the local flexibility provided by the Block Grant, ensure that local governments have ample capacity to provide critical child welfare services.

The $15 million set-aside within the Block Grant appropriation, which may be matched by Federal and local monies, will assist counties in providing cost-of-living adjustments to voluntary agencies and ensuring that foster care facilities meet State and local fire and other building codes. This additional funding will enable participating local districts and voluntary agencies to invest in improving the quality of voluntary agency staff and protecting the safety of children living in foster care facilities.

The bill repeals a maintenance of effort (MOE) requirement that has limited local flexibility by mandating that counties use specified funding sources to maintain foster care prevention spending at SFY 1994-95 levels. Many districts currently face fiscal penalties for failure to meet the maintenance of effort requirement because their spending patterns do not conform to the restrictive State statute. Recent changes in the permitted use of Federal funds for preventive services render this mandate obsolete.

The bill passes through the full cost of any Federal deferrals or disallowances to the responsible counties or allocates the cost of such actions among the counties when county-specific data is not available. State law requires counties to administer child welfare programs in accordance with all Federal statutory and regulatory mandates. Because adherence to statute and regulations is often the result of local decisions, it is appropriate that counties assume responsibility for penalties incurred for failure to meet these requirements. The State would participate financially in any Federal deferral or disallowance that results from deficiencies in State law or regulations governing local program operations.

Finally, the bill continues the moratorium that provides local social services districts with relief from sanctions resulting from procedural and record keeping lapses. However, it retains the ability to conduct program and fiscal audits.

Part LL. Division of Human Rights Certification. These sections amend the Human Rights Law to enable the Division of Human Rights (DHR) to gain certification by the Federal Department of Housing and Urban Development (HUD) as a “substantially equivalent “ state agency, thereby making the Division eligible to contract with HUD for case reimbursement.

In addition to employment, education and other sectors, the State Human Rights Law provides protections against discrimination in the area of housing, which are similar to protections provided at the Federal level by the Fair Housing Act and enforced by the

U.S. Department of Housing and Urban Development (HUD). Until 1992, DHR and HUD had cooperated on several levels, including HUD reimbursing DHR for taking housing cases that HUD otherwise would have processed. Because the provisions of the Fair Housing Act were expanded in 1988, and the Human Rights Law has not followed suit, DHR complainants lack full protection. As a result, DHR is unable to receive Federal compensation for housing cases it is already processing. This bill makes certain that housing sections in the Human Rights Law are consistent both internally and with Federal statute. Section 292 is amended to make the terms "multi-family dwelling" and "multiple dwelling" interchangeable. The accessibility requirements are expanded to include dwellings being transferred by sale.

Currently, familial status is a protected classification in some, but not all, sections of the housing provisions of the Human Rights Law. Sections relating to sale of housing, representation of availability, exemptions for owners' families and definition of multi-family dwellings do not agree with Federal statute. Currently, the Human Rights Law prohibits discrimination based on age, but does not exempt housing facilities designed and operated for the elderly.

The present Human Rights Law has no provisions for awarding attorney's fees, assessment of civil fines or penalties, court award of punitive damages, or representation by DHR-provided attorney in court.

Existing law allows DHR and the respondent to agree with a conciliation that the complainant must then accept or reject. The Division may also dismiss a case for administrative convenience if it finds that the complainant's objections to the settlement are without substance.

The changes in this legislation are limited to those necessary for HUD certification and would result in HUD designating New York State as a "substantially equivalent" state. This would allow HUD to enter in a contract with DHR to reimburse the State for processing housing discrimination cases.

None of the changes would diminish the intent or enforcement of the Human Rights Law. The position of complainants (particularly those with low incomes) would be strengthened vis-a-vis the DHR conciliation process and their ability to pursue a case in civil court with the assistance of a DHR attorney. The position of DHR, and the deterrent effect of the Human Rights Law, would be similarly advanced by the ability of DHR or a court to impose fines, penalties or damages for proven housing discrimination or the bringing of frivolous actions.

Further, it should be noted that HUD has reviewed this draft legislation and affirms that the recommended statutory changes will enable New York State to meet their eligibility requirements. Legislation in any other form may prevent New York from qualifying for the desired reimbursement.

Part MM. Research Institute on Addictions. Effective July 1, 1999, this bill amends the Education Law to establish the Research Institute on Addictions (RIA) at the State University of New York at Buffalo as an institute for medical research, scientific investigation and education in the area of chemical dependence; amends the Mental Hygiene Law to delete the RIA from the list of facilities within the jurisdiction of the Office of Alcoholism and Substance Abuse Services (OASAS) and to permit the cooperation, as necessary, between State agencies for any chemical dependence related activities within the auspices of the OASAS; and provides for the devolution of all powers, duties, function, property, causes of action, liabilities and obligations, contracts and agreements, and for the transfer of RIA employees without the diminution of compensation or change in collective bargaining unit.

The RIA is currently located within the OASAS as an institute for medical research and scientific investigation in the field of chemical dependence. The transfer of RIA is supported by both the OASAS and the State University of New York, and is expected to improve the effectiveness and coordination of chemical dependency research activities in New York. The transfer should result in a number benefits, including:

-- the ability for the RIA to pursue a greater number of grants in broader areas of chemical dependence research, and to recruit and retain research professionals with expertise in a variety of fields;

-- the development of a technology transfer initiative to improve the direct application of research findings into the field of chemical dependence, prevention and treatment; and,

-- the strengthening of the State University of New York at Buffalo's position as a leading research university in the country, and the development of addiction-related educational programs at the undergraduate, graduate and post-doctoral levels to attract qualified people into the field.

All of these benefits can be realized without changes to the RIA's current organizational structure or location.

MISCELLANEOUS/REVENUE

Part NN. Personal income tax brackets and dependent exemptions. This bill reduces the burden of the State personal income tax by increasing the dependent exemption and expanding the income threshold at which the top tax rate is imposed on taxpayers.

Summary of Provisions:

Sections 1 and 2 of the bill amend section 616(a) of the Tax Law and section 11-1716(a) of the Administrative Code of the City on New York to increase the dependent exemption to $1,500 for taxable years beginning in 2002, and to $2,000 for taxable years beginning in 2003 and after.

Sections 3 to 5 amend the personal income tax rate schedules in section 601(a), (b), and (c) of the Tax Law to:

(a) In 2002, expand the income threshold at which the top tax rate of 6.85 percent applies to $50,000 for married couples filing jointly and qualified widows/widowers, $25,000 for single taxpayers and married taxpayers filing separately, and $37,500 for heads of households.

(b) Starting in 2003 and after, further expand the income threshold at which the top tax rate applies to $60,000 for married couples filing jointly and qualified widows/widowers, $30,000 for single taxpayers and married taxpayers filing separately, and $45,000 for heads of households.

Existing Law:

Under current law, the dependent exemption is $1,000, and the income threshold at which the top tax rate of 6.85 percent applies is $40,000 for married couples filing jointly and qualified widows/widowers, $20,000 for single taxpayers and married taxpayers filing separately, and $30,000 for heads of households.

Statement in Support:

This bill, which builds upon the historic personal income tax reduction plan enacted in 1995, provides further tax relief for nearly five million lower- and middle-income taxpayers, and allows them to keep more of what they earn.

By doubling the dependent exemption, which has stood at $1,000 since 1988, this family-friendly tax cut plan reflects more accurately the cost of raising children.

When fully effective in taxable year 2003, this bill will reduce State personal income taxes by more $600 million each year, and reduce the tax burden on a typical middle-income family of four by about $150 per year.

Part OO. Personal income tax filing threshold. This bill eliminates the required filing of personal income tax returns by many New York residents whose income is too low to incur State income tax.

Summary of Provisions:

Effective immediately and applying to taxable years beginning after 1998, this proposal would amend section 651(a)(1) of the Tax Law to: (1) eliminate the requirement for a New York resident individual to file a return if required to file a Federal income tax return for that taxable year; (2) use New York AGI, rather than Federal AGI plus New York additions to income, for comparison to the filing threshold; and (3) simplify the filing threshold to be equal to the person's standard deduction, rather than the lesser of that deduction or $4,000.

Existing Law:

Under current law, a New York resident must file a New York personal income tax return if he/she: (1) is required to file a Federal tax return for the taxable year; (2)

has Federal adjusted gross income (AGI) plus New York additions to income in excess of a filing threshold which equals the lesser of $4,000 or that person's New York standard deduction; (3) is subject to the minimum income tax under the New York personal income tax; or (4) has received a lump sum distribution, any portion of which is subject to the separate tax on the ordinary income portion of lump sum distributions under the New York personal income tax.

Statement in Support:

(a) This bill would eliminate filing requirements for more than one million taxpayers who owe no income tax, thereby significantly reducing tax return processing costs.

(b) The current filing threshold of $4,000, which was enacted in 1987, approximates the standard deduction levels in effect at that time. This threshold, however, is below current standard deduction levels (ranging from $6,500 to $13,000) for all taxpayers other than "dependent filers" (for whom the standard deduction equals $3,000), resulting in many individuals who owe no tax being required to file.

(c) Requiring State filing by those who must file Federal returns results in many individuals having to file a return even though they owe no State taxes. Indeed, these individuals, many of them retirees, have certain kinds of income (e.g., Federal bond interest and most retirement benefits) which are taxable at the Federal level but not at the State level.

(d) The bill addresses the rules which mandate filing a return in New York. It does not, however, limit an individual's right to file a return if that individual chooses to do so, for instance, when a refund is due back to him/her.

(e) The intent of the bill is to be "taxpayer friendly," consistent with the recent Federal Restructuring and Reform Act of 1998.

(f) Finally, objections have been raised regarding the impact of the elimination of zero-liability returns on the allocation of school aid among school districts around the State, since income is a component of the State school aid formula. These concerns, however, have proven immaterial as analysis by the Education Department shows that the net impact on school aid would be minimal.

Part PP. Innocent spouse protection. This bill conforms the State of New York, City of New York, and City of Yonkers personal income taxes to the Federal Internal Revenue Code regarding joint and several liability provisions for joint returns.

Summary of Provisions:

Sections 1 to 3 of this bill eliminate the provisions established under Chapter 567 of the Laws of 1998 and restore the joint and several liability requirement, except for specific cases as provided in the Tax Law.

Section 4 of the bill adds a new paragraph 7 under section 651 (b) to require that the Tax Department must inform, through publications and instructions, married taxpayers of their joint and several liability when they file joint tax returns.

Section 5 of the bill adds a new section 654 which conforms the State to the IRS Restructuring and Reform Act of 1998 (P.L. 105-206) by adopting by reference section 6015 of the Internal Revenue Code. This newly enacted Federal law provides detailed rules for relieving joint filers from joint and several liability. In addition, section 654 of the Tax Law provides the necessary modifications to section 6015 of the IRC to be consistent with existing Tax Law provisions.

Section 6015 of the IRC:

a. provides detailed rules for qualifying for innocent spouse relief, namely in situations where one spouse provided erroneous information which resulted in an understatement of liability, and the other "innocent" spouse did not know or had no reason to know that the return contained such understatement;

b. allows divorced or legally separated taxpayers to elect separate and proportionate liability; and

c. gives the Secretary of the Treasury the authority to relieve a taxpayer of liability if it is inequitable to hold him/her liable for an unpaid tax, but no relief is available under a. or b. above.

Sections 6 to 17 of the bill make the appropriate adjustments to the Tax Law and to the Administrative Code of the City of New York, and add references to section 654 of the Tax Law, thereby ensuring that, in the treatment of joint tax returns, the New York City personal income tax on residents and the City of Yonkers income tax surcharge on residents are administered the same way as the State personal income tax.

Section 18 of the bill provides that it will be effective starting January 1, 1999.

Existing Law:

Chapter 567 of the Laws of 1998 stipulates that, effective January 1, 1999, the tax liability of a husband and wife who file a joint New York State personal income tax return shall be separate and proportionate, rather than joint and several, as has always been the case. More specifically, each spouse's liability will be considered separately and be proportionate to his/her share of the couple's total liability reported on the return. Provisions in effect prior to the enactment of this new law regarding the relief of innocent spouses from joint and several liability were thought inadequate by the Legislature.

As an exception to the new rule, liability will remain joint and several if the Commissioner of Taxation and Finance establishes that one spouse provided erroneous information which resulted in substantial understatement of liability, and that the other spouse knew or had reason to know that the return contained such substantial understatement.

Until Chapter 567 of the Laws of 1998 becomes effective, the Commissioner can provide relief from liability to an innocent spouse through a compromised assessment if that spouse can demonstrate: (1) that he/she did not know and had no reason to know of the other spouse's substantial understatement of liability; or (2) that collection of the other spouse's share of liability from the innocent spouse could not be accomplished within a reasonable amount of time without imposing considerable economic hardship on him/her.

Chapter 567 of the Laws of 1998 did not amend the New York City personal income tax on residents nor the Yonkers income tax surcharge on residents, thereby maintaining the joint and several liability requirement, subject to the innocent spouse provision that predated the enactment of Chapter 567.

<u>Statement in Support</u>:

(a) This bill is in response to Governor Pataki's request in his approval message relating to Chapter 567 of the Laws of 1998 that New York State reflect the new Federal innocent spouse legislation.

(b) As more than three million joint tax returns are filed every year, restoring the joint and several liability requirement would be much easier for taxpayers and for the Department of Taxation and Finance. Indeed, the separate and proportionate liability clause would require that personal income tax forms be rewritten to provide individual information on income, deduction, etc. for each spouse, in addition to their joint information. Such data would be necessary to allocate liability separately. This change would make it burdensome and time consuming for taxpayers to fill out their tax returns and for the Department to administer. The implementation of the tax changes would be costly. By contrast, the Tax Department processed about 1,000 claims for relief under the innocent spouse provision in 1997, of which only about half actually qualified for such relief.

(c) The bill would target specifically those it was intended to protect, namely the innocent spouses who need to be relieved of inequitable liability on a joint return, and separated or divorced spouses who elect to be liable only for their proportionate share of liability.

(d) Since Chapter 567 of the Laws of 1998 did not make commensurate adjustments for New York City and Yonkers to conform to the State provisions, an amendment to current law would have to be passed to allow both cities to be administered in the same manner as the State.

Part QQ. **Utility deregulation.** This bill reforms and reduces the State and local taxation of the electricity and gas industry to promote competition in the energy marketplace and provide rate relief to energy consumers.

Summary of Provisions:

Sections one and two of this bill amend, respectively, sections 183 and 184 of the Tax Law to clarify that, after the repeal of section 186 of the Tax Law as proposed by section 3 of this bill, corporations formed for or principally engaged in the transportation, transmission or distribution of gas, electricity or steam will be liable for franchise taxation under Article 9-A of the Tax Law, rather then sections 183 and 184 of such law.

Section three of the bill repeals sections 186 and 186-b of the Tax Law. Section 186 imposes the franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies, while section 186-b imposes the MTA tax surcharge on the tax imposed under section 186. Such repeal is effective January 1, 1999. The corporations no longer subject to tax under section 186 will generally become subject to tax under Article 9-A of the Tax law, which imposes the franchise tax on general business corporations.

Section four of this bill amends the tax imposed by section 186-a of the Tax Law. Telecommunication providers are left unchanged. As to other taxpayers, the amendment provides that, if regulated by the Department of Public Service, the taxpayer shall compute its gross income as follows: (1) gross income derived from the transportation, transmission or distribution of gas or electricity (the receipts are defined as receipts representing the noncommodity portion of the bill for electric or gas service) and (2) other gross income, separately identified as from the sale of the commodity of electricity or gas. The rates are:

Gross Income From The Transportation, Transmission or Distribution of Gas or Electricity:

January 1, 1999 - December 31, 1999	3 1/4%
January 1, 2000 and thereafter	2 1/2%

Other Gross Income:

January 1, 1999 - December 31, 1999	2.6%
January 1, 2000 - December 31, 2000	2.4%
January 1, 2001 - December 31, 2001	1.75%
January 1, 2002 - December 21, 2002	1%
January 1, 2003 and thereafter	0%

The gross operating income base under section 186-a will be phased out according to the same schedule as that above for the "other gross income" base.

Section four of the bill also makes clarifying amendments to paragraphs (b) and (c) of subdivision 2 of section 186-a. The definition of "person" under paragraph (b) is amended to make clear that, with respect to sales of gas or electric service or of gas or electricity, the exclusion from tax for municipalities (and state and municipal subdivisions) applies only to bona fide municipal electric generation and distribution systems or gas distribution systems. The ownership and operation of generating and distribution plant and equipment or, with respect to gas, a system of distribution owned and operated by the municipality are essential to qualify for the exclusion. In addition, all gas or electricity must be sold at retail and, then, solely to customers within the municipality. However, an exception is set forth for the sale of electricity or the transportation, transmission or distribution thereof to a municipality in the circumstance where a municipality is engaged in the retail sale of electricity and the sole source of supply (excluding temporary substitution power during outages or periods of reduced output) is the State or a public authority of the State. A clarification has been added to the charitable, educational and religious organization exclusion to make it clear that such organizations must qualify under section 1116(a)(4) of the Tax Law.

Paragraph (c) of subdivision 2 of section 186-a is amended to set forth a statement with respect to gross income as it relates to receipts from sales of the transportation, transmission or distribution. As amended, the provision states that receipts from the sale of transportation, transmission or distribution include receipts from all sales except sales to (1) a rate-regulated utility; (2) a municipal utility; and (3) a public authority of the State. Another exception is provided with respect to sales to a municipality. The terms of the municipal utility exclusion and the municipal exclusion are the same as discussed previously in relation to exclusions from gross income.

Section five of this bill, to take effect January 1, 2003, amends section 186-a, as amended by section 4 of this bill. The amendment eliminates the section 186-a tax on the gross operating income base. Also, it eliminates, from the gross income base of taxpayers described in paragraph (b) of subdivision 1 of section 186-a, receipts from the sale of the commodity of gas or electricity.

Section six of the bill amends the Metropolitan Commuter Transportation District surcharge imposed under Tax Law, section 186-c, so the district will be held harmless as to the rate reductions occurring under section 186-a with respect to certain taxpayers and receipts.

Section seven of the bill repeals sections 189 and 189-a of the Tax Law which impose the privilege tax on importation of gas services for consumption and the MTA surcharge on that tax.

Section eight of the bill repeals section 192.3 of the Tax Law, which contains the tax reporting requirements for the tax imposed under section 186.

Sections nine, ten, twelve, thirteen and fourteen through nineteen of the bill make technical conforming amendments to reflect the repeal or amendment of various provisions of the Tax Law by the bill. These sections of the bill amend, respectively, sections 197-a.1, 197-b.1(a) and .6, 209.4, 210.1-c(b), 210.12(j)(1), 1085(c)(3) and 1452(a)(9) of the Tax Law, sections 25-u and 25-x of the General City Law and section 1020-q.2 of the Public Authorities Law.

Section eleven of the bill adds sections 208.9(c-2) and (c-3) respectively, to the Tax Law to provide transition adjustments under the income-based franchise tax regime which will apply beginning in 1999. The (c-2) adjustments apply to "qualified public utilities", meaning utilities which (1) were subject to ratemaking supervision by the State Department of Public Service on December 31, 1998 and (2) were subject to Article 9 tax under section 186 of the Tax law for 1998. The (c-3) adjustments apply to "qualified power producers", meaning utilities which (1) were *not* subject to ratemaking supervision by the State Department of Public Service on December 31, 1998 and (2) were subject to Article 9 tax under section 186 of the Tax law for 1998 on account of being principally engaged in the business of supplying electricity.

The paragraph (c-2) depreciation adjustment for qualified public utilities replaces the federal depreciation deduction applicable to depreciable property placed in service before 1999 (transition property) with a deduction equal to that shown on the books and records of the taxpayer, kept in accordance with generally accepted accounting principles.

Similarly, paragraph (c-2) provides a New York basis adjustment for transition property, such that gain or loss recognized when the property is sold or otherwise disposed of will be determined using book basis rather than federal tax basis for the property. However, a special rule applies, in the case of transition property sold at a gain during the first ten years after transition to the article 9-A tax, or in the case of nuclear electric generating facilities whenever sold, so that an ameliorative New York basis is used. This New York basis is the original cost of the property minus the New York depreciation allowed since entering the Article 9-A regime. However, in the event that use of this New York basis converts the federal gain to a loss, no gain or loss will be recognized under the Article 9-A franchise tax.

Similarly, paragraph (c-2) provides that where transition property is disposed of in a nonrecognition event, such as a tax-free reorganization or a trade-in for replacement property, a basis adjustment carries over to the transferee of the property, or to the replacement property, for purposes of adjusting gain or loss in a subsequent recognition transaction.

In addition, paragraph (c-2) provides an adjustment for the expense associated with regulatory assets. Broadly, regulatory assets are expenditures whose recognition as expense is deferred to some future period when rate revenue is allowed to recoup the expense. The expenditures were expensed on the federal tax return in years prior to 1999, but the corresponding rate revenue will be recognized in later years when it is collected. The adjustments are intended to match this income and expense by allowing an expense deduction in New York taxable income where the related income is recognized in federal taxable income after 1998.

Paragraph (c-3) provides depreciation adjustments for qualified power producers. These adjustments disallow the federal depreciation deduction, and provide a New York depreciation deduction which treats all the producer's depreciable property at the transition date of January 1, 1999 as a single asset, depreciable over 20 years using the straight-line method. This adjustment applies only for purposes of the depreciation deduction. Gain or loss on sale of such property will be recognized on the same basis as for federal purposes.

Section 13-a of the bill amends section 210.3(a)(2)(B) of the Tax Law, in Article 9-A thereof, to create a special rule for allocation in the case of receipts from the service of transporting or transmitting gas through pipes. It is provided that in determining the portion of the taxpayer's total receipts from such service which are attributable to New York (and thus includable in the numerator of the receipts factor used in computing the business allocation percentage), the total of such receipts is to be multiplied by a fraction. The numerator of the fraction is the taxpayer's "transportation units" within New York, and the denominator is the taxpayer's "transportation units" within and without the State. A transportation unit consists of the transportation of one cubic foot of gas over a distance of one mile. This methodology is currently employed under Article 9.

Section twenty of the bill contains transitional provisions affecting taxpayers which will, by virtue of this bill, move from taxation under section 186 for 1998 to Article 9-A (or Article 32, in unusual instances) for a taxable year beginning on January 1, 1999. Subdivision (a) of this section provides that such a taxpayer's previous year's tax, which must be paid in order to receive an automatic extension of time for filing a return, or the payment of which as estimated tax will be sufficient to avoid penalty, is to be the taxpayer's tax under section 186 for 1998.

Subdivision (b) of section twenty of the bill provides that pre-1999 overpayments under section 186 which, under the current statute, would be credited forward against future Article 9 liabilities, will instead be credited forward against the taxpayer's future Article 9-A (or Article 32) liabilities.

Subdivision (c) of section twenty of the bill requires taxpayers subject to section 186 of the Tax Law for 1998 to make a payment on March 15, 1999 equal in amount to 25% of their 1998 section 186 liability (if such liability is in excess of $1000). Such payment will constitute the mandatory first installment of estimated tax under section 213-b (or section 1461(a)) of the Tax Law. If this bill is enacted after March 15, 1999, then it is provided that the taxpayer's March 15, 1999 payment of its mandatory first installment for 1999 under section 186 will be treated as described in the previous sentence.

Subdivision (d) of section twenty of the bill provides that a taxpayer which became entitled to a credit under section 187, 187-a or 187-b of the Tax Law for a pre-1999 year, and which was unable to deduct the full amount of such credit against its Article 9 liabilities through its 1998 Article 9 year, may carry the excess forward and use it against its future Article 9-A (or Article 32) liabilities.

Subdivision (e) of section twenty of the bill provides that where a taxpayer is subject to Article 9 for 1998 and to Article 9-A for the next two years, and such taxpayer claims an Investment Tax Credit (ITC) or an Economic Development Zone Investment Tax Credit (ZITC) for the first year of such two year period and the Employment Incentive Credit or Economic Development Zone Employment Incentive Credit in the second year of such two year period, such taxpayer, in making the required look-back with respect to employment in the State or Economic Development Zone, as the case may be, to the year immediately preceding the ITC or ZITC year, may look to its 1998 taxable year under Article 9.

Subdivision (f) of section twenty of the bill is a general savings clause, designed to make clear the continued applicability, where appropriate, of provisions of law repealed or amended by the bill.

Section twenty-one of the bill adds section 1101(b)(19) to the Tax Law to define gas and electric service. Gas service means “gas and gas service” and electric service means “electricity and electric service,” as such terms have customarily been used and subject to tax under section 1105(b) of the Tax Law, which imposes sales tax on gas, electricity and such services, of whatever nature. New section 1101(b)(19) makes clear that the terms “gas service” and “electric service,” respectively, include gas or electricity itself, as a commodity or as a part of an integrated service where the commodity is bundled with delivery and other components of a gas or electric service. Such terms would also include the transportation, transmission or distribution of the gas or electric service, either itself or similarly bundled with the commodity. Other components of an integrated service are also included, such as metering service, meter reading, billing or collection services, capacity and demand charges and the like, even if such other components are unbundled and furnished by a separate service provider, as well as ancillary services currently in the rate base but which may be separately charged for in the future.

Section twenty-two of the bill amends the definition of “use” in section 1101(b)(7) of the Tax Law to clarify that “use” includes the right or power over gas, electric and other services subject to use tax.

Section twenty-three of the bill amends section 1105(b) of the Tax Law, which imposes the State sales tax on utility services, to delete the terms “gas” and “electricity,” since such terms are subsumed in the new definitions of gas and electric services in section twenty-one of the bill.

Section twenty-four of the bill amends section 1105-A(b) and (d) of the Tax Law, which exempts from sales and use taxes certain tangible personal property and services used in producing tangible personal property for sale, to make necessary conforming and technical changes for purposes of the use tax, and to delete obsolete language.

Sections twenty-five, twenty-six and twenty-seven of the bill amend sections 1107(b)(3), 1108(b)(3) and 1109(c), respectively, of the Tax Law, to make conforming changes to reflect the use tax on gas and electric and other services.

Section twenty-eight of the bill amends section 1110(a) of the Tax Law, which imposes the State's compensating use tax, to add new clause (G) imposing use tax on gas or electric service described in section 1105(b). This use tax would be imposed on the use of the same type of gas and electric services subject to sales tax; that is, gas and electric services of whatever nature, purchased other than for resale.

Section twenty-nine of the bill adds subdivision (h) to section 1110 of the Tax Law to establish the base on which the use tax on gas and electric services is imposed. Use tax will be at four percent of the consideration given or contracted to be given for the gas or electric service, or for the use of such service, as well as for any tangible personal property transferred in conjunction with performing the service and any charges made by the seller for shipping or delivering such tangible personal property. Likewise, included in the base subject to use tax are any charges by the vendor or other seller of the service, or by another person, whether or not separately stated, for (1) shipping, delivering, transporting, transmitting or distributing the gas or electric service to the purchaser and (2) any unbundled component of such service, as described in the definition of gas and electric services in new Tax Law section 1101(b)(19) added by section twenty-one of the bill.

Sections thirty through thirty-three of the bill make similar conforming and technical corrections to various sections in Article 28 of the Tax Law relating to State sales and use taxes, to reflect the new definition of gas and electric services and the use tax imposed on gas, electric and other services.

Sections thirty-four and thirty-five of the bill amend section 1210 of the Tax Law, which, in general, authorizes counties and cities to impose sales and use taxes, to clarify that, if a county or city imposes sales taxes on utility services, such imposition also includes use tax on gas and electric services. Likewise, if a county or city elects to exempt residential energy sources and services from local sales tax, or to tax them at a reduced rate, such exemption or reduced rate will also apply to the county's or city's use tax on gas and electric services. Sections thirty-four and thirty-five of the bill also make conforming and technical changes to reflect the use tax on services.

Section thirty-six of the bill amends section 1212(a) of the Tax Law, which authorizes school districts to impose sales tax on utility services, to provide that, if a school district imposes such sales tax, it will also impose the use tax on gas and electric services. The amendment also makes a conforming reference to the use tax on telephone answering services, to clarify that the school district's use taxes include the use tax on such services.

Sections thirty-seven through forty of the bill make conforming and technical changes to various sections relating to the administration of local sales and use taxes in Article 29 of the Tax Law, to reflect the use tax on gas and electric services and conforming references to the use tax on telephone answering services.

Sections twenty-one through twenty-seven and thirty through forty, relating to the definition of gas and electric services, State and local sales taxes on such services, and technical and conforming changes to such sales taxes, take effect on April 1, 1999. Such sections will apply to property and services sold on or after that date although made under a prior contract. Where the property or service is sold on a monthly, quarterly or other term basis, and the bills for the property or services are based on meter readings, the amount received for the bill will be subject to tax if the meter is read after April 1, 1999, but only if more than one-half of the number of days in the month or other term for which the bill is rendered occur after March 31,1999. The conforming and technical changes relating to use taxes in such sections twenty-one through twenty-seven and thirty through forty will take effect when the compensating use tax on gas and electric services take effect.

Such compensating use taxes and technical and conforming changes related to them will take effect on June 1, 1999, subject to the same transition rules regarding meter readings described for sales tax purposes.

Bill section 41 mitigates the impact on the local property tax base that will result from the interaction of the Real Property Tax Law and the changes the bill makes to the Tax Law. It provides for gradual elimination, over a ten year period, of real property taxes on certain machinery and equipment that would otherwise become immediately exempt as a result of moving corporations that generate electricity from Article 9 of the Tax Law to Article 9-A. Such machinery and equipment, if owned by a 9-A corporation, is currently exempt from real property taxes. However, the same property, if owned by an Article 9 corporation, would be considered taxable real property. The gradual phase-out thus mitigates the impact on localities, while at the same time accomplishing equitable taxation between corporations that generate electricity and corporations engaged in manufacturing.

Existing Law:

There are State and local sales taxes on gas and electricity and gas and electric services of whatever nature, but no compensating use tax. When a resident of New York, whether an individual or a business, purchases gas or electricity outside the State, there is no sales or use tax even if the energy is consumed in the State. Home residential consumers are currently exempt from State sales tax and many are exempt from, or subject to reduced rates of, local sales taxes.

These home residential exemptions and reduced rates would also apply to use tax under the bill.

Section 1110(a)(E) imposes the State's four percent compensating use tax on telephone answering services. Article 29 of the Tax Law generally incorporates the State's taxes, including the use tax on telephone answering services, into local sales and use taxes which counties, cities and school districts are authorized to impose. When the use tax on telephone answering services was imposed, certain technical and conforming references to such tax were not made to certain provisions of Article 29 rectified in this bill.

Statement in Support:

The Public Service Commission (PSC) has restructured the energy utilities to encourage competitive markets to achieve the advantages of the efficiency, economy, and innovation of the marketplace. The existing State and local tax system was designed to function within the context of an industry structure that no longer exists. If the current tax system remains in place it will produce unintended results including tax increases and tax induced competitive disadvantages for New York based energy providers.

In the competitive market, energy consumers will have the opportunity to purchase a variety of energy and energy related services from energy service companies (ESCO's) that are not price regulated by the PSC. The local PSC price regulated gas/electric utility will remain responsible for getting the energy to the consumer.

The clarification of the sales tax and the imposition of the compensating use tax clarify the application of existing law while providing for the equality of competition among market participants. Clarification is required because energy services will no longer be available exclusively from vertically integrated local utilities. The clarification ensures, in instances where energy is currently taxable, that the service of getting the energy to the consumer will remain taxable whether the energy itself is purchased from the local regulated utility or an ESCO.

Prior to electric market restructuring by the PSC, and similar earlier federal efforts to create more competitive interstate markets for natural gas, the provision of electricity or gas was an integrated monopoly service provided by the local utility. The PSC regulated local utility purchased gas and/or generated electricity and provided the service of delivering it to the customer as a bundled service.

When energy services were sold exclusively by integrated local utilities, a compensating use tax for energy was not included in the structure of the sales tax. A use tax was not necessary because energy could not be purchased outside the State. In the restructured environment, gas or electricity may be purchased outside the State and used within the State. Without a compensating use tax, in-State providers of energy are disadvantaged for transactions that are taxable. A compensating use tax is imposed as a complement to the sales tax;

the use tax works in lieu of the sales tax to achieve the same results as a sales tax for sales that occur outside, and where the use occurs within, the State.

A transitional credit in support of competitive energy markets for ESCO's is provided as an economic development incentive to invest in the creation of competitive energy markets in New York. The credit to an ESCO is measured by the value of the State sales tax imposed and reported on the cost of the charge by the local utility for the electric service to deliver the energy provided by the ESCO to the customer. Typically this charge exceeds the value of the sales tax on the commodity itself. The credit is refundable and it is available to both corporate and personal income taxpayers. The credit will be available for sales made by ESCO's beginning on April 1, 1999, through March 31, 2000. The credit will not be necessary after this time because the competitive energy market will be sufficiently developed.

The franchise tax under section 186 of Article 9 on gas or electric corporations, measured primarily on gross receipts, is eliminated. As a result of the elimination, these corporations will become subject to the franchise tax on business corporations, Article 9-A, measured primarily on net income. Gas (including propane) pipeline corporations, currently subject to franchise taxation under sections 183 and 184, measured primarily on gross receipts are transferred to Article 9-A. The result of these changes is to provide a competitive tax environment for all components of the energy services industry including regulated utilities, their unregulated affiliates and independent non-regulated companies. Currently, the gross receipts nature of the tax discourages competition because the sale of energy among companies results in the imposition of the tax at each sale.

The bill will lower energy costs by eliminating the portion of the excise tax, Article 9, section 186-a, on the energy commodity of electric or gas currently imposed on those furnishing utility services for ultimate consumption. This component of the excise tax will be phased-out during a five year period to moderate the reduction in State revenue that would result from an immediate elimination.

Gas or electric utilities will continue to pay an excise tax, 186-a, based on the portion of their revenues associated with their regulated transmission and distribution activities. Currently this tax is imposed upon utility services for ultimate consumption; the tax will be restructured to ensure that it will only be imposed upon price regulated utilities. The restructuring will give the industry the ability to provide customers a variety of service and billing alternatives without the potential for multiple taxation or other administrative difficulties. The restructuring maintains the existing base of taxation for transmission and distribution without alteration. The scheduled future rate reduction to 2.5% would remain in effect.

The section 189 privilege tax on the imposition of gas services for consumption (gas import tax) is repealed. The gas import tax was imposed when it became possible for large natural gas customers to bypass their local utilities and purchase gas outside the state and make arrangements to transport the gas to their local utility. The local utility would then complete the delivery of the gas to the final destination. These arrangements resulted in the avoidance of the Article 9, section 186, franchise tax and the Article 9, section 186-a, tax on the value of these transactions. To compensate for the absence of these taxes on the gross receipts of the out-of-State supplier/transporters, the gas import tax was imposed on the value of gas imported in instances in which the Article 9 taxes were not imposed. The repeal of the section 186 franchise tax, and the elimination of the section 186-a tax on the commodity, make this tax unnecessary.

The bill protects the local property tax base by providing for gradual elimination, over a ten year period, of certain machinery and equipment that would otherwise be removed from the definition of real property immediately as a result of the interaction of the Real Property Tax Law and the changes in the Tax Law provisions of the bill. It provides short-term protection for localities, as well as moving to equitable taxation between corporations that generate electricity and corporations engaged in manufacturing.

Part RR. Alternative minimum tax; qualified emerging technology tax credits. The purpose of this bill is to reduce the rate under the Article 9-A minimum tax, increase the value of the qualified emerging technology employment and capital tax credits, and to increase the total amount of credit allowable to a taxpayer for purposes of the qualified emerging technology capital tax credits.

Summary of Provisions:

Article 9-A Minimum Tax Rate Reduction

Section 1 amends subparagraph (ii) of paragraph (c) or subdivision 1 of section 210 of the Tax Law. This provision reduces the rate applied to a taxpayer's minimum taxable income base from three percent to two and one-half percent for taxable years beginning after June 30, 2000.

Article 9-A Qualified Emerging Technology Credits

Section 2 amends paragraph (d) of subdivision 12-E of section 210 of the Tax Law. This provision increases the credit factor used in computing the employment credit from one thousand dollars above the base year employment to fifteen hundred dollars for taxable years beginning after 2000.

Section 3 amends subparagraphs 1 and 2 of paragraph (a) of subdivision 12-F of section 210 of the Tax Law. These provisions expand the percentage used in computing the tax credit for each qualified investment in a qualified emerging technology company. For taxable years beginning after 2000, investments that are not sold, transferred, traded, or disposed of during the four years following the year in which the credit is first claimed apply a rate of twenty-five percent, increased from 10 percent, and for qualified investments that are not sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed apply a rate of fifty-percent, increased from twenty-percent.

This section also expands the total amount of credit allowable to a taxpayer for all years, in the aggregate. For a taxpayer meeting the four year holding period, the allowable amount is increased from one hundred and fifty thousand dollars to five hundred thousand dollars and for a taxpayer meeting the nine year holding period, the allowable amount of credit is increased from three hundred thousand dollars to one million dollars.

The bill would take effect immediately.

<u>Existing Law:</u>

Article 9-A Minimum Tax Rate Reduction

The 1998-99 State Budget included provisions to reduce the minimum tax rate from 3.5 percent to 3.25 percent for taxable years beginning after June 30, 1998 and before July 1,1999. The rate is further reduced to 3 percent for taxable years beginning after June 30, 1999.

Article 9-A Qualified Emerging Technology Credits

The 1998-99 State Budget included the "New York State Emerging Industry Jobs Act" that provides Article 9-A tax credits for companies that invest in qualified emerging industries in New York State. This Act included an employment tax credit and two capital credits depending on how long the investment is held.

<u>Statement in Support</u>:

Article 9-A Minimum Tax Rate Reduction

The reduction of the minimum tax rate from 3 percent to 2.5 percent will complement the reduction in the entire net income tax rate. Without the minimum tax reduction, companies may not receive a significant tax reduction, because they would pay tax under the minimum tax base. Furthermore, the reduction in this base will send a strong message to businesses that investing and growing in New York State is not a penalty under the minimum tax.

Article 9-A Qualified Emerging Technology Credits

The "New York State Emerging Industry Jobs Act" was designed to encourage the creation of jobs and investments in emerging technology industries by creating employment and capital credits. This bill provides a greater incentive for both increasing employment in qualified emerging technology companies and increasing investments in these companies. These increases will encourage the expansion of existing businesses and start-up companies in New York creating high-pay jobs in the most rapidly expanding segment of the economy.

Part SS. Urban employment credit. The bill will establish an Urban Jobs tax credit to businesses in the cities of New York. The legislation provides a credit for employers who expand jobs in New York cities. After adding a threshold number of 25 new jobs in a city (and the State), the employer is granted a credit of up to $1,000 per job if the jobs are retained for two years. The credit applies against the personal income tax, the 9-A corporate franchise tax, the Article 32 bank tax, the Article 33 insurance tax, and the Article 9 franchise taxes. In New York City, the credit only applies in State economic development zones.

<u>Summary of Provisions</u>:

Section 1 of the bill would add new section 187-C to the Tax Law, in Article 9. This provision would provide a tax credit against the taxes imposed under sections 183 and 184 (franchise taxes on transmission and transportation corporations), section 185 (franchise tax on agricultural cooperatives) and section 186 (franchise tax on utility companies).

The credit is available only where the taxpayer has increased employment since the prior taxable year, in both the State and the cities (but only in economic development zones in the case of New York City) of the State, by at least 25 jobs. For the year of the increase, the credit is equal to the product of the increase in excess of 25 jobs and either $500 or $250. The $500 figure is applicable where the average hourly rate of compensation is in excess of $8.

Where a credit is allowed for such an increase in employment, and the level of employment in both the State and the cities is maintained during the following taxable year, the same credit is allowed again for the second year, in addition to any credit earned for a further increase in employment in the second year. For example, a corporation formed in 2000 (and thus with zero employment in 1999) has an urban employment figure of 150 in 2000, 180 in 2001 and 220 in 2002. If the $500 credit rate is applicable, the credit for 2000 would be $500 X 125 (i.e., the increase in excess of 25) = $62,500. This credit is termed the "job growth credit." In 2001, the taxpayer would be entitled to another credit of $62,500 (termed the "job maintenance credit") simply by reason of having maintained an employment level of at least 150 and, in addition, a "job growth credit" to reflect the employment increase by more than 25 over the figure for 2000. This "job growth credit" would be equal to $500 X 5 (the increase, in excess of 25, from the 2000 figure of 150 to the 2001 figure of 180) = $2,500. In 2002, the taxpayer would be allowed a "job maintenance credit" of $2,500 simply by reason of having maintained the 180 person employment level and, in addition, a "job growth credit" to reflect the increase, in excess of 25, over the 2001 employment figure. This credit would be equal to $500 X 15 (the increase in excess of 25) = $7500. The credit created in this bill would be subject to carryforward for up to 10 years.

Sections 2, 3, 4, 5 and 6 of this bill establish the same credit for Articles: 9-A

(Franchise Tax on Business Corporations), 22 (Personal Income Tax), 32 (Franchise Tax on Banking Corporations) and 33 (Franchise Taxes on Insurance Corporations). Thus, section 2 adds a new section 210.25, section 3 amends section 606(i), section 4 adds section 606(q), section 5 adds section 1456(j) and section 6 adds section 1511(l) to the Tax Law. Appropriate renumbering of provisions is made as required. The bill is made applicable to taxable years beginning on or after January 1, 2000, and includes an anti-abuse provision.

Existing Law:

The Tax Law presently contains no credits targeted for increased employment in the cities of the State. However, the Tax Law does contain credits for employment in Economic Development Zones and Zone Equivalent Areas, which are frequently located in urban areas.

Statement in Support:

The credits created by this bill constitute part of the Governor's program for the economic rejuvenation of the cities of this State. They would create an incentive to increase employment in the cities, both by expansion and by the establishment of new facilities. Further, this would be accomplished without detriment to the non-urban areas of the State because the credits do not apply based on a mere relocation of employees to urban areas.

Part TT. New York capital assets. This bill provides an income exclusion under Articles 9-A and 22 of the Tax Law and Section 11-1712 of the Administrative Code of the City of New York for gains on the sale of capital assets used in a trade or business in New York.

Summary of Provisions:

Section 1 of the bill will amend subdivision 9 of section 208 of the Tax Law by adding a new subparagraph 15 to exclude gains on the sale of New York capital assets from entire net income.

Section 2 of the bill amends subdivision 9 of section 208 of the Tax Law by adding a new paragraph (n) to establish the parameters for the exclusion of gain on sale of New York capital assets.

A "New York capital asset" will be defined to be an asset used in this State in a trade or business carried on in this State, where the asset is: (a) real or depreciable personal property; or (b) a "section 197 intangible" as listed in the Internal Revenue Code. Specifically excluded from eligibility are inventory property, property which the taxpayer rents to others, and any interest in a corporation, partnership, trust, or estate or in a contract which is a futures, foreign currency, notional principal, or similar financial contract. An exception to the leasing exclusion applies to new and substantially rehabilitated buildings. However, the passthrough of the gain on the sale of New York capital assets by the entity to the shareholders, partners or beneficiaries, respectively, of this entity can be eligible for the exclusion. To qualify for the exclusion, the asset must have been placed in service on or after June 1, 1999.

The exclusion will depend on the length of time the asset is used in the State. The following table illustrates the exclusion percentage:

If the New York capital asset is used in this State for	exclusion percentage
1 or more but less than 3 years	5 percent
3 or more but less than 5 years	10 percent
5 or more but less than 10 years	15 percent
10 or more years	20 percent

Sections 3, 4, 5 and 6 of the bill establish the same exclusion for Article 22 (Personal Income Tax) and Section 11-1712 of the Administrative Code of the City of New York. Thus, section 3 adds a new paragraph 37 to subsection (c) of section 612 and section 4 adds a new subsection (w) to section 612 of the Tax Law. Section 5 adds a new paragraph 37 to subdivision (c) of section 11-1712 and section 6 adds a new subdivision (w) to the Administrative Code of the City of New York.

Section 7 provides that these provisions shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2001.

Existing Law:

Tax Law currently contains no income exclusion under Article 9-A or Article 22 for gain on the sale of capital assets.

Statement in Support:

The exclusion permitted by these provisions will create an incentive to increase investments in a wide variety of New York businesses. The purpose is to attract new businesses and to provide expansion opportunities for existing business in New York. It will give New York a competitive advantage in attracting capital and innovative entrepreneurs to the State. Further, the varying time of the exclusion would aid a wide range of taxpayers who may not be able to hold their investments for longer than one year, and it would encourage other taxpayers, who desire long-term investments, to benefit from the three-, five- and ten-year holding periods.

Part UU. Bank and insurance taxes. This bill provides tax relief to banks and insurance corporations.

Summary of Provisions:

Bank Tax

Section 1 amends subsection (a) of section 1455 of the Tax Law, with respect to the tax rate applicable to allocated entire net income of banking corporations. This provision lowers the rate, in stages, from 9 percent to 7.5 percent. The rate drops to 8.5 percent for taxable years beginning after June 30, 2000, and before July 1, 2001, to 8 percent for taxable years beginning after June 30, 2001, and before July 1, 2002, and to 7.5 percent on or after July 1, 2002.

Section 2 amends subsection 1 of section 1455-B of the Tax Law, which imposes the MTA surcharge on the tax imposed under section 1451 and computed under section 1455. This provision is amended to ensure that the changes in the tax rate enacted in section 1 of this bill will not be reflected in the computation of the surcharge.

Insurance Taxes

Section 3 amends subdivision (a) of section 1502 of the Tax Law, contained in Article 33, with respect to the tax rate applicable to allocated entire net income. This provision lowers the rate, in stages, from 9 percent to 7.5 percent. The rate drops to 8.5 percent for taxable years beginning after June 30, 2000, and before July 1, 2001, to 8 percent for taxable years beginning after June 30, 2001, and before July 1, 2002, and to 7.5 percent on or after July 1, 2002.

Section 4 repeals section 1502-a of the Tax Law.

Section 5 amends section 1505 of the Tax Law, which contains the limitation on tax ("the cap") for insurance companies. Paragraph one of subdivision (a) of section 1505 is amended to lower, in stages, the rate of the cap for property and casualty companies from 2.6 percent to 2 percent. The rate drops to 2.4 percent for taxable years beginning after June 30, 2000 and before July 1, 2001, to 2.2% for taxable years beginning after June 30, 2001, and before July 1, 2002, and to 2 percent on or after July 1, 2002.

Section 6 amends subdivision (a) of section 1505-a of the Tax Law, which imposes the MTA surcharge on the taxes imposed by sections 1502 (the tax on entire net income) and 1510 (the premiums tax), as limited by section 1505 (the cap). This provision is amended to ensure that the changes in the tax rate enacted in section 3 of this bill and in the rate of the limitation on tax enacted in section 4 of this bill will not be reflected in the computation of the surcharge.

Section 7 provides that the bill would be effective immediately. However, the repeal of section 1502-a will apply to taxable years beginning on or after January 1, 2001.

<u>Existing Law:</u>

Bank Tax

Under Article 32 of the Tax law, banking corporations are subject to a tax on allocated entire net income of 9 percent where that produces the highest of four alternative bases.

Insurance Taxes

The tax liability of an insurance corporation subject to tax under Article 33 equals the sum of the tax imposed under section 1501 of the Tax Law and the tax imposed under section 1510 of the Tax Law. The tax imposed under section 1501 is commonly referred to as the tax on entire net income. The tax imposed under section 1510 is commonly referred to as the premiums tax. This tax, in the case of life insurance companies, is equal to .7 percent of the taxpayer's gross direct premiums, less return premiums thereon, received on risks resident in New York State. In the case of all other insurance companies, the tax is equal to 1 percent of the taxpayer's gross direct premiums, less return premiums thereof, for accident and health contracts and 1.3 percent of all the taxpayer's other gross direct premiums, less return premiums thereon. Pursuant to section 1505, however, the total tax liability of an insurance company under Article 33 may not exceed the tax on premiums, computed at a rate of 2 percent for life insurance corporations and 2.6 percent for all other insurance corporations. This limitation on tax is commonly referred to as "the cap." The State Insurance Fund is required to compute its tax in accordance with section 1505.

<u>Statement in Support</u>:

Under legislation enacted as part of the 1998-99 Budget (S. 6094-B/A. 9094-C), general business corporations subject to tax under Article 9-A of the Tax Law were provided with a tax rate reduction. However, that legislation did not reduce the taxes imposed on banking corporations and insurance corporations. These provisions will provide parity among the Article 9A, 32, and 33 franchise taxes.

In addition, the reductions in the tax rates under Articles 32 and 33 will help to make New York more attractive economically to both banking services and insurance companies in a rapidly changing environment. Furthermore, these reductions send a strong message to national and international bank and insurance companies that New York is an appealing headquarters location.

Bank Tax

This bill would provide banking corporations with a tax rate reduction from 9 percent of allocated entire net income to 7.5 percent of allocated entire net income under Article 32 of the Tax Law.

Insurance Taxes

This bill would provide insurance corporations with a tax rate reduction from 9 percent of allocated entire net income to 7.5 percent of allocated entire net income under Article 33 of the Tax Law. In addition, this bill would provide parity under Article 33 between life insurance companies and property and casualty companies by lowering the rate of the cap for property and casualty companies to the same rate that is currently applicable to life insurance companies.

This bill would provide the State Insurance Fund with the same tax treatment as private insurers. In a new more competitive insurance market it is important to permit the State Insurance Fund to compete on a level playing field with the private insurance industry. This change also helps SIF fulfill its statutory mission to its policy holders to provide insurance at the lowest possible rates.

Part VV. Termination of medical provider assessments. This bill will terminate the imposition of assessments on health facility providers as of March 31, 1999.

Summary of Provisions:

Effective April 1, 1999, the bill would amend sections 2807-d, 3614-a, and 3614-b of the Public Health Law and section 367-i of the Social Services Law to terminate assessments on health facility providers. Such providers are: certified home health agencies, long-term home health agencies, personal care providers, diagnostic and treatment centers, hospitals, and residential health care and health related facilities.

Existing Law:

Under current law, the imposition of assessments on the various health facility providers would not terminate until March 31, 2000.

Statement in Support:

The accelerated termination of assessments is part of a more comprehensive review of State statutes affecting medical providers. Such review aims to bring about greater equity and efficiency.

Part WW. Farmers' school property tax credit. This bill extends the farmers' school property tax credit available to farmers with agricultural land set aside or retired under a Federal supply management or soil conservation program, and enhances such benefits for farmers with land enrolled in a specific Federal conservation program.

Summary of Provisions:

Section 1 of the bill amends section 210(22)(d) of the Tax Law to clarify that land set aside or retired under a Federal supply management or soil conservation program is eligible for the school property tax credit for agricultural land under the corporate franchise tax and amends section 210(22)(e)(2) to expand the base acreage eligible for a full tax credit for agricultural land after 1998 to include land enrolled or participating in a Federal environmental conservation acreage reserve program as established in the 1996 Farm Bill.

Section 2 of the bill amends section 606(n)(4) of the Tax Law to clarify that land set aside or retired under a Federal supply management or soil conservation program is eligible for the school property tax credit for agricultural land under the personal income tax and amends section 606(n)(5)(B) to expand the base acreage eligible for a full tax credit for agricultural land after 1998 to include land enrolled or participating in a Federal environmental conservation acreage reserve program as established in the 1996 Farm Bill.

Section 3 of the bill provides for an immediate effective date, with application to taxable years beginning after 1998.

Existing Law:

Sections 212 (computation of franchise tax on business corporations) and 606 (credits against personal income tax) of the Tax Law were amended by the Governor's Farm Preservation Act of 1996 to establish an income tax credit for farmers. In 1997, the Governor proposed and signed legislation increasing the number of New York farmers eligible for school property tax relief under the Act. In 1998, the Governor and Legislature accelerated the full implementation of the credit for 100 percent of school taxes on agricultural property up to 250 acres and a 50 percent credit for acreage over 250 acres. Farmers may deduct up to $30,000 in non-farm income before calculating whether they meet the eligibility requirement that two-thirds of their Federal gross income is generated from farming. Farmers may also subtract payments made on farm debt principal for purposes of the $150,000 income cap.

Statement in Support:

The Governor's Farm Preservation Act of 1996 provided much-needed property tax relief to farmers by authorizing a school property tax credit against income tax. This proposal builds on this critical tax benefit for farmers, and promotes participation in important environmental programs by allowing farmers to receive additional relief for acres enrolled or participating in a Federal environmental conservation acreage reserve program.

After 1997, the base acreage eligible for a full tax credit is set at 250 acres, with 50 percent of the remaining agricultural land on a farm eligible for the credit. The proposed amendments clarify that "qualified agricultural property" includes land set aside or retired under a Federal supply management or soil conservation program. This land is generally taken out of production, for example, for environmental purposes such as buffering a stream to prevent erosion. The current definition of qualified agricultural property in the Tax Law requires the land to be "used in agricultural production." The proposed clarification is consistent with the treatment of such "set-aside" land for purposes of agricultural value assessment under Article 25-AA of the Agriculture and Markets Law, and also comports with guidance on the School Tax Relief Program published by the Department of Taxation and Finance.

The proposed amendments also increase the 250 base acres eligible for the full credit to include any additional land enrolled or participating in a Federal environmental conservation acreage reserve program. Not only will the changes provide relief for farmers from school property taxes, but they will encourage environmentally compatible uses of agricultural land, and forge stronger partnerships between the State and Federal programs for preserving and protecting the State's agricultural land and natural resources. The property tax relief proposed in the bill might also qualify as the State match for commitment of Federal conservation reserve program dollars.

There is some evidence that higher property taxes and uncertainty about the tax treatment of property in conservation programs may create disincentives for landowners to participate in these programs. This is especially true in the Northeast, even though this area arguably derives the greatest benefits from conservation programs because of a high population density and close proximity of urban centers to agricultural areas. [Poe, Gregory L., "Property Tax Distortions and Participation in Federal Conservation Programs; An Exploratory Analysis, Cornell University (1997)]

The 1996 Federal Farm Bill made major improvements and additions to the Federal conservation programs. Programs included under the Environmental Conservation Reserve Program umbrella include: the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP). These programs are designed to promote the conservation and improvement of soil, water and wildlife resources.

Part XX. Miscellaneous tax relief. This bill clarifies and simplifies provisions of the Tax Law, as follows:

Agricultural Cooperative Corporations and Homeowners' Associations

The bill eliminates the Article 9-A minimum tax on certain homeowners' associations and provides a $1,000 credit against the Article 9 tax on agricultural cooperatives.

Petroleum Business Tax

The bill repeals the minimum taxes under the Article 13-A petroleum business tax (PBT).

Prepaid Cigarette Index

The bill provides for a replacement inflation index used to adjust the base retail price of cigarettes for purposes of calculating the amount of prepaid sales tax due. Also, it codifies the Department of Taxation and Finance's policy of permitting the amount of prepaid tax per pack of cigarettes to be rounded to the nearest whole cent.

Manhattan Parking Tax

The bill extends special sales tax related provisions required of Manhattan parking facility operators that would otherwise expire on November 30, 1999.

Summary of Provisions:

Agricultural Cooperative Corporations and Homeowners' Associations

Section 1 adds a subdivision 7 to section 185 of the Tax Law to provide a $1,000 non-refundable credit against the tax imposed by the section.

Section 2 amends Tax Law section 192 to provide that taxpayers, otherwise subject to tax under section 185, are not required to file a report if their tax, prior to credits, is $1,000 or less for the reporting period.

Section 3 amends the opening paragraph of subdivision 1 of section 210 of the Tax Law 210, in Article 9-A, to eliminate the fixed dollar minimum tax in the case of homeowners' associations which have no homeowner's association taxable income for Federal income tax purposes.

Tax Law section 185 changes would be effective for taxable years beginning on or after January 1, 2000. The changes to section 210 relating to homeowners' associations minimum taxes would be effective for taxable years beginning on or after January 1, 1999.

Petroleum Business Tax

Section 4 amends section 301-a of the Tax Law to eliminate the minimum tax of $25 per month on petroleum businesses.

Section 5 amends section 301-e of the Tax Law to eliminate the minimum tax of $2 per month on aviation fuel businesses.

Bill sections 4 and 5 would be effective December 1, 1999.

Prepaid Cigarette Index

Section 6 amends paragraph (1) of section 1111(j) of the Tax Law to provide that the amount of prepaid tax per package of cigarettes shall be rounded to the nearest whole cent. Paragraph (2) of section 1111(j) of the Tax Law is amended to provide that the base retail price of cigarettes be indexed by multiplying it by a ratio based on the annual change in manufacturer’s list prices plus the amount of applicable New York State cigarette tax for a carton of standard brand cigarettes. The numerator would be the sum of such prices and tax on the first of each month for the immediately preceding 12 months ending in June. The denominator would be the sum of such prices and tax on the first of each month for the 12 months ending in June of the preceding year.

Additional provisions in section 6 incorporate data from the June 1996-1997 period into the September 1, 1999, adjustment and delete certain obsolete language in section 1111(j)(2) of the Tax Law.

Section 6 would be effective immediately and apply to the September 1, 1999, price adjustment.

Manhattan Parking Tax

Section 7 amends subdivision (a) of section 1142-A of the Tax Law to extend the special provisions in section 1142-A through November 30, 2004, effective immediately.

<u>Existing Law:</u>

Agricultural Cooperative Corporations and Homeowners' Associations

Tax Law section 185 imposes a franchise tax on the net value of capital stock within the State of farmers, fruit growers and other similar agricultural corporations organized and operated on a cooperative basis.

Homeowners' associations are subject to tax as business corporations under Article 9-A of the Tax Law. Currently, the lowest fixed dollar minimum tax is $100.

Petroleum Business Tax

Section 301-a of the Tax Law imposes a minimum tax of $25 per month on petroleum businesses, and section 301-e imposes a minimum tax of $2 per month on aviation fuel businesses.

Prepaid Cigarette Index

Chapter 2 of the Laws of 1995 added section 1111(j) of the Tax Law to require every cigarette agent to prepay the sales tax due on cigarettes. The prepaid tax is calculated by multiplying the base retail price of cigarettes by 7 percent. Each year, on the first day of September, the base retail price is adjusted for inflation with a ratio reflecting changes in the tobacco and smoking products consumer price index. This index was published by the Bureau of Labor Statistics of the United States Department of Labor but has since been discontinued.

Manhattan Parking Tax

Chapter 810 of the Laws of 1992 enacted certain temporary provisions which were originally set to expire on November 30, 1995. This legislation was targeted at improving sales tax compliance in the parking industry by requiring parking service vendors to keep additional records detailing each parking service transaction and file additional information with their sales tax returns. Additionally, the Tax Commissioner or his agents were authorized to conduct unannounced "walkabouts" of parking garages for observational purposes.

Chapter 141 of the Laws of 1995 extended these provisions through November 30, 1999.

Statement in Support:

Agricultural Cooperative Corporations and Homeowners' Associations

This bill will reduce filing requirements for most agricultural cooperatives, thus reducing paperwork requirements on such taxpayers by not requiring such taxpayers to file a report if their tax, prior to credits, is $1,000 or less for the reporting period.

Homeowners' associations with no Federal homeowner's association taxable income would be exempted from payment of a fixed dollar minimum tax under Article 9-A of the Tax Law. Such associations typically receive their income from member dues and other federally exempt sources related to their non-profit purposes.

Petroleum Business Tax

This bill will remove an unpopular and unnecessary tax burden.

Prepaid Cigarette Index

The price indexing methodology required by statute for the cigarette sales tax prepayment is no longer valid because the inflation index referred to in the Tax Law no longer exists. To ensure that the base retail price of cigarettes reflects the actual selling price, a new methodology must be implemented.

The indexing adjustment contained in this bill is based on data currently being published by the Tax Department for the purposes of the Cigarette Marketing Standards Act. Hence, implementing this approach would require minimal administrative change.

The Tax Department currently permits the prepaid tax due per pack of cigarettes to be rounded to the nearest whole cent. This simplifies the calculation of the amount of tax due and makes it easier for credits to be claimed on the prepaid tax. Codifying this policy would clearly state the Tax Department's policy and prevent any future uncertainty on the issue of rounding.

Manhattan Parking Tax

Due to the cash basis of parking service transactions, it is believed that substantial tax evasion occurs in this industry. The additional documentation of sales of parking services, that will be extended by this bill, will assist auditors from the Tax Department while evaluating the sales tax liability of parking service operators.

The high rate of tax (18.25 percent) on parking in Manhattan provides an opportunity for parking service operators for evasion. The record keeping requirements extended by this bill will help to ensure that the operators remit the proper amount of tax.

Operators who are non-compliant with respect to sales tax collection and remittance have a competitive advantage over operators who are voluntarily compliant with the law. Enactment of this bill will help to continue to provide a level playing field for all parking facility operators in Manhattan.

Part YY. **Estate and generation skipping taxes.** This bill will conform those provisions applicable to estate and generation skipping transfer (GST) taxes contained in the State Tax Law to changes to the Internal Revenue Code (IRC) made by the Federal IRS Restructuring and Reform Act of 1998.

Summary of Provisions:

This bill will amend provisions of the New York estate and GST tax laws that are affected by the IRS Restructuring and Reform Act of 1998 which amended certain IRC provisions that are part of New York law. The relevant IRC estate tax provisions are included in section 2 of Chapter 1013 of the Laws of 1962 (generally referred to as the “estate tax appendix”); and the IRC GST tax provisions are included in Tax Law section 1025.

The majority of this bill relates to the conversion of the current exclusion from the gross estate of family-owned business interests, allowed under IRC section 2033A, to a deduction. The rest of the bill conforms New York law to technical changes made to the IRC regarding the GST tax, the exclusion from the estate tax for land subject to a qualified conservation easement and the extension of time for payment of estate tax for closely held businesses.

Under prior Federal law, there were questions as to whether the excluded business would qualify for date-of-death valuation, marital deductions, and determining the value of a gross estate so that the estate could qualify for payment extensions. By initially valuing the estate with the inclusion of the business interest, these gray areas are covered for the taxpayer’s benefit.

Prior law stipulated that the total value of the exclusion and the Federal unified credit could not be higher than $1.3 million. Since the Federal unified credit increases over the next several years, the value of the business exclusion would similarly “decrease.” Through this mechanism, the total estate tax for those with business exclusions might actually increase.

The authorization of an election privilege enables the taxpayer to take a business exemption and an additional exclusion totaling $1.3 million. This mechanism allows those estates with a business valued at $1.3 million to use $675,000 for the deduction and $625,000 as the exclusion, reducing the value of the taxable estate, as well as the estate tax liability.

A detailed section-by-section summary of provisions prepared by the Tax Department is attached as an Appendix to this memorandum, and may be found immediately before the Table of Contents.

Existing Law:

Chapter 56 of the Laws of 1998 made several amendments to the New York estate and GST taxes to conform those laws to their Federal counterparts, as amended by the Taxpayer Relief Act of 1997. Chapter 56 amended provisions of the State taxes which state that the IRC provisions applicable to these State taxes are the IRC of 1986 with amendments enacted on or before August 5, 1997, the date of enactment of the Taxpayer Relief Act of 1997.

Chapter 56 also added subsection (c) to IRC section 2031 and IRC section 2033A to the appendix to the estate tax, providing respectively for exclusions from gross estate for land subject to a qualified conservation easement and for certain qualified family-owned business interests.

Chapter 56 also added State counterparts to IRC section 2031(c) and 2033A in new Tax Law section 954-b and 954-c, to provide those exclusions from gross estate for estates which are not required to file Federal estate tax returns. Changes were also made with respect to the GST tax and IRC section 6166, the extension for time of payment of estate tax where the estate consists largely of an interest in a closely held business.

Statement in Support:

The State generally conforms estate, gift and GST tax laws to their Federal counterparts contained in the IRC. Due to Constitutional constraints, each of these taxes contain provisions which bind State law to the IRC as of a specific date. This bill will simplify the administration of these taxes by updating applicable dates through July 22, 1998, the date of enactment of the Federal Restructuring and Reform Act of 1998.

Federal conformity permits administrative and technical efficiencies and simplicity for the taxpayer, tax practitioner, tax collectors and tax administrators. This bill is necessary to ensure that relevant sections of the State's estate and GST tax are updated to reflect the changes made by the Federal Restructuring and Reform Act of 1998.

Conformity to Federal estate tax and the GST tax provisions will become even more important in the future when the State tax will be based on the Federal tax. Unless State provisions are conformed to Federal provisions, changes to the Federal gross estate may have unintended State taxpayer, and revenue, implications.

Without this bill, the Federal gross estate computed for State pick-up tax purposes could be greater than the Federal gross estate computed for Federal tax purposes, resulting in a State tax that exceeds the Federal credit actually allowed.

Part ZZ. Real estate investment trusts. This bill will extend for three years the tax rate reductions under the New York State real estate transfer tax and the New York City real property transfer tax for conveyances of real property to existing real estate investment trusts (REITS).

Summary of Provisions:

Section 1 of the bill amends section 1402(b)(2)(B) of the Tax Law to extend until September 1, 2002, the reduced tax rate for conveyances of real property into existing REITS under the real estate transfer tax.

Sections 2 and 3 amend section 1201(b)(xi)(2) of the Tax Law and section 11-2102(e)(2)(B) of the Administrative Code of the City of New York, respectively, to authorize and implement the extension until September 1, 2002, of the tax rate reduction under New York City's real property transfer tax for conveyances of real property to REITS.

Section 4 provides that the bill would be effective immediately.

Existing Law:

Chapter 309 of 1996, effective July 13, 1996, reduced the State tax rate for conveyances to existing REITS from $2 per $500 of consideration to $1 per $500 of consideration. The New York City base rates of 1 percent, 1.425 percent, and 2.625 percent (depending on conveyance type and consideration level) were also reduced by 50 percent for conveyances to existing REITS. This statute expires September 1, 1999.

Statement in Support:

(a) This bill would encourage the increased participation of REITS in State and City real estate markets as REIT shares are liquid. This should result in the sale of buildings that might not otherwise occur.

(b) REITS provide New York's real estate market with a source of capital.

(c) Approximately $1.1 billion in conveyances took advantage of a lower tax rate for the latest year of data available.

(d) Should the real estate market enter a negative cycle, this legislation could result in a greater number of transactions.

Part AAA. Mandatory Vehicle and Traffic surcharges. This bill makes permanent the provisions of law pertaining to the payment of mandatory surcharges and the crime victim assistance fee.

Summary of Provisions:

Effective April 1, 1999, the bill would amend subdivision (p) of section 406 of Chapter 166 of the Laws of 1991 to make permanent the provisions pertaining to the payment of mandatory surcharges pursuant to section 1809-a of the Vehicle and Traffic Law and would repeal subdivision eight of section 1809 of the Vehicle and Traffic Law to similarly make permanent the mandatory surcharges and the crime victim assistance fee paid pursuant to its provisions.

Existing Law:

Under current law, the provisions pertaining to the mandatory surcharges and the crime victim assistance fee expire on October 31, 1999 (section 1809), and November 1, 1999 (section 1809-a).

Statement in Support:

The bill would preserve the State's current revenue structure.

Part BBB. Lottery game provisions. This bill will both preserve current and yield additional revenues for education. First, the legislation eliminates the sunset provision on the Quick Draw lottery game. Second, the bill eliminates the current restrictions on hours, size of facility, and food sales imposed on Quick Draw agents. Finally, the legislation increases the prize payout for the Instant Cash game.

Summary of Provisions: This legislation is effective immediately.

a. Subdivision 1 of section 1612 of the Tax Law is amended to:

- delete the restrictions that the Quick Draw game cannot be offered for more than eight consecutive hours or for more than 13 hours in a day;

- delete the size limitation for a facility offering Quick Draw, currently 2,500 square feet; and

- delete the requirement that at least 25 percent of a facility's sales must result from food sales if such a facility serves alcoholic beverages.

b. Subdivision 2 of section 1612 of the Tax Law is amended to increase the prize payout from 55 percent of instant ticket sales to 65 percent of instant ticket sales and reduce the allocation to education from 30 percent to 20 percent; and

c. Subdivision 9 of section 152 of Chapter 2, Laws of 1995, an effective date section, is amended to:

- delete the phrase that would have repealed the Quick Draw game authorization (section 1612 of the Tax Law) as of March 31, 1999; and

- delete the phrase relating to the Quick Draw request for proposals (section 1620 of the Tax Law) to permit the sunset of the entire section.

The bill also repeals section 152 of Chapter 166 of the Laws of 1991. This section, which limits aggregate Instant Cash prizes to 55 percent of ticket sales, is superseded by section 2 of this bill.

Existing Law: (see above)

Statement in Support:

a. The Quick Draw game provides $148 million annually for aid to education. Eliminating the proposed restrictions is estimated to yield an additional $45 million in revenue on a full year basis. These receipts provide needed revenues to support public schools. Any adverse (substitution) effect that Quick Draw had on other lottery products was short lived, and Quick Draw now has evolved its own market niche. Thus, all sales from this proposed modification to Quick Draw are incremental.

b. The Quick Draw game has been offered for the past three years. To date, this game has not produced any of the potentially harmful social or economic consequences envisioned prior to enactment of the Quick Draw game. In fact, the Quick Draw game seems to be in the mainstream of lotto games played around the country and throughout the State.

c. The Division of the Lottery's research suggests that players in facilities offering alcoholic beverages do not have a higher propensity to play Quick Draw or to play more compulsively than non-consumers of alcoholic beverages. Thus, the restrictions on food and space requirements seem unnecessary. They are, however, barriers both for small businessmen and others desiring to offer the game to their patrons and for those responsible for compliance with and auditing these restrictions.

d. The Quick Draw game adds to State revenues and economic development. It provides an additional market product for more than 3,200 establishments which derive more than $30 million annually in commissions. As a result, many new owners are seeking a license for the game.

e. Statistically, it can be shown that a direct positive correlation exists between the average prize payout on instant ticket games and per capita instant ticket sales, where the payout ranges between 50 percent and 70 percent. As customers are rewarded more by winning larger prizes and more frequently, they often re-invest a portion of their winnings. Based on New York's own historical experience in raising takeouts, it is likely that raising the takeout on instant games would provide new incremental revenues for education.

BUDGET IMPLICATIONS:

The above parts, which are required to implement the 1999-2000 Executive Budget, have the following budgetary impacts:

GENERAL GOVERNMENT

Part A will protect the current assets of the Property/Casualty Security Fund.

Part B will generate $1,500,000 in General Fund revenue from the fees for new levels of expedited Department of State services.

Part C is necessary to ensure the fiscal integrity of the Department of State's Business and Licensing Services Account.

Part D will provide authorization for the spending of $2.4 million for program administration and $45.2 million for Community Services grants to local not-for-profits which are included in the Executive Budget.

Part E implements a $1.4 million appropriation recommended in the Budget to initiate the process of adopting a model fire prevention and building code and State energy code, and establishes a local reimbursement fund to be implemented once the new Fire Prevention and Building Code is adopted. Up to $3 million would be distributed to local governments on a pro rata basis.

Part F authorizes the use of COPs proceeds which would be used to reimburse a special fund, the Special Revenue-Other Millennium Compliance account, that is pre-funding an estimated $28 million in 1998-99 consultant expenses for Year 2000 projects.

Part G will reduce the State's 1999-2000 contribution to the New York State and Local Retirement Systems by $23.6 million (including $2.5 million savings to the Judiciary). Estimated annual savings to local governments is approximately $32 million. The change to new employer deficiency contributions is not expected to have significant budget implications.

Part H is required to maintain the balance of the State's Financial Plan by authorizing transfers and loans that are assumed in the Financial Plan and by ensuring that required reimbursements, certifications, and disbursements are accomplished. In addition this bill is necessary to reimburse approximately $1.7 billion in projected capital projects funds spending with the proceeds of bonds sold by public authorities, to implement the Governor's debt reduction initiatives, to establish a Tobacco Settlement Fund and to ensure the continued tax-exempt status and interest rate of certain outstanding general obligation and authority bonds, and permits the State to carry out basic administrative functions.

TRANSPORTATION, ECONOMIC DEVELOPMENT and ENVIRONMENTAL CONSERVATION

Part I provides $3 million in additional revenue through the exchange of POCR funds for PASNY corporate revenues.

Part J implements appropriations for State parks and lands infrastructure and stewardship projects, the Hudson River Park, the Hudson River Estuary and other important environmental efforts.

Part K implements an appropriation of $3.3 million to fund State assistance payments in relation to forest lands.

Part L ensures pesticide product registration fee revenues of $1.6 million to support the Department's pesticide program.

Part M implements appropriations for the State's Clean Air Operating Permit program.

Part N will generate approximately $13.2 million in additional revenue for the Oil Spill Fund in 1999-00.

Part O authorizes expenditures of Section 18-a moneys for NYSERDA, and specifies reporting requirements for agencies receiving funds from utility assessments.

Part P implements a General Fund reduction of $11.8 million, including $9.7 million in direct agency operations and $2.1 million in general state charges. This is a result of the shift to take out-based support for the Racing and Wagering Board's regulation of racing activities.

Part Q authorizes the Dormitory Authority to provide up to $1.2 million to Cornell University for operation of the Cornell Theory Center.

Part R provides financing authorizations required for local transportation projects included in the State's transportation plan.

PUBLIC PROTECTION, HEALTH AND MENTAL HYGIENE

Part S will strengthen the most comprehensive local services networks for the elderly, the Community Services for the Elderly and Expanded In-home Services for the Elderly programs, and achieve savings for the State.

Part T will result in savings attributable to the early release of additional Shock participants of $1.8 million in 1999-00, increasing to $2.8 million in 2000-01.

Part U is expected to save $12.5 million in FY 1999-00, and $25 million annually beginning in FY 2000-01 by eliminating reimbursement for housing certain felons in local jails.

Part V will transfer the appropriation of funds for the review units from the current agencies to the Division of Criminal Justice Services. The merged unit structure will create operational efficiencies so that an expanding workload can be accommodated without increasing costs.

Part W will bring the State into compliance with Federal regulations regarding sex offenders and avoid a Federal funding penalty associated with non-compliance. Without this, the State will lose approximately $3 million dollars based on the 1998 Federal Anti-Drug (Byrne) grant funding level.

Part X implements a recommended appropriation of $550,400, which will offset the $1.1 million increased cost to counties for District Attorney salaries linked to the recent raise in salaries for the Judiciary.

Part Y will achieve $216 million in new State share Medicaid savings and continue prior year savings actions.

Part Z implements $1.1 million in 1999-00 savings through the elimination of the Youth Opportunity Program, and $1.6 million in savings on a full annual basis.

Part AA reflects savings and administrative efficiencies associated with the consolidation of the alcoholism and substance abuse treatment system.

Part BB will produce overall savings of $2.9 million from centralization of motor vehicle license and registration functions.

Part CC insures the receipt of $42 million in Federal highway funding by providing for penalties for drug-related offenses.

Part DD generates General Fund savings of $300,000 from the use of U.S. Postal Service data for Department of Motor Vehicles mailings.

Part EE insures the receipt of $59 million in Federal Highway Safety funding by penalties for operating out-of-service vehicles.

Part FF extends various criminal justice programs and fees to avoid a significant adverse impact on the State Financial Plan.

Part GG enables the use of $10 million for development of the new Statewide Public Safety Communications System and related activities.

EDUCATION, LABOR AND FAMILY ASSISTANCE

Part HH continues excess cost aid for public schools 1998-99 levels, and eliminates funding for efficiency/reorganization study grants, resulting in a State savings of $1.28 million in the 1999-00 school year.

Part II enables the use of: a residential equalization rate that will save $20 million the first year; $2 million in additional local assistance that is budgeted to increase aid for maintaining assessments on a current basis and for revaluations in municipalities that have not done so in the past ten years; and procedural and eligibility modifications to STAR that will affect workload for the 1999-00 fiscal year.

Part JJ will implement savings of $1.2 million through the elimination of higher education staffing within the State Education Department, and the transfer of $250,000 to the Higher Education Services Corporation to support the administration of financial aid programs.

Part KK will enable counties to be reimbursed for an estimated $270 million in expenditures for adoption administration and foster care prevention services.

Part LL assures an annual Federal income of $340,000 that a contract between DHR and HUD is anticipated to generate. Some additional revenue may accrue to DHR as a result of the ability to levy fines and penalties.

Part MM effectuates the transfer of the RIA's operations and $2.3 million in appropriation authority from the Office of Alcoholism and Substance Abuse Services to the State University of New York at Buffalo.

MISCELLANEOUS/REVENUE

Part NN will reduce personal income tax receipts by an estimated $314 million in taxable year 2002 and by an estimated $604 million in 2003. This decrease in tax receipts has been included in the Financial Plan.

Part OO represents an annual cost savings for the State of about $1 million from the change to the income tax filing threshold.

Part PP allows New York State to adhere to the Federal Internal Revenue Code regarding joint and several liability provisions for joint returns, ensures New York City and Yonkers conformity to those provisions, and avoids additional administrative expenses for the State estimated at $12 million for fiscal year 1999-2000.

Part QQ will reduce utilities' taxpayer liability in 1999 by $45 million. The fully effective annual fiscal cost is $150 million.

Part RR has the following budget implications:

Article 9-A Minimum Tax Rate Reduction

Enactment of this bill will result in no State revenue loss in State fiscal years 1999-2000 and 2000-2001. The revenue cost to the State is $12 million in State fiscal year 2001-2002 and thereafter.

Article 9-A Qualified Emerging Technology Credits

Enactment of this bill will result in no State revenue loss in State fiscal years 1999-2000 and 2000-2001. The revenue loss is $20 million in State fiscal year 2001-2002 and thereafter.These revenue losses are reflected in the 1999-2000 Financial Plan accompanying the Budget.

Part SS will result in no State revenue loss from the urban employment credit in State fiscal year 1999-2000 and 2000-2001, $30 million in fiscal year 2001-02, and $60 million in subsequent years. This revenue loss is reflected in the 1999-2000 Financial Plan accompanying the Budget.

Part TT will result in no State revenue loss from the modifications to capital asset provisions in State fiscal years 1999-2000 and 2000-01; a $5 million loss in State fiscal year 2001-02; and a fully phased-in fiscal cost of $20 million. This revenue loss is reflected in the Financial Plan accompanying the Budget.

Part UU has the following budget implications:

Bank Tax

Enactment of this bill will result in no State revenue loss in State fiscal year 1999-2000; a $2 million loss in State fiscal year 2000-2001; a $45.0 million loss in State fiscal year 2001-2002; and a $100 million loss when fully implemented. This revenue loss is reflected in the 1999-2000 Financial Plan accompanying the Budget.

Insurance Taxes

Enactment of this bill will result in no State revenue loss in State fiscal years 1999-2000 and 2000-2001. It will cost the State $25 million in State fiscal year 2001-2002; and $50 million when fully implemented. This revenue loss is reflected in the 1999-2000 Financial Plan accompanying the Budget.

Part VV is necessary to implement the 1999-2000 Executive budget. It represents a reduction in medical provider assessment receipts in the General Fund and in a Special Revenue Fund of $223 million.

Part WW will increase, starting in the 1999 tax year, the size of the credit received by farmers who are enrolled under the specified Federal program and who have large farms. As a result, it will result in an ongoing revenue loss estimated at between $250,000 and $500,000. This decrease in tax receipts has been included in the Financial Plan.

Part XX has the following implications for the 1999-2000 Executive Budget:

<u>Agricultural Cooperative Corporations and Homeowners Associations</u>

This bill will reduce total taxes paid by homeowners' associations by an estimated $60,000, or less, and reduce taxes paid by all agricultural cooperatives by an even lesser amount. This revenue loss is reflected in the Financial Plan accompanying the 1999-2000 Executive Budget.

<u>Petroleum Business Tax</u>

This bill will result in an estimated $200,000 revenue loss annually. This amount has been reflected in the Financial Plan accompanying the 1999-2000 Executive Budget.

<u>Prepaid Cigarette Index</u>

Enactment of this bill will preserve a minor amount of State sales tax revenue and approximately $1.6 million in local sales tax revenue during the State's 1999-2000 fiscal year. The State portion has been reflected in the Financial Plan accompanying the 1999-2000 Budget.

<u>Manhattan Parking Tax</u>

This bill will preserve a minor amount of State sales tax revenue and approximately $1.5 million in New York City sales tax revenue. The State revenue amount is reflected in the Financial Plan accompanying the 1999-2000 Executive Budget.

Part YY will result in an estate tax revenue loss to the State of $1 million in 1999-2000. This revenue loss is reflected in the 1999-2000 Financial Plan accompanying the Budget.

Part ZZ will result in a $1.3 million State revenue loss related to real estate investment trusts in State fiscal year 1999-2000, and $2.2 million in subsequent years; and a $2.7 million revenue loss to New York City in State fiscal year 1999-2000, and $4.1 million in subsequent years. This revenue loss is reflected in the 1999-2000 Financial Plan accompanying the Budget. These estimates are relative to the standard tax rate and assume that the reduced tax rate has no positive impact on the number of transactions.

Part AAA is necessary to preserve $25 million in State revenues in 1999-2000 and $60 million in 2000-2001 and thereafter. Similarly, those cities which now receive half of the mandatory surcharge for parking, stopping, and standing violations will continue to receive revenue of $7 million in 1999-2000 and $16.5 million in 2000-2001 and thereafter.

Part BBB is necessary to preserve $148 million in current revenues from the Quick Draw game and to add $45 million in extra Quick Draw receipts during the State's 1999-2000 fiscal year. An additional $20 million is expected from higher sales of instant tickets. These moneys have been reflected in the Financial Plan accompanying the 1999-2000 Executive Budget.

APPENDIX

Part YY: Section by Section Analysis

Section 1 of the bill amends subsection (a) of section 951 of the Tax Law to update the Internal Revenue Code (IRC), for purposes of the New York estate tax, to include all amendments through July 22, 1998, which is the date of enactment of the IRS Restructuring and Reform Act of 1998.

Section 2 of the bill amends paragraph (1) of section 954(d) of the Tax Law to delete a reference to IRC section 2033A from the list setting forth IRC provisions which define Federal gross estate. Section 954(d)(1) was redesignated as (c)(1) and amended by Chapter 389 of the Laws of 1998, effective February 1, 2000. Therefore, section 2-a of the bill makes the same amendment to section 954(c)(1) as section 2 made to section 954(d)(1); it deletes a reference to IRC section 2033A

Section 3 of the bill repeals section 954-c of the Tax Law, which provided a State counterpart to the Federal exclusion from gross estate for family-owned business, which is available to estates required to file New York estate tax returns but which are not required to file Federal estate tax returns. Since the Federal exclusion for family-owned business is now a deduction, this provision is no longer necessary.

Section 4 of the bill adds a new subsection (g) to section 955 of the Tax Law, which allows for New York estate tax deductions, to provide modifications to IRC section 2057, the deduction for family-owned business interests, for purposes of the New York estate tax. Paragraph (1) of subsection (g) provides that the provisions of IRC section 2057 relating to coordination with the unified credit, imposition of a recapture tax, filing of agreements and other irrelevant provisions will not be applicable to deductions under Tax Law section 955 which are allowable by reason of IRC section 2057. This provision applies whether or not a Federal estate tax return is required to be filed. Paragraph (2), which applies only where no Federal estate tax return is required, provides that the time for making the election to take the deduction for family-owned business interests shall be the same as would be required if a Federal return was required to be filed, and the election shall be made on the estate tax return.

Section 5 of the bill adds a reference to IRC section 2057 to Tax Law section 955(h)(1), listing Federal estate tax deduction provisions.

Section 6 of the bill amends Tax Law section 958-a(i), to provide that if the deduction for family-owned business is elected, a farmer’s credit for farm property under Tax Law section 958-a may not be taken. Section 7 of the bill amends Tax Law section 958-b(f), to provide that if the deduction for family-owned business is elected, a credit for closely-held business under section 958-b may not be taken. Currently, sections 958-a(i) and 958-b(f) provide that if the exclusion for family-owned business is elected, the credits may not be taken.

Section 8 of the bill amends IRC section 2031(c)(6), contained in the estate tax appendix, to provide that the exclusion from gross estate for land subject to a qualified conservation easement shall be made on the estate tax return and shall be made on or before the due date (including extensions) for filing the return. Language which made the election irrevocable is also deleted. As a result of these changes, an estate can make or change the election on an extended return.

Section 9 of the bill adds a new paragraph (9) to IRC section 2031(c), relating to the exclusion from gross estate for land subject to a qualified conservation easement, to make it clear that if a qualified conservation contribution is made after death by an executor, an estate tax charitable deduction is allowed, but no income tax charitable deduction is allowed the estate or heirs for such contribution. This amendment has no substantive effect since it has already been automatically incorporated for New York State and local income tax purposes pursuant to Tax Law section 607(a).

Section 10 of the bill renumbers IRC section 2033A contained in the Article 26 appendix to be IRC section 2057, and amends subsection (a) of such section to convert the exclusion from gross estate for family-owned business to be a deduction for family-owned business. The maximum deduction allowable is $675,000. Also, new provisions are added to better coordinate the deduction with the Federal unified credit.

Sections 11 through 19 of the bill make other amendments to IRC section 2057. Section 11 amends IRC section 2057(b)(2)(A) to reflect the change from an exclusion to a deduction in defining includible qualified family-owned business interests.

Section 12 amends IRC section 2057(b)(3) to remove redundant language from the formula for determining the amount of “includible gifts” of family-owned business interests made to family members. For an estate to qualify for the deduction, the sum of the qualified family-owned business interests included in the estate, plus the amount of “includible gifts” of qualified family-owned business interests as defined in IRC section 2057(b)(3), must exceed 50 per cent of the adjusted gross estate.

Section 13 of the bill amends the opening paragraph of IRC section 2057(c), to reflect the change from an exclusion to a deduction in the definition of “adjusted gross estate” by deleting “determined without regard to this section."

Section 14 of the bill amends IRC section 2057(e)(1) to clarify that, for purposes of satisfying the trade or business requirement in the definition of “qualified family-owned business interest,” a decedent is treated as being engaged in a trade or business if any member of his family is engaged in such trade or business.

Section 15 of the bill amends IRC section 2057(e)(2), which provides limitations on qualified family-owned business interests, to clarify that in identifying assets that produce, or are held for the production of, personal holding company income, the definition of personal holding company income is applied without regard to the dividend requirements for corporations. Section 2057(e)(2) is also amended to clarify that an interest in property will not be disqualified, in whole or in part, as an interest in a family-owned business where the decedent leases that interest on a net cash basis to a member of the decedent's family who uses the leased property in an active business. The rental income is not treated as personal holding company income.

Section 16 of the bill amends IRC section 2057(f)(2)(A), relating to the calculation of the recapture tax imposed for failure to materially participate in the business, or for certain dispositions of interests in the business. Since, under Tax Law section 955(g)(1)(B), added by section 4 of this bill, the recapture tax provisions of IRC section 2057(f) are not applicable to the New York deduction for family-owned business interests, this amendment is solely for purposes of conforming the IRC provisions in the estate tax appendix to the Federal tax law as of the applicable date set forth in Tax Law section 951.

Section 17 of the bill adds a new paragraph (3) to IRC section 2057(f), which for the same reasons stated above with respect to the amendment to subsection (f) made by bill section 16, is not applicable to the New York deduction for family-owned business.

Bill section 18 amends IRC section 2057(g)(1) contained in the estate tax appendix, relating to security requirements for qualified heirs who are not citizens of the U.S. Paragraph (1) provides that with certain exceptions, any interest passing to such an heir shall be treated as a qualified family-owned business interest only if the interest passes in a qualified trust. This amendment deletes a reference to subparagraph (M) of section 2057(i)(3), to provide that the recapture tax does not apply to involuntary conversions of qualified real property or exchanges of qualified real property.

Bill section 19 amends IRC section 2057(i)(3) by adding new subparagraphs (L) and (M), to provide, respectively, that for purposes of IRC section 2057, rules similar to those in IRC section 2032A(g) and 2032A(h) and (i) shall apply. Under subparagraph (L), the IRS shall prescribe regulations setting forth the application of the section in the case of an interest in a partnership, corporation or trust, which, with respect to the decedent, is a family-owned business interest. Under (M), rules are provided for treatment of involuntary conversions of qualified family-owned business interests, and with respect to exchanges of qualified family-owned business interests.

Bill section 20 repeals IRC section 2057 contained in the estate tax appendix. Once the pick-up tax enacted by Chapter 389 of the Laws of 1997 goes into effect, it will not be necessary to include the Federal deduction provisions in the estate tax appendix. Therefore, Chapter 389 repealed those deduction provisions; and section 20 of this bill conforms to this structure. The repeal of IRC section 2057 will take place on the same day the estate tax pick-up tax goes into effect (February 1, 2000).

Bill sections 21 and 22, respectively, amend IRC sections 6166(b)(7)(A)(iii) and 6166 (b)(8)(A)(iii) contained in the estate tax appendix, to clarify that for purposes of the extension of time to pay estate tax where an estate consists largely of an interest in a closely held business, deferred payments of estate tax on non-readily tradeable business interests and holding companies don't qualify for the 2 per cent interest rate otherwise available under IRC section 6166, but are subject to a rate of 45 per cent of the regular deficiency rate. Such interest is not deductible for income or estate tax purposes. These amendments preserve the exception from the 2-percent rule which existed with respect to the 4-percent rule before the 4 percent was changed to 2 percent by the Taxpayer Relief Act of 1997.

Section 23 of the bill amends Tax Law section 1020(a), contained in the GST tax, to provide that the IRC provisions applicable to the New York GST tax is the IRC with all amendments through July 22, 1998, the date of enactment of the IRS Restructuring and Reform Act of 1998.

Section 24 of the bill amends section 2652(b)(1) contained in the GST appendix (section 1025 of the Tax Law), defining "trust" for GST purposes, to clarify that the election to treat a qualified revocable trust as part of a decedent's estate under IRC section 646 (redesignated as IRC section 645 by the IRS Restructuring and Reform Act of 1998), would apply for GST purposes only with regard to the application of section 2654(b), describing when a single trust may be treated as two or more trusts.

Section 25 of the bill amends section 2654(b) contained in section 1025 of the Tax Law, to provide that for purposes of the GST tax rule that determines when (1) portions of a trust attributable to different transferors, or (2) substantially separate and independent shares of different beneficiaries in a trust are treated as separate trusts, a trust will be treated as part of an estate for any period in which the trust is treated as part of the decedent's estate for federal income tax purposes.

Section 26 of the bill repeals section 38 of Part A of Chapter 56 of the Laws of 1998, which section would repeal section 954-c of the Tax Law as of the effective date of the imposition of the "pick-up" tax (February 1, 2000). This bill, in section 3, repeals Tax Law section 954-c immediately, applicable to estates of decedents dying after December 31, 1997.

Section 27 of the bill provides effective dates for its provisions. Generally, the bill conforms to the effective date provisions of the IRS Restructuring and Reform Act of 1998. Therefore, most of its provisions take effect immediately and apply to estates of decedents dying after December 31, 1997. As indicated previously, sections 2-a and 20 will take effect on the same date as section 9 of Part A of Chapter 389 of the Laws of 1997 (the effective date of the "pick-up tax," February 1, 2000) and will apply to estates of decedents dying after that date. Sections 24 and 25 of the bill, relating to the GST tax, will apply to estates of decedents dying after August 5, 1997. Estates of decedents dying after December 31, 1997, but before the date which is 30 days after the date this bill is enacted, may elect to file estate tax returns based on the law in effect prior to the enactment of sections 2 through 7, 10 through 19, and 26 of this bill, relating to the conversion of IRC section 2033A from an exclusion to an IRC section 2057 deduction.

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