Civil Service Enforcement/ Research Department

TO: Executive Board Members, Council Leaders, & Statewide Labor-Management Chairs

FROM: Thomas Cetrino

DATE: December 9, 2011

RE: ***Tax Reform and Job Creation Legislation – Summary of Major Provisions***

Summary of Provisions

The Senate and Assembly have passed and the Governor has signed two pieces of legislation (S50001/A40001 and S50002/A40002) that will "create jobs", reform the tax code and **raise $1.931 billion annually. A little under $500 million will be raised for the remainder of SFY 2011-12 which the Division of Budget says will close this fiscal year's projected deficit**. About $1.531 billion will be available to reduce the estimated $3.5 billion deficit for SFY 2012-13 after accounting for the costs of the legislation which includes various tax credits, the creation of an infrastructure fund, reductions in the corporate tax rate for manufacturers, reductions in the MTA region payroll tax that supports MTA operations, and $108 million in flood relief aid and inner city youth employment funding. The net amount raised is slightly more than the projected cost of the budgeted increases in Medicaid and School Aid for next year and the Executive has announced its continued commitment to leave these increases intact in the SFY 2012-13 budget. **This means that significant spending cuts of at least $2 billion are likely to be enacted next year *unless* further revenue is raised from corporate tax reform and tax loophole closures.**

In addition to this problem **the legislation will permit the bidding of design and construction of infrastructure projects as a single contract (also known as design build contracts).** PEF opposes design build contracts because recent studies by the Federal Highway Administration have found design build projects to cost more than projects bid under the traditional bidding/contract method. In addition, we believe design build contracts will increase the reliance of the State on consultant engineers who on average cost 75% more than state employee engineers for design work.

Tax Code Restructuring (S50002/A40002, Part A)

The legislation enacts a restructuring of the tax code that will result in reductions in personal income tax liability for 4.4 million New York State taxpayers. The new tax bracket structure would be organized as follows:

Household Income Level	Previous Tax Rate	New Tax Rate
$40,000 to $150,000	6.85%	6.45%
$150,000 to $300,000	6.85%	6.65%
$300,000 to $2 million	7.85% - 8.97%	6.85%
Over $2 million	8.97%	8.82%

The income levels in the above chart apply to households. The brackets for individuals and heads of households would be lower. For example single individuals with incomes of $1 million or more will be subject to the 8.82% rate

It is important to note that the largest tax rate cut is for households with incomes of between $300,000 and $2 million who will see their income tax rates reduced by between one and two percent. The tax rate cut for middle class families would range between .2 and .4 percent. According to the Governor under this restructuring, 4.4 million taxpayers would receive a tax cut totaling $690 million. No taxpayer would pay more than they are currently paying. The highest bracket, applying to those with incomes in excess of $2 million, would cover 32,000 taxpayers. Of these 32,000, approximately 14,600 or 45% are out of state residents.

This is a three year plan. The new structure would be in effect for tax years 2012, 2013, and 2014. At the end of this period the top rate of 8.82% would revert to 6.85%. Additionally, all brackets and the standard deduction would be indexed for inflation in 2013 and 2014.

The Albany accounting firm Marvin and Company PC estimates that households with incomes of $1 million will receive a tax cut of $22,000 while households with income of $40,000 will receive a $40 tax cut:

Income	**Actual Tax Cut**
less than $40,000	$0
$50,000	$40
$70,000	$120
$90,000	$200
$150,000	$440
$300,000	$1500
$1,000,000	$22,000

Through an Executive Order, the Governor has created the New York State Tax Reform and Fairness Commission to address long term changes to the tax system and create economic growth. The Commission will have thirteen members appointed by the Governor and the legislative leaders. The Commission will conduct a comprehensive review of the State's taxation policy, including corporate, sales and personal income taxation and make ***revenue-neutral policy recommendations*** to improve the current tax system. In its review, the Commission will consider ways to eliminate tax loopholes, promote administration efficiency and enhance tax collection and enforcement. It appears that the Commission will not be able to recommend a continuation of the higher tax rate on households with incomes of over $2 million when it expires on December 31, 2014.

Design Build Contracts (S50002/A40002, Part F)

As discussed earlier the legislation will permit design/build contracts for infrastructure projects that will cost more than $1.2 million. **The authorization to use this type of contracts is effective immediately and will expire in three years (December 2014).** Design/build contracts can be used by the New York State Thruway Authority, the Department of Transportation, the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation and the New York State Bridge Authority. These contracts can be used for almost any infrastructure capital project "including, but not limited to, the State's highways, bridges, dams, flood control projects, canals, and parks, including, but not limited to, to repair damage caused by natural disaster, to correct health and safety defects, to comply with federal and state laws, standards, and regulations, to extend the useful life of or replace the State's highways, bridges, dams, flood control projects, canals, and parks or to improve or add to the State's highways, bridges, dams, flood control projects, canals, and parks

This change would be accompanied by a streamlining of the permitting and approvals for infrastructure projects and procurements. Design/build contracts will not be required to go to the lowest responsible bidder as required by Section 359 of the public authorities' law and Section 38 of the highway law. Instead such contracts will be awarded based on the "best value" for the State which is defined as including but not limited to the:

- Quality of the contractor's performance on previous projects;
- Timeliness of the contractor's performance on previous projects;
- Level of customer satisfaction with the contractor's performance on previous projects;
- Contractor's record of performing previous projects on budget and ability to minimize cost overruns;
- Contractor's ability to limit change orders;
- Contractor's ability to prepare appropriate project plans;
- Contractor's technical capacities;
- Individual qualifications of the contractor's key personnel;
- Contractor's ability to assess and manage risk and minimize risk impact; and
- Contractor's past record of compliance with article 15-A of the executive law.

All contract awards shall reflect, wherever possible, objective and quantifiable analysis. All existing labor and environmental review laws, including Wicks, prevailing wage, and the allowance of project labor agreements, would be in effect for design/build contracts. In addition design/build contracts appear to be subject to the Contract Disclosure Law.

The New York Infrastructure Fund

There is an agreement to create, through an Executive Order, a dedicated fund to inject over $1 billion for infrastructure investments. These investments will include new capital projects and acceleration of existing capital plan projects to stimulate the economy and job creation in the immediate term. The $1 billion investment will include $700 million from the State's own debt funded capital investment pool and $300 million from the Port Authority's toll increase revenues. The Port Authority money would go specifically towards funding infrastructure projects in New York City.

The $1 billion State investment is expected to leverage a new public/private infrastructure fund which would raise $1 billion from pension funds and private investments. In total, the State's investment is expected to leverage $10 billion of capital investment, the bulk of it from federal funding. **The details of how the new public/private infrastructure fund will operate and whether or not the New York State Employee Retirement System will invest pension funds into this fund *have not been finalized.*** PEF has many concerns about such an investment of State employee pension funds including how much the rate of return will be, the risk level of the projects invested in and who makes the decision to invest. **In addition, PEF opposes investing any state employee pension funds for projects that are bid through a design/build bid process that will result in less work for State employee engineers and less money available for actual infrastructure projects.**

Projects to be funded include: rebuilding roads and bridges; parks, dams and flood control projects; upgrading water systems; upgrading educational facilities; and investing in energy efficiency improvements to commercial and residential buildings.

Flood Recovery Grant Program, Natural Disaster Job Retention Tax Credit, and Property Tax Relief Options for Impacted Local Governments (S50001/A40001 & S50002/A4002 (Parts E, G, H and I)

The legislation includes a $50 million grant program (appropriated in S50001/A40001) for recovery efforts in regions of the State impacted by Hurricane Irene and Tropical Storm Lee. It is a lump sum local assistance appropriation and its specific use is not detailed in the appropriation bill except that the funds can be used by the Empire State Development Corporation or any other State agency to implement this grant program which will include:

- $21 million for small businesses, farms, multiple-dwellings and non-profit organizations that sustained direct physical damage costs not covered by other recovery programs. Grants would be limited to $20,000 and be available only to companies that are on the Small Business Administration's list of companies that have sustained damage. The program will be administered by the Empire Development Corporation (S50002/A40002, Part H).

- $9 million for county flood mitigation of control projects in counties for which federal disaster declarations have been made. Grants would range from $300,000 to $500,000. The program will be administered by the Empire Development Corporation in consultation with the Department of Environmental Conservation (S50002/A40002, Part H).

- $20 million distributed to municipalities located in an area which was included in a federal disaster declaration for either Hurricane Irene or Tropical Storm Lee. The money will be distributed on "an as needed basis" under a plan and criteria developed by the Director of the Division of Budget (S50002/A40002, Part H).

Additionally, local governments *could* allow impacted property tax payers to pay their taxes in installments and *could* allow property tax payers to reduce the assessments on their property if their property has lost fifty percent or more of its value as a result of either Hurricane Irene or Tropical Storm Lee or both. The details of these local government options are explained in Parts G and I of S50002/A40002.

The legislation also includes a job retention credit for businesses harmed by a natural disaster (S50002/A40002, Part E). The credit would equal 6.85% of the wages of retained jobs. The credit would be available to firms with at least 100 employees that have retained or expanded their workers' roles during this time. While the program is written broadly, according to the Senate Minority, it is anticipated that it will be targeted to two specific businesses in the Binghamton area impacted by the flooding from Tropical Storm Lee. The estimated cost of this credit is not available.

Reduced Manufacturing Tax Rate (S50002/A40002, Part C)

The legislation provides a reduction in the tax paid by corporate manufacturers, saving them $25 million. This reduction would halve the current rate of 6.5% to 3.25%.

Inner City Youth Employment Program and Tax Credit (S50001/A40001 & S50002/A40002 (Part D)

The legislation enacts an $83 million dollar program of grants, training funds and tax credits to deal with the crisis of inner city youth unemployment. Components include:

- A $25 million tax credit for employers who hire unemployed youth between the ages of 16 and 24. The program would cover the first six months of 2012 and would provide a credit of up to $3,000 for a six month training period with an additional credit of $1,000 if they retain their youth employees for a six more months. (S50002/A40002 (Part D))

- $25 million in local assistance funding for a summer jobs programs for inner city youth. The money will be allocated by the Department of Labor (DOL) to local social services districts in accordance with a methodology that shall be based on allocations for the prior state fiscal year and on a district's relative share of persons aged fourteen to twenty living in households whose incomes do not exceed 200 percent of the federal poverty level.

- $9 million in local assistance funding for various SUNY and CUNY higher education programs including $3.485 million for Higher Education Opportunity program awards.

- $8 million in State Operations contractual services funding to be distributed by DOL for youth employment readiness training expenses and related stipends. According to the Senate Minority, youths will be provided with up to three monthly stipends of $300 to cover costs associated with transitioning into the workforce.

- $7 million in local assistance funding to be distributed by the Office of Children and Family Services for Facilitated Enrollment Child Care Demonstration Projects that assist working families who earn up to 275 percent of the poverty level who apply for child care subsidies. $3.855 million is available for families living in the Liberty Zone, Brooklyn, Queens, and Bronx, $1.605 million is available for families in Monroe County, and$1.54 million is available for the current pilot program operated in Albany, Oneida, Rensselaer, Schenectady and Saratoga counties by the NYS AFL-CIO Workforce Development Institute.

- $2 million in state operation funding for SUNY for the Advanced Technology Training and Information Networking program that develops educational, occupational, and life skills through interactive computer training offered through Education Opportunity Centers.

- $2.5 million in local assistance funding to be distributed by the Office of Temporary and Disability Assistance for the Career Pathways Program that provides educational services such as GED preparation, adult basic education, and English language instruction in conjunction with hands on job training.

- $2.5 million in local assistance funding to be distributed by DOL for the Displaced Homemakers program.

- $1 million in local assistance funding to be distributed by the Division of Criminal Justice Services for the Center for Employment Opportunities which offers comprehensive employment services for people with criminal records including life skills education, short-term transitional employment, full-time job placement, and post placement services.

- $1 million in local assistance funding for the Division of Housing and Community Renewal for the Foreclosure Prevention program.

MTA Payroll Tax (S50002/A40002, Part B)

The legislation reduces by $250 million the MTA payroll tax, currently estimated to bring in $1.6 billion. It does so by eliminating the tax on small businesses and private schools. Specifically, the tax is eliminated for businesses with payrolls under $1.25 million. For businesses with payrolls between $1.25 and $1.5 million, the payroll tax is reduced from $.34 per hundred dollars of payroll to $.11 per hundred dollars of payroll. For businesses with payrolls between $1.5 and $1.75 million, the payroll tax is reduced from $.34 per hundred dollars of payroll to $.23 per hundred dollars of payroll. For businesses with payrolls over $1.75 million, the tax remains at $.34 per hundred dollars of payroll.

Under this new plan 289,000 taxpayers will have their obligations under the tax eliminated while an additional 5,900 taxpayers will have their obligations reduced. Together these taxpayers represent between 65% and 70% of all MTA tax payers.

Along with the cuts for small businesses, the plan would eliminate tax obligation for non-public schools including parochial and charter schools.

Self-employed individuals would see their exemption from the tax increase from the first $10,000 of income to the first $50,000 of income.

The $250 million cost to the Financial Plan from these changes stems from the State's commitment to make the MTA whole for any revenues lost as a result of the changes. However, the State does not provide for a permanent funding source for this subsidy nor does it provide for any growth that may have occurred in revenues if the payroll tax remained in place as originally enacted

We will continue to monitor the State's fiscal situation including the office of State Comptroller's monthly cash reports.