

**MEMORANDUM**

FROM: Hinman Straub Advisors, LLC

RE: 2020-21 Enacted State Budget

DATE: April 3, 2020

Governor Cuomo and the Legislature reached a final agreement on a new state budget this week. Legislators began voting on Tuesday evening, and continued to meet as individual bills became available. Both houses had implemented processes to facilitate voting by remote means or with social distance during the COVID-19 emergency.

New York State’s constitution requires a balanced budget each year, and the new state budget confronts a massive deficit estimated to be as high as $15 billion. The COVID-19 pandemic has hit New York State’s budget particularly hard. In January, the Governor’s executive budget proposed actions to close a then-projected $4-6 billion gap that has since grown substantially in recent weeks.

A key aspect of the budget was addressing New York’s Medicaid spending, which was projected to exceed the Medicaid Global Cap by a $4.0 billion. Instead of proposing specific cuts to the Medicaid program within the Executive Budget, the Governor reconvened the Medicaid Redesign Team (MRT II) to identify cost-containment measures to provide $2.5 billion in gap-closing savings and indexed spending in future years. A number of the recommendations advanced by the MRT II were included in the final budget agreement which attained $2.201 billion in savings this fiscal year and $2.737 billion next year.

The new budget reduces revenues by an estimated $10 billion, the first year-to-year cut since 2011. It authorizes the State to issue up to $8 billion in short term bonds to provide funds in case of reduced revenues during the year. The budget also allows two state authorities to provide the State with a $3 billion line of credit in the new fiscal year. The state budget director is authorized to make spending reductions on a rolling basis if new revenue estimates make the budget unbalanced.

Significant provisions of the 2020-21 state budget include:

1. **Taxes & Revenue**

**DOB Authority to Balance the General Fund – AID TO LOCALITIES, Section 1**

The Enacted Budget authorizes the Director of Budget to take numerous actions to ensure the General Fund remains balanced. The adjustments or reductions must be done uniformly, across the board to the extent practicable, or by specific appropriations, as needed. The General Fund is considered unbalanced when actual operating receipts are less than 99% of estimated operating receipts or expenditures are 101% of estimated expenditures, or both.

The legislation creates three time periods for which forecast estimates and revisions will be compared against actual receipts and spending: April 1 to April 30; May 1 to June 30; and July 1 to December 31. DOB must notify the Legislature 10 days prior to any reduction or adjustment and the legislature may, by concurrent resolution, reject the proposed reduction or adjustment and present its own plan. Failure to do so within 10 days will automatically implements DOB’s plan.

If the General Fund is deemed unbalanced (by DOB), DOB is authorized to withhold all or part of appropriations, including amounts to be paid on specific dates prescribed in law or regulation, if, in the Director’s sole discretion, such action is necessary to respond to the direct and indirect economic, financial and social effects of the COVID-19 pandemic.

**Make Warrantless State Tax Debt Collection Methods Permanent (Part A)**

The Enacted Budget extends to April 1, 2025 (1) the authority of the Commissioner of Taxation and Finance to use the financial institution data match system for collection of fixed and final tax debts and (2) to serve income executions (wage garnishments) on individual tax debtors and, if necessary, on the employers of such debtors, without the necessity of filing a warrant.

**Extend Hire-A-Vet Credit for Two Years (Part B)**

The Enacted Budget extends the tax credit received for hiring a veteran to January 1, 2022.

**Extend Oil and Gas Fee for Three Years (Part C)**

The Enacted Budget extends the existing oil and gas fee authorization to March 31, 2024.

**Cap the Maximum Amount and Income Threshold for the Long-Term Care Insurance Credit (Part E)**

The Enacted Budget amends the Long-Term Care Insurance Credit under the personal income tax to make only taxpayers with New York adjusted gross income of less than $250,000 eligible for the credit and to cap the credit amount at $1,500.

**Authorize Tax and Finance to Provide Unclaimed Tax Benefits (Part F)**

The Enacted Budget authorizes the Tax Department to compute and issue an earned income credit when it discovers a taxpayer is eligible for such credit and did not claim it, and to allow the standard deduction in lieu of the itemized deduction elected by the taxpayer when the standard deduction is greater than the allowable itemized deductions.

**Reform the Tobacco Products Tax (Part H)**

The Enacted Budget reforms the definition of “wholesale price" of tobacco products to clarify that it means the price for which the tobacco products are sold to a distributor.

**Enhance Cigarette Tax Enforcement and Penalties (Part I)**

The Enacted Budget enhances cigarette tax enforcement and licensing penalties against retail dealers who sell unstamped or unlawfully stamped cigarettes and against persons affiliated with those retail dealers. The bill would also authorize the Department of Taxation and Finance to suspend or revoke a retail dealer’s sales tax certificate of authority when its registration to sell cigarettes has been suspended or revoked.

**Make Technical Amendments Related to Alcoholic Beverage Taxes (Part J)**

The Enacted Budget eliminates the current ABT rate of one cent per liter tax on liquor containing less than two percent of alcohol by volume. This tax generates virtually no revenue and creates an unnecessary burden on taxpayers. In addition, the bill would create uniformity in the application of the inter-distributor exemption by extending it to include every entity registered as a distributor with the Tax Department. Finally, the bill would update and conform the thresholds for the exemption from the annual reporting requirements for small producers, to SLA's annual production caps for farm producer licenses.

**Extend Excelsior Tax Credit Program and Enhance for Green Projects (Part L)**

The Enacted Budget amends the Excelsior Jobs Program to extend and enhance the program and to add tax credits for economic development projects aimed at reducing greenhouse gas emissions and supporting the use of clean energy.

**Reform the Film Tax Credit (Part M)**

The Enacted Budget reduces the amount of the credit from 30 percent to 25 percent and also clarify that a tax credit that receives funds from additional pool 2 may be claimed in the taxable year that is the later of 1) the taxable year when the production of the qualified film is complete, or 2) the first taxable year beginning immediately after the allocation year for which the film has been allocated credit by the Governor’s Office for Motion Picture and Television Development.

The proposal would also reduce the Empire State Post Production Credit from 30 percent to 25 percent for qualified films produced at qualified post production facilities located within the Metropolitan Commuter Transportation District and from 35 percent to 30 percent for qualified films produced at qualified post production facilities located elsewhere in the state.

Finally the proposal would exclude from the term “qualified film” an episode of a television series and would require that a qualified film, other than a television pilot, must have a minimum budget of $1 million dollars if the majority of principal photography shooting days for the qualified film are shot in the counties of Westchester, Rockland, Nassau, or Suffolk or the five New York City boroughs, and have a minimum budget of $250,000 if the majority of principal photography shooting days are shot in other counties of the state.

**Allow for the Appointment of Acting County Directors of Real Property Tax Services (Part P)**

The Enacted Budget allows for the appointment of an Acting Director of Real Property Tax Services in the event that the appointed Director of Real Property Tax Services is unable to perform the duties of the office or the office becomes vacant.

**Remove References to the STAR Offset Program (Part S)**

The Enacted Budget removes obsolete references in the Real Property Tax Law and the Tax Law to the former STAR offset program.

**Make Technical Amendments to Telecommunications and Railroad Ceiling Programs (Part T)**

The Enacted Budget clarifies the railroad ceiling valuation date to ensure that the Department and localities are using a consistent date, and would clarify the equalization rates to be used in the telecommunications ceiling program.

**Make Exceptions for Late Enhanced STAR Filers (Part U)**

The Enacted Budget reopens the enrollment period for the STAR Income Verification Program (IVP) and allow Tax and Finance to send checks to qualified late enrollees.

**Build a New Equine Drug Testing Lab (Part V)**

The Enacted Budget permits NYRA to use their capital funds to finance and construct a new state-of-the-art equine drug testing laboratory to be built at a university in New York State.

**Amend Sports Wagering Lounge Restrictions (Part X)**

The Enacted Budget allows sports wagers to be made from locations within a casino outside a sports wagering lounge. This proposal would amend current law by stating that a sports pool shall be primarily operated in a sports wagering lounge at a casino, which would allow wagers to be made from other locations inside the casino, pursuant to regulation.

**Extend Pari-Mutuel Tax Rate and Simulcast Provisions for One Year (Part Z)**

The Enacted Budget extends the June 30, 2020 expiration date for in-home simulcasting.

**Extend Provisions Related to the Jockey Insurance Compensation Fund (Part CC)**

The Enacted Budget extends the provisions of the fund for the years 2020 and 2021.

1. **Energy & Environment**

**Thruway Fiber Leases – TED, Part F**

The Enacted Budget modifies the Executive proposal to authorize fiber optic leases without public auction by providing that agreements must be based on set fees, provided that:

* The thruway authority has determined the disposal of such property complies with all applicable provisions of this chapter;
* The thruway authority has determined that disposal of such property is in the best interest of the thruway authority;
* The set fees established shall be based on an independent appraisal of the fair market value of the property; and
* Any public authority, state agency, municipality, not-for-profit hospital, public library, or institution of higher education located in New York state shall be required only to pay the actual cost of providing for use of the fiber optic system, but not exceeding the fair market value.

**Creates a new Office of Renewable Energy Siting, a NYSERDA build-ready program, and transmission development plan – TED, Part JJJ**

The Enacted Budget includes a modified version the Executive’s proposal to create a new Office of Renewable Energy Siting, a NYSERDA build-ready program, and transmission development plan.

*Major Renewable Energy Development Program*

The purpose of the program is to consolidate the environmental review and permitting process for major renewable energy facilities. The provision creates the Office of Renewable Siting, established within the Department of State, charged with accepting applications and evaluating, issuing, amending, and approving siting permits. The Office is required to establish uniform standards and conditions for siting, design, construction, and operation of major renewable facilities. Allows for site specific permit conditions and off-site mitigation (for a fee). The Office is required to provide municipalities with submitted applications.

*Build Ready Sites*

Creates the Clean Energy Resource Development and Incentives Program, run by NYSERDA, designed to foster renewable development on difficult to develop sites, incentivize the re-use of previously developed sites, support host communities, and protect environmental justice areas from adverse impacts.

*Transmission Development Plan*

The bill also includes provisions to study and improve the state's bulk transmission system to support the state's climate goals. It gives the New York Power Authority a substantial role in developing those new investments within its existing rights of way.

**$3 Billion 'Restore Mother Nature' Bond Act – TED, Parts QQ, RR**

The Enacted Budget includes a $3 billion environmental bond issue. If a ballot initiative is approved by voters this November, the bond act would fund an array of capital projects in the environment, including habitat restoration, flood reduction and resilience, restoring freshwater and tidal wetlands, reclaiming floodplains, preserving open space and expanding renewable energy programs.

**Ban on Polystyrene Single Use and Packaging Products – TED, Part PP**

**The Enacted Budget prohibits the distribution and sale of expanded** **polystyrene single-use food containers and loose packing materials, beginning January 1, 2022.**

**Ban on High-Volume Hydraulic Fracturing – TED, Part WW**

**Lawmakers agreed to codify the current administrative ban on hydraulic fracturing, and to also impose a moratorium on gelled propane hydraulic fracturing.**

**Environmental Protection Fund**

**The budget includes $300 million for the Environmental Protection Fund, level with SFY 2019-2020. The EPF supports capital projects such as forest land acquisitions, farmland protection, and municipal wastewater plant improvements.**

1. **Transportation, Infrastructure & Economic Development**

**CHIPS Bidding Threshold Increase – TED, Part A**

The Enacted Budget amends the highway law to increase the Consolidated Local Street and Highway Improvement Program (CHIPS) competitively bid threshold from $250,000 to $350,000.

**Penalties for Oversized and Unauthorized Vehicles – TED, Part B**

The Enacted Budget increases the penalties for commercial vehicles on parkways and over height vehicles in violation of height restrictions.

**HELP Trucks - Rear Facing Blue Lights – TED, Part C**

The Enacted Budget allows safety service patrol vehicles to display rear-facing blue lights.

**Tandem Truck Access Routes - Thruway Cashless Tolling (AET/ORT) – TED, Part E**

The Enacted Budget designates certain portions of roads adjacent to the Thruway for use by tandem trucks, allowing tandem trucks to enter, exit, and change direction, while eliminating tandem truck incursions near the Open Road Tolling gantries.

**MTA Bond Cap Increase – TED Part I**

The Enacted Budget amends Public Authorities Law to increase the MTA's statutory bonding capacity to $90.1 billion and extends their bonding authority until 2024.

**Metropolitan Transportation Authority Tax Increment Financing – TED, Part K**

The Enacted Budget extends for one year, the authority of municipalities within the Metropolitan Commuter Transportation District to share with the MTA the property tax revenues that are generated by the increase in real estate values resulting from mass transportation capital projects.

**E-Bikes and E-Scooters – TED, Part XX**

The Enacted Budget authorizes the use of certain lower speed motorized bicycles and scooters, with the ability for localities to regulate.

**Make the Infrastructure Investment Act Permanent – TED, Part DD**

The Enacted Budget expands design-build authorization to other alternative project delivery methods, and expand the current list of authorized entities that may utilize design-build contracts to include the Dormitory Authority of the State of New York (DASNY), the New York State Urban Development Corporation (UDC), New York State Office of General Services (OGS), the State University Construction Fund, the Battery Park City Authority, and the New York State Olympic Regional Development Authority (ORDA).

**Extend the Authorization of the New York State UDC to Administer the Empire State Economic Development Fund – TED, Part EE**

The Enacted Budget accepts the Executive proposal to extend the authorization of the New York State Urban Development Corporation (UDC) to administer the Empire State Economic Development Fund (EDF) for an additional year. This authorization has been renewed annually since 2012 and is currently set to expire on July 1, 2020.

**Extend the General Loan Powers of the New York State UDC – TED, Part FF**

The Enacted Budget accepts the Executive proposal to extend the general loan powers of the New York State Urban Development Corporation (UDC) for an additional year. This authorization has been renewed annually since 1997 and is currently set to expire on July 1, 2020.

**Extend Authorization of Revenues and Costs for the DHBTF – TED, Part YY**

The Enacted Budget extends for four years, authorization of revenues to and costs from the Dedicated Highway and Bridge Trust Fund.

**START-UP NY Extender – TED, Part KKK**

The Enacted Budget accepts the Executive’s proposal to extend for five years the application period for the START-UP NY program.

**Use of MTA Capital Funds to Offset Decreases in Revenue due to COVID-19 – TED, Parts LLL, MMM**

The Enacted Budget authorizes the use of borrowing and additional funds for 2020 and 2021 to offset decreases in revenue, including lost taxes, fees, charges, fares and tolls due to increases in operating costs due to COVID-19.

**Additional Funds to the 2020-2024 MTA Capital Program – TED, Part UUU**

The Enacted Budget commits New York State ($3B) and New York City ($3B) to fund capital costs of the MTA Capital Program.

**MTA Real Property Acquisitions – TED, Part VVV**

The Enacted Budget provides for the acquisition of properties to further its capital projects.

1. **Labor, Employment & Public Protection**

**Paid Sick Leave – ELFA, Part J**

The Enacted Budget adds a new section to the Labor Law, Section 196-b, which requires all employers to provide sick leave to their employees each calendar year as follows:

* Employers with 0-4 employees must provide up to 40 hours of unpaid sick leave;
* Employers with 0-4 employees with a net income greater than $1 million must provide up to 40 hours of paid sick leave;
* Employers with 5-99 employees must provide up to 40 hours of paid sick leave; and
* Employers with 100 or more employees must provide up to 56 hours of paid sick leave.

The amount of sick leave earned is based upon hours worked, with the rate of accrual being no less than one (1) hour of sick leave per every thirty (30) hours worked. An employer must allow employees to use accrued leave, after January 1, 2021, for the following purposes:

* For a mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;
* For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member; or
* For an absence from work when the employee or employee's family member has been the victim of domestic violence (as is similar to the Human Rights Law, time off for such reasons would not extend to the perpetrator of domestic violence).

Employers are obligated to allow employees to roll their unused sick leave to the next year up to the max hours that can be earned.

The law does not require employers to pay employees for unused sick leave nor does it preclude employers from having policies that provide time that is more robust than the law. Employers can also front load the time to their employees at the beginning of the year to eliminate the obligation to track how it is earned. Nonetheless, employers must maintain records of sick leave earned and used and provide same to employees upon request within three (3) business days.

**Prohibit Gender Based Pricing Discrimination – TED, Part S**

The Enacted Budget prohibits business from charging different prices for substantially similar goods and services based on the gender of the individuals for whom the goods are marketed and intended.

**Ensure Pay Equity at State and Local Public Authorities – PPGG, Part QQ**

The Enacted Budget extends recently enacted pay equity protections for protected class employees within State agencies to protected class employees within state and local public authorities.

**Continuing to Protect and Strengthen Unions – PPGG, Part W**

The Enacted Budget adds an existing exception to the prohibition against a public employer disclosing the personal information of public employees. This will allow public employers to provide the personal information of new hires, and of employees who have been transferred or promoted, to an employee organization without such action being classified as an improper practice. This corrects an unintentional consequence of the original statute and ensures that unions will be kept apprised of new hires and member status.

**Authorize the Transfer of Adolescent Offenders from Department of Corrections and Community Supervision to Office of Children and Family Services – PPGG, Part G**

The Enacted Budget allows DOCCS to transfer adolescent offenders to OCFS and in doing so, would allow the current facilities allocated for these offenders to be repurposed into medium security facilities.

**Prison Closures – PPGG, Part F**

The Enacted Budget allows for the expedited closure of correctional facilities within DOCCS, in state fiscal year 2020-21, provided that the Governor provides at least 90 days' notice prior to any such closures and provides notice to the Legislature.

**Expand the Definition of "Immediate Family Member" in Farm Labor Statute – TED, Part II**

The Enacted Budget amends Labor Law to expand the definition of “immediate family member” in the farm labor statute.

**Make Permanent the New York Buy American Act – TED, Part EEE**

The Enacted Budget makes the New York Buy American Act permanent. The New York Buy American Act was enacted in 2017 and is set to expire on April 15, 2020. This would ensure that certain surface roads and bridges are constructed with American made iron and steel.

**Require Prevailing Wage to be Paid on Certain Private Construction Projects – TED, Part FFF**

The Enacted Budget requires prevailing wage to be paid on construction projects that are paid for with at least 30 percent public funds. A public subsidy board would be empowered to examine and make any necessary adjustments to thresholds included in the bill, as well as determinations related to applicability of this section to projects undertaken with benefits stemming from certain programs.

**The “Josef Neumann Hate Crimes Domestic Terrorism Act.” – PPGG, Part R**

The Enacted Budget creates a “domestic act of terrorism motivated by hate” crime as a new A-1 class felony punishable by up to life in prison without parole.

**Remove Guns from Domestic Abusers – PPGG, Part M**

The Enacted Budget authorizes law enforcement to remove guns from the scene of a domestic violence incident.

**Disqualify Individuals from Gun Ownership if They Commit Crime Out of State – PPGG, Part N**

The Enacted Budget prohibits certain individuals from obtaining a gun license who commit serious offenses out-of-state that would disqualify them from obtaining a gun license if committed in New York.

**Bail Reform – ELFA, Part UU**

The Enacted Budget includes provisions amending reforms to the bail system enacted last year. Judges will have more discretion to impose conditions to assure an alleged offender’s return to court or prevent that person from committing a crime involving serious physical injury to another person.

**Subway Sex Offender Ban – ELFA, Part VV**

The Enacted Budget would prohibit those convicted of unlawful sexual conduct or assault on MTA employees, passengers or customers from utilizing MTA facilities for up to three years.

1. **Campaign Finance & Ethics**

**Public Campaign Finance** **– TED, Part ZZZ**

The Enacted Budget codifies the 2019 recommendations of the Campaign Finance Reform Commission creating a new public campaign finance program for candidates of statewide and state legislative offices. The program reduces the contribution limits for both participating and non-participating candidates and establishes qualifying thresholds, maximum public fund limits, and public fund match ratios for participating candidates. Additionally, the enacted language increases the frequency and threshold levels political parties need to satisfy for ballot access.

**Time Off for Voting – PPGG, Part AAA**

The Enacted Budget amends provisions of the election law enacted in 2019 requiring mandatory three paid hours off for voting. Under the enacted budget, employees are entitled to two hours paid time off, only in the event that the employee does not have sufficient time to vote outside of his or her scheduled working hours. .

**Manual Recounts – PPGG, Part JJ**

The Enacted Budget modifies the Governor’s proposal by requiring full manual recounts in any election contest that results in a margin of victory of twenty votes or less, or is half a percent or less, or in elections where one million or more ballots have been cast the margin is less than five thousand votes.

**Disclosure Requirements for Charitable Nonprofit Entities** **– PPGG, Part UU**

The Enacted Budget modifies the Executive’s proposal to require any registered charitable organization that is required to file a funding disclosure report or financial disclosure report to file such annual report with the Department of Law. It also requires covered entities to file a completed IRS Form 990, Schedule B with the Department of State, regardless of whether such form is required to be submitted to the IRS. Covered nonprofit entities engaged in public advocacy at threshold levels may also be required to disclose funding sources.

1. **Public Health**

**Tobacco and Vaping Control**

The Enacted Budget prohibits the retail sale of flavored vaping products unless those products are approved by the federal Food and Drug Administration. Pharmacies will be prohibited to sell tobacco products, herbal cigarettes or vapor products. A program will be created to educate students, parents and school personnel on the dangers of vapor product use.

**Gestational Surrogacy**

The Enacted Budget legalizes gestational surrogacy to be regulated by the Department of Health. Protections for persons serving as surrogates are set forth, to include procedures for obtaining informed consent, health and life insurance coverage, requiring formal surrogacy agreements and requiring judges to confirm the veracity of parentage applications.