



# The Siren

**Important News and Updates for NYSPFFA Members**

*Prepared by Hinman Straub and Corning Place Communications*

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## **THE 2014-15 EXECUTIVE BUDGET PROPOSAL**

On January 21, 2014, the Governor released his fourth Executive Budget proposal since taking office in 2011. Totaling \$137.2 billion, the proposed budget represents an increase of \$1.8 million (1.3%) more than the 2013-14 enacted budget (less \$2.4 million in federal disaster relief relating to Superstorm Sandy and \$2.56 billion under the Federal Affordable Care Act).

A detailed analysis of the Governor's proposal is posted on our website in the [Members Only Area](#). The following are portions of the proposed budget that we believe are of interest.

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### **CALENDAR**

Jan. 27, 2013 (9:30 a.m.) — General Government Budget Hearing\*

Feb, 5, 2013 (10:00 a.m.) — Public Protection Budget Hearing\*

Feb. 24-26, 2013 — [NYSPFFA Continuing Education Program at Cornell University](#)

*\*NYS Legislative hearings are in Hearing Room B of the Legislative Office Building*

If you have any questions or concerns regarding the information in this newsletter, please contact Joseph Dougherty or John Black at (518) 436-0751. For other NYSPFFA matters, please contact Mike McManus or Sam Fresina at (518) 436-8827.

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### ***Elimination of Reimbursement for Supplemental Medicare Part B for Higher Income State Retirees***

The Governor's proposal would amend Civil Service Law § 167-a to cease reimbursement of the Income related Medicare Adjustment Amount ("IRMAA") for state retirees of municipalities participating in the NYSHIP Plan earning more than \$85,000 (single retiree) or \$170,000 (married retiree). In 2007, the federal government required higher-income enrollees to pay an additional monthly premium (IRMAA) above the regular Medicare Part B premium (\$104.90). The amount of the IRMAA is based upon certain income thresholds but can range from \$42.00 to \$230.80. A detailed chart of the income thresholds and corresponding payments is included in the memorandum on the website.

The proposal would still require the State to reimburse the regular monthly premium but no longer require reimbursement of the individual retirees who meet the income thresholds.

### ***Emergency Preparedness Initiatives***

The Governor proposes several initiatives that would make, in his opinion, the State's response to emergencies more efficient. The following are some examples of the Governor's proposed initiatives:

- Establish an enhanced Weather Detection System
- Create SUNY College of Emergency Preparedness, Homeland Security and Cybersecurity
- Equip gas stations with back-up power capacity
- Expand state strategic fuel reserves
- Offer emergency preparedness courses for citizens

### ***Suspension of \$1.5 million Annual Transfer to the Emergency Services Revolving Loan Fund***

The Governor's proposal also seeks to suspend for four (4) consecutive years an annual transfer of \$1.5 million, comprised of wireless communication services surcharges, to the Emergency Services Revolving Loan Fund ("ESRLF").

ESRLF was created as a means to assist local governments, fire districts, and not-for-profit fire/ambulance corporations in financing emergency response equipment, such as firefighter apparatus, fire engines and ambulances, and construction costs related to the housing of such equipment. Annual spending from ESRLF and the repayments to it both average approximately \$3 million. The Governor opines that the \$10 million currently in ESRLF is sufficient to allow the fund to continue to operate and make new loans over the next four years.

We are looking into the potential impact, if any, that this will have on our membership.

### ***Local Government Assistance***

The Governor's proposed budget also has several items aimed at pushing local governments to consolidate and restructure. This will be an area to watch as the budget process moves forward. The following proposals include:

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### **Regional Efficiency Plans**

The Governor's proposed budget includes a two-year freeze on property taxes for homeowners in school districts and local governments that stay within the property tax cap. However, to ensure that officials are working together to eliminate waste and duplication, local governments and school districts will be required to develop regional efficiency plans which, when implemented, would include the sharing and consolidation of local government services in order for their residents to receive the second year of the tax freeze.

### **Eliminating Duplicative and Overlapping Local Government Services**

The Governor's proposed budget includes of \$39 million in funding to provide grants for implementing consolidations and regional services as well as tax credits to residents of local governments that fully dissolve or consolidate.

### **Assisting Distressed Local Governments**

The Governor's proposed budget maintains funding at \$80 million to provide

grants or loans to local governments that implement restructuring initiatives through the Financial Restructuring Board. The proposal maintains \$715 million to local governments in unrestricted aid.

### **Freezing Property Taxes to Promote Consolidation of Services**

The Governor's proposed budget would the increase in property taxes for homeowners in local governments and school districts that stay within the cap for the next two years. This will be effective for school districts and the Big 4 cities starting with the 2014-15 fiscal year and for all other local governments in fiscal years beginning in 2015.

Homeowners with incomes at or less than \$500,000 who reside in a school district or local government which stays within the tax cap will receive a State tax credit equal to the increase in property taxes.

However, in order for their homeowners to get the tax credit in the second year, school districts and local governments must continue to stay within the tax cap and must develop a plan for sharing or consoli-

dating services and eliminating duplication and overlap. For local governments and dependent school districts, this plan will be coordinated by the county. For independent school districts, it will be coordinated by the school district with the largest enrollment in the BOCES district.

Each plan must achieve savings, in the aggregate, in an amount of at least one percent of participating entities' levy in the year following the second year of the credit. This percentage increases to two percent and three percent in subsequent years. These savings must be applied to tax reduction. Failure to achieve planned savings would result in recapture of State aid to the local government or school district.

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### **NEW RETIREMENT LEGISLATION: CHAPTER 423 OF THE LAWS OF 2013**

[Chapter 253 of the Laws of 2013](#) expands the Partial Lump Sum Retirement program that is available to certain

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retirees of the Police and Fire Retirement system. This new law expands the amount of the lump sum that may be elected at retirement for certain retirees. If a member has been eligible to retire for four years, he or she may elect a lump sum payment of 20% of the actuarial equivalent of his or her retirement allowance. In addition, if a member has been eligible to retire for five years, he or she may elect a lump sum benefit of 25% of his or her retirement allowance.

As a cautionary note, this program is not suited for everyone. Before a member considers this program, he or she should consult with a financial expert and a tax expert. There are potentially severe tax consequences if the lump sum is not rolled over to a tax free investment. In addition, electing a lump sum permanently and substantially reduces the amount of your retirement allowance. Below is an example:

A member who is age sixty and is entitled to a \$50,000.00 annual pension who has been eligi-

ble to retire for five years and elects a 25% lump sum will receive a lump sum amount of \$125,000.00 **BUT** the annual retirement allowance is reduced to \$37,500.00.

Again, proceed with extreme caution before electing this benefit and seek qualified professional advice.

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### **U.S SUPREME COURT POSSIBLY FOCUSING ON CONSTITUTIONALITY OF PUBLIC EMPLOYEES MANDATORY UNION DUES**

The U.S. Supreme Court heard oral arguments in [Harris v. Quinn](#), a case involving home care-workers and the constitutionality of requiring such employees to accept and financially support a private organization as their exclusive representative to petition the State for greater reimbursements from its Medicaid programs. The argument discussed the larger picture of public employee labor relations.

New York State submitted an amicus brief advocating for mandatory payments.

The case has yet to be decided, but we are currently reviewing all of the papers submitted in the matter to understand its potential impact and will provide a more detailed analysis, which we will upload to the website.

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### **MAYOR'S REVIEW OF SECTION 75 HEARING RECOMMENDATION WAS IMPROPER**

The Third Department recently [ruled](#) that a reviewer of a Section 75 hearing officer's recommendation must recuse him or herself when the reviewer prejudged the matter at issue. The Court also affirmed that a public employee is not penalized for exercising his rights despite the fact that the employer can use testimony from another hearing to bring perjury charges.

A fire inspector from the Village of Endicott, who also served as the union president, got into a heated exchange with the fire chief. The Village brought Section 75 charges against the fire inspector, alleging that the fire

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inspector used expletives in his exchange with the fire chief. While the fire inspector admitted that he said, "What the f\*\*\* is your problem," he denied using expletives in telling the fire chief that he was the union president and acting in that capacity. The hearing officer credited the version of the fire chief, found the fire inspector guilty, and suspended him. The Mayor reviewed the recommendation and sustained the guilty finding but modified the suspension.

Meanwhile, the fire inspector filed an improper practice charge with the Public Employment Relations Board ("PERB") after receiving the disciplinary charges. At a PERB hearing that was held after the Mayor sustained the disciplinary case findings, the fire inspectors again testified that he did not make the second statement. Using the testimony from the PERB hearing, the Village brought a second set of disciplinary charges for, among other things, perjury and making a false official statement against the fire inspector. The hearing officer recommended finding the fire inspector guilty

and terminating employment. The Mayor adopted the recommendation.

On appeal, the Third Department rejected the fire inspector's first argument that a subsequent perjury hearing violated the public policy underlying Section 75. But, the Court ultimately reversed and held that the Mayor should have recused himself as the reviewing officer because he prejudged the matter based upon statements he made in the first hearing regarding the credibility of the fire inspector.

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**SECTION 207-a(2) SUPPLEMENTAL BENEFITS HELD NOT TO BE AUTOMATIC**

On January 23, 2014, the Third Department [ruled](#) that while subdivision (1) and (2) benefits under General Municipal Law 207-a are "one unified benefit," receipt of subdivision (1) benefits does not necessarily require a municipality to pay subdivision (2) benefits. However, because they are "one unified benefit," a denial to continue Section 207-a benefits under subdivision (2) when a firefighter was previously receiving subdivision (1)

benefits requires a fair hearing.

The basic facts of the case are that a firefighter was injured in the line of duty. In 2009, he was granted subdivision (1) temporary benefits. In December 2010, the firefighter was granted a performance of duty disability under Retirement and Social Security Law § 363-c. The municipality ceased paying the subdivision (1) benefits and required the now-retired firefighter to apply for subdivision (2) benefits. In response to the firefighter's application, the Village denied him subdivision (2) benefits without a hearing.

In ruling that subdivision (2) benefits are not guaranteed solely because a firefighter was previously receiving benefits under subdivision (1), the Court highlighted the different standards and requirements necessary to qualify for each benefit. That is, subdivision (1) benefits are temporary benefits subject to review and dependent on changes in the firefighter's medical condition and compliance with the

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statutory requirements. Subdivision (2) supplementary benefits, however, are not subject to termination after they are granted and they pertain to a permanent disability.

With this being the second case in this month that dealt with the procedures surrounding Section 207-a (2) benefits, we will continue to monitor and report future developments.

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**JUSTICE RULES THAT  
YONKERS FIREFIGHTERS'  
SECTION 207-A  
PROCEDURE IS SUBJECT  
TO ARBITRATION  
UNDER THEIR CBA**

Westchester County Supreme Court Justice [ruled](#) favorably for Yonkers Fire Fighters, Local 628, concerning their collective bargaining agreement (“CBA”) and a negotiated General Municipal Law § 207-a procedure by requiring the grievance be submitted to arbitration.

The matter arose after the City required a retired firefighter to file an application for Section 207-a(2) supplemental benefits. The union maintained that this practice was a unilat-

eral change because the City over the past 24 years granted supplemental benefits under subdivision (2) without the need for a separate application when a retiree was awarded a performance of duty or accidental disability retirement from NYS Retirement System. As a result, the City violated the negotiated Section 207-a procedure. The City disagreed.

The Union set forth several arguments. First, retirees are covered under the CBA and the union is the exclusive bargaining agent for all covered firefighters. Second, the CBA applies to all Section 207-a, specifically including Section 207-a (2) supplemental benefits. Third, the City’s demand that a firefighter file a new application for supplemental benefits is a unilateral change in practice. Fourth, the matter is subject to arbitration under the CBA.

While Justice Smith did not decide the ultimate merits of the grievance, she denied the City’s motion to stay the arbitration stating that “this Court necessarily finds that there is a reasonable relationship between the subject dispute as to whether a retired firefight-

er is entitled to receive GML 207-a(2) benefits and the general subject matter of the CBA and thus arbitration of the subject grievance is required.”

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