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## **MEMORANDUM**

TO: NYSPPFA

FROM: Hinman Straub P.C.

RE: **NYS Legislature's SFY 2014-15 Budget Proposal  
Workforce, Public Protection and General Government**

DATE: March 31, 2014

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*On Saturday, March 29, 2014, Governor Andrew Cuomo and legislative leaders announced a three-way agreement on New York State's Fiscal Year (SFY) 2014-15 Budget. The Legislature is expected to vote on the agreed upon package on Monday, March 31, 2014, just prior to the start of the fiscal year.*

### **Budget Overview**

The final 2014-15 State Budget holds State spending below 2% for the fourth consecutive year, allowing for 1.7% annual spending growth for all State Operating Funds. The total of all funds spending for the SFY, which includes spending from capital funds and Federal funds (other than federal hurricane Sandy aid and Affordable Care Act funds), is expected to increase by 1.3% from SFY 2013-14 (growing from \$135.4 billion to approximately \$138 billion in SFY 2014-15). In addition, the State projects a budget surplus of over \$300 million in the current year, which will help support the tax reforms included in the 2014-15 Budget.

The final Budget uses this year's surplus and projected surpluses in future years to fund a series of tax reforms, including \$1.5 billion in property tax relief, a reduction in the corporate franchise tax, elimination of the income tax on manufacturers, and a 20% real property tax credit for manufacturers.

**What's Next?** The current budget package is made up of eleven (11) separate pieces of legislation. Both the Senate and the Assembly have passed each bill and the Governor has signed them into law in order for the budget to become effective.

The 2014-15 budget year begins April 1, 2014.

The following is a brief overview of proposals contained in the current budget package related to the workforce, public protection, and general government and serves as an update to our memorandum on the Executive Budget proposals.

### **State Workforce Overview**

There are 179,759 State employees employed in Executive agencies, the SUNY and CUNY systems and in the Offices of the Attorney General and State Comptroller. The number of positions in agencies directly controlled by the Executive will have declined by 8,239 (6.5 percent) between the period December 2010 to the end of 2014-15, from 127,392 to 119,153.

Approximately 94 percent of the State workforce is unionized; there are 10 employee unions and 14 negotiating units. In addition, approximately 10,800 employees are considered Management/Confidential (M/C) and are not represented by a union.

State employees receive an average compensation (salary and other pay) of approximately \$66,993 plus fringe benefits, totaling approximately \$104,160.

### **State Workforce**

#### **Agency Consolidation – Reclassification of State IT Personnel**

The budget includes portions of the Governor’s proposal in Part F of the Public Protection and General Government Title VII bill (S.6355-D/ A.8555-D). The budget package proposal, however, does not amend the Civil Service Law to include the Governor’s proposed Section 66-a concerning term appointments in information technology positions.

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

The budget intentionally omits the Governor’s proposal to amend Section 167-a of the Civil Service Law to cease reimbursement of additional monthly Federal Medicare Part B premiums, also known as Income Related Medicare Adjustment Amount (“IRMAA”).

#### **Enhanced Discrimination Prevention in Schools**

The budget intentionally omits from the Education, Labor and Family Assistance Title VII bill (S.6356-D / A.8556-D) the Governor’s proposed bill to bolster the Dignity for All Student Act by increasing the investigation, reporting, and intervention requirements on school officers.

### **Elimination of 2-Year Ban for Certain State Employees**

The budget does not include in the Public Protection and General Government Title VII bill (S.6355-D / A.8555-D) the proposed amendment of the Public Officer's Law to eliminate the 2-year ban for state employees who were hired subject to Chapter 500 of the Laws of 2009 and did not receive a qualifying score on a civil service examination or did not take a civil service examination but were terminated because there was no promotional examination available prior to the employee's termination.

### **Right-Sizing Prison Capacity.**

The budget continues the closure of four (4) identified prisons in the State as Part S of the Public Protection and General Government Title VII bill (S.6355-D / A.8555-D) and amends the law to address other issues relating to the operation and staffing of Department of Corrections and Community Supervision ("DOCCS") facilities that arose during the budget hearings.

### **OMCE Salary Commission Bill**

Originally included in the Senate's proposed budget bill as Part Y of the Public Protection and General Government Title VII bill (S.6355-D / A.8555-D), the Senate sought to establish a salary commission to ensure the fair and proper treatment of M/C employees in the State service. The final budget rejected the proposal. Such revision completely removed the managerial/confidential employee salary commission from the Legislature's proposed budget.

## **Public Protection**

### **Increased License Sanctions and Fines for Multiple Alcohol and Drug-Related Driving Offenses.**

The budget rejected the Governor's proposal to increase license sanctions for a driver who commits multiple violations of Section 1192 of the Vehicle and Traffic Law or any out-of-state equivalent (i.e., operating a motor vehicle while under the influence of alcohol or drugs).

### **Increase License Sanctions for Texting and Cell Phone Violations.**

The budget included, as Part B of the Public Protection and General Government Title VII bill (S.6355-D / A.8555-D), additional penalties for texting or using a cell phone while driving. The budget increases sanctions similar to the Governor's proposed budget but provides for some modifications as follows:

- Imposes a 120-day suspension for a driver who holds a probationary license or holds a class DJ or MJ learner's permit or class DJ or MJ license and texts or uses a cell phone while driving. The Governor's proposal originally had a one-year suspension for any driver under the age of 21-years;
- Imposes a one-year mandatory revocation for a driver who holds a probationary license or holds a class DJ or MJ learner's permit or class DJ or MJ license and commits two or more texting or cell phone violations. The Governor's original proposal was for any driver under the age of 21-years; and
- The budget would similarly increase the maximum fines, but not to the extent that the Governor proposed, that may be imposed for cell phone use while driving and texting while driving violations regardless of age to:
  - i. \$50-\$100 to \$50-\$200 maximum fine for first offense;
  - ii. \$50-\$200 to \$50-\$250 maximum fine for second offense within 18 months of first offense; and
  - iii. \$50-\$400 to \$50-\$450 maximum fine for a third or more offense within 18 months of first offense.

### **Extension of Retention of Pre-Indictment Settlement Funds**

The budget includes, as Part C of the Public Protection and General Government Title VII bill (S.6355-D / A.8555-D), extension of a district attorney's ability to retain pre-indictment settlement funds. It adopts the proposal from the Governor's budget but only extends it for another year until March 31, 2015.

## **Suspension of Wireless Communication Surcharge Annual Transfer of \$1.5 Million to the Emergency Services Revolving Loan Fund**

Included as Part D of the Public Protection and General Government Title VII bill (S.6355-D/ A.8555-D), the budget adopts the Governor's proposal to suspend the transfer of \$1.5 million from the Public Safety Communications Account to the Emergency Services Revolving Loan Fund for State fiscal years 2012-2013, 2014-2015, and 2015-2016. This is a reduction in the extension from the Governor's original proposal by two (2) fiscal years.

### **Public Trust Act**

The budget enacts the Public Trust Act in Part H of the Public Protection and General Government Title VII (S.6355-D/A.8555-D). The Act would create new corruption crimes and increased penalties for violations of the Public Trust. The Public Trust Act would incorporate portions of the Governor's proposal but with several differences. The following is a summary of the key parts of the Public Trust Act.

**Corrupting the Government** – A person would be guilty of this new offense if he or she, being a public servant, or acting in concert with a public servant, engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state to obtain property, actual services or other resources, or obtain property, actual services or other resources from the state, or any political subdivision or governmental instrumentality the state by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property, actual services or other resources.

The degree of the crimes depends on whether or not the person or person obtained property and/or the value of the property, services, or other resources, and the amount of such gain. The following represents the various degrees of the crime of corrupting the government:

- Fourth degree (any value): class E felony
- Third degree (value > \$1,000.00): class D felony
- Second degree (value > \$20,000.00): class C felony
- First degree (value > \$100,000.00): class B felony

**Public Corruption.** A person would be guilty of public corruption when:

- (a) (i) being a public servant he or she commits a specified offense through the use of his or her public office, or

(ii) being a person acting in concert with such public servant he or she commits a specified offense, and

(b) The state or any political subdivision thereof or any governmental instrumentality within the state is the owner of the property.

The corresponding penalty would be either a class C, D, or E felony, and is one step advanced on the penalty authorized by the law for the specific crime. For example, if the offense is otherwise a class A misdemeanor, where the victim is a public entity, it would be a class E felony.

A list of crimes affected by the amendment of Article 496 of the Penal Law includes:

- Petit larceny (Penal Law § 155.25)
- Grand larceny, fourth degree (Penal Law § 155.30)
- Grand larceny, third degree (Penal Law § 155.35)
- Grand larceny, second degree (Penal Law § 155.40)
- Grand larceny, first degree (Penal Law § 155.42)
- Scheme to defraud, second degree (Penal Law § 190.60)
- Scheme to defraud, first degree (Penal Law § 190.65)

Non-Criminal Consequences. Similar to the Governor’s proposed budget, the budget package proposes a fine for any conviction under any part of Section 496 (corrupting the government and public corruption) consisting of three times the profit or other gain from the crime and forfeiture of proceeds from the crime.

### **Bribery Crimes**

Corrupt use of position or authority. In lieu of the Governor’s proposed crime of “failure to report bribery,” the budget’s proposal includes the crime of “corrupt use of position or authority.” Such would be codified under Section 200.56 of the Penal Law and as a class E felony.

Bribery. Similar to the Governor’s proposal, the Legislature makes certain technical corrections and amendments to the crime of bribery but not to the extent of the Governor’s proposed budget. Most noteworthy is the Legislature’s rejection of the Governor’s proposal to no longer require an agreement or understanding between the parties as an element of the offense. The budget would also change the value of the benefit that is used in determining the degree of the crime.

- Bribery in the third degree (any benefit): class D felony
- Bribery in the second degree (value >\$5,000.00): class C felony

- Bribery in the first degree (benefit > \$100,000.00 or involving the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony): class B felony

Post-Conviction Consequences. The proposal seeks to impose the following collateral consequences for an individual convicted of bribery, official misconduct, or public corruption crimes.

- Barred from registering as a lobbyist;
- Prohibited from serving in a civil office;
- Disqualified from receiving tax credits, real estate tax benefits, and other benefits (also applies to entities which employ an individual convicted of such offense in a fiduciary position);
- Disqualified from bidding on and obtaining State contracts. In addition, the State would be allowed to consider any other crimes when determining whether an entity is a “responsible” bidder and cancel State contracts for conviction for crimes set forth in the Public Trust Act; and
- Automatically disqualified from participating as Medicaid, EI, or Workers’ Compensation providers.

### **Permanent Accident Prevention Course Internet Program**

The budget extends the authorization of the Department of Motor Vehicles (“DMV”) to provide the Accident Prevention Course Internet Program until May 31, 2019 (a 5-year extension). The only change from the Governor’s proposal was that the Governor sought to make the program permanent.

### **New York State / Federal Parity to Medical Certification of Commercial Drivers**

The budget rejected the Governor’s proposal to amend the Vehicle and Traffic Law (VTL) to facilitate New York State's compliance with federal requirements that call for certain restrictions to appear on commercial driver's licenses (CDLs).

### **Strengthen Enforcement Measures against Persistent Toll Violators**

The budget rejected the Governor’s proposal to strengthen the enforcement regimen for collecting tolls and increase penalties against persistent toll violators.

### **Consumer Protection Initiatives**

- **No-Fault Automobile Insurance Fraud.** The budget omits the Governor’s proposal for certain amendments to curb no-fault insurance fraud by “prohibiting payments to health providers engaged in fraudulent activity, levying civil fines for violations and authorizing DFS to perform unannounced facility audits and inspections” from the Transportation, Economic Development and Environmental Conservation bill (S.6357-D / A.8557-D).

- **Title Insurance Regulations.** The budget implements, as Part V of the Transportation, Economic Development and Environmental Conservation Title VII bill (S.6357-D / A.8557-D), the Governor’s proposal, in part, to license title insurance agents. It does not adopt the portions that would have also imposed similar regulations on title insurance solicitors or closers.

### **Create the SUNY College of Emergency Preparedness, Homeland Security and Cybersecurity**

The budget includes \$15 million in capital resources to fund initial planning and development costs for a new College of Emergency Preparedness, Homeland Security and Cybersecurity.

### **Create the Commission on Youth, Public Safety and Justice**

The budget establishes the Commission on Youth, Public Safety and Justice to make recommendations on how to best raise the age of juvenile jurisdiction, improve outcomes for youth, and promote community safety.

### **Miscellaneous Public Safety Actions**

The Governor’s proposed budget includes proposals to:

- Expand last year’s downstate gas station back-up power program to highways in Upstate New York. This will require that all retail gasoline outlets near strategic Upstate highways (I-87, I-90, I-84, I-88, I-86/17, I-81, I-390, and I-190) be prewired to allow for alternated generated power independent of the local electrical utility system. The bill also authorizes NYSERDA to provide grants and access to a pool of generators. \$3.1 million will be made available through Federal funding related to Superstorm Sandy.