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## MEMORANDUM

TO: New York State Professional Fire Fighters Association

FROM: Hinman Straub Advisors, LLC

RE: 2017-18 Enacted State Budget

DATE: April 10, 2017

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On Friday, April 7, Governor Cuomo and the Legislature reached an agreement on the final and outstanding items of the 2017-18 New York State Budget, one week after the April 1 budget deadline. This announcement follows a week of negotiations between the Governor and Legislature, and included the passage of a state budget extender that funded all government operations through May 31 had a final budget not been agreed to.

According to the Governor, the state budget totals \$153.1 billion (\$98.1 billion in State Operating Funds); increases Education Aid by \$1.1 billion (\$700 million increase in Foundation Aid), bringing the new Education Aid total to \$25.8 billion; increases Medicaid state share funding to \$23.5 billion; and, extends tax rate on millionaires for two years.

The Assembly passed the final budget bills on Saturday, April 8 and the Senate finished voting on bills on Sunday, April 9. The Legislature is now in recess and do not return to Albany until Monday, April 24.

### **I. Major Budget Items**

#### **Ride Sharing Expansion Across New York State**

The budget authorizes Transportation Network Companies (TNCs), such as Lyft and Uber, to operate across New York and creates uniform licensing standards. The Department of Motor Vehicles will provide oversight of rideshare companies and will ensure compliance with all laws, rules, and regulations required as part of a TNC's operational license. TNC companies will be required to maintain minimum insurance coverage levels of \$1.25 million while a TNC driver is traveling to pick up a passenger and until the drop-off is completed. The state will also establish minimum standards to ensure passenger safety, including mandatory background checks, ongoing monitoring for traffic safety, anti-discrimination protections, and zero-tolerance drug and alcohol policies.

## **Workers' Compensation Reform**

The budget includes workers' compensation reforms that provide cost savings for businesses and better protections for injured workers including:

- 130 week general rules on the period of time it takes to reach “maximum medical improvement” for the purpose of being classified for permanent partial disability awards, and to provide a safety valve for injured workers who have not actually reached maximum medical improvement within 130 weeks
- Removes the requirement that injured workers remain attached to the workforce after being classified with a permanent disability
- Expands the safety net threshold from above 80 percent to above 75 percent, to allow the most seriously injured workers to petition to continue receiving benefits after the permanent partial disability caps have expired
- Moves the responsibility for annual safety net reporting from the Department of Labor to the Workers Compensation Board
- Provides for a statutory mechanism to require release and implementation of updated impairment guidelines reflecting advances in modern medicine
- Provides for a comprehensive prescription drug formulary
- Authorizes the Workers Compensation Board to implement administrative efficiencies related to billing and periodic reporting
- Authorizes the Workers' Compensation Board to execute assumption of liability policies for the special disability fund and the reopened cases fund
- Extends the New York Compensation Insurance Rating Board (NYCIRB) for ten years and requires the public actuary to issue a report regarding the savings associated with the reforms herein, on an annual basis for the next ten years
- Requires that a study of independent medical examinations be conducted by the Workers Compensation Board and that a report be submitted to the Legislature and the Governor
- Prohibits the Board from disallowing certain claims by police or firefighters related to job stress.
- Provides for a reduction in the maximum fund balance from ten to five percent, that can be retained by the Board from the administrative assessment levied and creates a fiduciary fund to transfer such excess fund balance into for the purpose of rate stabilization.

## **Tax Deduction for Union Dues**

The budget creates an itemized deduction from state income tax for public and private union dues. However, in order to claim this deduction, a worker must itemize on Schedule A.

## **Pension Forfeiture**

While not included in the budget bills, both houses have given “second passage” to a constitutional amendment (A.1749/S.418) that would permit a judge to reduce the public pension of a certain public officials who are convicted of a felony that has a “direct and actual relationship to the performance of the public officer's existing duties.”

If approved by the public at the November 2017 general election, this constitutional amendment would allow judges, following a court hearing, to reduce or revoke the public pension of a public officer convicted of a felony related to his or her official duties. Judges would be required to consider the severity of the crime in determining whether to reduce or revoke the officer's public pension. They would also consider whether pension forfeiture would create undue hardship for the convicted officer's spouse, children, and other dependents.

The measure defines public officers to mean elected officials, governor-appointed officials, municipal administrators and managers, heads of government departments, boards, and commissions, state and local chief fiscal officers and treasurers, judges and justices of the unified court system, and employees of the state designated as policymakers.

The amendment would apply to any crimes committed on or after January 1, 2018.

### **Excelsior Scholarship Program**

The budget provides free tuition to families making up to \$125,000 per year at SUNY and CUNY two- and four-year colleges. New Yorkers must be enrolled in college full-time, averaging 30 credits per year and completing their degree on-time and students must also maintain a grade point average necessary for the successful completion of their coursework. Under the program, New Yorkers will be required to live and work in-state for the number of years they received the Excelsior Scholarship.

### **Raising the Age of Criminal Responsibility**

The budget raises the age of criminal responsibility to 18-years-old and will be phased in over time, raising the age of juvenile delinquency from age 16- to 17-years-old beginning on October 1, 2018, and subsequently raising the age of criminal responsibility to 18-years-old on October 1, 2019. In addition, young people will no longer be permitted to be housed in adult facilities or jails and will be placed in specialized juvenile detention facilities certified by the New York City Administration for Children's Services and the State's Office of Children and Family Services, and in conjunction with the State's Commission of Correction and the New York City Department of Corrections.

### **Local Government Shared Services Plan**

The budget will empower citizens to control the cost of local government by requiring counties to assemble local governments to find efficiencies that will result in taxpayer savings. Public hearings and comment periods will be required as part of the development of the shared services plans. Additional details include:

- A shared services panel will consist of the chief executive officer of the county (County Executive) and the chief executive from every town, city, village, school district, and BOCES in the county, with the County Executive to serve as the chair of the panel
- Upon the development of the plan, it will be submitted to the county legislature/board of supervisors, after 3 public hearings, for the purpose of issuing an advisory report
- If the shared services panel approves the plan, by a majority vote, then such could be implemented/finalized by the chief executive officer of the county

- If the shared services panel fails to approve the plan, then the county shall release a report to the public on the proposal, which shall include the vote of the panel and written explanations from each member of the panel stating the reason for such vote. After this, the plan shall be resubmitted back to the panel for redevelopment
- This also establishes a county shared services financial incentive program, where counties implement an approved plan may apply to the state to match demonstrated cost savings resulting from an approved plan.

### **Autonomous Vehicle Testing**

The budget includes a one-year “demonstration and testing program” for autonomous vehicle technology in New York State. The demonstrations and tests must take place under the direct supervision of the New York state police and take place in a manner and form prescribed by the commissioner of motor vehicles. In addition, the commissioner of motor vehicles, in consultation with the superintendent of state police, must submit a report to the governor, the temporary president of the senate, the speaker of the assembly, and the chairs of the senate and assembly transportation committees on the demonstrations and tests authorized, which is due on or before June 1, 2018.

## **II. Revenue Actions**

- Reinstates the 421-a tax exemption program, which includes:
  - Provides three new affordability options for new residential construction with 300 units or more below 96th Street in Manhattan and along portions of the waterfront in Brooklyn and Queens
  - Requires developers to pay an average hourly wage, including benefits and employer-sided taxes to construction workers of \$60 in Manhattan and \$45 in Brooklyn and Queens. The hourly wage shall be increased by five percent every three years
  - Proposes 100% exemption from real property taxation, other than assessments for local improvements, for a period of 35 years. All affordable units in a project must remain affordable for 40 years
  - A large development outside of the enhanced affordability area may elect to opt in to receive the enhanced abatement by meeting the new requirements
  - Applicants and contractors must submit certified payroll reports to the New York City Comptroller (Fiscal Officer), and if delinquent will be subject to a fine of \$1,000 per week up to a maximum of \$75,000
  - In the event that the average hourly wage is less than fifteen percent below the required wage, then the applicant must pay the deficiency. If the average hourly wage is more than fifteen percent below the required wage, the applicant must pay the deficiency and the Fiscal Officer shall impose a penalty in an amount equal to 25% of the amount of the deficiency
  - Removes the New York City Council’s authority to enact a local law to restrict, limit or condition the eligibility of the tax exemption program

- Requires the Department of Economic Development to prepare an annual comprehensive economic development report. This report will include economic development assistance provided by Empire State Development Corporation and the Department of Economic Development, including, but not limited to, tax expenditures, marketing and advertising, grants, awards and loans. The report will also include data on each economic development program. The Department of Economic Development will post this report on its website no later than January 1 of each year.
- Re-authorizes for two years the use of Design-Build for the Department of Transportation, the New York State Thruway Authority, the Department of Environmental Conservation, the Office of Parks, Recreation, and Historic Preservation, and the New York State Bridge Authority. In addition, the budget includes increased transparency measures and an increase in the minimum threshold for design build projects, from \$1.2 million to \$10 million. The proposal also expands the use of design build for the following eight specific projects:
  - Frontier Town
  - Life Sciences Laboratory
  - Whiteface Transformative Projects
  - Gore Transformative Projects
  - Belleayre Transformative Projects
  - Mt. Van Hoevenberg Transformative Projects
  - The State Fair Revitalization Projects
  - The State Police Forensic Laboratory.
- Converts the NYC STAR Rate Reduction Benefit into a New York State tax credit.
- Relaxes the tax secrecy rules by permitting the commissioner to disclose to assessors, counties, or the head of the tax department or his designee in another state, the names and addresses of individuals who have applied for or are receiving the STAR PIT credit. Such information shall be confidential and not subject to FOIL requests.
- Includes a technical fix for Co-op's STAR PIT credit.
- A three-year extension of existing fees on properties where oil and natural gas are produced. The fees reimburse the cost of creating and maintaining a uniform statewide property tax assessment on such properties.
- Extends the Excelsior Jobs Program for three years, through tax year 2029, and creates a new tax credit, separate from Excelsior Jobs, the Life Sciences Research and Development Tax Credit, by denying the Angel Investor Tax Credit and expanding the definition of life sciences company. Expands the Employee Training Incentive Program (ETIP) to include incumbent worker training and specifically include training for employees of life science companies.
- Extends the Empire State Film and Post – Production Tax Credits for three years, from tax years 2020 through 2022.

- Changes the name of the Urban Youth Jobs Program Tax Credit to the New York Youth Jobs Program Tax Credit and extends it for five years, until 2022, and also creates the Empire State Apprenticeship Tax Credit Program within the New York Youth Jobs Program.
- Extends the Alternative Fuels and Electric Vehicle Recharging Property Tax credit for five years, through tax year 2022.
- Amends the Investment Tax Credit (ITC) by disallowing property principally used by the taxpayer in the production or distribution of electricity, natural gas, steam, or water, to exclude the disallowance for master tapes.
- Requires that a single member limited liability company (SMLC) that is disregarded as an entity separate from its owner (SMLLC's are treated similar to sole proprietors) for federal income tax purposes shall be treated the same way by New York State for purposes of claiming tax credits.
- Extends for two years the current limitations on the itemized deductions for high-income earners under the State and New York City Personal Income Tax.
- Expands the Child and Dependent Care Tax Credit for taxpayers with incomes between \$50,000 and \$150,000 and expands the current cap on childcare expenses from \$6,000 to \$9,000, depending on number of children, for families with up to five children.
- Creates for three years, an expansion of the financial institution data match system for state tax collection purposes to include information regarding financial accounts for tax debtors with fixed and final tax debts, whether or not a warrant has been filed, to allow for three years.
- Creates a three-year authority for the Commissioner of Taxation and Finance to garnish wages of tax without the necessity of filing a warrant with the county clerk
- Clarifies that the proceeds from a non-resident's sale of an entity (e.g. LLC or partnership) that own shares in a New York co-op would be considered New York source income and therefore subject to tax.
- Requires non-resident sellers of partnership assets that are subject to Internal Revenue Code (IRC) Section 1060 (special rules for the sale of a business), to classify the transaction as the sale of an asset.
- Amends the sales tax definition of "retail sale" to include any transfer of tangible personal property to certain entities when the property would be resold to related person or entities, including; (1) sales to single member LLCs or subsidiaries that are disregarded for federal income tax purposes, for resale to a member or owner; (2) sales to a partnership for resale to one or more partners; and (3) sales to a trustee for resale to a trust beneficiary.

- Clarifies how sales tax is charged on the transmission of gas and electricity.
- Imposes a \$0.90 Public Safety Communications Surcharge on the sale of prepaid cell phone devices and services and allows all counties and the City of New York to impose a \$0.30 surcharge on both prepaid and contract services.
- Re-privatizes the New York Racing Association
- Streamlines the payment process for taxpayers eligible for the STAR PIT credit so that taxpayers will receive their payment prior to the date their school property taxes are due.
- Authorizes the Tax Commissioner to periodically adjust the prepaid tax rate for motor fuel to more accurately reflect the current sales tax on the retail price of motor fuel.
- Allows REITS and RICS to either determine their New York source income or elect an amount of eight percent when determining apportionment to New York and to use a fixed dollar minimum capped at \$500.
- Establishes a sales tax exemption for the purchase of cemetery monuments.
- Increases the Excelsior Jobs Research and Development Tax Credit from three percent to six percent and reduces the job creation requirements for eligibility into the Excelsior Jobs Program.
- Extends for one year, provisions related to Minority and Women-Owned Business Enterprise (MWBE) participation, which will only be applicable if the required disparity report is completed and delivered to the Governor and the Legislature on or before June 13, 2017.
- Allows farmers to claim a tax credit for donations of food to food banks or other emergency food programs.

### III. Environmental Conservation

- **Environmental Protection Fund**  
The budget includes funding for the Environmental Protection Fund (EPF) to \$300 million dollars, level funding over SFY2016-2017. The EPF supports solid waste programs, parks and recreation, and open space and climate change programs.
- **Diesel Emissions Reduction Act**  
The budget defers until December 31, 2018 provisions of a 2006 state law requiring government agencies and contractors to comply with a stringent diesel emissions reduction standard that has proven problematic for state agencies and contractors.
- **\$2.5 Billion Clean Water Infrastructure Act**

The budget initiates the \$2.5 billion Clean Water Infrastructure Act, which will help local governments address water emergencies, pay for local infrastructure construction projects, underwrite land acquisition for source water protection, and investigate and mitigate emerging contaminants in drinking water. These projects will improve the quality and safety of municipal drinking water distribution, filtration systems, and wastewater treatment infrastructure.

- **Emerging Contaminant Monitoring**  
The budget enacts a new program within the Department of Health to test covered public water systems and other water sources for emerging contaminants, including those unregulated monitored under the federal Safe Drinking Water Act. The new budget also establishes a new “Drinking Water Quality Council,” directed to make recommendations relating to emerging contaminants.
- **Oil Spill Capital Account**  
The budget includes a new capital account, the “New York Environmental Protection and Spill Remediation Account.” This measure classifies a portion of the Oil Spill Fund spending related to response, remediation, and cleanup of petroleum spills as capital expenses.

#### IV. Economic Development

- **Regional Economic Development Councils Round VII**  
The budget includes \$150 million in capital funding for “high value regional priority projects” that will be combined with existing agency programs and \$70 million in state tax credits set aside from the Excelsior Jobs tax credit program for a seventh round of REDC awards totaling \$750 million.
- **Buffalo Billion Phase II**  
The budget allocates \$400 million in capital funding to the \$500 million Buffalo Billion Phase II. Buffalo Billion Phase II will extend investment in Western New York to the neighborhood level and strengthen existing connections between downtown, suburban, and surrounding areas. Phase II will focus on revitalization and smart growth efforts, improvements to workforce development and job training, growing advanced manufacturing, tourism and life sciences, and connecting communities to foster growth through rail expansion.
- **Upstate Airport Economic Development and Revitalization Competition Round 2**  
In the second round of the Upstate Airport Economic Development and Revitalization Competition, Plattsburgh International Airport will receive \$38.1 million and Syracuse Hancock International Airport will receive \$35.8 million. The plans are intended to enhance safety, improve operations and access, reduce environmental impact, and create a better passenger experience.
- **Life Sciences Initiatives Program**

The budget includes \$300 million in capital funding as part of a \$650 million initiative to grow a new, world-class life science research cluster in New York and expand the state's ability to commercialize research and grow the economy. The goal of this initiative is to increase the state's share of industry-funded research and development, support the commercialization of existing academic research, and position New York State to be a magnet for emerging manufacturing based enterprises.

- Rochester Photonics Venture Challenge in Rochester  
The budget includes \$10 million for the multi-year Photonics Venture Challenge in Rochester. This business competition aims to support start-up companies that commercialize these technologies through a business accelerator program. It includes a top award of \$1 million to the most promising start-up company.
- Empire Station  
The budget includes \$700 million for the development of the Moynihan Train Hall. In conjunction with renovations at the existing Penn Station, this will create a new Empire Station.
- Downtown Revitalization Round II  
The budget Executive Budget continues this program and provides an additional \$100 million for ten additional communities to participate. The program funds “transformative housing, economic development, transportation, and community projects to attract and retain residents, visitors, and businesses to downtowns.”
- NY Parks 2020  
The enacted budget includes \$120 million in New York Works capital funding for the NY Parks 2020 initiative to upgrade and repair state parks.

We are continuing to review the 2017-18 New York State budget in its entirety. Should you have any questions, please do not hesitate to contact us.