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MEMORANDUM

TO: New York State Professional Fire Fighters Association

FROM: Hinman Straub P.C.

RE: **Governor Cuomo's SFY 2019-20 Executive Budget Proposal Workforce, Public Protection, Labor, and Employment.**

DATE: January 15, 2019

On Tuesday, January 15, 2019, Governor Andrew Cuomo released the Executive Budget for State Fiscal Year (SFY) 2019-20. The following is a preliminary review of the Governor's proposal with a focus on the above-referenced topics. Additional analysis and memoranda will be forthcoming as briefings take place and additional information becomes available.

Key proposals in the SFY 2019-20 Executive Budget involving the public and private sector workforce include:

STATE WORKFORCE

There are an estimated 184,000 full-time equivalent State employees within 59 Executive agencies, the SUNY and CUNY systems and in the Offices of the Attorney General and State Comptroller. The Executive has direct control over 65% of the State workforce

Employment Category	**FY 2019**		**FY 2020**	
	Current Actual	**3/31/19 Est.**	**3/31/20 Est.**	**3/31/20 Change**
Executive Control	117,381	119,327	120,005	2,624
University Systems	60,294	59,876	59,876	(418)
AG & Comptroller	4,416	4,502	4,502	86
Total	**182,091**	**183,705**	**184,383**	**2,292**

Approximately 94 percent of the State workforce is unionized with the remaining unrepresented employees are serving in Management/Confidential (M/C) assignments.

The Governor's proposal recommends workforce increases in certain state agencies including:

- Department of Health (+154) to support the continued takeover of Medicaid operations, administration of new lead enforcement standards, assumption of the Medical Indemnity Fund program, and Behavioral Health Parity

- Department of Corrections and Community Supervision (+153) for Special Housing Units related to agreements with the New York Civil Liberties Union and codification of solitary confinement reform

- Department of Taxation and Finance (+110) to increase Audit Program staff

- New York State Housing and Community Renewal (+94) to support rent regulation reform

- Department of State (+40) to support call center activities

- Office of Mental Health (+40) to support the growing forensic needs within OMH facilities

- Department of Agriculture and Markets (+29) for required annual food safety inspections

- Gaming Commission (+19) for legally mandated 24/7 presence at casinos

- Parks, Recreation and Historic Preservation (+17) to support the Penn & Fountain/Shirley Chisholm Park

Collective Bargaining

The State has multi-year labor agreements in place with several unions, while negotiations are underway with other unions.

The Civil Service Employees Association (CSEA) and DC-37 Rent Regulation employees have five-year labor contracts that provide annual salary increases of 2 percent for FYs 2017 through 2021 and additional compensation changes offset by benefit design changes within the New York State Health Insurance Program (NYSHIP) and in overtime.

The State and the United University Professions (UUP) have a six-year collective bargaining agreement that covers academic years 2017 through 2022. The agreement provides for a 2 percent general salary increase in each year of the contract and additional compensation changes, which are partly offset by benefit design changes within NYSHIP.

Members of the Police Benevolent Association of the New York State Troopers (NYSPBA) have a five-year collective bargaining agreement that provides a 2 percent general salary increase in FYs 2019 through 2023.

Employees represented by PEF and the Graduate Student Employees Union (GSEU) have three-year collective bargaining agreements providing 2 percent annual salary increases in FYs 2017 through 2019. Salary increases provided to the Public Employees Federation (PEF) and Graduate Student Employees Union (GSEU) employees were also extended to Management/Confidential (M/C) employees. Negotiations on the next contracts with PEF and GSEU are expected to commence later in the year.

The State is in negotiations with all other employee unions whose contracts concluded prior to FY 2019, including the New York State Police Investigators Association (NYSPIA), Council 82, and the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA). Negotiations also continue with the Police Benevolent Association of New York State (PBANYS), whose contract expired at the end of FY 2015.

Employee Fringe Benefits and Fixed Costs

The State provides a variety of fringe benefits to its current and former employees, including health insurance, pensions and workers' compensation coverage.

All Governmental Funds spending on fringe benefits is projected to increase by $263 million (3.0 percent). According to the Governor, this growth is primarily attributable to the health insurance and workers' compensation programs, offset by relatively flat spending for pensions and social security, and reductions in other fringe benefits and fixed costs.

Growth in the health insurance program of $116 million (2.8 percent) is reflective of medical inflation and current enrollment levels. Workers' compensation costs are increasing by $51 million (8.9 percent) due to growth in the average weekly wage for benefit calculations and medical costs. Overall pension costs are projected to remain relatively stable due to improved investment returns and ongoing savings from the 2012 pension reforms. Social Security spending is also relatively stable due to steady workforce levels.

Summary of State Employee Fringe Benefits Spending

Benefit	FY 2019 (millions)	FY20 (millions)	Change (millions)	Percent
Health Insurance	4,196	4,312	116	2.8
Pensions	2,422	2,462	40	1.7
Social Security	1,032	1,065	33	3.2
Workers' Comp	576	627	51	8.9
All Other	684	707	23	3.4
Total	**8,910**	**9,173**	**263**	**3.0**

Medicare Part B Reimbursement Cap

The Governor's proposal seeks to standardize Medicare Part B reimbursement for all retirees and their dependents at $135.50 per month. Any future increases in the Medicare Part B premium retirees would not be automatically reimbursed to retirees and instead would need to be approved as part of the budget process.

Income Related Medicare Adjustment Amounts (IRMAA) Reimbursement

The Governor's proposal would cease reimbursement of additional Income Related Medicare Adjustment Amount premiums paid by higher-income retirees.

To minimize employee health benefit costs, the state requires all retirees participating in the NYSHIP to enroll in Medicare Part B upon turning age 65. After enrolling in Medicare Part B, the federal government requires enrollees to pay a monthly premium. State retirees pay this monthly premium to the federal government (typically taken as a Social Security check deduction), but are later reimbursed the full amount by the state as a credit in their monthly pension allowance.

In 2007, the federal government implemented an additional income-related Part B premium requiring higher income enrollees to pay higher monthly premiums. These higher monthly premiums are called Income Related Medicare Adjustment Amounts (IRMAA). Under the current law, the State also fully reimburses affected retirees if they are required to pay the additional IRMAA premiums.

Sliding Scale Reimbursement of Health Care Costs for New York State Civilian Employees

The Governor's proposal would gradually increase state support for a civilian retiree's health insurance coverage based on years of service of the retiree and would apply to those hired after April 1, 2019.

- For state employees who retire Grade 10 or higher with at least ten, but less than twenty years of service, the state will pay 50% of the cost of premium or subscription charges for the individual coverage. Contributions will increase by 2% for each year of service in excess of ten years, to a maximum of 68%.

- For state employees who retire Grade 10 or higher with twenty or more years of service, the state will pay 74% of the cost of premium or subscription charges for the individual coverage. Contributions will increase by 1% for each year of service in excess of twenty years, to a maximum of 84%.

- For state employees who retire Grade 9 or lower with at least ten, but less than twenty years of service, the state will pay 54% of the cost of premium or subscription charges for the individual coverage. Contributions will increase by 2% for each year of service in excess of ten years, to a maximum of 72%.

- For state employees who retire Grade 9 or lower with twenty or more years of service, the state will pay 78% of the cost of premium or subscription charges for the individual coverage. Contributions will increase by 1% for each year of service in excess of twenty years, to a maximum of 88%.

- For state employees who retire Grade 10 or higher with at least ten, but less than twenty years of service, the state will pay 35% of the cost of premium or subscription charges for

the dependent coverage. Contributions will increase by 2% for each year of service in excess of ten years, to a maximum of 53%.

- For state employees who retire Grade 10 or higher with twenty or more years of service, the state will pay 59% of the cost of premium or subscription charges for the dependent coverage. Contributions will increase by 1% for each year of service in excess of twenty years, to a maximum of 69%.

- For state employees who retire Grade 9 or lower with at least ten, but less than twenty years of service, the state will pay 39% of the cost of premium or subscription charges for the dependent coverage. Contributions will increase by 2% for each year of service in excess of ten years, to a maximum of 57%.

- For state employees who retire Grade 9 or lower with twenty or more years of service, the state will pay 63% of the cost of premium or subscription charges for the dependent coverage. Contributions will increase by 1% for each year of service in excess of twenty years, to a maximum of 73%.

This does not apply to members of the New York State and Local Police and Fire Retirement System, state Department of Corrections security hospital treatment assistants, or any state employee that retired with an ordinary, accidental or performance of duty disability retirement benefit.

Protecting Union Member Privacy

The Governor's proposal would prohibit the disclosure of personal information by public employers for all public sector employees (state and municipal employees). Specifically, the proposal would amend Section 209-a of the Civil Service Law to prohibit a public employer from disclosing home addresses, personal telephone numbers, personal cell phone numbers, and personal e-mail addresses of all public sector employees. Additionally, the bill would authorize public employers to provide employee organizations the name, address, job title, employing agency and work location of their members upon request, but not more than quarterly.

Extend Binding Arbitration until 2024

The Governor's proposal would extend binding arbitration for public safety unions until July 1, 2024.

FOIL Reform

The Governor's proposal would incorporate the state legislature into the provisions of FOIL; make proposed terms of a collective bargaining agreement available to the public; clarify that access to records may be denied where disclosure could endanger critical infrastructure; and codify proactive disclosure. Additionally, these changes would include personal communications between a legislator and a constituent in the definition of an unwarranted

invasion of personal privacy; require commercial entities to renew requests for trademark protection; and outline the process to handle suits by commercial entities to block disclosure.

Civil Service Continuous Recruitment Exams

The Governor's proposal would allow the Department of Civil Service to establish a continuing eligible list in connection with open-competitive examinations, whenever it deems it appropriate to do so. According to the Governor, continuous recruitment examinations offer a flexible and valuable selection tool under various circumstances. Eliminating the requirement that there must be a limited number of well qualified candidates available will enable the Department or municipal civil service commission to use the device when it is found that it can provide for a more efficient and modernized examination process.

Non-Competitive and Labor Class Promotional Exams

The Governor's proposal would allow state employees in non-competitive or labor class positions, who have already established their merit and fitness in their current position, to compete for competitive positions without regard to the method by which he or she became a state employee. Specifically this seeks to eliminate the requirement that the New York State Department of Civil Service hold an open competitive examination at the same time as the promotional examination in order for non-competitive and labor class employees to compete in a promotional examination.

Salary Protection for Provisional Employees

The Governor's proposal would grant salary protection to provisional and temporary incumbents and to provide salary protection to permanent incumbents who take a lateral transfer.

Extend and Expand Temporary Operator Authority

The Governor's proposal would authorize the Office of Children and Family Services (OCFS) to appoint a temporary operator for a foster care agency that would address concerns regarding the health, safety or welfare of children served in the program. A temporary operator could only be appointed when the foster care agency is unable or unwilling to ensure the proper operation of the program and conditions exists that have the potential to seriously endanger or jeopardize the health, safety or welfare of children served in the program, or when necessary to protect the health, safety or welfare of such children.

Further, this proposal outlines notification and due process requirements prior to the appointment of the temporary operator, the period in which a temporary operator may be appointed (90 days with subsequent 90-day periods authorized).

Additionally, this would extend the Office of Temporary and Disability Assistance (OTDA)'s authority to appoint a temporary operator whenever the commissioner or their designee has determined an emergency shelter has failed to comply with the requirements of state or local laws or regulations to the operation of such emergency shelter.

PUBLIC PROTECTION

End Revenge Porn

The Governor's proposal would criminalize revenge porn by prohibiting the unlawful publication of sexual materials consensually shared when the person had a reasonable expectation that such material would not be disclosed. Specifically, the crime will be a class A misdemeanor punishable by up to one year in jail or three years of supervision for any person who disseminates such materials.

Eliminate the Statute of Limitations for Rape in the 2nd and 3rd degrees

The Governor's proposal would amend the criminal procedure law to eliminate the statute of limitations for Rape in the 2nd and 3rd degrees.

Domestic Violence Survivors Justice Act

The Governor's proposal would expand sentencing and resentencing options for judges in cases in which defendant were domestic violence victims at the time of their offense. The bill specifies offenses that may be considered by judges for alternate sentencing and resentencing. It provides ranges for sentencing that could be imposed if the judge determines the defendant or incarcerated person was a victim of domestic violence at the time of the offense and such abuse was a significant factor in committing the offense.

Increase criminal penalties for assault on the press

The Governor's proposal would make it a felony to assault a journalist while on the job.

Prohibit rapid-fire modification devices

The Governor's proposal would prohibit the possession, manufacture, transportation, shipment and sale of items that accelerate the firing rate of firearms, rifles, or shotguns.

Establish a Firearm Waiting Period

This Governor's proposal would establish a ten-day waiting period before a licensed gun dealer can deliver a firearm, shotgun or rifle to a purchaser when the sale has not been approved or denied by the National Instant Criminal Background Check System (NICS).

Establish Extreme Risk Protection Orders

The Governor's proposal would prevent individuals determined by a court to be likely to engage in conduct that would result in serious harm to themselves or others from purchasing, possessing, or attempting to purchase or possess a firearm, rifle, or shotgun.

GENERAL WORKFORCE AND OTHER PROVISIONS

Workers' Compensation Medical Providers

The Governor's proposal would amend workers' compensation law to extend workers' compensation board (WCB) authority to resolve medical bill disputes, simplify the dispute process, and expand the list of authorized providers for workers' compensation claimants. The proposal also specifies that all provider types are subject to removal for misconduct expressly permits the WCB to resolve disputes concerning any medical service or supply rendered under the broad authority of the law.

Job Try-Outs as Eligible Work Activity for Public Assistance Recipients

The Governor's proposal would allow social services districts (districts) to place Public Assistance (PA) recipients in time-limited job try-outs. The districts would assign PA recipients to 90-day job try-outs as work experience assignments with private for-profit, non-profit and public sector entities in satisfaction of PA work requirements.

Criminal Penalties for Wage Theft

The Governor's proposal would increase the criminal penalties for employers who knowingly engage in wage theft and would indicate the class of penalty an employer would be guilty of based on specified amounts of wage theft per employee. It would also require payment of lost wages to employees as restitution.

Reduce Penalties for Unemployment Insurance Recipients Working Part-Time

The Governor's proposal would permit a claimant who is partially unemployed and eligible for benefits to be paid a reduced benefit amount based upon the difference between the weekly benefit rate if totally unemployed and an amount equal to two-thirds of total remuneration of any nature payable to the claimant for services of any kind during such week.

Additionally, this proposal would also provide that for a claimant whose partial unemployment is limited to one or two days a week of unemployment and whose remuneration is less than the maximum weekly benefit amount, he or she shall be paid a benefit amount equal to seventy-five percent or fifty percent respectively, of his or her weekly benefit amount, if the amount is higher than partial unemployment formula.

The Labor Law would be amended to eliminate forfeit day penalties and to increase the monetary penalties from 15 percent to 25 percent for the first occurrence and 50 percent for a second occurrence within 5 years of the first determination. The section would also be amended to provide that the additional 10 percent amount (or 35 percent amount for the second occurrence) of the monetary penalties are placed in the unemployment insurance control fund for fraud prevention.

Equal Pay

The Governor's proposal would prohibit the request of applicant salary history as a factor in determining whether to offer employment and would expand pay equity provisions to include equal pay for substantially similar work for all protected classes. The proposal states that the applicant may voluntarily provide salary information, without prompting. Should the applicant voluntarily disclose their salary history, the employer or employment agency would not be prohibited from discussing with the applicant about their expectations of salary, benefits or other compensation. Additionally, this proposal would expand coverage of the equal pay provisions for substantially similar work beyond sex or gender to include all protected classes.

Protections Against Harassment in the Workplace

The Governor's proposal would "ensure that judicial interpretations of similarly worded provisions of federal civil rights laws establish a floor for interpretations of Human Rights Law, rather than a ceiling and clarify that harassment is not limited to actions that are severe or pervasive."

Additionally, this proposal would require that all non-disclosure agreements in employment contracts entered on or after January 1, 2020 include language stating that employees may still file a complaint of harassment or discrimination with a state or local agency and testify or participate in a government investigation. Further, it would require the Department of Labor to consult with the Division of Human Rights on the production and distribution of a workplace sexual harassment prevention poster that "must be conspicuously posted" by every employer to inform employees of their rights.

Breastfeeding Protected in the Workplace

The Governor's proposal would expand upon 2015's "Breastfeeding Mother's Bill of Rights," by guaranteeing breastfeeding parents the right to use break time to express breast milk at work and the right to reasonable efforts by an employer to provide a private space to do so. In 2018, the Governor directed the Department of Financial Services to provide a clear reminder to health insurers that they must provide comprehensive lactation support services to new mothers. This proposal would ensure employers are following such laws by clarifying that "lactation is a pregnancy-related condition covered by the New York Human Rights Law requiring employers to make reasonable accommodations for lactation in the workplace."

Expand the Employee Training Incentive Program (ETIP) Credit

The Governor's proposal would amend the Employee Training Investment Program ("ETIP") to allow business entities to receive the tax credit associated with ETIP if they conduct training and are otherwise eligible. It also would expand the definition of eligible training to include an internship program in software development or the development of renewable or clean energy.

Extend the Workers with Disabilities Tax Credit for Three Years

The Governor's proposal would extend the sunset dates for the corporate and personal income tax credits for qualified employers that employ individuals with developmental disabilities until January 1, 2023.

Create the NYS Employer-Provided Child Care Credit

The Governor's proposal would create the NYS Employer-Provided Child Care Credit to assist employers in providing quality child care services to their employees. The IRS currently provides employers a credit for qualifying expenditures paid or incurred in providing child care alternatives for their employees. This would provide a similar state tax credit for New York employers to provide child care for their employees located in New York. The credit would be equal to 25% of qualified child care expenditures related to a child care facility located in New York, plus 10% of qualified child care resources and referral expenditures, attributable to employees working in New York, and, like the federal credit, would be capped at $150,000 per taxable year.

Qualified child care expenditures include operating costs of a qualified child care facility of the taxpayer or under contract with another taxpayer, as well as amounts paid or incurred to acquire, construct, rehabilitate, or expand property used as part of a care facility of the taxpayer.

Employer Recovery Hiring Tax Credit

The Governor's proposal would establish the Recovery Tax Credit program to provide tax incentives to certified employers for employing eligible individuals in recovery from a substance use disorder in part-time and full-time positions in New York State. The proposal would authorize the allocation of $2 million in refundable tax credits computed on a 1 dollar per hour worked per eligible employee basis, with a minimum requirement for each employee of 500 creditable hours worked and a cap for each employee of 2000 creditable hours worked.

Qualifying employers must have a formal working relationship with a local recovery community organization and eligible employees must demonstrate they have completed a course of treatment for a substance use disorder and are in a state of wellness. The credit may be claimed only one time for each eligible employee.

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