The People's Budget

Budget Equity XXI

Preliminary Analysis of the Governor's Executive Budget 2013-2014

by The New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus

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TABLE OF CONTENTS

MESSAGE FROM THE CHAIRMAN
Assemblyman Karim Camara
SFY 2013-2014

As Chairman of the forty-eight member New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus, it is my honor to present this analysis of the Governor's Executive Budget. Budget Equity XXI has been published in order to inform our constituents of the magnitude and impact the 2013 budget will have on our communities and New York's most vulnerable residents.

Over the past couple of years many of New York State's citizens have experienced some tremendous hardship as a result of raising unemployment rates, health care and education cost; as well as an unparalleled economic recession. With that in mind, this report has been created with the goal of making this year's budget a comprehensive and equitable representation of the needs of our communities, especially for those that have been historically excluded from experiencing the full benefits of all this State has to offer.

This document represents our due diligence to articulate the needs of our communities. It also demonstrates a collaborative effort by numerous organizations views, but with a united focus of how to remedy the various long standing issues in our communities, through a fair and equitable distribution of state resources.

The opportunity to rise up and pursue economic and academic security is essential for residents in our communities. On behalf of the Caucus, I want to confirm our continuous work, day after day fighting to ensure that the state's final budget protects the future of our constituents.

Message from Budget Co-Chair
Assemblywoman Crystal D. Peoples-Stokes
SFY 2013-2014

Governor Cuomo in his 2013-14 Executive Budget Proposal, has presented the members of the New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus with a budget that in many ways is more progressive than in previous years. The move away from the severe austerity measures taken over the last several budgets is a welcome sign. Most importantly the inclusion of an increase in New York State's long stagnant minimum wage in the budget proposal should serve as a spark and impetus to work harder to improve the conditions of working families in New York. Chief among my concerns is how New York and the nation will move forward and improve upon this weak recovery that has not yet turned around the rising poverty, persistent unemployment and faltering wages that the post-Bush era burdened us with.

Economic hardships have fallen hard on New Yorkers in recent years with huge increases in the numbers of families receiving food stamps and public assistance. With over 1.26 million additional food stamp recipients added since the recession began and a thirty percent increase in overall public assistance cases outside of New York City it is clear and evident that more has to be done to help spur the economy to create jobs now. In upstate cities like my Buffalo we have seen payroll job growth slow down to negative integers in some sectors with higher competition and fewer options remaining for qualified applicants.

As this nascent recovery moves ever so slowly forward we as policy makers should do more to bolster our economy's long term growth potential by passing the minimum wage increase as soon as possible and give workers a living wage. This income boost would pour $1.3 billion into workers' pockets, stimulating the economy, increasing purchasing power and stimulating local economies across New York.

In addition to the minimum wage increase we need to work harder to engage with the business community to find ways to forge productive relationships and create incentives in the pursuit of job creation. The expansion of MWBE participation, the pursuit of effective public/private partnerships with our public universities, encouraging the pursuit and buying of "Made In New York" products and increasing the resources available for job training and education will be essential ingredients in a cocktail for job creation and economic success as we move forward.

The Executive's proposed budget misses the mark by denying legislators opportunities to support local not for profits. New York leads the nation in gun enforcement legislation, however to further decrease homicides in our inner cities we must also deliver vital services to our at-risk youth through after school, cultural, educational and sports-related community activities that we know help mitigate the violence.

Now we must seize upon the opportunity of President Obama’s second term and work effectively together to bring New York and our national economy back stronger than ever. I look forward to working with my Assembly colleagues, the Senate and Governor in molding a budget in the best interests of all New Yorkers. I believe as Dr. King did that, “A genuine leader is not a searcher for consensus but a molder of consensus.”

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EXPLANATION OF TERMS

New York State's annual budget contains the financial resources that allow many programs throughout the State to operate in an efficient and effective manner. The appropriations contained in the state budget are presented in specific fund types and categories or purposes. The presentation is simply distinguishing where the money comes from and where it goes or for what purpose it is spent. The following definitions are meant to be a non-technical description of funding structure of the state budget.

Fund Types: How NYS derives its money for the programs.

General Fund (GF): Represents funds derived from the income taxes of New York State residents. These "TAX DOLLARS" can generally be spent for any purpose within the budget as designated by the Legislature and Governor.

Special Revenue Fund: Represents funds derived from a "SPECIAL SOURCE" and generally fall in two categories, State and Federal. These funds may be restricted in their usage and could prohibit appropriation for general purposes in the budget.

The Special Revenue Fund-State (SRO): Dollars come from special agency sources like user fees, fines, penalties, student tuition, etc. charged to New York State residents.

The Special Revenue-Federal (SRF): Dollars come from the federal government usually in the form of a grant and are for program-specific purposes in most cases. An example of these funds would be Federal Pell Grant funding for students at the State University of New York.

Capital Projects Revenue: Represents funds derived from tax revenue or the sale of New York State Revenue Bonds. These funds are specifically targeted for major infrastructure and capital improvements like roads, bridges, buildings, and computer upgrades.

Debt Service Funds (DSF): Represents tax dollars and special revenue sources set aside to pay for the various revenue bonds issued by the State of New York.

Categories and Purposes

State Operations: Funds in this category are used to support the primary operations of an agency such as administration and core programmatic activities.

Aid to Localities: Funds in this category are used to support the operations of local municipalities, community organizations, or direct grants to New York State residents (e.g. Tuition Assistance Grants for eligible college students).

General State Charges: Funds in this category are used to pay for the employee benefits of the state work force (e.g. medical insurance, retirement etc.).

Capital Projects Revenue: These funds are specifically targeted for major infrastructure or capital improvements like roads, bridges, buildings, and computer upgrades.

Debt Service Funds (DSF): Set aside to pay for the various revenue bonds issued by the State of New York.

PRELIMINARY ANALYSIS OF THE

2013-14 EXECUTIVE BUDGET PROPOSAL

BALANCING STATE BUDGETS DURING TENUOUS RECOVERIES

The 2013-2014 Executive Budget in Economic and Social Context

The Great Recession, which officially began in June 2007 and officially ended in June 2009, has been followed by the weakest recovery since the 1930's. As policymakers debate budget priorities for the 2013-14 state fiscal year (which is also referred to as FY 2014 and which begins less than two months from now, on April 1, 2013), the economic outlook is for moderate growth, prolonged high unemployment, and a continued squeeze on low- and middle-income New Yorkers.

New York State lost proportionately fewer payroll jobs during the Great Recession than the rest of the nation. But that is of little consolation given how deep the recession was in New York and the other states that fared comparatively well during this historic downturn. It is also of little consolation given the likelihood that high and long-term unemployment will persist for the next four years given the current policy mix at the federal and state levels.

Overall, New York City is faring much better than the suburbs and upstate, though low- and middle-income workers everywhere have suffered. New York can't recover on its own without a stronger national recovery. For that, more federal spending stimulus is needed, but Washington seems intent on cutting spending and creating "fiscal drag" that will slow economic growth.

The Great Recession and historically weak recovery have generated rising poverty, persistent unemployment, faltering wages and other indicators of widespread economic distress. The concentration of income growth at the top has resumed and income polarization is impeding recovery.

In addition, Wall Street's role in the economy seems to be permanently changing. That transition should be the occasion for adopting—at all levels of government—a comprehensive set of budget, tax and economic policy changes that will reduce polarization and foster sustained and broadly shared prosperity.

Although New York State fared better than many states during the Great Recession, economic hardships have been pronounced and have taken an enormous toll on millions of New Yorkers.

- The number of New Yorkers receiving food stamps increased to 1.26 million, or by 68%, since the recession began. However, outside of NYC, the increase was 76%.

- More than a million New Yorkers were added to the Medicaid rolls, bringing the total to 5.1 million.

- The number of people receiving public assistance grew by one-third outside of New York City, while within New York City, the city administration discouraged people from accessing public assistance.

- Even though the mortgage foreclosure problem was not as severe in New York State as in many states, 9% of New York homeowners are more than 90 days overdue on their mortgages, a higher share than in the nation overall.

- The Federal Reserve's Survey of Consumer Finances reported that median household net worth in the U.S. fell by 39% between 2007 and 2010, wiping out 18 years of gains since 1992. In the wake of the 2008 financial crash home values and family savings for middle-income families plummeted, robbing many families of their hard-won economic security. Meanwhile, the median net worth of the wealthiest 10% of families actually rose by 2%.

Since 2007-08, poverty rates have increased sharply at the national, New York State, and New York City levels, with New York's statewide poverty rate (16% for 2010-11) remaining consistently above the national rate (15.1% for 2010-11). The New York City poverty rate (22.5% for 2010-11) has remained substantially higher than the national and New York State rates.

While New York City is home to the majority of New Yorkers living below the poverty line, the poverty rates are far higher in the major upstate cities. According to the Census Bureau's American Community Survey, the percentage of people living below the poverty line in the upstate cities with populations above 65,000 ranged from 25.5% in Albany to 36.7% in Syracuse. Child poverty rates were even higher with half of all the children in Syracuse (53%), Rochester (53.9%), and Schenectady (50.8%) living in households with incomes below the poverty line.

Income polarization has also started to rise again. After peaking in 2007 (when the top 1% share of all income peaked at 35% for New York State and just below 45% for New

York City), income polarization declined in 2008 and 2009. But the trend of increasing income polarization resumed and was back to 2008 levels in 2011.

The poverty and income polarization trends of the last several years underscore the need, now more than ever, for federal and state policies that will move the economy toward broadly shared prosperity.

The still-fresh memory of financial sector misdeeds and the re-regulation of the sector appear to be changing the finance sector in significant, and possibly permanent, ways. 2012 Wall Street profits are projected to be the second highest ever, but cash bonuses are forecast to be only slightly higher than in 2011. As the trend continues, firms seem to rely more heavily on providing bonus compensation in the form of stock options or other deferred compensation. Average annual cash compensation among New York's financial firms is expected to stay high at around $360,000.

Capital gains and partnership income, both associated with activity in financial and real estate markets, increased strongly in 2012. Both capital gains and partnership income are highly concentrated among those with high incomes. Part of the 2012 growth resulted from the expectation that top federal income tax rates would rise in 2013, due to provision of health care reform that takes effect in 2013 which raises the federal tax on capital gains realizations.

With renewed growth in the concentration of income at the top in New York, policy makers should do more to bolster our economy's long-term growth potential. Ensuring more broadly shared prosperity is included through policies like restoring the minimum wage's purchasing power.

Balancing New York State's 2013-14 Budget

State government policymakers face a difficult challenge in balancing budgets during times such as the present. They have to do their best to come up with that mix of spending cuts and tax increases that will do the least harm to their state's economy.

There is no universally accepted wisdom for making these choices, but basic macroeconomic principles provide the best guide available. In a classic 2001 paper on this subject, Nobel laureate Joseph Stiglitz and Peter Orszag, (formly of the Brookings Institution) concluded that reductions in government spending on goods and services that are produced locally (like elementary and secondary education) as well as, reductions in transfer payments to lower-income families are most damaging to the economy since they come closest to taking dollar for dollar out of the local economy.

Stiglitz and Orszag also concluded that it makes eminently good sense for the federal government to help the states to balance their budgets during economic downturns. Ideally, during such periods, the federal government, which is not required to run balanced budgets and which is responsible for overall macroeconomic management, should assist the states with some form of counter-cyclical financial assistance. If the federal government does not help states to balance their budgets during such periods then the states will have to do more tax increasing and/or service cutting than would otherwise be necessary, thus canceling out more of the positive impact of the actions that the federal government is taking directly to stimulate the economy.

In 2009 and 2010, while New York's more balanced approach to budget balancing for the 2009-2010 fiscal year was being implemented, New York continued to do much better than the nation as a whole in terms of private sector employment gains and losses. But in 2011, New York's move to austerity budgeting in 2010 and 2011 had a negative impact on New York's relative performance in terms of private sector employment.

According to the recent Executive Budget, New York State's projected budget gap for the upcoming 2013-14 fiscal year is an estimated $1.35 billion. The Executive Budget is proposing to close this gap with nearly $1 billion in proposals to control spending and roughly $330 million in proposals to extend a number of expiring laws.

New York State should not balance its 2013-14 budget in ways that will make economic conditions worse or place a drag on the recovery by further cutting the staffing levels of state and local government agencies and nonprofit service-providing agencies. The Governor and the Legislature should make policy choices that will take the least amount of demand possible out of the state economy.

Rather than cutting and otherwise underfunding essential services, the Legislature should consider progressive revenue alternatives such as those outlined in the final section of this edition of Budget Equity.

EDUCATION

The 2013-2014 Executive Budget provides for a year-to-year increase of $550.31 million in formula aid. The Governor's plan also includes $203.47 million contained in a Fiscal Stabilization Fund for distribution to provide one-time financial relief for school districts. In addition, the Executive Budget provides $75 million for several new competitive grant programs including Full-Day Pre-kindergarten, School-Wide Extended Learning Time, Community Schools, Improved Science and Math Education and Early College High Schools programs. In total the Governor proposes $889 million in education funding.

The Executive Budget would freeze the database as of November 2012. In addition, school districts would not be eligible for any aid increases if they do not have APPR agreements in place for the 2013-2014 school year by September 1, 2013.

The Executive Budget also proposes a pension smoothing system that would authorize the Comptroller and the New York State Teachers' Retirement System to establish a long-term stable contribution option for municipalities and school districts.

Keeping the Promise

The Campaign for Fiscal Equity

In 1993, Robert Jackson and a group of New York City parents organized the Campaign for Fiscal Equity. CFE sued the State of New York on the grounds that the State was failing to provide students the "sound basic education" or "meaningful high school education" that is their constitutional right. Over the next 13 years the CFE lawsuit faced a series of delays and appeals to try and stave off the State's constitutional responsibilities to our school children. But, the New York State Court of Appeals, as well as the trial and appellate courts, repeatedly found that the state was failing in its constitutional obligations to provide for the classroom resources necessary to educate every student.

While the CFE case was specific to New York City, the CFE plaintiffs argued for a statewide solution because students in many schools faced the same lack of adequate classroom resources--whether upstate or downstate, rural or suburban, in large cities or small cities. In fact, the Court of Appeals recognized that the State, in formulating a remedy to CFE, "may of course address statewide issues if it chooses."

In 2007, the Caucus joined with all of our state elected officials in enacting the historic school reforms that were designed to provide a statewide resolution to CFE. The 2007 education reforms were designed to finally end the delays and excuses that stood between too many of our students and the quality education that is their constitutional right. Under this statewide CFE resolution, the state replaced a complex maze of 30 school aid formulas with a single foundation formula designed to fairly distribute classroom aid based on student need and community income and property wealth. The state committed to phase-in a $5.5 billion increase in foundation aid over four years. In 2007 and 2008 the state fulfilled this commitment by adding $2.3 billion in classroom funding through school aid. These funds were used to reduce class size, expand the school day and the school year, provide specialized programs for English Language Learners, reform high schools and middle schools, invest in professional development for teachers and principals, and create opportunities for full-day Pre-Kindergarten and Kindergarten programs. The funds invested created highly effective educational programs in schools across the state.

But in 2009, the fiscal crisis took hold and since then our schools have faced retrenchment. The State has cut $2.7 billion in school aid. Once again, CFE was delayed and the cuts were terribly inequitable because they were two to three times as large per pupil in poor and average need districts as in wealthy districts. As a result, schools have increased class sizes, cut summer school programs, tutoring, college preparatory and Advance Placement courses, Career and Technical Education, arts, music, sports and in some cases Kindergarten and Pre-Kindergarten. Finally, in 2013 there is an opportunity for restoring some of these classroom cuts. We must fulfill the obligations we committed to in 2007 when we settled CFE. Our CFE commitments statewide must be kept front and center, not pushed to the back of the line.

CFE: Where We Stand in 2013

New York State's Commissioner of Education Dr. John King has repeatedly warned that our schools face the prospect of "educational insolvency" whereby they will not be able to provide the quality of education students need to be prepared for college and in some cases will be unable to fulfill the requirements for graduation.

According to the New York State Board of Regents[1] the budget actions of the state in recent years have hurt our schools by leaving them:

- With state school funding below 2008-09 levels;
- A $2.2 billion Gap Elimination Adjustment that has to be paid back by the state to schools; and
- Foundation Aid that is $5.5 billion behind what was committed in the CFE settlement.

How long will it take for the state to fulfill its CFE commitments under current law?

Advocates estimate 15 years. At the current rate and with current state law the CFE commitment will not be fulfilled until at least the 2027-28 school year and that does not even account for inflation that will occur between now and then.[2] That means that from 1993 when Robert Jackson first filed the CFE lawsuit it will take 35 years to fulfill the commitment. A student who was entering ninth grade when CFE began, could easily be the parent of a ninth grader by the time New York State gets around to fulfilling CFE. For generations of students a dream deferred continues to be a dream denied.

This shortfall in funding has occurred because New York State enacted a ceiling on the growth in state school aid based on the growth in personal income that does not allow funding for school improvement. In fact under the current school finance system, schools began receiving small

[1] New York State Board of Regents, 2013-14 Regents State Aid Conceptual Proposal, November 8, 2012
[2] Alliance for Quality Education.

annual increases in 2012, but not enough to prevent more and more classroom cuts. Unless the Legislature adds more school aid, another round of classroom cuts is inevitable.

EDUCATION SPENDING ON PROGRAMS TO INCREASE MINORITY ACADEMIC ACHIEVEMENT/BILINGUAL EDUCATION

Over the past few years, details have come to the attention of lawmakers with regards to tens of millions in education funding that is not making its way to schools or classrooms. One such problem is in the way New York State funds additional education services for students not participating in a regular high school setting. New York City, Yonkers, Buffalo, Syracuse and Rochester receive Special Services Aid. While the level of aid has increased over the past three years, there has been no public accounting on how the current $219 million allocation has been spent to assist minority students.

A second funding stream to assist minority students with English language acquisition also raises red flags. English Language Learning (ELL) students already have the highest school drop out rates. To compound this problem, New York City and State Education officials continue to obscure their shortcomings on addressing this issue with repeated comments claiming there is a lack of qualified bilingual education teachers to fill the need. Yet, each year, New York State allocates over $20 million dollars annually to New York City public schools for bilingual education. It is obvious that the mismanagement of these funds contribute to the high drop out rates and the inability of education administrators to use this large sum of money to train, recruit and retain qualified bilingual teachers.

A recent report by the University at Albany/SUNY documents a significant breach in local compliance with state requirements for bilingual education programs. Its findings show that Latino students who are English Language Learners are being shortchanged. Moreover, the number of local schools that currently fail to provide bilingual education programs to Latino students is likely to be greater than what the study suggests. This is so, simply because the proportion of schools that do not provide information needed to assess compliance is significant; in fact, this proportion is double the percentage of schools that are not in compliance with state requirements.

Another significant finding of the report concerns teacher certification. The lack of certified bilingual teachers and the number of inappropriately certified teachers in New York is of epidemic proportions. Incentives for recruitment of bilingual teachers seem to be insufficient and existing certification qualifications appear to be an obstacle for increasing the number of certified teachers. The report suggests that changes in state policy including encouraging state and city colleges and universities with teacher education programs to provide certification programs at the undergraduate and graduate levels to prepare bilingual and ESL teachers is necessary.

The administrative mismanagement, failure to follow education requirements, and lack of efficient use of hundreds of millions of dollars in yearly State funding for Special Services Aid and the Bilingual Education program are factors increasing school dropout rates. It has been well documented by academics that persons with less education are more likely to be involved in criminal activity and high school dropouts are disproportionately represented in the state's prison system. The effects are stronger for males and vary by race but are evident across all subgroups. However, the rates are magnified for Black males, who are incarcerated at rates 6-8 times those of White males (Pettit and Western, 2004, 164).

Based on data for California, over the early lifetime up to age 35, a Black male dropout is almost certain to have been incarcerated at some point (Raphael, 2004); nationally, the probability is 60% for Black male dropouts but less than 20% for high school graduates (Pettit and Western, 2004). Latino dropouts are also disproportionately incarcerated, although the causal effect of education has not been precisely established.

School Based Health Centers

Fund SBHCs at Last Year's Level of $21,738,317. Governor Cuomo's 2013-14 proposed State Budget consolidates SBHC funding with 25 other programs in a lump sum appropriation totaling $114,800,000. It is unclear how much of this lump sum appropriation will be allocated to SBHCs. It is recommended that the State Legislature provide language in the final 2013-14 State Budget to ensure that SBHCs receive funding at last year's level of $21,738,317. Maintaining funding supports 228 SBHCs and in-school health care access for 185,526 students. It is recommended that the budget restore $557,000 in HCRA funds and assure that School Based Health Centers are held financially harmless through the Medicaid Redesign process.

The following is an outline of the major provisions of the 2013-2014 Executive Budget as it relates to elementary and secondary education.

Formula Based Aids

Foundation Aid: Maintained at $15 billion with set-a-side requirements maintained for Magnet Schools, Teacher Support Aid and New York City Attendance Improvement/Dropout Prevention.

Gap Elimination Adjustment (GEA): The Executive Budget contains a reduction of formula aids (with the exception of Universal Pre-K and Building Aid) by a Gap Elimination Adjustment (GEA) totaling $1.83 billion, a decrease of $321.55 million.

Private Special Education Excess Cost Aid: Funded at present law level of $358.98 million.

Public Special Education Excess Cost High Cost Aid: Funded at present law level of $532.04 million.

High Tax Aid: Decreased by $50.03 million to $154.74 million. The Governor proposes the creation of a new two-tier formula to target districts with low wealth and high property taxes.

BOCES Aid and Special Services Aid (Big 5 funds for Career Education and Computer Services): Funded at present law level of $929.05 million.

Transportation Aid: Funded at present law level of $1.72 billion.

Charter School Transition Aid: Funded at present law level of $33.47 million.

Textbook Aid: Maintained at $58.25 per pupil with flexibility provided to use funds for software, library materials and hardware and technology.

Computer Software Aid: Funded in 2000-2001 at an amount of $14.98 per pupil with flexibility provided to use funds for textbooks, library materials and hardware and technology.

Hardware and Technology: Funded at present law level of $38.86 million with flexibility provided to use funds for textbooks, library materials and software.

Library Materials Aid: Maintained at $6.25 per pupil with flexibility provided to use funds for software, textbooks and hardware and technology.

Universal Pre-Kindergarten: Funded at $385.03 million.

Full-Day Kindergarten Conversion Aid: Funded at $13.83 million.

Building Aid: Increased by $69.22 million to $2.78 billion**.** Pursuant to the NY Safe Act, school districts that purchase stationary metal detectors, security cameras, electronic security systems and hardened doors, as included in their School Safety Plans, will receive building aid reimbursement at a rate ten percent higher than their current building aid ratio. Projects must be approved by the Commissioner on or after July 1, 2013 and before July 1, 2016.

Other Grant Programs and Aid Categories

Fiscal Stabilization Fund – NEW: Funded at $203.47 million to provide fiscal relief to school districts for the 2013-2014 school year.

Full-Day Pre-Kindergarten Program – NEW: Funded at $25 million for a new competitive grant program designed to target higher need students in lower wealth districts. Funds could be used for new full-day placements and/or to convert existing half-day placements.

School-Wide Extended Learning Time– NEW: Funded at $20 million for a new competitive grant program to support high-quality extended day or year programs. Programs would have to increase student learning time by at least 25 percent.

Community Schools – NEW: Funded at $15 million for a new competitive grant program designed to transform schools into community hubs to deliver collocated or school-linked academic, health, nutrition, counseling and/or other services to students and their families. The RFP for the grant would be developed by the State Council on Children and Families.

Improved Science and Math Education – NEW: Funded at $11 million to provide $15,000 annual stipends to the most effective math and science teachers.

Early College High School – NEW: Provides an additional $4 million in funding for a total of $6 million for the State's Early High School Program.

Big 5 Grants: Eliminated for decreases of the following amounts:

Buffalo	$1.00 million
New York City	$1.50 million for after school programs
Rochester	$1.00 million
Syracuse	$1.00 million
Yonkers	$1.00 million plus an additional $750,000 for sports

Teacher Support Aid: Included in Foundation Aid with a set-aside requirement.

Teacher Centers: Funding for 2013-2014 is eliminated, a cut of $10.2 million. $3.1 million is provided for remaining obligations for the 2012-2013 school year.

Magnet Schools: Included in Foundation Aid with a set-aside requirement.

Fiscal Stabilization Grants and Prior Year Claims: Decreased by $12.28 million to $32.79 million.

New York City Academic Achievement Grant: Maintained at $1.2 million.

New York City Transportation of Students: Eliminated for a cut of $3 million.

School District Performance Improvement Awards and School District Management Efficiency Awards: Funded at $50 million for an additional round of grants.

Employment Preparation Education (EPE) Aid: Maintained at $96 million.

Homeless Children: Increased by $3 million to $21.23 million.

Incarcerated Youth: Increased by $500,000 to $21 million.

Bilingual Education Grants: Maintained at $12.5 million.

Learning Technology Grants: Maintained at $3.3 million.

Other Aid Programs

Health Education Program: Maintained at $691,000.

Teachers of Tomorrow: Maintained at $25 million.

Charter Schools Start Up Grants: Maintained at $4.8 million.

Basic Education for Public Assistance Recipients: Maintained at $1.84 million.

Extended Day and School Violence Prevention Programs: Funded at present law level of $24.3 million.

New York State Center for School Safety: Maintained at $466,000.

Mentor Teacher Internship Program: Maintained at $2 million.

Preschool Special Education: Funded at $983.50 million. The Governor proposes several changes including conducting a large scale audit of providers and building counties' capacity to monitor providers through $1 million in targeted grants and the development of a fiscal integrity tool while authorizing counties to retain 75 percent of all audit recoveries. In addition, New York City would be authorized to implement a competitive process to select providers and set rates.

Adult Literacy Education: Increased by $300,000 to $5.29 million.

Urban-Suburban Transfer Program: Maintained at present law level of $2.73 million.

Children of Migrant Workers: Maintained at $89,000.

Consortium for Worker Education: Decreased by $1.5 million to $11.5 million.

Other Programs

Contracts for Excellence

All districts required to submit Contracts for Excellence in the 2012-2013 school year are again required to do so in 2013-2014 unless all schools in the district are identified as in good standing.

Charter School Tuition Payments

Frozen at 2010-2011 per pupil amounts for the 2013-2014 school year.

One-Year Extensions

- The Executive Budget provides one-year extensions for the following:
- Big 4 special education class size flexibility language

- Public pension accruals
- Leasing of school buses
- Chapter 1 Advances (up to the same amount as last year)

Pension Smoothing

The Executive Budget would authorize the Comptroller and the New York State Teachers' Retirement System to establish a long-term stable contribution option for school districts and municipalities to opt into. Under the option the rates would be 12 percent for ERS and 12.5 percent for TRS. Rates could be increased by up to two percentage points in years five and ten.

New NY Education Reform Commission Administrative Recommendations

The Executive Budget presentation indicates that the State Education Department will increase the standards for teacher certification to require passage of a "bar exam" for teachers and more intensive student teaching experiences. In addition, the Department will create a school performance management system to streamline reporting and increase fiscal and programmatic transparency and accountability.

4201 Schools

Advocates are concerned about the Executive Budget proposal to shift the cost of summer school programs at the 4201 Schools to local school districts. This change would result in a one-year savings to the State; however it would be disruptive to the schools that serve some of our most vulnerable children – students who are deaf, blind or severely physically disabled. Children attending these schools are predominantly from low-income households and many are children of color, whose disabilities require a 12-month program of instruction. Likewise, local school districts would bear the entire cost for these children's educational program, until reimbursement from the State is received months later.

HIGHER EDUCATION

With the nation still recovering from a high economic deficit and high unemployment, accessibility to Higher Education has become more important than ever before. New York State's economic growth relies on a well-educated workforce to survive and thrive. One of Governor Cuomo's common themes in his State of the State address was that Higher Education is an important economic driver and needs to be even more influential on the economy of the state and the nation within the next decade.

Governor Cuomo's Executive Budget provides $3.21 billion in General Fund support for Higher Education, a reduction of $10 million from the 2012-13 Academic Year. The changes include a $30 million reduction of the SUNY Hospital Subsidy, $17 million in Tuition Assistance Program (TAP) increases, and a $1 million addition for the Community College Net Change.

According to the Executive's Budget, on a yearly basis New York State's higher education institutions educate about 1.3 million students. The State University of New York (SUNY) and the City University of New York (CUNY) oversee 47 four-year colleges and graduate schools that provide about 400,000 full-time students with a selection of undergraduate and graduate degrees. SUNY and CUNY also support 36 community colleges, which service approximately 330,000 students. About 540,000 students attend one of the many private institutions across New York State.

The Executive recommends state-operating support of $969.1 million for State-operated campuses of the State University of New York (SUNY) and $524.5 million for the four-level colleges of the City University of New York (CUNY) during the 2013-14 Academic Year. The amounts shown for state-operating support are the same from the 2012-13 Academic Year.

On August 1, 2011 the legislature enacted a graduated 3 year tuition increase. With tuition increases added to the already high cost for a higher education, attending college seems out of reach for many students. In order for people to have a well paying job today higher education is needed.

The Executive Budget also provides tuition revenue appropriations of $1.57 billion at SUNY, an increase of $106 million, and $964.79 million at CUNY, an increase of $61 million from the previous year. In-state undergraduate tuition at SUNY will be $5,870 and $5,730 at CUNY for the 2013-14 Academic Year. Tuition for both institutions has increased by $300 from the 2012-13 Academic Year, this is in accordance with Chapter 260 of the Laws of 2011.

More new proposals Governor Cuomo has added to the Executive budget this year in Higher Education is to maintain state support for SUNY and CUNY Community Colleges and linking base aid to workforce measures. This would provide a base aid for SUNY and CUNY Community Colleges at $2,272 per full-time equivalent student. The Executive proposes to create a $5 million performance based funding program to reward community colleges that enable students to find jobs in their chosen occupation, provide training for careers, and help students graduate.

City University of New York (CUNY), established in 1847 is now the third largest public university system in the nation serving 540,000 students. CUNY is comprised of 24 institutions including 11 four-year colleges, seven community colleges, one technical college, a law school, a graduate school and an affiliated medical school. CUNY's mission is to provide affordable higher education with a focus on the urban community of New York City. As almost 70% of CUNY students are of African-American, Hispanic, Asian or other ethnicities, any cuts to CUNY affect much of the diverse student body. An important theme this year as in years past is to reinforce that it is counterproductive to cut higher education when people are coming back to college because of the economy.

CUNY should receive an additional $6 million for student support services programs. These include veteran services, CUNY LEADS program for students with disabilities, child care and providing a meaningful work experience for students.

Additional community college base aid is needed since student enrollments at these colleges are particularly soaring. Community colleges are essential to economic recovery. They are a pipeline to jobs and a critical engine of economic development. The Caucus supports at least a $260 per FTE funding increase for community colleges. This will help students to earn their associate degrees in a timely manner.

The State University of New York (SUNY) was founded at Potsdam in 1816 and is the nation's largest public university system with more than 7,600 degree and certificate programs and 64 campuses including four university centers, 13 university colleges, two independent health centers, four specialized colleges of technology, five statutory colleges, six colleges of technology and 30 community colleges. Students are also afforded the convenience of the SUNY Learning Network, which is comprised of online courses from each of the campuses. In 2011, nearly 25% of enrolled students were minorities. SUNY is devoted to providing affordable education to students from New York and around the world.

Tuition Assistance Program (TAP) is a grant currently available for students who are New York residents and are enrolled full-time in a graduate or undergraduate program. The Executive budget recommends $950.4 million for TAP, which is managed by the Higher Education Services Corporation. This amount reflects a $17 million increase in accordance with the tuition increases at SUNY state-operated campuses and CUNY senior colleges. The Executive proposes no programmatic changes to TAP.

Educational Opportunity Program (EOP) provides the opportunity for students who would not ordinarily be admitted to college under traditional standards, but show promise for completing college-level work and the ability to graduate college. The program is designed to aid students financially, academically, socially, and personally giving them the best chance possible to succeed. The Executive budget maintains funding for this program at $21.1 million.

Higher Education Opportunities Program (HEOP) is a partnership between New York State and its independent colleges and universities to provide a college education to students who are economically and academically disadvantaged. The opportunities created between these institutions and the state of New York are some of the most successful in the country and afford those who could not ordinarily attend college a chance to succeed. This program would maintain the same funding from last year at a funding level of $24.3 million.

Science and Technology Entry Program (**STEP) / Collegiate Science and Entry Technology Program (C-STEP**) These are academic enrichment programs designed to foster a student's success in preparing for professional licensure and careers in medicine, law, business, education, science, technology, engineering, mathematics, and health. STEP is for students in grades 7-12 while C-STEP is for students engaged in higher education. In Governor Cuomo's budget, funding for the Science and Technology Entry Program remains the same as last year's level of $10.8 million and funding for Collegiate Science and Technology Entry Program is the same as well with an appropriation of $8.2 million.

Search for Education, Elevation, and Knowledge (SEEK) is a CUNY based program that applies to college students who would not have been able to attend higher education institutions due to economic or educational conditions. This is restricted to college seniors. The Executive maintained funding for this program at a funding level of $18.4 million.

NYSUNY 2020: The Executive proposal includes a $55 million appropriation for a third round of NYSUNY 2020 Challenge Grants. The Executive also includes appropriations to continue projects from the initial round of SUNY 2020 including:

- an $88 million appropriation for the University at Albany for the design and construction of an emerging technology and entrepreneurial complex. The debt service for this project will be paid for by private sources;
- a $30 million capital appropriation for campus wide projects at Stony Brook; and
- a $25 million appropriation to allow Binghamton University to receive funding from external sources for their Smart Energy Research and Development Facility.

The Executive also proposes reappropriation changes to allow the University at Albany to access funds from a prior capital appropriation to be used for NYSUNY 2020 purposes.

NYCUNY 2020: The Executive proposes a new NYCUNY 2020 grant program for CUNY schools and provides $55 million for this purpose.

New Higher Education Capital: In addition to the NYSUNY and NYCUNY 2020 funds the Executive proposal includes $38.5 million for projects at SUNY Community Colleges and $8.1 million for CUNY Community Colleges. SUNY's Residence Hall Rehabilitation Fund is appropriated at $50 million and CUNY is appropriated at $21 million for payment to the Dormitory Authority for the state share of CUNY capital projects. This brings total Higher Education capital funding to $411 million for SFY

2013-14. The Executive also proposes to extend the New York Higher Education Capital Matching Grant Program (HeCap) to March 31, 2014.

College Discovery $883,390, which includes a continuation of the additional $55,000 approved during the December Special Session. CUNY's College Discovery program is a higher education opportunity program at the two year CUNY colleges. It was established to provide comprehensive academic support to assist capable students who otherwise might not be able to attend college.

The Liberty Partnerships Program (LPP) provides funding and collaborative opportunities for basic and advanced academic skills development through special classes and tutorial services, educational, personal and family counseling, career and college exploration activities, mentoring and a variety of enrichment activities for students. All students enrolled in LPP are counseled on academics, life situations, and career and college choices. LPP staff members consistently advocate for students and their families. This program has been funded at $12.5 million in SFY funding.

HEALTH

Global Spending Cap and Commissioner "Super Powers"
The proposed budget would continue the Medicaid global spending cap, tied to the ten-year rolling average of the medical component of the U.S. Consumer Price Index (CPI), which is currently 3.9%. The cap on state share Department of Health (DOH) Medicaid expenditures for SFY 2013-2014 is $16.48 billion, growing to $17.10 billion in SFY 2014-2015.

The governor's budget would extend for one additional year, through March 31, 2015, the Commissioner of Health's "super powers" to reduce spending if expenditures exceed projections. Originally established for two years in the SFY 2011-2012 and extended for a third year in last year's budget, the proposed budget would continue for a fourth year DOH's authority to develop a Medicaid Savings Allocation Plan to reduce Medicaid spending to stay within the cap. Thus far, the Commissioner's "super powers" have not been used.

2% Across-the-Board Cut to Medicaid Payments
The 2011-2012 budget authorized for two years, until March 31, 2013, a 2% across-the-board reduction to Medicaid payments or an alternative equivalent reduction developed by DOH and the Division of the Budget (DOB) in consultation with a specific health care provider sector. The proposed budget would extend this cut for two years, through March 31, 2015, continuing to exempt certain payments.

Family Health Plus Changes: A Significant Loss for Low-Income Consumers
The Proposed Budget would eliminate the Family Health Plus (FHP) program as part of the implementation of Federal Health Care Reform. No new applications would be taken after December 31, 2014, and the program will be repealed January 1, 2015.
Family Health Plus has been a lifeline for low-income workers and their families in New York for over a decade. Created in 1999 under Governor Pataki, the program has made it possible for families struggling to make ends meet to access preventive services and avoid catastrophic debt in health emergencies.

Eliminating Family Health Plus does not present a hardship for childless adults because this group will be covered under Medicaid post-2014. However, Elimination of the program does create a significant hardship for many Family Health Plus eligible parents. Parents between 133% of the federal poverty level and 150% of the federal poverty level are currently eligible for Family Health Plus but will not be eligible for Medicaid post-2014. Their only option will be to enter the Exchange, where, even with subsidies to help make private insurance more affordable, their medical costs will rise sharply.

A family of three with an annual income of just over $25,000 will need to come up with $782 annually for insurance in the Exchange, even with the subsidy. Co-pays will also be significantly higher than they are in FHP. Unfortunately, for families at these income levels, many of whom are already struggling with debt, these increases may mean the difference between taking out coverage and paying the penalty for going without. Simply put, Exchange coverage will be unaffordable for many families.

The Executive Budget does provide assistance to some of the parents eligible for Family Health Plus coverage. Families that apply for Family Health Plus prior to the end of 2013 will receive assistance with cost-sharing and premiums such that their expenses will be no greater than they would have been in Family Health Plus. But a family that misses the deadline of December 31, 2013, will receive no assistance from the state at all.

The Caucus urge the Governor to strengthen the protections for low-income parents in the Proposed Budget. Implementation of the Affordable Care Act's (ACA)Medicaid expansion results in significant cost-savings for New York. A small portion of those savings should be set aside to assist FHP eligible parents going forward, until we are able to recognize the opportunity offered in the ACA to create a Basic Health Program, which will play the same role in assisting low-income working families as Family Health Plus has done historically, but funded entirely through federal subsidies.

Recommendations:
The Proposed Budget should be amended to create a placeholder for a Basic Health Program. In the meantime, the Budget needs to ensure wrap-around protection for all Family Health Plus eligible parents going forward.

Preserve Immediate Needs Medicaid
The Executive Budget includes language that would amend the Medicaid presumptive eligibility statute to block temporary Medicaid coverage to applicants with immediate need, an obligation that currently exists in a different part of the social services law. Under the Proposed Budget's change, only people determined eligible for Medicaid, or who qualify for presumptive Medicaid coverage, would be able to access temporary Medicaid authorizations. Individuals who apply jointly for temporary cash assistance and Medicaid, and who present with immediate medical needs would have no recourse.

Applying for Medicaid can be a very lengthy process. The Empire Justice Center has been involved in a series of cases with local social service districts, all of whom have been willing to enter into settlement negotiations with promises to improve their systems to achieve compliance with federal deadlines for eligibility determinations. Without the ability to access temporary Medicaid to get prescriptions filled or see a medical provider, applicants facing delays are at risk of decompensation. Blocking access to temporary Medicaid not only jeopardizes the health of applicants, it risks costing Medicaid more money in the long run since, as conditions worsen, expensive acute care becomes more likely.

Recommendation: Reject the Proposed Budget's elimination of immediate needs Medicaid.

Trend Factor Elimination
The proposed budget would permanently eliminate trend factors for all health care providers. The 2011-2012 budget authorized for two years, until March 31, 2013, elimination of the trend factor for health care providers, excluding pediatric nursing homes.

Affordable Care Act (ACA) Conformance and Exchange Implementation
The proposed budget would conform sections of New York State's Public Health, Insurance, and Social Services laws to federal Affordable Care Act (ACA) requirements and make statutory changes to facilitate the implementation of the Health Benefit Exchange.

These proposals include:

- general ACA conformance changes related to ACA Medicaid expansion, changes in Medicaid and Child Health Plus eligibility determinations, including the use of modified adjusted gross income (MAGI) standards, administrative simplification for public program enrollment, and various other changes;
- creating the State Enrollment Center—a centralized system to carry out eligibility determinations by the state and its contractors for all public health insurance programs;
- eliminating Healthy New York on December 31, 2013, in time for its beneficiaries to enroll in new insurance options available in the Exchange;
- eliminating Family Health Plus (FHP) on January 1, 2015 (starting in January 2014), with these beneficiaries expected to enroll in Medicaid, if eligible, or commercial coverage available on the Exchange. Premium assistance would be available for FHP beneficiaries who enroll in silver-level coverage on the Exchange and have an income between 133% and 150% of the federal poverty level ($38.5 million in state savings in SFY 2014-2015; $106 million total impact);
- defining the Medicaid benchmark plan for newly eligible Medicaid populations ($115.13 million in costs to the state in SFY 2014-2015; $307 million total impact)
- requiring all health plans to cover essential health benefits and conform with ACA requirements.

The state realizes additional federal matching funds for the final three months of the state fiscal year when Medicaid is required to expand coverage for childless adults on January 1, 2014. To comply with ACA requirements, the budget provides Medicaid eligibility for childless adults with income from 100% to 138% of the federal poverty level (FPL) for the first time (New York already covers childless adults with income under 100% FPL). There will be a 100% federal match for the newly eligible childless adults with income from 100% to 138% FPL. New York is one of seven "expansion states" that already covered part of the childless adult population prior to ACA.

In 2014, the state will get a 75% match for this population that is already covered in New York (childless adults with income under 100% FPL). The match phases up to 90% in 2020 and beyond. The increase in the match from 50% to 75% will result in a significant decrease in state Medicaid spending beginning in January 2014 (the last quarter of SFY 2013-2014). The increased federal match results in $83 million in state savings for SFY 2013-2014; $40 million would go to lower state spending under the cap and $43 million would go to public health programs.

Safety Net/Vital Access Provider (VAP)
The proposed budget would increase the total funding available for safety net initiatives established in last year's budget: Vital Access Providers for ongoing rate enhancement or other

support; and the Essential Community Provider Network for short-term funding. Last year's budget authorized $100 million annually for SFY 2013-2014 and SFY 2014-2015. This year's proposed budget increases funding in SFY 2013-2014 to $182 million ($52 million in new funding and $30 million redirected from the financially disadvantaged nursing home program). Funding is increased in SFY 2014-2015 to $154 million.

Social Impact Bonds "Pay for Success"

The proposed budget would authorize the state to spend up to $100 million over a multi-year period for Social Impact Bonds, also known as "Pay for Success" initiatives to improve program outcomes in the areas of health, human services, and public safety. This initiative would attract private financing for preventative programs with repayment to investors contingent on meeting specific performance targets and generating state or local government savings.

Outcome-Based Health Planning for Public Health Programs

The proposed budget would consolidate about 100 public health programs, including Doctors Across New York, to improve outcomes and target resources more effectively. DOH would be authorized to make grants through a new competitive outcome-based contracting and outcome-based health planning program to promote health in integrated care management settings and encourage collaboration to improve the health of communities. The budget proposal includes six programmatic areas: chronic disease prevention and treatment; environmental health and infectious disease; health quality and outcomes; workforce development; maternal and child health outcomes; and HIV, AIDS, Hepatitis C, and sexually-transmitted diseases. The first four of these six programmatic areas are directly linked to New York State's new prevention and health improvement agenda.

Excess Medical Malpractice Liability Coverage Pool

The proposed budget would modify the excess medical malpractice liability coverage pool, which would be overseen by the state Department of Financial Services (DFS) and DOH, to prioritize support for the highest risk class of physicians and dentists practicing in the highest risk territories. After the initial enrollment period of these practitioners, if DFS determines that sufficient funding exists for additional policies, DFS would make policies available on a first-come, first-served basis.

To be eligible for excess coverage, a physician or dentist would have to meet the following criteria: 1) have professional privileges at a hospital that is certifying his or her eligibility; 2) provide emergency services from time to time; 3) accept Medicaid; and 4) either have primary coverage in an individual or group policy or be insured under a voluntary attending physician program previously permitted by the state. The rates and premiums paid for these policies would have to be actuarially sound and not discounted. If the state appropriation is insufficient to meet the costs of coverage during a year, the shortfall would be made up by the physicians and dentists in the program. The proposed budget reduces the total pool amount by $12 million to $114.66 million.

Care Management for All

As part of the state's "care management for all" initiative, the proposed budget would authorize the state to enroll all Medicaid recipients in a Medicaid managed care or care management program. This would be accomplished by allowing currently excluded populations to be enrolled in a managed care, managed long-term care (MLTC), or other care coordination program, and allowing currently excluded benefits to be provided through managed care. These populations and services would be moved into managed care when program features and reimbursement rates are approved by DOH.

Superstorm Sandy Recovery Funding
The proposed budget would provide support for Superstorm Sandy recovery and rebuilding projects, programs, and other initiatives. The proposal includes appropriations of $21 billion for disaster-related recovery, rebuilding, and mitigation and $30 billion of additional federal aid to flow through these appropriations or be directly administered by the federal government or local governments. These resources would support a variety efforts, including repairing and rebuilding health care systems through improvements at hospitals, nursing homes, and clinics to help these facilities respond to future storms. The Governor estimates that recovery needs related to health care will total $2.2 billion. A vulnerable population database would be established to provide first responders and health care personnel with access to information to help find and serve those who may need assistance.

Coordinate State Health Insurance Purchasing
Currently, DOH and the state Department of Civil Service (DCS)/New York State Health Insurance Plan both negotiate and purchase health insurance on behalf of the state. The proposed budget requires DOH and DCS to adopt common approaches to take advantage of efficiencies resulting from best practices, including the alignment of hospital cost reimbursement policies, the expansion of patient-centered medical home models, and the promotion of evidence-based strategies to enhance wellness and reduce health care costs. Future annual savings of more than $50 million may be possible when these agencies adopt a common purchasing strategy for medical services.

HOSPITAL PROPOSALS

DSH/Indigent Care Funding Methodology Changes
The proposed budget would modify the distribution methodology for hospital indigent care/Disproportionate Share Hospital (DSH) payments to comply with new federal requirements and avoid further federal payment reductions. The proposal defines the basic structure for a new distribution methodology that would be effective January 1, 2013 through December 31, 2015. It includes the following provisions:

- Distributions would be based on each hospital’s share of uncompensated care need based on uninsured inpatient and outpatient units of service multiplied by Medicaid rates.

- The uncompensated care need amount would be adjusted by a statewide cost adjustment factor and reduced by collections from uninsured patients. It would be further adjusted by applying a nominal need computation taking into account each facility’s Medicaid inpatient share, which would increase distributions to high-volume Medicaid safety net hospitals.

- Existing voluntary pools would be consolidated into a single $994.9 million pool, which includes an additional $25 million in funds from a reduction in hospital Ambulatory Patient Group (APG) funding.

- A separate $139 million distribution would be made to major public hospitals.

- Regulations would create a transition adjustment that would establish a “floor” to define the maximum percentage loss that a hospital could experience compared to the current distributions. Similarly, the regulations would limit increases in DSH payments to fund transition payments to hospitals that lose amounts in excess of the established maximum loss percentage. While these details would be established in regulation and are not included in the Executive Budget language, DOH has indicated that losses would be limited to 2.5% in the first year and that the floor would increase to 5% in the second year, and 7.5% in the third year.

Public Hospital Indigent Care Adjustment
The proposed budget would revise the distribution methodology for the $412 million public general hospital indigent care adjustment pool to conform to ACA requirements by distributing funds based on each public hospital’s proportionate share of Medicaid and uninsured losses to total Medicaid and uninsured losses for all public hospitals.

Construction Projects
The proposed budget would streamline the CON process by allowing hospitals and diagnostic and treatment centers to undertake construction projects without a state review of public need, as long as the project does not involve a change in capacity, types of services provided, major medical equipment, facility replacement, or the geographic location of services. This proposal would also grant the Commissioner of Health authority to waive financial feasibility reviews for projects meeting the above requirements.

Medical Indemnity Fund
The proposed budget would appropriate $50 million for the Medical Indemnity Fund established in the SFY 2011-2012 budget to pay for future health and related costs of neurologically-impaired infants.

BEHAVIORAL HEALTH PROPOSALS

2013 will be another pivotal year for mental health policy. Health care reform and state Medicaid redesign initiatives are transforming our mental health service system at an unprecedented pace. These initiatives have serious implications for mental health policy. The challenge of transforming to a more integrated health and behavioral health care system through managed care and health homes comes with tremendous uncertainty. It is important to sustain and improve the state's mental health care system, prevent suicides, eliminate discrimination and better inform consumers.

Reinvestment and System Transformation: The transition of behavioral health services into to managed care is expected to save millions, as will the associated closing of state inpatient psychiatric beds. <u>Savings must be reinvested in community based services.</u>

Enhanced Mental Health Funding: We also must continue to advocate for enhanced levels of funding for community based mental health services, which have historically been underfunded relative to physical health. These services will become ever more necessary under integrated models of care that are integrated into communities. <u>Enhance current funding levels in this year's budget.</u>

Local Assistance: Many vital community based services for individuals and families living with and recovering from mental illnesses are not covered under Medicaid, but are instead funded by Local Assistance. Medicaid redesign initiatives must take serious account of how "non-Medicaid" services will be preserved in the state's transition plan to Medicaid managed care.

Service Integration

The proposed budget would provide $15 million annually to promote the delivery of integrated mental health services, alcoholism and substance abuse services, physical health services, and services to individuals with developmental disabilities, when such services are provided at a single location or service site. The funding would support two initiatives that integrate evidence-based behavioral and physical health services to Medicaid patients—the Service Integration Licensure Pilot Project and the Collaborative Care Model. Patients receiving care at Pilot clinics would be able to obtain coordinated physical and behavioral health service with a goal to improve overall health. The Collaborative Care Model would promote the detection and treatment of common mental health conditions in primary care settings.

Behavioral Health Transition to Managed Care

This provision would amend the Behavioral Health Organization (BHO) statute authorized in the SFY 2011-2012 budget. The original budget authorized the commissioners of OMH and OASAS, in consultation with the Commissioner of Health, to jointly designate on a regional basis a limited number of specialized managed care plans, special needs managed care plans, and/or integrated physical and behavioral health provider systems certified as ACOs capable of managing the behavioral and physical health needs of Medicaid enrollees with significant behavioral health needs. The proposal consolidates references to these plan/provider types into one category, called special needs managed care plans, that can manage the physical and behavioral health needs of this population. The proposed budget also pushes back by one year, to April 1, 2014, the deadline for the state to make initial designations for such special needs managed care plans.

Integrate Assisted Outpatient Treatment with Health Homes
The proposed budget would invest $10 million annually to ensure that individuals receiving court-ordered services through assisted outpatient treatment (AOT) and individuals being discharged from state psychiatric hospitals have access to services in the community through Health Homes. Health Home Plus programs would be embedded in designated Health Homes to more effectively manage the care of people assigned to AOT. These providers would establish risk management and quality improvement programs to ensure continuity of care and integrate physical and behavioral services.

PHARMACEUTICAL PROPOSALS

Prescriber Prevails for Atypical Anti-psychotic Drugs
The proposed budget would repeal a provision established in the 2012-2013 budget requiring Medicaid managed care providers to cover medically necessary prescription drugs in the atypical anti-psychotic therapeutic class, including non-formulary drugs, upon demonstration by the prescriber, after consulting with the managed care provider, that such drugs are medically necessary and warranted based on the prescriber's reasonable professional judgment. This is expected to produce $9.38 million in state savings in SFY 2013-2014 ($18.75 million total impact) and $12.5 million in state savings in SFY 2014-2015 ($25.0 million total impact).

Prescriber Prevails for Fee-for-Service Plans
The proposed budget would eliminate the "prescriber prevails" provision for Medicaid fee-for-service plans, which allows a prescriber, in his or her reasonable professional judgment, to determine that use of a prescription drug not on the preferred drug list is warranted. This is expected to produce $1.04 million in state savings in SFY 2013-2014 ($2.07 million total impact) and $1.35 million in state savings in SFY 2014-2015 ($2.7 million total impact).

Fee For Service Pharmacy Brand Name Reimbursement
The proposed budget would reduce the Fee-For-Service pharmacy brand name reimbursement rate from average wholesale price (AWP) minus 17% to AWP minus 17.6%. This is expected to produce $1.8 million in state savings in SFY 2013-2014 ($3.6 million total impact) and $2.4 million in state savings in SFY 2014-2015 ($4.8 million total impact).

AGING AND LONG-TERM CARE PROPOSALS

Nursing Home Capital Reimbursement
Beginning January 1, 2014, the proposed budget would require DOH to establish capital cost Medicaid reimbursement for nursing homes through regulation, in consultation with the nursing home field.

Nursing Home Standard Wage
The proposed budget would require managed care contracts for inpatient nursing home services to include resources to support compensation “sufficient to ensure retention of a qualified workforce” and for those contracts to require that standard rates of compensation be paid to nursing home employees, including nurses, nursing aides, orderlies, attendants, and therapists. These standards rates would include a basic hourly cash rate of pay and a supplemental benefit rate.

The payment rates would be annually determined by the Department of Labor (DOL), in consultation with DOH, using wage and fringe benefit data from various sources. Contracts that are issued, renewed, modified, altered, or amended on or after October 1, 2013, would have to comply with this requirement.

Failure to comply with this standard wage requirement would result in sanctions and enforcement processes. If DOH, in consultation with DOL, determines that a nursing home is materially out of compliance, DOH would prohibit that nursing home from accepting new admissions pending remediation of such non-compliance unless it is determined that continued admissions to that nursing home are required to maintain sufficient access to services in that geographic area.

Nursing Home Quality Pool
The annual nursing home quality pool would be increased by $10 million ($5 million state investment) for a total of $60 million. This increase is new money and not taken out of the base like the current $50 million.

Affordable Housing
The budget would dedicate $91.35 million in SFY 2013-2014 to expand access to supportive housing services. The funding is comprised of: 1) $75 million in funds previously authorized by the Medicaid Redesign Team (MRT) for supportive housing initiatives; 2) $12.5 million in new funds; and 3) $3.85 million from savings associated with the closure of hospitals and nursing homes and the decertification of beds.

Spousal Refusal
The proposed budget would eliminate the ability of legally responsible relatives to refuse to contribute any available income or assets toward the cost of care in determining Medicaid eligibility for long-term care services, including MLTC. This is expected to produce $34.3

million in state savings in SFY 2013-2014 ($68.6 million total impact) and $137.0 million in state savings in SFY 2014-2015 ($68.5 million total impact).

Recommendations:

- Oppose elimination of the spousal refusal option for low-income Medicaid recipients.
- Support the extension of spousal impoverishment protections to couples living in the community and accessing long term care through Managed Long Term Care plans.

Assisted Living Program

DOH would be authorized to add up to 4,500 assisted living program beds for “transitional” adult homes. Adult homes eligible to apply are homes in New York City with a certified capacity of 80 beds or more, as of September 1, 2012, in which 25% or more of the resident population has a serious mental illness.

The proposed budget would also authorize capital reimbursement for facilities exclusively housing assisted living program beds. DOH would be authorized to establish in regulations a cap on real property construction costs for these facilities

Reconciliation of Nursing Home Rebasing Transition Payments

The proposed budget would eliminate the reconciliation of the 2007 and 2008 rebasing transition payments for nursing homes.

Public Nursing Home Upper Payment Limit Payments

The proposed budget provides an additional $16 million in upper payment limit (UPL) payments to non-state operated public nursing homes.

Nursing Home Gross Receipts Assessment

The proposed budget would make permanent the 6% reimbursable assessment on nursing home gross receipts.

Housing Disregard to Join Managed Long Term Care

The SFY 2011-2012 budget authorized DOH to seek federal approval to allow nursing home-eligible individuals to receive a “disregard” of a portion of their income for the purpose of assisting with housing expenses if they join a MLTC plan. The proposed budget would extend this option to adult home residents.

Independent Living Centers $12.361 million

The Governor’s proposed budget makes an investment in funding for Independent Living Centers (ILCs), essential community-based advocacy and service organizations that serve as the safety net to ensure people with disabilities have access to services and supports to live independently in their communities. Savings from reducing Medicaid costs for institutional care should be reinvested in ILCs, unique, disability-led organizations that have done the most to ensure reduced use of institutions.

The State has an unprecedented opportunity to utilize New York’s Independent Living Centers to assist in implementing *Olmstead* and the Medicaid Redesign Team’s reforms impacting people with disabilities, including the transition to mandatory managed long term care. Data from the New York State Education Department, ACCES-VR, show that the work of ILCs to transition and divert people with disabilities from costly institutional placements saved the State more than $1.2 billion since 2001 as a result of avoided institutional care. ILC transition and diversion activities save the State more than $9 in institutionalization costs for every state dollar invested in ILCs. ILCs are well placed to assist in implementing *Olmstead* by helping individuals with disabilities to access the services and supports they need to live independently and fully integrated in their communities.

FAMILY WELFARE

Welfare Reform

The caucus supports A.2669-Wright. The bill strengthens recipients' protections from wrongful sanctions and ends durational sanctions. Erroneous case sanctioning practice keeps eligible very low-income households from receiving critical cash assistance. The bill would remedy this pervasive problem.

Full family sanctions are misguided, punitive, and harmful and will not lead to the desired goal of increased compliance. Full family sanctions create an immediate family crisis and jeopardizes the welfare and safety of children and the basic stability of families. Sanctioning children in poor families makes them two to five times more likely to suffer from stunted growth, exposure to lead poisoning, low birth weight, repeat of a grade, iron deficiency, dropping out or expulsion from school, and serious disabilities.

Full family sanctions also disproportionately affect parents who have one or more barriers to employment. Often misapplied, sanctions cause tremendous harm to families who are, in fact, in compliance with program requirements. Proponents of full family sanctions argue that they are intended to encourage compliance with program requirements and eventually transition recipients off welfare. However, studies have shown that sanctioned families are less likely to be employed than non-sanctioned families, and are more likely to return to the welfare system.

Recommendations

We also recommend the following changes to the Governor’s budget proposal:

Child Care Subsidies –While funded flat against last year’s budget, the amount of federal and state funds available to support subsidies is not yet sufficient to meet the need reflected in county level waiting lists. We urge the Governor to begin a multi-year effort to increase funding so that every parent who needs a subsidy in order to work can receive one.

PCAP – Prenatal Care Assistance Program - PCAP is a prenatal outreach program to improve birth outcomes and reduce the high cost of low birth weight infants.

HPNAP – Hunger Prevention Nutrition Assistance Program - HPNAP provides funding to food banks which supply soup kitchens and food pantries.

The Supplemental Nutrition Assistance Program - or WIC supports nutritious food to pregnant women and their young children with federal and state funding.

The Governor’s budget would consolidate these programs along with 86 others into six pools of funds, the total of which has been reduced by 10%. The restructuring of formerly categorical programs into competitive pools puts full funding for these highly valued community services at risk. We urge the Governor to revise this proposal to ensure that these programs are fully funded to meet current needs.

Lead Poisoning Prevention Programs– At least one of three programs is also included in the restructuring proposal and is therefore also at risk for a reduction in funding. Given that childhood lead poisoning cannot in any way be remediated, we urge the Governor to ensure that funding for all three lead poisoning prevention programs is at the very least maintained and if possible expanded to include all high risk zip codes.

Nurse Family Partnership (NFP) and Healthy Families New York - Both are home visiting programs with proven success and we urge the Governor to restore the funding for the NFP which was not included in the budget.

INVEST A TOTAL OF $92 MILLION IN CHILD CARE ASSISTANCE

Child care is an economic development strategy. Low income working families in New York State are facing a crisis of unprecedented proportions, as funding for the state's Child Care Block grant remains stagnant and at a level $92 million below funding for 2010-2011. As an increasing number of counties across the state cut eligibility for child care assistance due to lack of funding, we believe that it is essential that funding be restored to the 2010-11 level, not only because New York's low income families rely heavily on child care assistance to make ends meet, but also as a critical economic development initiative.

The Governor's budget, which has made a priority of economic development in other areas, overlooks the importance of this critical investment. In his justification for the minimum wage increase, the Commissioner of the New York State Department of Economic Development notes that the annual cost of child care for a working family exceeds $10,000 per year. The Governor's proposal, which will increase a minimum wage earner's income to just over $18,000 (at 40 hours per week and 52 weeks per year), will still mean that a single parent with two children will remain below the poverty level and that the cost of child care remains well beyond reach.

An investment in one child care subsidy will yield the economic return in two jobs. Not only does every child care subsidy keep a low income worker employed, it also supports a significant small business sector in New York State – child care providers. Child care providers constitute 22,000 small businesses, including not-for-profit and for-profit centers, Head Start and Pre-kindergarten programs, and 11,000 family child care providers. Early care and education teachers, aides and staff represent one of the fastest growing employment sectors in the economy.

We commend the Governor for adding an additional $70 million in TANF funds into the child care block grant. Unfortunately, the corresponding decrease in the state's general fund investment of the same amount leaves the size of New York's child care block grant at $907,245,924 (unchanged from last year), and below the level of funding for the three fiscal years before that.

Rather than cutting the state's investment to offset the TANF increase, New York should maintain the $70 million general fund investment from last year and add $22 million dollars for a total of $999,328,543 – the 2010-11 funding level.

IMMIGRATION

DREAM Act and DREAM Fund

The Development Relief and Education for Alien Minors (DREAM) Act (Bill A02597/S2378) is legislation that would allow undocumented students the opportunity to apply for state college educational assistance programs to help pay for higher education. It also creates the DREAM Fund commission.

Programs Include

Tuition Assistance Program (TAP)
Higher Education Opportunity Program (HEOP)
Educational Opportunity Program (EOP)
Collegiate Science and Technology Entry Program (C-STEP)
Opportunity Programs available at Community Colleges

This legislation will allow undocumented young adults who entered into the country before the age of 18, have lived in New York State for a minimum of 2 years, are under-the age of 35, and have demonstrated a commitment to education and good moral character to have access to financial aid opportunities within the state and be eligible for the program and other funding. This bill, sponsored by Assemblyman Francisco Moya and Senator Jose Peralta, was reintroduced in the 2013-2014 Session and has been referred to Higher Education.

The DREAM Fund commission enables eligible undocumented students who are applying to 2 and 4 year colleges and universities to apply for various scholarships in the DREAM Fund. New York has proposed the DREAM FUND legislation which makes family tuition accounts available to account owners who provide a valid taxpayer identification number. The money for this fund will come from private sources and will provide scholarships to students who met the qualifications. Sponsored by Assemblyman Moya, the DREAM Fund passed the Assembly last year. This year, the DREAM Fund bill was combined with the DREAM Act. The primary benefit offers undocumented students access to higher education while increasing the value New York's work force. With this DREAM legislation, we welcome immigrants to New York with open arms, informing them that we are here for them and wish to see them prosper in the city of New York.

New York State Health Benefit Exchange

In 2012, Governor Cuomo established the New York State Health Benefit Exchange Program (2012 # A8514/S5849). This program will facilitate the sale of qualified heath care plans in the individual market in New York and create optional heath care plans for small businesses and assist qualified employers and employees. These plans would not only be available to all legal citizens, but also non-citizens who live and work in NY.

Adult Literacy Education (ALE)

This program provides New Yorkers the opportunity to learn how to read and write, apply for credential bearing programs, enroll in GED courses, and serve as a resource to close the gap between poverty and unemployment for many New Yorkers. The Caucus recommends restoring it to FY2010 funding level of $6.9 million dollars for the 2013 fiscal year.

Deferred Action for Childhood Arrivals Transition Fund (DACATF)

A new program designed to provide out-of-school youth and young adults educational services in New York. Programs include English as a second language (ESL), Adult Education classes, and other programs. The State Education Department request, $2 million dollars to help keep up the fund's increasing cost.

Enhancing Immigration Services in the Office for New Americans

This is a crucial immigration program that helps tens of thousands of immigrants get the vital help and services they need throughout the state. By expanding this program it will open more doors to immigrants in New York.

Financial Support for Immigrant Storm Victims

Many immigrant families are unable to get the federal, city, and state support for the recovery from Superstorm Sandy because they were unable to provide documentation that was required to get assistance. Though there are restrictions on federal funds, there should be some leeway with funds raised by the Empire State Relief Fund and allocated by New York State. There needs to be a way to bridge the gap and open up relief and recovery programs and funds to immigrant families that may have lost everything in the storm. They have suffered the same setbacks from the storm, including the loss of possessions and/or jobs alongside their neighbors, and they require assistance.

JUSTICE AND LEGAL SERVICES

Criminal Justice Services
New York State prisons remain overcrowded with a disproportionate number of minorities serving sentences as the result of the Rockefeller Drug Laws. The high proportion of incarcerated minorites is largely due to difficulty securing adequate representation as counsel and the prevalence of drugs in urban communities.

Incarceration remains a costly and ineffective manner to address chemical dependencies. Many prisons still lack programs that assist inmates dealing with the addiction that has led to their incarceration. This situation leads to high rates of recidivism as the inmates are not prepared to deal with their addiction when they are released from prison.

With the recent implementation of alternatives to incarceration programs and drug treatment facilities, non-violent offenders are returning to the community rehabilitated, saving the state substantial costs.

In recent years, drug courts have helped divert low-level drug offenders away from prisons and into rehab programs. These programs ensure that these offenders receive the treatment they desperately need while ensuring they receive appropriate supervision.

THE DEATH PENALTY
Many opponents of the death penalty believe it should not be reinstated on moral grounds. Current law has a maximum sentence of life imprisonment without parole (LWOP) and if nothing is done legislatively, the decision in People v. LaValle will make LWOP our highest punishment for first degree murder.

The death penalty is also inordinately expensive. In the decade that we have allowed capital punishment to divert money and resources from local and state treasuries, conservative estimates reveal that we have spent more than $170 million to obtain seven death sentences. Assuming that figure to be correct, each death sentence has cost $24 million to be actualized.

FY2013-2014 Budget Priorities support direct legal services and advocacy for New York's most vulnerable residents.

Protect and Invest in Communities Affected by Superstorm Sandy. We cannot leave low-income communities damaged, displaced and disrupted by Sandy. LSNYC advocates are on the frontline of providing daily services to—and advocating with—Sandy-impacted homeowners, tenants and low-wage workers to ensure a fair allocation of recovery resources throughout New York. We believe supportive legal services are essential to protect human rights and to ensure that the voice of low-income New Yorkers remains central to the long-term rebuilding process.

Expand Programs to Ensure Immigrant Student Success. This program provides quality legal services to low-income immigrants seeking to achieve economic stability, education and employment success. In 2012 Legal Services NYC launched Immigrant Students Connect, a legal services partnership with NYC community colleges to link directly with students in need of housing, immigration, consumer debt, domestic violence and other legal needs that pose barriers to success.

Invest $7M in the NYS Disability Advocacy Program (DAP). DAP is a nationally recognized program that generates significant savings for NYS and local governments while providing disabled New Yorkers direct services when appealing a denial of federal disability benefits. DAP returns $6 for every $1 invested in the form of retroactive awards to low-income New Yorkers and interim assistance payments to local governments.

Restore $3M in Domestic Violence Services funding for Community-Based Providers. Statewide Non-Residential Domestic Violence Service providers offer critical, lifesaving legal and social services support to DV survivors outside of the overburdened shelter system. These programs offer crisis planning and counseling, legal advocacy to obtain orders of protection, divorces and immigration status, as well as social services in areas such as financial justice, debt counseling and all other legal and service needs required to gain independence from abuse.

Invest in School Based Mental Health Services. In the wake of the Newtown shootings and displacement caused by Superstorm Sandy, the need for trauma-informed school supports is abundantly clear. Children exhibiting disruptive behavior often have unmet mental health needs which are best addressed through culturally competent, family-centered interventions. School-based mental health services reduce the need for school removals and promote continuity in treating children with emotional disturbances.

New York should:

Adequately Fund the Public Defense Backup Center of New York State Defenders Association

The mission of the New York State Defenders Association (NYSDA) is to improve the quality and scope of publicly supported legal representation to low income people. NYSDA's 19 staff members work daily to enhance the delivery of public defense services in the state's 62 counties saving the amount those services would otherwise cost localities and protecting the rights of poor people in criminal and adult family court cases. NYSDA's Backup Center also contracts with the State to provide service upon request to nearly 6000 lawyers in more than 120 county-based programs and to maintain the Public Defense Case Management System (PDCMS) in 49 offices in 36 counties.

To maintain its current program of backup support and to continue its entry-level training program for new defenders (endorsed by the Franklin H. Williams Judicial Commission on Minorities as a model for the nation) NYSDA's Public Defense Backup Center needs $2,089,000.

Fund New York State Defenders Association	$2,089,000

Fund Aid to Defense (ATD)
Since the early 1970s, and in response to legislated law enforcement initiatives, prosecutors and public defense providers in some counties have received state aid to handle certain felony cases. The program has long been characterized by disparity between prosecution and defense with the prosecution annually receiving more funding. Moreover, since 2000, prosecutors have been funded in all 62 counties while public defense has, only been funded in 26 counties. The aid to Defense Program has been substantially cut through the years from $20 million in 1990 to a little more than $8 million this year. The Aid to defense program should be restored to its former level. Begin the restoration of appropriate ATD funding $20,000,000.

RESTORATIONS REQUESTED BY ADVOCATES

Restore funding to the Indigent Parolee Program	$1,600,000
Fund Prisoners' Legal Services of New York	$2,500,000
Fund the Office of Indigent Legal Services	$3,000,000

Debt and Foreclosure
Another issue of great concern to the caucus is the protection of homeowners. It is no secret that foreclosures are devastating homeowners, our children, families and our neighborhoods, with minority communities experiencing a disproportionate impact. Since the onset of the financial crisis, the Assembly has been a champion of protections for homeowners and of funding for vital foreclosure prevention services to help homeowners retain their homes. In 2008 the Foreclosure Prevention Services Program was launched with the help of legislative appropriations in the amount of $25 million. With the help of renewed funding, over the past few years, this program has developed into a cost-effective network of 120 not-for-profit organizations comprising a complimentary collaboration of housing counselors and legal service lawyers across the state that provide direct foreclosure prevention assistance to distressed homeowners free of charge. Funding for these services expired last year, and despite our best efforts renewed funding is not in the executive budget this year.

The Foreclosure Prevention Program helps avert economic costs to the state and helps save the state money. It is well documented that foreclosures have a devastating impact not just on the homeowners losing their homes, but also their children, tenants, neighborhoods, court systems and local governments. Many homeowners are unable to access affordable modifications without assistance, increasing the likelihood that they will either obtain an unaffordable modification or needlessly lose their home to foreclosure.

Continue funding for the Foreclosure Prevention Services Program. New Yorkers need well trained advocates to help them obtain affordable, sustainable modifications and avert unnecessary foreclosures. Without continued funding for the FPSP, service providers will soon begin to shut down services across the state, leaving thousands of New York homeowners without the services on which they have come to rely, to say nothing of the hundreds of well-trained advocates whose jobs will be lost.

CIVIL LEGAL SERVICES

Providing meaningful access to the courts is a crucial service to the public in these difficult economic times. In this time of economic crisis the greatest impact is on low-income households, legal services are even more essential to meet the increasing demand. Civil legal service providers have been facing a crisis for the past few years, confronted with rising demands for their services by at-risk New Yorkers while facing a sharp decline in funding to support these services. The number of people in poverty is rising and as the impact of the economic crisis continues, increasing numbers are seeking legal services. They have lost their jobs, their housing, health benefits, disability assistance and/or their subsistence income among other basic necessities of life. They are in foreclosure or facing wrongful evictions, and without the ability to afford a lawyer they need help. At the best of times, due to insufficient resources, legal services providers are barely able to meet 20% of the legal needs of the poor, and are now having to turn away increasing numbers of eligible low-income New Yorkers seeking their services.

With New York State's high unemployment and increasing poverty rates the prospects for the neediest New Yorker's are dire. African Americans and Hispanics are hit particularly hard. By 2010, the number of people living in poverty rose to 46.2 million and has continued to grow. About one in four African Americans and Hispanics is recorded as living in poverty.

In light of the crushing impact of the financial crisis on the most vulnerable of our state's population, and the exponentially rising demand for these services, it is imperative that civil legal services be funded at a level that will enable our not-for-profit providers to continue to assist low income New Yorkers.

It is also imperative to restore funding for domestic violence legal services programs to help ensure that low-income New Yorkers have the necessary assistance of legal services providers to access justice.

WOMEN'S ISSUES

The Executive budget proposes to consolidate over 89 individual health awareness and prevention programs into 6 competitive pools. This funding would total $355.2 million dollars. This consolidation reduces the funding for these programs by about $40 million dollars. Ultimately this means that some health awareness and prevention programs would not get enough money in order to run a successful program. The funding for these programs should not be put in jeopardy by being forced to compete with each other. These programs are essential to the heath and well being of the residents of New York.

Chronic Disease ($63 million)

This pool includes:

- Osteoporosis Prevention Education and the Breast, Cervical, Ovarian Cancer Detection and Education Program Advisory Council program.
- Medical Assistance Program related to treatment of Breast and Cervical cancer.

Maternal, Child Health and Nutrition Program ($114.8 million)

This pool includes:

- Adolescent Pregnancy Prevention Programs.
- Nutritional for WIC.
- Rape Crisis Center.
- Domestic Violence Hotlines and Services programs.

HIV and AIDS Program ($90.7 million)

This pool includes:

- Regional and Targeted HIV, STD, Hepatitis C services.
- HIV, STD, and Hepatitis C preventions.
- HIV Health Care and support services.
- HIV Clinical and provider education programs.

Along with the competitive pooling of these programs, $544,000 was cut from child care funds for SUNY and CUNY programs.

Displaced Homemakers

The NYS Displaced Homemaker Program (DHP) helps women in transition navigate the road to personal and economic self-reliance by providing counseling, training, job placement and other support services they may need to obtain meaningful employment. Since 1978, the DHP has helped thousands of women who have experienced challenging and transitional times in their lives. It is recommended that the budget restore DHP funding to the 2008-09 level of $5.3 million for all 21 centers.

CASINOS

Amending the state constitution to allow seven full service Las Vegas style casinos is problematic for New Yorkers of color in a number of ways.

First, if Las Vegas-style casinos come to New York, low-income communities that are heavily reliant on state aid to education will suffer. These big Las Vegas style casino companies provide minimal tax revenue to support government programs and education due to the low taxes they pay.

New York's existing racinos, however, pay a large portion of their revenue to support government, mainly education. As a result, the state's existing facilities produce more tax revenue than Las Vegas and Atlantic City combined. Over the past decade this has meant more than $3.6 billion for New York's schools. If these new Vegas-style casinos open, they will immediately start gobbling up the limited gambling dollars available and, with the lower tax rate they need to be profitable, will take our schools' funding with them.

Second, the Executive Budget proposal strips legislators – and the communities they represent – of the power to decide whether or not they want a casino in their neighborhood. Future Las Vegas style casinos could be placed in any neighborhood of New York City. It is very important for local communities and their elected representatives to have the ability to choose the locations of casinos. Those decisions would instead be placed solely in the hands of an unelected Gaming Commission.

Third, gambling revenue for governments is little more than a regressive, hidden tax on the poor. By creating full-blown Vegas-style casinos, New York will simply be preying upon those who are least able to afford it in order to balance its budget.

Finally, the hidden costs of gambling – including bankruptcy, divorce and broken homes – disproportionally affect those who live on the margins of our society. This will lead to an increase in problem gambling in our communities.

WORKFORCE INITIATIVES

New York State must commit to addressing the structural problems that result in high unemployment for communities of color. The caucus supports initiatives to get the unemployed back in the work force, including on-the-job training partnerships that offer job training for those who are unemployed or underemployed, the expansion of state funding for youth jobs program, and the creation of the "Rebuild NY" State Infrastructure Bank. This entity will use money received from the State or the proposed Federal Infrastructure as equity, and lever that equity to create a pool of funds for investment into economic development or transportation infrastructure projects.

MINIMUM WAGE

The Governor's Budget would raise the income of as many as one million low-paid workers across New York State. It is long overdue because the minimum wage has not been increased since 2009. At the current minimum wage, a full time worker can't support a family. Increasing their wages would add $600 million in consumer spending to the state's economy, creating jobs and increased business.

Contrary to the claims made by opponents, the best research by reputable economists shows that an increase in the minimum wage has little to no negative effect on business or employment. Eighteen other states already have minimum wages higher than New York, including neighboring states like Connecticut, Massachusetts and Vermont.

An increase in the minimum wage is one of the best ways to address the huge problem of income inequality which has been growing worse in recent years. New York has the worst income inequality of any state in the nation.

Indexing the Minimum Wage

While we support the adoption of an increase in a minimum wage, it is critically important to add a provision to index the minimum wage for future increases so that the minimum wage is not eroded by inflation. Workers should not have to wait for years to get a fair wage adjustment.

UNEMPLOYMENT INSURANCE REFORM & UNEMPLOYMENT IN MINORITY WORKFORCE

New York State continues to struggle with high unemployment rate and minority communities have suffered tremendously from the current recession. The Bronx, for example, has twice the rate of unemployed as the rest of New York City, 14%. Out of the more than 800,000 jobs lost due to the recession in New York City, 75% were lost by Black and Latino workers. To make matters worse, New York State's Unemployment Insurance has the lowest benefit payment of any of our neighboring states. Yet the cost of living in New York City is the highest in the nation. The twin punch of low benefits combined with continued high unemployment rates inflicts tremendous economic damage in minority communities.

During the peak of the recession, New York State borrowed money from the federal government to pay for unemployment benefits. With the state still owing $2.7 billion to the federal government, in 2011 it began billing employers with a yearly "interest assessment surcharge" to cover the interest payments. In 2012, interest payments to the federal government totaled $102 million. Regardless of size, every New York State business must pay a maximum of $12.75 per employee to cover the Interest Assessment Surcharge.

Depending on size of business (based on employees), this tax adds thousands to the cost of doing business in New York. Over 75% of New Yorkers work for businesses with less than 100 employees. The surcharge is considered a job killing tax; while at the same time, unemployment rates continue to be disproportionately high in low income and minority communities. With a $2.8 billion debt to the federal government hanging over its head and tens of millions in yearly interest payments, New York must review its current unemployment insurance practices to ensure the program is financially stable and that workers receive benefits that are on par with neighboring states and are adequate to help them meet a basic standard of living.

The Governor's Unemployment Reform Proposal
The Governor's budget allows for gradual benefit increases reaching 50% of the average weekly wage (AWW) in 2026. The maximum benefit will go from the current $405 weekly max to $450 by October of 2018. Thereafter, the bill creates a process for the benefit cap to be indexed and automatically adjusted to 50% of the AWW on an annual basis. The bill gradually increases the employer taxable wage base (also outlined below). Combined with a series of cuts, this proposal is designed to raise the benefits and simultaneously eliminate a deficit in the Unemployment Trust Fund (UTF) that runs between $3 billion and $4 billion annually. Additionally the minimum benefit will increase from $64 weekly to $100 weekly.

- **Increase and Indexation of the Taxable Wage Base-**The taxable wage base will increase gradually to $13,000 in 2026 (from the current $8,500). Thereafter, the taxable wage base will be indexed and increase every year to stay equal to 16% of the state's average annual wage.
- **Increase in Minimum Required Earnings to Qualify-**The current minimum earnings in a claimant's high quarter to qualify for benefits will increase from $1,600 to $2,100.

Proposed elimination of COLA for human services employees

Human services work with people with disabilities, and with children and youth as employees of nonprofit human services agencies the state has initiated a major shift from institutional services to community based care. Unfortunately, the proposed 2013-14 budget undermines the ability to make that transition work, by proposing to once again "defer" the promised cost of living adjustment (COLA) for human services providers. It has been four years since these providers got a COLA.

The state needs to address workforce issues in human services, primarily in non-profit voluntary agencies. Low wages in this industry make recruitment and retention of qualified workers difficult. In 2011 the median wage for personal care aides in New York State was $10.31 per hour. This causes high turnover, and that diminishes the quality of care despite the best efforts of dedicated staff. A report by the National Direct Service Workforce Resource Center found that turnover rates ranged from 42% to 69% per year in some categories of workers in direct services for people with disabilities. These workers genuinely want to do their best for the people they serve, but the lack of funding makes it very difficult for direct care workers.

We believe that the state's policy should be to reduce turnover by raising the pay of the lowest paid direct service workers. Reimbursement formulas should provide incentives to hold down administrative expenses at the top while raising direct care wages at the bottom. As a first step the state funding for a cost of living adjustment or COLA for workers who provide direct services should be reinstated.

Close the Public Utility Loophole in Article 9, S 230 of the Labor Law
Requires pervasively regulated investor owned utilities to pay prevailing rate to building service workers covered by Article (Se. 230 of the Labor law. Building service workers (security officers, cleaners, porters etc.) are often the first line of defense for critical infrastructure in times of disaster and emergency, be they natural or man-made. It is in the best interest of the state to have a well-trained, stable workforce in these important jobs. Prevailing rate will lower turnover and ensure a more effective first line of protection.

The Summer Youth Employment Program (Add $10 million) provides summer employment and educational experiences that enable youth to acquire work skills. This program was funded by the governor at $25 million but will need to be adjusted to account for the increase in the minimum wage. Advocates recommend a $10 million adjustment so the program can continue to service youth throughout the state.

NY Works-$165 million for capital grants/job creation.

Pension Smoothing
The Governor's budget includes a pension plan that will let school systems and municipalities (currently under financial pressure from escalating pension costs) to "smooth" out their payments by locking in a set rate for the next 25 years. Municipalities would agree to a set contribution figure for the next 25 years or even longer. While the rate would be lower than the current rate, they would be locked into it. Should the fund recover and begin to perform better the municipalities would be obligated to stay in the plan unless they buy their way out of the system. Opponents warn that this plan will allow public employers to underfund their pension plans in the guise of mandate relief.

Workers' Compensation: The Executive Budget would reform the Workers' Compensation Board's assessment process and adjust benefits for injured workers by:

- amending the assessment process so that employers would pay assessments directly to the Board through their carrier;
- establishing a bonding program to address insolvent group self-insured trusts;
- eliminating mandatory deposits into the Aggregate Trust Fund and close the Reopened Case Fund;

- amending the assessment reserves required to be held by the State Insurance Fund;
- authorizing the Board to release up to $250 million for the debt reduction fund and up to $500 million for capital as well; and
- increasing the minimum workers' compensation benefit amount from $100 per week to $150 per week.

Temporary Assistance for Needy Families (TANF): The Executive would provide $1.26 billion in funding for TANF benefits and $1.39 billion in other TANF funding commitments. All funding for TANF initiatives is eliminated in the Executive Budget except for the following:

- Flexible Fund for Family Services: $964 million, the same level as provided in SFY 2012-13;
- Child Care Subsidies: $395 million, an increase of $70.4 million over SFY 2012-13.
- The Executive provides a decrease from the General Fund of the same amount. Overall, child care subsidies would be funded at $842.83 million, a decrease of $5.33 million from SFY 2012-13;
- Summer Youth Employment Program: $25 million, the same level provided in SFY 2012-13; and
- Food Banks: a new $2 million is provided under TANF. These funds will complement resources available under Department of Health, and will be awarded to regional food banks on a competitive basis.

Workforce Investment Act

The Executive Budget recommends $171.36 million in Workforce Investment Act funding, an $11.35 million decrease due to a reduction in federal funding.

The Advanced Technology Training and Information Networking Program (ATTAIN)

The ATTAIN program brings digital access to economically disadvantaged communities by providing labs with state of the art hardware and software as well as necessary training for individuals so they may improve their employability. The proposed SFY 2013-14 budget contains no funding for ATTAIN when traditionally, funding has been appropriated at around $7 million. To eliminate funding for these labs would mean eliminating what is for some, the only means of attaining a skill set that is required to compete in today's job market.

Recommendation: The Caucus is recommending that we restore funding to the December 2011 special session level of $3 million.

Employment Opportunity Centers

Each year, thousands of disadvantaged men and women are offered the opportunity to enroll in tuition-free programs in the areas of occupational/technical preparation, GED and college preparation, or various computer-based certifications through the State University of New York's (SUNY) Employment Opportunity Centers (EOCs). The twelve EOCs across the state play an integral role in the education and training of these individuals who may not otherwise have access to the resources necessary to prepare them for employment positions in today's job market.

Recommendation: These centers are a model for socio-economic revitalization and we urge the Governor to examine all possible sources of available revenue to ensure that this important initiative is able to continue its work in our communities.

ENVIRONMENTAL JUSTICE

There are many positive elements in Governor Cuomo's 2013-14 Executive Budget proposal. There are also opportunities for further improving the budget, including reforming tax credits associated with the state Brownfield cleanup program and re-authorizing the State Superfund Program. Additionally, New York is slated to receive billions in federal funds for Superstorm Sandy recovery. It is vital that we closely monitor expenditures of these funds to ensure that they both help communities in the short term and make them more resilient against future storms by guiding redevelopment and new building out of flood-prone areas like wetlands, floodplains, and shorelines.

Environmental Protection Fund (EPF)

The Environmental Protection Fund (EPF) delivers resources to communities to help them recover from Superstorm Sandy, create parks, support family farms, keep waterways clean, and much more. The Caucus applauds the governor's proposal to increase funding for the EPF by $19 million.

Department of Environmental Conservation (DEC)

The State Superfund Program's 2003 reauthorization for $1.2 billion over ten years becomes fully appropriated during the current fiscal year, and there is no appropriation for it in the Executive's 2013-14 budget proposal. Unfortunately, there are nearly 900 highly polluted sites on the state Superfund list and this number continues to grow. Superfund sites are some of the most contaminated and toxic in the state, and cleaning them up involves lengthy contract periods which can be hampered by uncertain funding. Spending authorization for the State Superfund Program needs to be renewed. This should be done either in the state budget or as part of a Brownfields reform package this legislative session.

Budget Proposal Improvements: Brownfield Cleanup Tax Credits

The Brownfield cleanup program was designed to encourage the restoration of contaminated former industrial and commercial sites with the intent of stimulating economic growth in low-income neighborhoods, all while making these communities healthier and safer. Unfortunately, an Environmental Advocates of NY analysis of state tax and finance data in 2012 found that although $1 billion has been spent since 2006, only 114 sites have been cleaned up.

Now is the time for New York's leaders to reform Brownfield tax credits by delinking them from eligibility for the Brownfield cleanup program. Allowing a simplified process for certifying a cleanup without tax credits would result in more cleanups and allow the program to admit sites that are currently excluded, such as historical fill sites and sites contaminated by off-site sources.

The state should also cap tax credits associated with the redeveloped value of the property. This would allow the state to better predict and manage its fiscal exposure and develop criteria to guide the distribution of tax credits to better target underserved communities most in need of incentives to attract development.

Environmental Justice and Minority Communities

Gansevoort Recycling Facility and State MOU Obligation is a dispute that epitomizes environmental justice struggles within our State. For decades, garbage has been trucked through and temporarily housed in some of the poorest neighborhoods in New York City. Finally, almost 7 years ago a breakthrough agreement was reached on how to handle the 35,000 tons of garbage and an additional 3,900 tons of recyclables generated by New York City each day. Two years later an agreement between Mayor Bloomberg and the State of New York provided a Memorandum of Understanding (MOU) in which the City and State would each commit $25 million to the Hudson River Park, thus allowing for the siting of the Gansevoort Recycling Facility at the Hudson River Park, a key element of the plan will handle Manhattan recyclables that are currently trucked to the Bronx and for which state legislation was necessary.

New York State has not lived up to its part of the MOU and low income communities continue to bear the brunt of toxic pollutants and associated health problems caused by housing waste facilities, and the related and relentless heavy diesel-burning trucking of waste to and from these sites. To complicate the matter, waste transfer sites in the Bronx are located in flood zones. Had Super Storm Sandy taken a different path, much of the Bronx would have been covered with water contaminated with some of the most dangerous toxic substances.

Years of waiting for a resolution, to what are classified as environmental justice issues in the Bronx, give a sense that a clean environment is only for the privileged and that environmental policy rests on prejudiced public policy. The fact is that about 70% of waste handled in NYC is trucked to and from transfer stations in only three neighborhoods - the South Bronx, Williamsburg-Greenpoint, and Jamaica, Queens. Manhattan, which generates nearly 40% of all waste, handles 0% of it.

The MOU, mentioned above was crafted by the staff of Governor Paterson. The 2013-14 proposed Executive Budget contains a combined increase of $39 million dollars for a variety of programs that include; the Environmental Protection Fund (EPF), which provides dedicated funding to communities throughout New York to improve our environment ($19 million which will increase to 2012-2013 Executive Budget to $153 million this year).

$10 million for the Cleaner, Greener Communities program, administered by NYSERDA to fund energy efficiency and renewable energy projects, and your proposed budget includes $25 million additional funding for the Cleaner, Greener Communities program, designed to reduce greenhouse gas emissions, save energy and benefit the State’s economy. It is understood that $10 million of the $25 million will pay for new projects.

It is clear to environmental justice organizations and public officials that New York State has the resources to meet its obligation under the MOU and end the neglect, indifference and harmful public policy that continues to ravage the health and the environment of low income residents of Brookly, Queens, and the Bronx.

MINORITY AND WOMEN BUSINESS ENTERPRISES

Established in 2011, Governor Andrew Cuomo's MWBE Task Force has made strides in determining ways to increase MWBE participation on public contracts and to promote the awarding of public contracts to minority and women owned companies. The Caucus seeks to further its commitment to develop and support best practices to diversity in the area of procurement. Members of the Caucus applaud the strategic focus to eliminate barriers to growth for small and MWBE contractors by establishing a statewide Surety Bond Assistance Program. This revolving fund will assist firms in becoming bond-ready and getting bonds to participate in state projects. We urge members of the MWBE community to utilize this state-assisted resource to grow their businesses.

Further, we support increasing MWBE participation in the procurement of state financed and state economic development projects. We propose such initiatives as the creation of a "Mentor Protégé Program," easing bonding restrictions on MWBEs, and helping MWBE contractors identify government contracting opportunities. Governor Cuomo announced a goal of 20% MWBE participation by 2012, but we are still far from that number. The caucus is committed to using every resource available to make contract distribution more equitable.

Support for MWBE initiatives through not for profits

The Caucus also supports the development of not-for-profit organizations that provide education and advocacy for socially or economically disadvantaged businesses in the construction industry, empowering them to grow and create good paying jobs. These education platforms provide a classroom curriculum along with strategic consulting services to help create opportunities for these business owners. The curriculum focuses on turning-around the business reasons why emerging contractors have traditionally not qualified for surety and bank credit; focusing on financial presentation and infrastructure development. By incubating strong, well managed minority owned construction firms, these not-for-profit initiatives will help prepare these businesses to enter the lucrative public contracting arena, thus empowering them to bring good paying jobs back to their communities and reignite the workforce for many who are unemployed and disenfranchised.

The Caucus acknowledges several issues that remain areas to concern of the MWBE community:

- MWBE's participation is included in the $60.4 billion aid federal package to pay for reconstruction costs from Superstorm Sandy;

- Conduct an impact analyst of the State's Strategic Sourcing initiative on the MWBE business community's growth;

- Extend the 20% mandate to increase MWBE participation in State contracting to the Tier 1 level for Public-Private Partnerships (P3'S) and super-sized contracts;

- Allow large-scale MWBE's that exceed the personal net worth and size threshold to qualify for the 20% State agency goal. However, these MWBE's are not unfairly advantaged over other potential contractors in the awarding of state contracts;

- Increase the number of minority- and women-owned firm participants in each pension fund by requesting the Office of the State Comptroller (OSC) work with the Division of Minority and Women Owned Business Development to recognize and accept the State's MWBE certification; and

- Require the Division of Minority and Women Owned Business Development ("DMWBD") to promulgate regulations requiring all State agencies to commission a three-year growth plan to increase MWBE utilization and release this report to members of the Legislature.

THE RIGHT CHOICE FOR NEW YORK:
A FAIR, ADEQUATE, AND ECONOMICALLY SENSIBLE TAX SYSTEM

This edition of Budget Equity identifies significant unmet needs in many areas of state government responsibility – from elementary and secondary education to higher education to health awareness and prevention programs. The existence of these unmet needs is in large part the result of the multi-year, multi-billion dollar tax cuts enacted during the 1994 through 2006 period. If it were not for the continuing impact of those revenue reductions, New York State would not face the prospect of implementing economically counterproductive cuts in important services and programs.

This section of Budget Equity begins by reviewing the relationship between the 1994-2006 tax cuts and the funding freezes and budget cuts being recommended in this year's Executive Budget. It then puts forward some recommendations for establishing a fair, adequate and economically sensible tax system.

The 2013-14 Executive Budget proposes freezes and cuts in state funding for important programs and services.

As documented in earlier sections of this report, the 2013-14 Executive Budget proposes to reduce funding for a number of important programs and services that are funded by the state government. For example, the Executive Budget proposes to combine a large number of health-related grant programs into six competitive pools and to simultaneously reduce the overall funding for these programs by $40 million or a little more than ten percent. This year's Executive Budget also includes to once again freeze the phase-in of the Foundation Aid formula established as part of the 2007 settlement of the Campaign for Fiscal Equity lawsuit.

Besides these funding reductions, the 2013-14 Executive Budget also proposes to continue prior year cuts and freezes – in some cases at prior year levels and in other cases at reduced but still daunting levels. A prime example is the "Gap Elimination Adjustment" which cuts aid to public schools in an across-the-board fashion to help eliminate the state government's budget gap while increasing school districts' budget gaps and forcing reductions in services and programs that are particularly important in high need school districts.

The Executive Budget proposes to reduce this "Gap Elimination Adjustment" from $2.16 billion during the current school year to $1.83 billion for the 2013-14 school year. But that $1.83 billion "adjustment" means that on top of the proposed freeze in Foundation Aid, there is an additional aid cut that averages 9.4 percent of districts' operating aid and which is much higher for many school districts.

The continuing impact on state revenues of the 1994-2006 tax cuts represents the primary cause of the funding freezes and budget cuts in this year's Executive Budget.

The inclusion of significant austerity measures in this year's Executive Budget raises a fundamental question: "Why does New York State have a 'Budget Gap' that it needs to eliminate?" This can be answered on several levels. In an immediate sense, New York has a "budget gap" because of the historic proportions of the Great Recession that officially lasted from December 2007 through June 2009, and the tepid nature of the subsequent economic recovery. But the New York State government was less prepared for the Great Recession than it would have been if it had not implemented such an extensive program of tax reduction during the 1994 through 2006 period. Governor Pataki characterized the tax cuts implemented during this period as follows in his last Executive Budget.

> Since 1995, every major State tax has been cut, making New York the preeminent tax-cutting state in the nation. The breadth and scope of these cuts are remarkable:
>
> - New York has cut 19 different taxes 81 separate times.
> - In 1995, total New York State tax collections per $1,000 of personal income were 5.3 percent above the national average. In 2003, State tax collections per $1,000 of personal income were 3.6 percent below the national average.
>
> By 2006-07, taxpayers will have saved more than $125 billion as a result of Governor Pataki's tax cuts. Cumulative savings will total nearly $167 billion by 2008-09.

Governor Pataki characterized New York's tax cuts during this period as the largest, multi-year tax reduction program ever implemented by any state. That is true. But this tax cutting binge could have been half its actual size and it would have still been the largest state tax reduction program ever; and, New York State would have had reserves that would have allowed it to weather the Great Recession better than it did.

The NYS Division of the Budget, in Governor Pataki's last Executive Budget, estimated that the impact of the 1994-2006 tax cuts would be about $21.2 billion on 2007-08. The Fiscal Policy Institute has estimate that because of several factors (the recessionary revenue losses experienced by the state in 2009-10 and 2010-11, the temporary tax increases enacted in 2009 and the elimination of the STAR rebate checks), the impact of the 1994-2006 tax cuts in 2010-11 was down to $13.5 billion.

The funding freezes and budget cuts being proposed by the 2013-14 Executive Budget are economically counterproductive.

The austerity measures being proposed by the 2013-14 executive Budget, such as the "Gap Elimination Adjustment" now being applied to state aid for elementary and secondary education; continuing reductions in the state workforce; and the freezing of general purpose aid for cities, towns and villages, cannot be implemented without an impact on the effectiveness of the government services involved. This is well understood. But, such austerity measures will also diminish New York's economic prospects in both the long run and the short run.

Austerity measures applied to education, child development, health care, and nutrition, for example, negatively affect the long-term competitiveness of the economy.

These measures also have an unnecessarily negative impact on the economy in the short run. In a classic 2001 paper on balancing state budgets during economic downturns, Nobel laureate Joseph Stiglitz and Peter Orszag, then of the Brookings Institution, concluded that reductions in government spending on goods and services that are produced locally (like education and healthcare) and reductions in transfer payments to lower-income families are most damaging to the economy since they come closest to taking dollar for dollar out of the local economy.

The Governor and the legislature should balance the New York State budget in an economically sensible manner.

To address the unmet needs identified in this edition of Budget Equity, to avoid cost saving measures that are likely to have negative effects on the state's economy and or on the wellbeing of New York residents, and to restore a sense of fairness to New York's state-local tax system, state policymakers should balance the 2013-14 state budget and subsequent state budgets in an economically sensible manner. That means adopting a balanced approach that includes reasonable revenue measures, and not relying overwhelmingly on cuts in services and programs.

Restoring Progressivism to the Personal Income Tax

Some of the revenue lost to the 1994-2006 tax cuts, and some of the New York tax system's lost progressivism, were both restored – on a temporary basis - by the enactment in May 2009 of a three-year increase in the top rates on the state's top Personal Income Tax (PIT). These temporary rate increases were continued - at a slightly reduced level – for 2012 through 2014 by a December 2011 enactment.

In the early 1970s, New York's top PIT rate was 15.375 percent. By 1997, that top rate had been reduced by more than 50 percent to 6.85 percent. The state's "permanent" top PIT rate is still at that 6.85 percent level but, for 2009 through 2011, the top rate was set at 8.97 percent for returns with taxable incomes (that's income after exemptions and deductions) above $500,000.

In December 2011, that temporary top PIT rate was reduced slightly while the starting point for the top bracket was increased from $500,000 to $2 million for married couples and $1 million for single taxpayers. The result was twofold. First, the state's highest income families saw their tax rate decline modestly from 8.97 percent in 2011 to 8.82 percent in 2012. Second, a substantial tax cut (a 23.6 percent reduction from 8.97 percent in 2011 to 6.85 percent in 2012) went to families with taxable incomes of between $500,000 and $2 million and individuals with taxable incomes between $500,000 and $1 million - roughly the bottom half of the top one percent of the income distribution.

Families with taxable incomes below $300,000 were not affected by the temporary rate increase put in place for 2009 through 2011. Those families with taxable incomes between $40,000 and $300,000 did, however, benefit from modest temporary rate reductions for 2012 through 2014, from 6.85 percent to 6.45 or 6.65 percent, depending on their income level.

In December 2011, at the time that the temporary PIT rates for 2012 through 2014 were enacted, Governor Cuomo was particularly critical of the state's "permanent law" bracket structure for applying the same top marginal PIT rate of 6.85 percent to families with taxable incomes only slightly above $40,000 (and individuals with taxable incomes slightly above $20,000) as it applied to families with incomes of $20 million.

While praising the temporary rates put into place for 2012 through 2014, the Governor also announced that he would create a Tax Reform and Fairness Commission to recommend a set of PIT brackets and rates for the long haul. This commission, which the Governor appointed in December 2012, is now beginning its work. We urge it to develop a more graduated rate structure for families with taxable incomes within the $300,000 to $2 million range (and for single individuals with taxable incomes between $200,000 and $1 million). All taxpayers in these income ranges are currently at a single marginal rate of 6.85 percent before the jump to 8.82 percent for married couples with taxable incomes above $2 million (and for individuals with taxable incomes above $1 million). We also urge this commission to consider additional brackets and rates for taxable income ranges above $2 million – such as $2 to $5 million, $5 million to $10 million, $10 million to $25 million, etc.

A Corporate Tax Reform Agenda for a Strong Economy

Outlined below are a series of corporate tax reforms that would generate much needed revenue while closing loopholes; leveling the playing field between small and medium-sized New York firms, on the one hand, and large multi-state and multinational corporations, on the other; and, reforming costly and ineffective tax breaks.

1. New York State should refine its laws creating economic development tax breaks to ensure that the benefits of those laws only go to businesses that create and maintain jobs in the state, and not to businesses that offshore jobs or otherwise eliminate them.

In recent decades there has been substantial growth in both the number of tax breaks enacted in the name of job creation and in the cost of those tax breaks. Even though New York State's annual Tax Expenditure Report excludes some very costly tax breaks enacted at the behest of corporate lobbyists, it estimated that the cost of the state's economic development tax breaks increased from $3.48 billion in 2008 to $4.29 billion in 2012.

At the same time, however, very few of the tax breaks enacted in the name of job creation, actually require that the recipients create additional employment opportunities in the state; or that they even maintain their level of employment in the state to benefit from these tax breaks.

Recommendation: To the maximum extent possible, the laws governing each of the state's economic development tax breaks should be amended to require that a business has to, at the very least, maintain its level of employment and compensation in the state to qualify for those breaks.

Recommendation: New York State should reduce the value of the initial Investment Tax Credit (ITC) while increasing the number of additional years (currently set at two) in which ITC beneficiaries can qualify for an Employment Incentive Credit by maintaining or increasing employment in New York. This will reduce (and, in some cases, eliminate) the benefits available to businesses that reduce employment while increasing the benefits to businesses that maintain or increase their levels of employment in New York State over time.

Recommendation: New York State should enact legislation like the proposed "Bring American Jobs Home Act" that eliminates the deductibility of expenses incurred in the off-shoring of American jobs. New York State should also enact legislation that discourages the off-shoring of call centers. In addition, New York State should make businesses that off-shore American jobs ineligible for economic development tax breaks.

2. New York State's current limits on the use of business tax breaks should not be eliminated until fiscal balance is restored and the austerity measures on the expenditure side of the budget are eliminated.

In 2010, to help stop the erosion of business tax revenues and to reduce the magnitude of the cuts being made in essential public services, New York State enacted, for the 2010, 2011 and 2012 tax years, a cap of $2 million dollars on the value of the business tax credits that a taxpayer could use in a single year. As the law currently stands, credits in excess of this $2 million annual limit can be claimed by affected taxpayers on returns for tax years 2013, 2014 and 2015.

The caps in place for the 2010, 2011 and 2012 tax years serve to increase state tax revenue above what it otherwise would have been in the fiscal years in which payments for those tax years are made. For example, the 2013-14 Executive Budget indicates that "all funds" business tax receipts for 2012-13 "include $384 million from the tax deferral of certain tax credits, an incremental increase of $71 million" over 2012-13; and that "Included in 2013-14 is an incremental increase of $14 million in 2012-13 to $394 million in 2013-14) in receipts from the deferral of certain tax credits."

Recommendation: Just as the 2013-14 Executive Budget proposes to continue the freeze on the implementation of the 2007 settlement of the Campaign for Fiscal Equity lawsuit and to subject the frozen level of Foundation Aid to a "Gap Elimination Adjustment," the 2013-14 enacted budget should extend the $2 million cap on credits; treat credits in excess of the cap in the same way that scheduled Foundation Aid payments in excess of the Foundation Aid caps have been treated; and apply a "Gap Elimination Adjustment" to the credits.

3. New York State should seek federal legislation and enact state legislation to reduce the ability of multi-state and multinational corporations to create "nowhere income."

A 1959 federal law (P.L. 86-272) prohibits a state from taxing any portion of the net income or profits of a multi-state corporation that has sales of goods in a state but no property or payroll in that state. To the extent that (a) the location of a firm's sales is one of the factors used in apportioning that firm's income among the states for tax purposes; and (b) some of that firm's sales are to customers in a state in which it has no property and no payroll, some of that firm's profit is not taxable by any state. This untaxed profit is known as "nowhere income."

As an increasing number of states, including New York, have moved to apportioning income solely on the basis of the portion of a firm's sales in the state (i.e., the Single Sales Factor approach initially adopted by New York in 2005 to be phased in over the course of the next several years), a decreasing portion of the U.S. net income of multi-state and multi-national firms is taxable by any state.

For the last several years, many of the same multi-state and multinational corporations that have lobbied for Single Sales Factor apportionment in the states in which they have substantial property and payroll have been lobbying at the federal level to expand P.L. 86-272 to make even less corporate income subject to taxation by the states. This legislation, which is misleadingly named the Business Activity Tax Simplification Act (BATSA), would allow a firm to have some property or payroll in a state and still escape taxation of any portion of its income by that state.

Recommendation: New York officials should work with officials from other states to advance federal legislation repealing or substantially reforming P.L. 86-272 and to oppose federal legislation that would increase the portions of multi-state and multinational corporation domestic net income, which can be shielded from state corporate income taxation.

Recognizing the problem of "nowhere income," tax experts seeking to establish a uniform and fair system of state-level corporate taxation have long recommended that states adopt either a "throwback" or "throwout" rule (See Institute on Taxation and Economic Policy, "Nowhere Income and the Throwback Rule" at http://www.itepnet.org/tax_topics/corporate_income_taxes.php).

Under a "throwback" rule, sales made in states where a firm's income is not taxable are "thrown back," for apportionment purposes, to the state from which the sales were made. A "throw out" rule is a variation that excludes nowhere sales from entering into the apportionment calculation at all.

Recommendation: New York should adopt a “throwback” or “throwout” rule.

4. New York should restore the integrity of its corporate “Alternate Minimum Tax.”

New York State’s corporate Alternate Minimum Tax (AMT) was enacted in 1987 to make sure that large profitable firms paid some minimum amount in state taxes.

That 1987 law, which was enacted with the active support of the Business Council of New York State, reduced the state’s main corporate income tax rate from 10% to 9% (and to a lower level for small businesses). It also eliminated and/or limited a number of corporate tax preferences. The Investment Tax Credit (ITC), for example, was reduced from 6% to 5% rather than being eliminated but the AMT was established at a 3.5% rate. Credits, like the ITC, could still reduce a firm’s tax liability but not below 3.5% of its income.

In addition, the “Double Weighting of Sales,” a tax break that had been enacted in 1975 at the behest of the Business Council, was not repealed in the calculation of the main tax at the 9% rate, but the traditional 3-factor formula (that involved the equal weighting of property, payroll and sales and which had applied the main tax before the 1975) change was made applicable to the new AMT.

The intended purpose of this set of changes was to provide that a firm would pay state taxes on its income at 9% with preferences or 3.5% without preferences. such as the ITC. Since 1987, however, the state’s main corporate income tax rate has been reduced to 7.1% and the AMT rate has been reduced to 1.75%. But, perhaps even more significantly, tax breaks have been added to the AMT. Single Sales factor apportionment (an even juicier prize for multi-state corporations than the Double Weighting of Sales) now applies to both the main tax and the AMT. And, an increasing number of tax credits are allowed to reduce a firm’s taxes below the AMT level.

Recommendation: The Corporate Alternate Minimum Tax (AMT) rate for firms other than manufacturers should be restored to the 3.5% level and the loopholes that have been added to the AMT should be eliminated.

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