




**Lippes  
Mathias**  
Wexler Friedman LLP

54 State Street  
Suite 1001  
Albany, NY 12207  
**Phone:** 518.462.0110  
**Fax:** 518.462.5260  
**lippes.com**

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## MEMORANDUM

**TO:** NYSCOPBA Executive Board  
**FROM:** Lippes Mathias Wexler Friedman LLP   
**DATE:** January 22, 2020  
**SUBJECT:** Executive Budget proposal 2020-2021

On Tuesday, January 21, 2020, Governor Cuomo delivered his proposed Executive Budget for State Fiscal Year ("SFY") 2020-21.

As you know, the Governor's proposed spending plan for the next fiscal year contains both agency appropriation bills which contain specific financial allocations for the various State agencies, commissions and departments, and Article VII proposals, which constitute the necessary statutory changes that must be implemented for the Governor's proposed spending plan to take effect.

On behalf of NYSCOPBA, we have conducted a preliminary review of the entire Executive Budget proposal for SFY 2020-21 and have provided a brief summary below for your review and reference. We will continue to review the Executive Budget proposal in the next few weeks and provide additional details as necessary. We will also thoroughly analyze the Governor's 30-day amendments when they become available since many of the details associated with the Governor's spending plan for 2020-21 will be contained within the amendments. If you have any questions or comments about any information contained within this memorandum, as always, please feel free to contact us.

### **New York State Financial Plan**

Governor Cuomo proposes to spend \$105.8 billion in SFY 2020-21 on a State Operating Funds basis. This represents an increase of 1.9% in comparison to SFY 2019-20.

On an All Governmental Funds basis (which includes Capital Projects and funding from the federal government that is not included in the State Operating Funds basis), disbursements are projected to total \$178 billion for SFY 2020-21.



## **DOCCS:**

The Governor is recommending approximately \$3.4 billion for the Department on an All Funds basis, representing a decrease in funding of approximately \$233 million compared to last year.

With respect to the Department's workforce, the Governor is proposing a decrease of 1,247 Full-Time Equivalent positions ("FTEs") compared to last year. Of this reduction, 948 FTEs will come from the Supervision of Inmates program. According to the Governor, the proposed decrease in workforce within DOCCS is solely due to the proposed prison closures. It should be noted that the reduction in FTEs in DOCCS (as well as in OMH referenced below) will be achieved through attrition and without layoffs.

## **OMH:**

The Governor is recommending approximately \$4.5 billion for OMH on an All Funds basis, representing an increase of approximately \$50 million for the Agency compared to last year. According to the Governor, the proposed increase reflects the State's investment in community-based services, targeted salary increases for direct care and clinical staff, and residential stipend enhancements.

With respect to OMH's workforce, the Governor projects the overall workforce to decrease by 105 FTEs to 13,652. Of this decrease, there is a projected 40 FTE decrease within the Forensic Services program.

## **OPWDD:**

The Governor is recommending approximately \$5.0 billion for the Agency on an All Funds basis. This represents an increase over last year of approximately \$171 million.

With respect to workforce within the Agency, the number of projected FTEs remains unchanged from last year (18,572).

## **Article VII Proposals**

As you know, in addition to proposing the funding levels for State agency spending in the form of appropriation bills as part of his Executive Budget proposal, the Governor also proposes various statutory changes that are necessary to implement his spending plan. These changes to statute are found in the plethora of Article VII budget bills that are introduced each budget cycle. For your review and reference, provided below are highlights of various Article VII proposals.

**Prison Closures:** The Governor has proposed legislation authorizing the closure of correctional facilities during SFY 2020-21 "as he determines to be necessary for the cost-effective and efficient operation of the correctional system, provided that the Governor provides at least 90 days' notice



prior to any such closures to the Temporary President of the Senate and the Speaker of the Assembly.” The proposed language is silent as to the number of facilities targeted and is silent as to the number of potential beds that would be impacted. We will work with DOCCS and the Governor’s office to determine the intent of this proposed legislation.

**Transfer of Juvenile Inmates:** The Governor is proposing legislation that would require the transfer of all adolescent offenders and individuals under the age of 18 from the custody of DOCCS to the Office of Children and Family Services on or before October 1, 2021. In discussions with DOCCS, we have been informed that the Adolescent Offender Facilities (“AOFs”) will not be shuttered despite the removal of inmates from these facilities. Rather, these facilities will be repurposed and utilized by DOCCS as medium security facilities (according to the support memorandum accompanying the Article VII bill). As more details become available with respect to this initiative, we will apprise the Board.

**Legislation to Protect Unions:** As you may recall, last year, working with other unions, we successfully sought the inclusion of language within the enacted Executive Budget to further protect public employee unions following the *Janus* decision. Such enacted legislation prevents public employers from disclosing personal information of public employees to any group or entity other than the employee organization representing such employees. This year, the Governor is proposing further protections to mandate public employers who conduct new employee orientations to provide the employee organization representing such employees to have access to such employees during orientations. Pursuant to this proposal, the employee organization must receive at least 10 days’ notice in advance of an orientation.

**Medicare Part B Premium Reimbursement:** There are, once again, two initiatives contained in the Executive Budget proposal that would impact the amount of Medicare reimbursement for retirees. As a condition of participation in the New York State Health Insurance Plan (“NYSHIP”), both active employees and retirees are required to apply for Medicare benefits upon attaining eligibility. Currently, Medicare eligible retirees and active employees participating in NYSHIP are reimbursed for the full cost of any Medicare Part B premiums they may be charged, including any additional premiums paid by higher income retirees.

The proposals contained in the Governor’s fiscal plan for 2020-21 would limit the amount of reimbursement of Medicare Part B premiums in two ways. First, the dollar amount for reimbursement would be capped at the federally established 2020 level of \$144.60 per month, effective April 1, 2020. Should the Medicare Part B premiums be increased by the federal government in the future, the amount of the reimbursement by New York State would be subject to the annual budget process.

Second, Medicare eligible individuals classified by the federal government as “higher income” beneficiaries currently pay an additional premium referred to as IRMAA premiums, which under existing New York law are reimbursed by the State. The second part of this proposal would



effectively cease reimbursement of IRMAA premiums for higher income retirees. Both of these Medicare reimbursement proposals were rejected by the Legislature last year.

**Sliding Scale Health Care Reimbursement:** The Governor is proposing legislation that would impact health insurance for future State *civilian* retirees who begin their State employment on or after April 1, 2020. Uniformed employees in a service-based retirement plan would not be impacted by this proposal. (All current members of NYSCOPBA and the vast majority of NYSCOPBA's future members would therefore not be impacted by this proposed plan.) For these prospective civilian retirees who retire with less than 30 years of service, the State would provide health insurance coverage on a graduated scale based upon years of service. A similar program was proposed by the Governor last year but was not incorporated into the final Executive Budget.

**Jail-Based Restoration to Competency Proposal:** The Governor is once again proposing legislation to authorize the establishment of jail-based restoration to competency programs for felony defendants within mental health units operated by certain local jails. Currently, felony-level defendants may be restored to competency in an OMH psychiatric center, a psychiatric unit within an Article 28 hospital, or on an outpatient basis within the community. Implementation of this proposal could potentially reduce the number of patients residing within the State's forensic psychiatric institutions. The Legislature has rejected this proposal each time the Governor has proposed it.

**Gun Reform Legislation:** The Governor has proposed a series of gun reform measures that, although not specifically targeted at NYSCOPBA members or law enforcement officers, may be of interest to some members of the union. One such proposal would prohibit individuals who cannot legally possess a rifle or shotgun from possessing a major component part that could be used to build a firearm. This proposal would also require licensed dealers to take certain safety precautions to ensure that such disqualified purchasers are unable to purchase major component parts of a gun.

A separate proposal introduced by the Governor would enact the "Safe Homes and Families Act." The proposal would amend the Criminal Procedure Law to authorize law enforcement to remove guns from the scene of a domestic violence incident. The bill would also amend the Criminal Procedure Law and the Family Court Act by authorizing law enforcement officers to temporarily seize weapons in the interest of the safety of the victims of a domestic dispute.

An additional proposal being introduced would disqualify individuals from gun ownership if they commit a serious misdemeanor offense in another state. Under current New York law, individuals are prohibited from obtaining a gun license if they commit certain New York misdemeanors that are deemed "serious offenses." This proposal would disqualify such individuals who commit similar serious offenses in another state from owning a gun in New York.

Finally, the Governor has proposed legislation to require all state and local law enforcement to collect and submit all gun related evidence to specified centralized databases.



**Kingsboro Psychiatric Center Initiative:** We reported to the Board via email correspondence that the Governor was proposing to transform Kingsboro Psychiatric Center into a “voluntary-operated, step-down transition to community residence program” on the Kingsboro campus. While the Governor referenced this initiative in his Budget Briefing Book, he has not yet released bill language regarding this proposal. It is possible we will learn more about this initiative in the Governor’s 30-day amendments. We will reach out to the Governor’s office in an effort to learn more about this proposal while we await the 30-day amendments.

We will continue to review the Executive Budget documents – appropriation bills and Article VII bills – and will provide further clarification regarding some of the proposals referenced herein that will require further explanation by the second floor and/or the Division of Budget. We will also monitor the ongoing negotiations between the Executive and the Legislature and will keep the Executive Board of NYSCOPBA fully informed of any significant developments. In the meantime, if you have any questions please feel free to contact us.