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# Report on the State Fiscal Year 2015-16 Enacted Budget

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Based on preliminary estimates, the SFY 2015-16 Enacted Budget appears to rely on a similar amount of temporary or non-recurring resources, including the impact of additional prepayments made at DOB's discretion. The components of these are as follows:

- \$3.0 billion in existing temporary resources, offset by existing temporary costs totaling \$983 million;
- \$1.7 billion in disaster assistance;
- \$1.0 billion in SFY 2014-15 prepayments of SFY 2015-16 costs (offset by a future anticipated prepayment of SFY 2016-17 costs this year of \$100 million);
- \$540 million in one-time monetary settlement resources; and,
- \$318 million in new temporary and non-recurring resources included in the Enacted Budget (largely reflecting Executive proposals, with certain modifications).

Excluding extraordinary federal aid related to Superstorm Sandy, non-recurring and temporary resources in the Enacted Budget total approximately \$4.2 billion. These figures will likely be revised when more information is available upon release of the SFY 2015-16 Enacted Budget Financial Plan.

### ***Transparency and Accountability***

High standards of transparency, accountability and oversight are critical to ensuring that taxpayer dollars are protected from waste and abuse, and public access to information is not diminished. When budgetary actions do not meet such standards, public resources are left vulnerable to misuse and inefficiency, and important discussion and debate may be short-circuited. The SFY 2015-16 Enacted Budget omits several proposals from the Executive Budget that would have reduced government transparency and accountability. The Enacted Budget was timely, with final legislative action on appropriation bills missing the March 31 deadline by only hours. Still, transparency with respect to both process and content was sacrificed.

The Joint Budget Conference subcommittee process, designed in part to provide public disclosure of budget negotiations, did not issue final reports of the results of subcommittee decisions. The initial meetings of the subcommittees indicated that \$610 million was to be allocated by the substantive subcommittees for various programmatic areas. There were public meetings where various changes to the budget were discussed, but final conclusions were not reached. At that point, public meetings stopped and final reports were never delivered.

Several of the budget bills were printed before the conclusion of the budget negotiations, and lacked important provisions. For example, one of the largest areas of local spending, education and school aid, was removed from the Aid to Localities Budget Bill which the Legislature passed. The Aid to Localities Budget Bill was later amended in the final bills that were passed in each House within hours of being completed and made available to members of the Legislature and the public. The Capital Projects Budget Bill, which includes the allocation of billions of dollars in new spending from settlement funds, was also passed without the normal three-day aging period. Such bills were passed with messages of necessity.

As a result of the compressed schedule for Legislative action, bills addressing major areas of public interest, including changes to education and ethics requirements, were passed with only minimal information with respect to their content being disclosed. The rushed passage of these

important bills denied the public the opportunity to get a full understanding of the agreements being reached and the impacts such agreements could have before their enactment.

The Enacted Budget includes various provisions that raise concerns regarding oversight, transparency and accountability. Several of these provisions were included in the Executive Budget proposal and in some cases modified in the Enacted Budget. Examples include:

- **Creation of the Dedicated Infrastructure Investment Fund (DIIF).** The Enacted Budget establishes a new fund, the DIIF, with appropriations for a wide range of new projects. Up to \$4.55 billion may be transferred to the DIIF, at the discretion of the Director of the Budget. The Enacted Budget provides very little clarity with respect to the intended use of these funds, including whether the moneys are for one-time purposes, or for ongoing expenses. The Executive has indicated its intent to use the money deposited into the Fund for one-time purposes, which would be appropriate. However, the breadth of the language creating the Fund and of the language in appropriations associated with it leaves open whether this intent will be achieved.

Also, the enacted language diminishes the State's and the public's ability to monitor how the settlement funds are used. The language does not provide for any comprehensive or standardized mechanism to track spending of these dollars. While the Enacted Budget added some reporting requirements for two large appropriations from the DIIF, most appropriations have no reporting. Furthermore, the Executive is authorized to transfer large sums to public authorities for spending, which would eliminate the oversight and checks and balances that would apply to State agency spending. (For further information, see the subsection on the DIIF in the Debt and Capital section of this report.)

- **Extensive use of lump-sum appropriations for Executive and Legislative initiatives.** There appears to be an increase in both the amount of lump sum appropriations and in the scope for which they are used to fund yet-to-be-determined projects.

In an effort to improve transparency and accountability in the State's spending, the Budget Reform Act of 2007 prohibited the use of lump-sum appropriations by the Legislature.<sup>2</sup> Because the 2007 reforms are statutory, the use of "notwithstanding" provisions overrides such restrictions. In addition, because the 2007 statutory prohibition does not apply to appropriations advanced by the Executive, a loophole exists since final Enacted Budgets in recent years have been Executive resubmissions to the Legislature made in the final days and hours of budget negotiations.<sup>3</sup> As a result, this prohibition does not apply to most of the Enacted Budget. Recent years' Enacted Budgets have used notwithstanding provisions to include lump-sum appropriations for allocation in accordance with a plan approved by the Director of the Budget and one legislative leader, and approved by roll call of one house of the Legislature.

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<sup>2</sup> The Act defines a lump-sum appropriation as "an item of appropriation with a single related object or purpose, the purpose of which is to fund more than one grantee by a means other than a statutorily prescribed formula, a competitive process, or an allocation pursuant to subdivision five of section 24 of this chapter." Subdivision five relates to any appropriation added by the Legislature without designating a grantee. Such provision requires that such funds shall be allocated "only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the chair of the senate finance committee, the chair of the assembly ways and means committee, and the director of the budget, and thereafter shall be included in a concurrent resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to each house upon a roll call vote."

<sup>3</sup> See Appendix C, Evolution of the SFY 2015-16 Budget Bills, for an explanation of Executive budget bill resubmissions.

- \$1.5 billion for upstate revitalization initiatives to be distributed through a competitive selection process overseen by Empire State Development;
- \$150 million for projects on Long Island;
- \$150 million for response to disasters or emergencies;
- \$115 million for infrastructure improvements or economic development projects; and
- \$50 million for agricultural purposes in the Southern Tier and Hudson Valley.

Spending authority for most of these funding streams is very broad, so that potential benefits to local governments are unclear.

Additional potential sources of funding for local governments in the Enacted Budget include:

- \$400 million for a new Transformative Investment Program;
- a \$385 million increase in the State and Municipal Facilities Program; and
- \$200 million for a New York State Water Infrastructure Improvement Act.

For the Transformative Investment Program and the State and Municipal Facilities Program, a wide variety of entities in addition to local governments are eligible for these funding sources, and there are minimal details available with respect to the criteria that will be used to allocate the funds. The Water Infrastructure Improvement Act of 2015 authorizes the Environmental Facilities Corporation (EFC) to issue financial assistance to municipalities, State agencies and authorities for sewage treatment and water supply projects; additional information is in the Environment section of this report.

### ***Campaign Finance Reform / Ethics***

The Enacted Budget does not include the Executive's proposed public campaign finance system for elections to the four State-level offices, the Senate and the Assembly, starting with the 2018 primary and general elections, or the creation of a new PIT check-off, the proposed New York State Campaign Finance Fund check-off, which would have given taxpayers the option of directing a portion of their personal income tax payment for the purpose of funding campaigns.

The Enacted Budget includes provisions proposed by the Executive related to the disclosure of outside income, transparency and accountability with respect to legislative per diem payments, and the use of campaign funds for personal use. The Enacted Budget also extends provisions of the Lobbying Law to apply to municipalities with a population of 5,000 or more, down from 50,000 or more.

### ***Pay Raise Commission***

The Enacted Budget modifies the Executive Budget proposal to establish a Commission on Legislative, Judicial and Executive Compensation. The Commission is directed to be convened every four years beginning on June 1, 2015 to review and make recommendations regarding compensation and non-salary benefits for members of the Legislature, statewide elected officials, judges, and certain agency commissioners and other officials.

Major provisions changed from the Executive proposal include a review of compensation for judges and justices of the State-paid courts. The Commission is modified from the Executive proposal to comprise seven members (up from three proposed by the Executive) including three gubernatorial appointees, two legislative appointees and two appointees by the Chief Judge of the State, with the Chair changed from the gubernatorial appointee to one of the additional members appointed by the Chief Judge, with the stipulation that he or she would not vote on matters regarding Executive or Legislative compensation.

Executive Budget provisions that were omitted related to reviewing and making recommendations for caps on income from outside sources for legislators, creating a two-tiered system of legislative pay, requiring at least four public hearings (the Enacted Budget permits hearings but does not require them), and publishing the findings and report of the Commission on the Internet.

The Commission is required to report to the Governor, the Legislature and the Chief Judge not later than the 31<sup>st</sup> of December of the year in which the Commission is established for judicial compensation and the 15<sup>th</sup> of November the following year for Legislative and Executive compensation. No public reporting or disclosure is required.

The language states that each recommendation made by the Commission shall have the force of law, suggesting that the Legislature no longer has to enact a law to provide its members or any of the covered entities with a pay raise. The New York State Constitution, Article III, Section 6 requires that "Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law . . . . Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section, until changed by law pursuant to this section."

### ***Design-Build***

The Infrastructure Investment Act (the Act) passed by the Legislature in December 2011 authorized the Thruway Authority, the New York State Bridge Authority, DOT, Parks and DEC to use design-build contracts and alternative methods of procurement, including "best value," "cost plus," and "lump sum" awards for construction contracts, as well as incentive clauses, for certain infrastructure projects. This authorization expired in December 2014.

The Enacted Budget reauthorizes the Act to allow certain State agencies and authorities to enter into design-build contracts. The new two-year authorization includes language requiring that authorized entities may use design-build in consultation with local labor organizations and the construction industry, and requiring UDC to submit a report to the Governor and legislative leaders no later than June 16, 2016 with various data regarding the usage of design-build.

Changes proposed by the Executive that were omitted would have made the Act permanent and extended its provisions to all State agencies and public authorities, added buildings to the list of authorized projects, and deemed contracts awarded pursuant to the Act competitive procurements for the purposes of Public Authorities Law Section 2879-a, which relates to the Comptroller's authority to review and approve certain public authority contracts.