OFFICE OF THE STATE COMPTROLLER

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Comptroller's Fiscal Update: Review of the SFY 2015-16 Executive Budget Amendments and Revenue Consensus

March 2015

Executive Summary

The Executive Budget for State Fiscal Year (SFY) 2015-16 was released by the Executive on January 21, 2015. On February 20, the Executive submitted 30-day amendments to the proposed Budget. Major changes from the original Executive Budget and Financial Plan, and results from the Revenue Consensus process are as follows:

- Changes in the 30-day amendments further broaden Executive discretion and control in the use of up to $4.55 billion in proceeds from certain financial settlements. Specific appropriations from the proposed new Dedicated Infrastructure Investment Fund (DIIF) have been eliminated and replaced with appropriated transfers, allowing the Executive to use such funds to reimburse any spending from the Capital Projects Fund.
- The Executive has added major policy initiatives to appropriation bill language affecting programs including school aid, health care, the Tuition Assistance Program (TAP), MTA Capital funding, State and local road and bridge funding, and significant portions of other capital projects funds spending. Such use of programmatic language attaches important policy provisions to appropriations that lapse within two years or less.
- The Executive revised SFY 2014-15 General Fund tax receipts projections downward by $355 million, primarily in Personal Income Tax (PIT). Net General Fund tax receipts for SFY 2015-16 are unchanged, while spending for SFY 2015-16 is revised upward by $10 million from January projections, with projected year-over-year growth of 4.6 percent, excluding settlement funds. All Funds spending is projected to total just less than $150 billion in SFY 2015-16.
- The Executive and the Legislature reached revenue consensus on a two-year estimate that was $200 million higher than the SFY 2015-16 Executive Budget Financial Plan estimates. Projections by the legislative fiscal committees ranged from $82 million lower to $425 million higher than the All Funds projection by the Division of the Budget (DOB) included in the Executive's revised Financial Plan.

Overview of Executive Budget 30-Day Amendments

The following provides an overview of the most significant changes included in the 30-day amendments to the SFY 2015-16 Executive Budget. The Executive did not advance amendments in the statutorily provided 21-day period.

Appropriations Amended to Incorporate Policy Initiatives

The Executive proposed amendments for three of the five major appropriation bills – State Operations, Aid to Localities, and Capital Projects – to incorporate major policy provisions into appropriations for a broad range of agencies. Some of these policy provisions had been advanced in the original budget proposal through Article VII language bills. In most cases, the proposed amendments would prohibit the use of the appropriated funds unless the Legislature enacts a newly integrated policy initiative, as proposed by the Executive, no later than March 31, 2015, or unless the Director of DOB approves such use. Funding for school aid, TAP, State and local roads and bridges, the MTA, and healthcare-related expenditures would be made conditional upon legislative approval of the Executive policy initiatives, as detailed below.

- **Allocation of certain settlement resources** (see further detail in the next section of this report). The 30-day amendments eliminate the separate appropriations from the Dedicated Infrastructure Investment Fund for the use of settlement funds that had been proposed in the Executive Budget. These purposes broadly remain, but have been integrated into four existing, previously unlinked appropriations, with increases to those appropriations totaling $4.55 billion, as follows:
  - $900 million added to the Department of Health (DOH), in the Health Care Facility Transformation Program Capital funding appropriation;
  - $400 million added to the Metropolitan Transportation Authority (MTA), in the MTA Capital funding appropriation;
  - $2.285 billion added to the Department of Transportation (DOT), in the appropriation for the Dedicated Highway and Bridge Trust Fund; and
  - $965 million added to DOT, in the appropriation for local transportation-related support, including the Consolidated Local Street and Highway Improvement Program (CHIPS).

  Except for the DOH appropriation, use of such funds would be prohibited unless the Director of DOB determines that all proposed uses of the funds would be in the public interest, and all such funds could be used for liabilities incurred before April 1, 2015 and could be transferred to any other State agency or public authority. In addition, separate new transfer appropriations from the DIIF totaling $4.55 billion are added to these agencies' budgets, authorizing the DIIF to reimburse the Capital Projects Fund for any disbursements (whether or not related to the purposes identified in the four agencies).

  The amendments incorporate language within the increased appropriations for DOH, DOT and the MTA to identify the proposed purposes that had previously been proposed to be funded through the DIIF, and allocate the appropriation through percentage-shares of the overall appropriation. While the purposes resemble those in the original Executive Budget proposal appropriated from the DIIF, no language in these new appropriations links them explicitly to the DIIF, and some elements have been changed.

  For example, the 30-day amendments eliminate the Executive's proposed $1.5 billion Urban Development Corporation (UDC, often known as Empire State Development Corporation (ESDC)) appropriation for the Upstate Revitalization Fund. The amendments allocate an equivalent total amount to the increased DOH and DOT appropriations using a percentage share, and alter the language driving the use of the funds. The language still requires spending to be pursuant to a plan developed by the Chief Executive Officer of UDC, based in part on the competitive process involving the State's ten Regional Economic Development Councils (REDCs), with moneys awarded at UDC's discretion. However, under the revised proposal, the funding would be awarded to the three regional plans that best support job creation and leverage private sector investment, as opposed to supporting economic development and critical infrastructure projects more generally, as originally proposed.

- **School Aid.** By reference and other language, the 30-day amendments add components of the Executive's proposed education-related Article VII changes, which involve charter schools, teacher evaluations, and other matters, directly into the State Education Department (SED) appropriations. These include proposals to:

  - Link the proposed $1.0 billion increase in school aid for the 2015-16 school year (SY) to enactment of several of the Executive's proposed education-related changes by the Legislature on or before March 31, 2015.
  - Require each school district to submit documentation, to be approved by SED by September 1, demonstrating full implementation of the Executive's proposed Annual Professional Performance Review (APPR) requirements for teachers and principals.
  - Prohibit the use of SED's State Operations appropriations to pay for any school aid increases over the amount provided in SY 2014-15, absent enactment by the Legislature of the proposed education changes.

- **Tuition Assistance Program funding.** Language is added to the $1 billion local assistance appropriation for TAP, administered by the Higher Education Services Corporation (HESC), to include eligibility requirements related to New York State residency, and to prohibit the spending of TAP appropriations unless the Legislature enacts provisions identical to the Governor's proposed education tax credit program and the NYS DREAM Act, which would extend tuition assistance to certain undocumented immigrants, by March 31, 2015.

- **Ethics and disclosure changes.** Language is added to various appropriations, primarily in the economic development area, to require certain personal financial and other disclosures by State legislators, to be submitted as a written declaration to the Director of DOB, before such funds could be spent. Language is also added to appropriations for the Office of the State Comptroller to prohibit the use of such funds to process or implement the payment of reimbursements for travel and related expenses by State elected officials unless certain ethics disclosure requirements are met as determined quarterly, in writing, by the Joint Committee on Public Ethics (JCOPE).

- **Regional Economic Development Council (REDC) funding.** The 30-day amendments eliminate the Executive's proposed $150 million Urban Development Corporation (UDC or ESDC) appropriation for the REDCs, and add individual amounts totaling $150 million to the appropriations for four agencies. Similar to the process identified for the $1.5 billion Upstate Revitalization spending, language is proposed to condition such spending on a plan developed by UDC's Chief Executive Officer, based in part on the REDC competitive process, with moneys awarded at UDC's discretion. Affected appropriations are as follows:
  - $50 million in the Office of Parks, Recreation & Historic Preservation (30.8 percent of a $162.5 million appropriation);
  - $50 million in DOT (3.4 percent of a $1.45 billion appropriation);
  - $25 million in the SUNY Construction Fund (11.1 percent of a $225 million appropriation); and
  - $25 million in the CUNY Construction Fund (19.5 percent of a $128 million appropriation).

- **Design/Build (Infrastructure Investment Act).** Existing law provided for the repeal of the Infrastructure Investment Act, which included authorization for certain State entities to enter into design-build construction contracts, as of December 2014. The 30-day amendments include language to continue the Act as it existed on December 8, 2014 with certain additional amendments. Such language is added to the State Operations appropriation for the Office of General Services (OGS), as well as capital projects appropriations and reappropriations for the following agencies: Department of Corrections and Community Supervision; Department of Environmental Conservation; Office of Children and Family Services; OGS; Office of Mental Health; Office for People With Developmental Disabilities; Office of Parks, Recreation, and Historic Preservation; Division of State Police; State University of New York; City University of New York; and Department of Transportation.

- **Local Assistance for Medicaid.** The 30-day amendments add several Medicaid-related provisions that had been included in the Executive's proposed Health and Mental Hygiene Article VII legislation to Medicaid local assistance appropriations. These include proposals to: prohibit people from refusing to use their own income to pay for the medical needs of their spouse; eliminate the ability of health care providers to decide whether Medicaid covers certain prescription drugs; leverage supplemental pharmacy rebates for enrollees of Medicaid managed care plans; and increase discounts on the wholesale price of brand name drugs.

Allocation of Certain Financial Settlement Resources

The Executive Budget proposed the creation of a new capital projects fund, the Dedicated Infrastructure Investment Fund (DIIF), with two accounts – Upstate Revitalization and Special Infrastructure – to disburse up to $4.55 billion in non-recurring proceeds from certain financial settlements.[1] The Executive Budget proposed separate appropriations from the DIIF for 10 different programs or purposes.

In addition, the original proposal included language that would allow the Director of DOB to authorize the transfer of funds from the DIIF to the General Fund in a variety of circumstances: in case of economic downturn; to prepare for, prevent, deter or respond to acts of terrorism, natural or man-made disasters or public safety, health or other emergencies; and/or to offset declines in federal Medicare or Medicaid revenues in excess of $100 million from anticipated levels. Such transfers would be authorized to the extent that moneys are available.

The original Executive Budget proposal had incorporated within the structure of the DIIF, and in transfers and appropriations from the DIIF, a significant amount of discretion for DOB. The 30-day amendments increase the level of discretion afforded the Executive with respect to the DIIF by eliminating the broad-scoped, though separately itemized, appropriations from the DIIF and widening the authorized use of funds in the DIIF to include reimbursement of any capital projects fund spending.

The 30-day amendments eliminate the two DIIF accounts and replace them with a single account, Infrastructure Investment, and eliminate the 10 appropriations that were previously proposed for broad programmatic purposes. Instead, existing unrelated appropriations are increased to add these purposes and others in three agencies – DOH, the MTA, and DOT – to authorize spending, in lump-sum form, for the purposes previously proposed as separate DIIF appropriations in the original Executive proposal. Funding amounts are set forth by percentage-share allocations. There is no language in the increased agency appropriations that link these allocations explicitly to the DIIF.

Programmatic Appropriations

As described in the Executive's support memo, the 30-day amendments "diversify the allowable use" of the appropriations for the Dedicated Highway and Bridge Trust Fund (DHBTF), CHIPS, MTA capital projects, and the health care facilities transformation program. Most of the program descriptions that are added to the existing appropriations are written expansively, with virtually no limitation on use. Broad catch-all categories, including "economic development projects" and "infrastructure improvements," are provided as the only limitation in some cases. There are no criteria or guidelines for fund expenditures, no reporting requirements, and no measure of the return on the State's investments for New York's taxpayers.

With the exception of the health care facilities funding, all such spending would be subject to approval of the Director of DOB, could be used for costs incurred before April 1, 2015, and could be transferred to any State agency or public authority for the purposes described. As a result,

[1] For more information on the original Executive proposal, see the Office of the State Comptroller's Report on the SFY 2015-16 Executive Budget, available at http://osc.state.ny.us/reports/budget/2015/review_of_executive_budget_2015.pdf, page 51.

oversight measures, checks and balances, and spending reviews that might otherwise apply could be bypassed. Furthermore, if the Legislature were to reduce any of these appropriations, all categories within the appropriation, including the original purpose for which the funding was provided, such as CHIPS, DHBTF, and MTA capital purposes, would be reduced proportionately.

Figure 1 identifies the initial appropriations included in the Executive Budget, the amounts by which they have been increased in the 30-day amendments, and an itemization of the purposes for which they may be used, in the boxes on the right. The proposed appropriated transfers are also shown, though the proposed language does not in any way connect them to the programmatic appropriations. As shown below, appropriations totaling $7.2 billion could be affected for purposes that include health care facilities, MTA capital funding, State roads and bridges funding and local transportation-related funding.

Figure 1

30-Day Amendment Revisions to Settlement Money Allocations

(in millions of dollars)

Settlement Resources Allocated to DIIF	Amount
Monetary Settlements Projected for SFY 2014-15	**5,680**
Less Support of General Fund	(275)
Less Chemical Dependency Fund	(5)
Less General Fund Unrestricted Reserve	(850)
Total Proposed Transfer to DIIF	**4,550**

Appropriated Transfers to Capital Projects Fund From DIIF	Amount
Department of Health	900
Metropolitan Transportation Authority	400
Department of Transportation	2,285
Department of Transportation	965
Total Proposed Transfer From DIIF	**4,550**

Initially, the Executive proposal created a new capital fund (the DIIF), transferred up to $4.55 billion in funds from the General Fund to the new fund, and provided 10 different appropriations from the new fund for various purposes.

The Executive's 30-day amendments transfer up to $4.55 billion from the General Fund to the proposed DIIF. All purposes that were appropriated in the initial proposal are now added to various other existing appropriations and the initial appropriations are eliminated. Finally, the Executive adds transfer language in the form of an appropriation under each of the amended appropriations, implying a funding connection or source, though the language does not provide for such.

Instead, the proposed transfer language allows a "transfer to the Capital Projects Fund in order to reimburse such fund for disbursements." It does not specifically identify what disbursements will be reimbursed from the Capital Projects Fund, thus eliminating any substantive connections between the transfers and the spending.

	Amount	Share
DOH Initial Appropriation (Brooklyn facility)	700	63.636%
Health Care/Facilities	*400*	*36.364%*
New Total Appropriation	1,100	100.000%
DOH Initial Appropriation (Utica Facility)	300	37.500%
Upstate Revitalization	*500*	*62.500%*
New Total Appropriation	800	100.000%

	Amount	Share
MTA Initial Appropriation (Capital Projects)	750	65.217%
Penn Station Access	*250*	*21.739%*
Transit-Oriented Development	*150*	*13.043%*
New Total Appropriation	1,150	100.000%

	Amount	Share
DOT Initial Appropriation (DHBTF)	413	15.316%
Upstate Revitalization	*500*	*18.531%*
Broadband and Other Telecom	*500*	*18.531%*
Thruway Stabilization	*1,285*	*47.623%*
New Total Appropriation	2,698	100.000%

	Amount	Share
DOT Initial Appropriation (primarily CHIPs)	438	30.149%
Upstate Revitalization	*500*	*34.409%*
Municipal Restructuring	*150*	*10.323%*
Disasters and and Emergencies	*150*	*10.323%*
So. Tier and Hudson Valley Ag	*50*	*3.441%*
Infrastructure Improvements	*115*	*7.914%*
Regional Economic Development	*50*	*3.441%*
New Total Appropriation	1,453	100.000%

Total Affected Appropriations	**$ 7,201**

Note: Initial Appropriations are as proposed in the Executive Budget released in January. The original DIIF purposes, which are now incorporated by a percentage-share allocation, are shown in blue italics. The REDC allocation was not part of the original DIIF spending plan. Although the appropriated transfers are located within certain agencies, they are not related to spending at those agencies, or the purposes for which appropriations are provided.
Source: Division of the Budget.

Appropriated Transfers from the DIIF

The 30-day amendments also include four new open-ended appropriations to transfer funding from the DIIF to the Capital Projects Fund to reimburse spending from such Fund, in amounts identical to the increased appropriations provided within the four appropriations. In the original proposal, DIIF moneys were appropriated for broadly defined programmatic purposes. However, the amendments place no limitations on the specific spending that can be reimbursed. As a result, the settlement money in the DIIF could be used to reimburse or supplant any Capital Projects Fund spending. The reimbursement language is not limited to just the newly increased appropriations. These proposed transfers disconnect the settlement dollars from the originally proposed uses and broaden the use of such funds to any Capital Projects Fund spending.

The new proposal would allow the settlement funds to be used for General Fund relief by reducing the amount needed to be transferred from the General Fund for capital projects purposes. For example, in SFY 2015-16, the Dedicated Highway and Bridge Trust Fund (DHBTF) is expected to receive $694 million from the General Fund to support transportation-related spending (along with other resources). The proposed transfer language would allow the Executive to transfer $694 million from the DIIF to the Capital Projects Fund, to offset other anticipated transfers to the Capital Projects Fund, thus preserving the availability of General Fund resources for other purposes. Under this scenario, the intended purposes added to the four agency appropriations would have to be funded through other means (or not at all).

The proposed structure of DIIF spending would essentially establish an additional undesignated reserve for the State, since the DIIF could be used to reimburse any capital projects fund spending and could be transferred back to the General Fund in certain instances. In any use of the latter authority, the use of funds would be unrestricted except as otherwise provided by law.

Financial Plan Update

SFY 2014-15 – Updated for Amendments and Forecast Revisions

In the 30-day amendments, DOB has modified projections made in the SFY 2014-15 Third Quarter Financial Plan Update included with the Executive Budget. These adjustments primarily address a shortfall in tax revenues relative to the most recent projections, adjusting General Fund tax receipts downward by $355 million. In the January Financial Plan revisions, DOB had increased its projection of General Fund tax collections for the month of January by $304 million (not including transfers from other funds) from the November Mid-Year Financial Plan Update, primarily in Personal Income Tax (PIT), based on strong collections in the month of December. Actual January PIT collections were approximately $355 million below the revised projections, though this was partially offset with higher-than-expected receipts in other areas. The General Fund balance ended January $241.5 million below updated expectations.

The January Financial Plan projected the State would end the year with what the Plan described as a General Fund operating surplus of $525 million (based on changes from the Mid-Year Update released in November), primarily from better-than-anticipated tax receipts, offset by higher-than-anticipated transfers to other funds. Since tax collections did not meet expectations in January, DOB made other adjustments that leave intact the presentation of a $525 million operating surplus. These include identifying additional bond proceeds, federal funding, lottery revenue and other revenue sources which lower General Fund spending and transfers.

Initially, DOB had thought that General Fund transfers to other funds would exceed November projections by $201 million. However, identifying the additional revenue reduced the need for General Fund transfers to other funds by $301 million. Now, expected transfers to other funds are $100 million less than anticipated in November.

SFY 2015-16 – Updated for Amendments and Forecast Revisions

General Fund

General Fund receipts, including transfers from other funds, are projected to total $66.1 billion in SFY 2015-16, unchanged overall from January projections, though DOB revised certain categories. The Executive's updated Financial Plan lowers projected General Fund PIT receipts for SFY 2015-16 by $90 million from January projections. This is still $202 million higher than projections made in November 2014, primarily due to an increased projection for estimated payments, partly offset by a reduced projection for withholding. In addition, General Fund business taxes are expected to grow 5.7 percent in SFY 2015-16, down from 5.8 percent projected in January, but up from the 4.3 percent projected in November.

General Fund spending, including transfers to other funds, is projected to increase 11.8 percent in SFY 2015-16 to $70.6 billion, primarily because of the large transfer ($4.55 billion) of revenue from financial settlements to the proposed Dedicated Infrastructure Investment Fund (DIIF). Without this transfer, General Fund spending would be projected to increase 4.6 percent or $2.9 billion. This reflects a net increase of $10 million from January projections.

All Funds

All Funds receipts are projected to increase just 0.9 percent from SFY 2014-15 to $149.3 billion, primarily because of a decline of $5.4 billion in monetary settlements illustrated in lower miscellaneous receipts (which are projected to decline 17.6 percent). If the settlement funding is not counted (including the $275 million in SFY 2014-15 and $250 million in SFY 2015-16 that were initially anticipated and included in General Fund spending and receipt figures), All Funds receipts would increase 4.7 percent or $6.7 billion.

All Funds tax collections are projected to increase 5.6 percent or $3.9 billion, primarily in PIT, which is now expected to increase 6.7 percent or just under $3 billion. The initial proposal from January projected that PIT would increase by 5.8 percent. However, based on January 2015 collections, the amended Plan reduced collections in SFY 2014-15 by $525 million and decreased projected collections for SFY 2015-16 by $120 million, thus increasing the projected growth from year to year.

All Funds spending is projected to increase nearly $7 billion, or 4.9 percent, to just less than $150 billion, including approximately $540 million from the DIIF.[2]

Economic and Revenue Projections

On February 26, the Legislature and Executive met publicly to discuss economic conditions and to release separate revenue and economic projections as required by Section 23 of the State Finance Law. Tax revenue estimates for the remainder of SFY 2014-15 and all of SFY 2015-16 ranged from $425 million higher than DOB's 30-day All Funds estimate (the projection by the Assembly Majority) to $82 million lower (the Assembly Minority). Revenue estimates by the Senate conferences also showed higher projections than the Executive's amended Financial Plan.

Figure 2 shows the differences between each legislative conference's estimates and DOB's updated projections. The largest differences arise in the estimates for PIT and business taxes.

[2] The $540 million expenditure is expressed as a transfer from the DIIF; the amended proposal does not indicate where such funding will be transferred or if the funding will be spent in the same year once transferred – see page T-230 of the SFY 2015-16 Executive Budget Financial Plan, Updated for Governor's Amendments and Forecast Revisions.

Figure 2

Legislative Tax Receipt Projections Compared to Updated Executive Projections

(millions of dollars)

	Assembly Majority	Senate Majority	Assembly Minority	Senate Minority
Personal Income Tax	410	94	97	22
User Taxes and Fees	42	11	(36)	33
Business Taxes	(18)	145	(82)	38
Other Taxes	(22)	32	(28)	11
Payroll Tax	13	26	(33)	4
Total Taxes	**425**	**308**	**(82)**	**108**

Sources: Division of the Budget, Legislative Fiscal Committees

On February 27, 2015, the Executive and the Legislature reached consensus on their projections for State revenue and the overall economy. The consensus forecast estimated that tax receipts over the current fiscal year and SFY 2015-16 would be $200 million higher than the Executive's projections. While this higher estimate is not incorporated into the most recent Financial Plan Update, the Executive has indicated it will be factored into budget negotiations. Though consensus on the revenue forecast was reached, all sides identified varying degrees of risk associated with the forecast, and agreed that ongoing monitoring of the State fiscal condition was important.

Concerns Regarding Financial Plan Risks and Appropriation Language

The Comptroller's Report on the SFY 2015-16 Executive Budget, issued in February, identified a number of risks associated with the proposal. These included the pace of the economic recovery and uncertainty regarding tax receipts, federal aid and other revenues, as well as unspecified savings actions and other spending-side concerns. These risks remain.

In the 30-day amendments, DOB has reduced projections for tax collections in SFY 2014-15. Such reductions were the net effect of an estimated decrease in PIT collections, partly offset by increased collections in other tax areas. While overall estimates in the current year have been reduced downward, projections for SFY 2015-16 remain the same, resulting in continued risks associated with the revised estimates. The revenue consensus between the Executive and the Legislature further increased projected revenues by $200 million. Based on projected employment and wage growth and estimates of income growth for the 2014 tax year as well as tax collections to date, the revised revenue projections may be optimistic.

As summarized above, the amended Executive Budget includes in appropriation language major changes to State policies in areas including education, health care, transportation, public construction, and financial disclosure by elected officials. Inclusion of policy changes in time-limited appropriations means that any such provisions included in the Enacted Budget would require further legislative action within the next year or two, or would expire due to State Constitutional and statutory limits on the life of appropriations. For this reason and others, important policy reforms may be better addressed through statutory revision.