BUDGET EQUITY XVIII

The People's Budget

by

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

Assemblyman Darryl C. Towns
Chairman

Assemblyman Carl Heastie
Caucus Budget Co-chairman

Assemblywoman Crystal D. Peoples
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Preliminary Analysis of the Governor's Executive Budget 2009 - 2010

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Assemblyman Darryl C. Towns
SFY 2009-2010

During hard economic times, it is the responsibility of federal, state and local governments to provide leadership and direction. Certain choices and budgetary decisions that may seem harsh must be made by state leadership that plots a course toward recovery and economic stability.

Our State is currently facing unprecedented financial and economic challenges during which, everyone must be willing to sacrifice and give of themselves.

With this in mind, it is the Black, Puerto Rican, Hispanic and Asian Legislative Caucus' (Caucus) mission to ensure that people of such races in this State of New York continue to receive a fair share of the state resources. We understand the need for financial belt tightening; however, we will remain vigilant to make certain that cuts are fairly apportioned to everyone.

The Caucus has historically championed the cause of all minorities, the middle-class and poor. It continues to work to give those who were traditionally politically disenfranchised a real voice in the State government.

Our budgetary goals are clear and resolute. The state must continue to invest in areas that produce jobs, increase economic development, close the technological divide and effectively educate our children, while simultaneously maintaining our healthcare, housing, transportation and judicial infrastructures.

We are prepared to work with all our Federal and State leaders to provide solutions to complex issues that face us, not only on a statewide bases, but also nationally and internationally.

During these extremely challenging times, we need a laser focus and team effort to guarantee that our constituency is served and our budgetary priorities are met.

This document represent a brief, but important outline of where our constituents' main concerns lie and areas that may need more support to do a greater good over time. To those who say it cannot be done in times such as now, not only will we try and keep on trying until it's done, we will say and realize, "Yes we can!"

Message from Budget Workshop Co-Chairman
Assemblyman Carl E. Heastie
SFY 2009-2010

In his Executive Budget for the 2009-2010 fiscal year, Governor Paterson is faced with the monumental challenge of balancing the States financial crisis with the responsibility we have to make sure that working families are not over burdened with the programmatic cuts to healthcare and education. Our State has clearly drifted into a recession along with the rest of the country. It is our responsibility, as a legislature, to make certain that the neediest are not left out in the cold but we also must act in a fiscally responsible manner.

Governor Paterson has had to make some very difficult decisions in his executive budget proposal. The proposal includes cuts to education, and healthcare while asking our state workforces to make concession by reopening their contracts and for-going a raise and sacrificing 5 days of pay.

The Governor has proposed a delay on the campaign for fiscal equity funding that would have seen an increase of $2.5 billion in this year's Budget. This proposal has a $1.1 billion Deficit Reduction Assessment (DRA) for the 2009-2010 school year. Current reimbursement formulas are maintained and Foundation Aid is kept for two years at the 08-09 level. The Governor provides $20.7 billion in General Support to Public Schools which is a $698 million decrease from 2008-2009. In spite of our tremendous fiscal challenges, Governor Paterson has maintained funding for Universal Pre-k programs at the 2008-2009 funding level.

Governor Paterson has proposed to keep funding for opportunity programs like EOP, HEOP, and SEEK at relatively the same levels as funded in 2008-2009. One noticeable cut was a $4 million dollar cut to the CSTEP Program. These programs have historically helped underrepresented populations attend college when they might not have been able to afford school without the additional financial assistance. The fact that the Governor remains resolute in his support for theses necessary programs is truly encouraging. However the proposed tuition increase for undergraduates at SUNY of $620 and CUNY students of $600 will be very difficult for students and their families to absorb.

In the Health portion of the budget the Governor –has had to make some very tough decisions about funding for the care and health of our communities. The Governor has maintained his focus on preventative care and the cost savings associated with health maintenance. The Governor has been able to provide a plan that expands access to Child Health Plus for those families that are in need. One of the more publicly discussed initiatives is the "Fat Tax", a "sin" tax that is intended to dissuade people from drinking sugar laden soft drinks. The Budget includes several cuts that will be a tremendous burden for our sick and infirm not to mention the working families in the healthcare field.

Governor Paterson has taken a fiscally conservative approach to dealing with the Budget crisis facing our state. He has taken to the new role of fiscal steward for our state in a responsible manner. I do believe that there is some ground to gain in regard to alleviating some of the cuts, particularly on healthcare and education. The Federal government is in the process of passing the American Recovery and Reinvestment Act which should infuse some much needed stimulus money into the State's coffers. Another measure that should be given heavy consideration for any attempt at closing the projected budget deficit is the Fair Share Income Tax/Millionaires Tax proposals. With these added revenues the State should be able to close the budget gap without severely crippling our States education institutions and healthcare facilities

There is always room for improvement and I look forward to working with the Governor to provide New York with a Budget that provides for New York's neediest while providing opportunity for the growth of our youth.

Message from Budget Workshop Co-Chair
Assemblywoman Crystal D. Peoples
SFY: 2009-2010

In his Executive Budget for the 2009-10 fiscal years, Governor David Patterson is faced with some of the most difficult economic challenges our nation and state has ever encountered. He has responded by proposing expansive cuts in programs that may have a dramatic affect upon our schools, hospitals and communities. The effects of these proposed cuts will be dramatic and it is important that we work to make sure the areas of healthcare, education and economic development are proactively addressed as we move forward in completing this year's budget.

This years' slogan, "Yes we Can, Possibilities and Challenges in a New Era" has a resonant meaning as we come together in these difficult times. That's why the 38th annual legislative conference presents us with great hope, as well as opportunity, as we together face these fiscal and economic crises with our Governor and our new President.

We must come together as a community and show leadership and innovative thinking in meeting these obstacles. The fiscal and economic challenges are staggering and the implications of not directly addressing these needs are unacceptable. The Governor's proposed 2009-2010 budget presents us with many programmatic changes that will require all of us to work together to make sure that the majority of the cuts do not have a disproportionate impact on our most vulnerable working class families.

The Legislature must be prepared to support our economic growth by utilizing the federal stimulus as soon as possible. Initiating and expanding education, job training, economic development and shovel ready infrastructure projects that will stimulate jobs are the right way to go. Now is not the time for delay

Our role as members of the New York State Association of Black, Puerto Rican, Hispanic and Asian Caucus is to work effectively as we have over the last 37 years to facilitate and foster the needed debate and discussions necessary to make sure that our constituencies are served. Now is the time that we stand together and work to help mitigate the damage that has been wrought by the last 8 years of leadership from Washington. Together, as we have in the past, we can make a difference.

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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 does NYS derive 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 (SRO) -State: 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 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

2009-10 EXECUTIVE BUDGET PROPOSAL

EDUCATION

Governor David Paterson has produced a budget for 2009-2010 that forced him to make many of the hard choices that are required to meet his obligations in this challenging fiscal environment. Unfortunately we cannot put off our commitment to improving the schools in New York State by faltering from our intended path. Governor Paterson's proposed Budget falls $2.5 billion in total education spending short of what should be spent on education according to the law enacted to settle the Campaign for Fiscal Equity.

The 2009-2010 Executive Budget would freeze most categories of formula aid, including Foundation Aid and Universal Pre-kindergarten Aid, at 2008-2009 levels while allowing for present law funding for expense based aids such as Excess Cost, Transportation and Building Aid. However, an across-the-board Deficit Reduction Assessment totaling $1.1 billion is applied to all districts based upon pupil need, wealth and tax effort. Funding for the Teacher-Mentor Intern Program, Teachers Centers and several other programs is eliminated.

Impact of Governor Paterson's Proposed Budget on School Equity

Governor Paterson's Executive Budget briefing book states that education cuts will contribute $2.5 billion towards closing the state's 2009-10 deficit. These cuts include $1.1 billion from a "Deficit Reduction Assessment" which takes money out of classrooms today. The Budget also cuts the $1.5 billion in new foundation aid that the State owes to school districts under the law that was enacted to settle the Campaign for Fiscal Equity lawsuit.

Overwhelmingly, this $2.5 billion cut is in foundation aid –- basic classroom operating aid. Foundation Aid is equalizing — it promotes equitable funding to districts with high-needs students. Since Foundation Aid is distributed based on student need and more aid goes to high-needs areas, these cuts are particularly problematic for high-needs students. As shown in the chart below, the "Big 5," which have among the largest concentrations of students of color and poor students, are facing among the largest budget cuts.

More Foundation Aid goes to high-need districts and these districts are less able to raise local revenues to make up what Governor Paterson's budget proposes to cut. The cuts per classroom are large for the Big Five – in the range of $19,000-$42,000. These poorer districts with high concentrations of students of color are unable to make up the difference by substantially raising local revenues. Cuts to wealthier school districts range from $5,000-$13,000.

School District	Percent Black Students	Percent Hispanic Students	Percent Other Non-White Students	Percent White Students	Percent Poor Students	Cut Per Pupil	Cut Per 8th Grade English Class	Total Cut Per District
Buffalo	57.4%	14.3%	3.1%	25.2%	84.5%	$1052	$24,193	$41.6 million
New York	32.3%	39.4%	14.2%	14.1%	72%	$1015	$28,414	$1 billion
Rochester	65.4%	20.7%	2.0%	11.9%	82.7%	$1708	$42,706	$58.2 million
Syracuse	54%	10.5%	4.3%	31.2%	80.5%	$1656	$38,098	$34.6 million
Yonkers	27.9%	48.5%	6.3%	17.3%	66.2%	$680	$19,045	$15.9 million

Demographic data from New York State Education Department. Fiscal data from Fiscal Policy Institute, Alliance for Quality Education.

These budget cuts disproportionately impact school districts with concentrations of high-needs students, including students of color. Across the State, gaps in performance remain unacceptably large. Expecting the districts to do more with less funding is a recipe for disaster.

<u>What will the $2.5 billion in School Aid cuts mean?</u>

-Larger class sizes with less teacher time per student
-Thousands of teacher layoffs across the State
-Reductions and elimination of tutoring programs, after-school programs, extended time available, fewer electives and advanced placement classes

<u>How can the Legislature promote equity and protect our school children?</u>

The first step is to address the State's need for balanced revenues by raising the Personal Income Tax rate for New Yorkers making over $250,000 per year. Making our income tax system more progressive would increase revenue by more than $5 billion and remedy historic inequities in New York State's tax structure.. Restoring the education cuts and complying with the 2007 law that resolved CFE is an important next step. The Legislature must continue to invest in programs intended to close the gap—like those in the Contracts for Excellence. Protecting our school children and their right to a sound, basic education should be our top priority

<u>Foundation Aid:</u> Frozen at 2008-2009 level of $14.87 billion with set-a-side requirements maintained. The Executive Budget calls for a two-year freeze in Foundation Aid with the phase-in extended until the 2014-2015 school year.

<u>Deficit Reduction Assessment-NEW:</u> Reductions to formula aid Statewide totaling $1.1 billion calculated using pupil need, wealth and tax effort factors. The minimum reduction is 3 percent multiplied by a district's 2009-2010 formula aid without Building Aid, EXCEL and Universal Pre-kindergarten Aid. For high need districts the maximum reduction is limited to 2.5 percent of a district's Total 2008-2009 General Fund Expenditures.

Pre-kindergarten: Maintained at $401.23 million. The phase-in is extended from the 2010-2011 school year to the 2014-2015 school year.

Contracts for Excellence: All districts, currently in the program, would be required to maintain funding on existing Contract for Excellence programs less the percentage reduction of their Deficit Reduction Assessment. Furthermore, Contract for Excellence districts which did not fully expend their 2007-2008 funds would be permitted to carry them over for additional Contract for Excellence eligible programs or services in the 2008-2009 or 2009-2010 school year.

Building Aid: Increased by $211.76 million for a present law total of over $2.2 billion. $165 million is also provided for EXCEL payments.

Charter Schools Stimulus Fund: Funded at $5.5 million for school districts that are significantly impacted by charter schools**.** Eligible districts must have had more than 2 percent of their resident pupils enrolled in a charter school or payments to charter schools in excess of 2 percent of their total general fund expenditures. Pupils in Board of Education sponsored or approved charter schools are not permitted to be counted for aid purposes under this formula.

STAR: The Executive Budget changes the floor adjustment that limits the annual reductions in STAR exemption amounts from 11 percent to 18 percent. The Middle Class STAR rebate program would be eliminated.

WICKS LAW: The Executive Budget proposal would repeal WICKS requirements for five years. In addition, various procurement reforms would be established to increase bidding thresholds and allow "best value" and piggybacking on existing contracts.

Notable areas of decreased funding

Legislative Discretionary Funds: Eliminated as follows:

Buffalo	$1.5 million
Rochester	$1.0 million
Syracuse	$1.0 million
Yonkers	$2.0 million

Adult Literacy Education: Reduced by $2 million to $$4.9 million.

Mentor Teacher Internship Program: Eliminated for a cut of $10 million.

Teacher Resource and Computer Training Centers: Eliminated for a cut of $40 million.

After School Grants/21st Century Learning Centers: Eliminated for a cut of $9.8 million.

HIGHER EDUCATION

Emphasizing the seriousness of the budget outlook, Governor Paterson presented his first Executive Budget on December 16. Lawmakers normally wouldn't have considered the 2009-10 budget until January. Due to New York State's critical financial condition, the Governor noted, "living beyond our means" has brought on a deficit of $15.4 billion in the remaining months of 08-09 and fiscal year 09-10. The four-year deficit is now expected to be $51 billion. Under law, the State must have a balanced budget, so significant action is essential.

The demand for higher education is greater than ever before. In order for people to have a well paying job today a higher education is the key. Retaining such an education is viewed to be impossible to many people due to the cost. Although there are programs that give individuals aid in the State of New York, such as grants, and scholarships, many still have to resort to loans from banks.

To help prevent reductions in the resources available for SUNY and CUNY, the Executive Budget recommends the first undergraduate tuition increase since 2003-04 due to this fiscal difficulty. For the first time in thirty years, the universities will keep a portion of the revenue from this increase as part of an investment plan. SUNY undergraduate tuition is being increased by $620 or 14 percent and graduate tuition will also be increased by 14 percent. SUNY non-resident undergraduate and graduate tuition is increased by 21 percent. The SUNY community college base aid is to be decreased by $270 per full-time student. CUNY undergraduate tuition is being increased by $600 or 15 percent. CUNY non-resident undergraduate and graduate tuition is being increased by 20 percent. The CUNY community base aid is to be decreased by $270 per full-time student.

This is the second time in 13 years both SUNY and CUNY colleges are raising their tuition. The State would allow both systems to keep 10 percent of tuition revenues this spring, and 20 percent of the increase in 2009-10, creating $12.4 million for the current academic year.

Many college students oppose these tuition hikes since they are having difficulty affording college now; however the Governor has maintained funding for many programs to assist young students as they pursue a college education. In spite of the difficult economic crisis our state currently faces the Governor has shown great resolve by continuing his support for programs like HEOP, EOP, TAP, and SEEK.

The New York Higher Education Loan Program (NYHELPs) Governor Patterson has proposed a loan program, The New York Higher Education Loan Program (NYHELPs), to accommodate the increase in tuitions. "In a time of rising borrowing costs and tightening lending by private banks, this new lower-interest student loan program I have proposed will help ensure New Yorkers have access to the funds they need to finance their college educations," said Governor Paterson. "Under this program, thousands of students will be eligible for affordable loans, helping our State retain the best and the brightest young minds as we seek to return New York to economic prosperity." If approved and signed into law, the program will help fill the growing gap between rising college costs and available state and federal aid.

The NYHELPs will be a public/private partnership. Lenders funds will be geared to make fixed and variable rate student loans to New York State residents, using $350 million in private activity bonds issued by the State of New York Mortgage Authority (SONYMA). Governor Paterson has proposed granting $50 million in State General Fund support for this year and $10 million a year thereafter to a pool that protects against borrower default. The colleges would have to give a nominal fee based on their loan participation. This would influence lenders to make more money available for students to borrow.

NYHELPs borrowers will apply online through the New York State Higher Education Services Corporation's (HESC) Student Loan Marketplace. The program will require that borrowers complete a comprehensive Web-based financial literacy education program. Students could receive an estimated interest rate between 7.5 and 8.5 percent, subject to the market conditions of the time the bond is issued. Now most private student loans offer interest rates ranging from 12 to 17 percent. The main purpose of NYHELP is to make college affordable for everyone.

The City University of New York (CUNY) was established in 1847. It was originally known as Free Academy until 1926 when it became a municipal college system. In 1961, the Legislature recognized the municipal college system as CUNY. CUNY is the nation's leading urban public university serving more than 400,000 students. CUNY consists of 23 colleges: six community colleges, eleven senior colleges, William E. Macaulay Honors College at CUNY, the Graduate School and University Center, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies and the Sophie Davis School of Biomedical Education. CUNY is the nation's leading urban public university serving more than 400,000 students.

The State University of New York (SUNY) was formed in 1948. SUNY students are predominantly New York State residents, representing every one of the State's 62 counties. SUNY students also come from other states, the District of Columbia, and 168 foreign countries. SUNY consists of 64 campuses which are divided into four categories: Community Colleges, Technology Colleges, Comprehensive Colleges, and Research & University Centers. These categories are based on educational mission, the kinds of academic opportunities available, and degrees offered. SUNY offers students a wide diversity of educational options such as short-term vocational/technical courses**,** certificate programs, associate degree programs, baccalaureate degree programs, graduate degrees and post-doctorate studies. Students are capable of working at their own pace and also at home through the SUNY Learning Network. SUNY has a total enrollment of more than 427,000 (full-time and part-time) students which is approximately 37 percent of the state's entire higher education student population.

Tuition Assistance Program (TAP) is a grant for full time graduate and undergraduate students who are NY residents. This is one of the most helpful assistance programs to those who are in desperate need of aid. The Higher Education Services Corporation manages TAP. A TAP award can range anywhere from $500 to $5,000. TAP is a grant so it does not have to be paid back. There are requirements that you must meet to be eligible for TAP. For example if you are not enrolled in school as a full time student (which is considered to be registered for 15 credits) or you do not have a high school diploma you may not be able to receive a full reward of TAP. Last year, the Executive Budget proposed $796.3 million for TAP. This year, the Executive

Budget has decreased the amount generated for TAP and now recommends $789.1 million. This decrease of $7.2 million is a major concern because of how students rely on TAP to stay in school.

Educational Opportunity Program (EOP) is a funding program that seeks to help New York State students of all races who are both economically and educationally deprived. The program is constructed to provide support to students financially, academically, socially and personally. Like other programs EOP also has requirements for students in order for them to receive the help. These requirements include: you must be a New York State resident for 12 months prior to enrollment; ineligible for admission under traditional standards, but you demonstrate potential for completing a college program; and if you are in need of financial assistance within income guidelines. In selecting students for the program, priority is given to candidates from historically disadvantaged backgrounds. The Executive Budget recommends a higher amount than last year for this program. EOP is recommended to be given $20.4, as compared to last year where EOP only received $19.8 million from the Executive Budget. This increase is an important step to expanding access to this highly successful program.

Higher Education Opportunities Program (HEOP) is a program that is designated to be used by independent colleges in New York State. It is designated to those students who attend these independent colleges that are disadvantaged both economically and educationally. These disadvantaged students are people from low-income families with potential college success but do not have the cognitive skills required to complete their work. Unfortunately, the funds for this program have decreased from last year. Last year the Executive Budget recommended $24.2 million for HEOP and this year only $23.7 million was recommended. Last year although the Executive Budget recommended $24.2 million, by the end of the 2008-2009 year $25.2 million was spent, which is the actual amount recommended in the Budget in the 2007-2008 year.

Search for Excellence, Education and Knowledge (SEEK) is a program that applies to college students who are attending college for the first time and are economically and academically disadvantaged. This is a CUNY funded program and is restricted to be used for only CUNY senior colleges. For the past few years, the amount recommended from the Executive Budget has increased. This year $17.1 million is recommended for SEEK.

The Science and Technology Entry Program (STEP) and the Collegiate Science and Technology Entry Program (C-STEP) are programs for New York residents who are interested in the fields of math, science, technology, and health-related fields but are financially and academically in need. For STEP students must be under represented in the fields which they are intrigued by. CSTEP increases career awareness by having career development workshops and conferences while increasing the graduate school and job opportunities. These programs have not received one increase in funding in years. The increase is long over due and unfortunately may now take longer since the funding this year has been cut. The Executive Budget this year recommends only $4 million, compared to the $19 million recommended for the past two years. These programs are in desperate need for support to ensure that young students have access to higher education.

Health and Families

HEALTH

The cuts and taxes on health care providers contained in Governor Paterson's state fiscal year (SFY) 2009-2010 Executive Budget proposal must be reduced. In total, healthcare facilities face $2.3 billion in cuts and taxes, and hundreds of millions more in redistributions. The magnitude of the cuts, taxes, and redistributions contained in his proposal will without doubt lead to hospital, nursing home, and home health care agency service and job reductions and, in some cases, closures across the state.

It is important to ensure that every dollar of Federal Medicaid stimulus funding New York received is spent on the Medicaid program to offset the Governor's proposed cuts. These are Medicaid dollars; they should first be used to restore the proposed cuts and taxes in the Executive Budget proposal, and facilitate the reform and access to care initiatives promoted by the Governor.

The cuts and taxes would be especially damaging because of the increased number of uninsured New Yorkers seeking care in emergency rooms or hospital outpatient clinics as the result of the current economic downturn and the intense economic strain that health care providers already face.

The Governor's Budget Proposal

The health care cuts, taxes, and redistributions of funds in Governor Paterson's proposed state budget would profoundly affect hospitals, nursing homes, home health providers, and—most importantly—the communities they serve. Every area of health care is being severely impacted, even though more and more patients and residents will need care as the economy continues to weaken and our State's population continues to age. The proposed health care cuts contained in the Executive Budget, in most instances, represent only the state share of Medicaid. The provider impact is much greater after including the loss of federal Medicaid funds and the effect on Medicaid managed care rates linked to hospital Medicaid fee-for-service payments. When combined with the loss of federal funds and the ripple effect on Medicaid managed care payments, the proposed cuts and taxes on hospitals, nursing homes, and home health providers grow to more than $2.3 billion. These are on top of the $1 billion in cuts enacted in 2008.

There are two general categories of actions contained in the budget proposal:

- deficit reduction actions (across-the-board cuts and taxes); and
- redistributions/restructuring of reimbursement.

However, the budget does not:

- include any potential revenue from the likely passage of a federal stimulus package that would include a substantial increase in the Federal Medical Assistance Percentage (FMAP);

- include any broad-based personal income tax increase;
- utilize the State's "rainy day" reserve funds; or
- address needed reform in the areas of managed care, medical liability, regulatory relief, or clinical integration.

Deficit Reduction Actions ($1.8 Billion Impact on Hospitals, Nursing Homes, and Home Health)

The Governor has proposed cuts and taxes on every hospital, nursing home, and home health provider in the State as part of what is called a "deficit reduction" plan. Specifically, the proposed budget would eliminate the 2008 and 2009 trend factors for hospitals, nursing homes, and home health providers, effective for payment rates starting January 2009.

For hospitals and nursing homes, an 8% reduction has been proposed for the period January through March 2009, and 2% in SFY 2009-2010. For home health agencies, a 1% across-the-board reduction would be imposed.

Additionally, the proposed Budget includes other proposals that would reduce home care payments, grants, Health Care Reform Act (HCRA) funds, and other funding.

Gross Receipts Tax

According to the Governor's proposal, a 0.7% gross receipts tax would be reinstated on hospitals and home health agencies. As we have stated in prior years, the imposition of the gross receipts tax on health care essentially represents a "sick tax". For many providers, the gross receipts tax alone would eliminate their entire margin.

For hospitals, the Medicaid cuts and "sick tax" are projected to result in an average statewide operating deficit of more than 2.0%. The Department of Health (DOH) has repeatedly pointed to positive industry operating margins in 2006 (+0.7%) and 2007 (+0.9%) as an indication of the capacity of hospital providers to absorb the proposed cuts and reforms.

Redistribution and Restructuring Payments; Shifting to Outpatient Care

The Governor has called for a significant restructuring of how Medicaid pays for hospital, nursing home, and home health services. These new reimbursement systems are in addition to the proposed deficit reduction cuts and taxes and would result in considerable redistribution of funding between providers.

The Governor proposes to reinvent how Medicaid pays for hospital inpatient services through a series of highly technical and redistributive changes, cutting $300 million in Medicaid payments in the process, and then reinvesting a portion of the amount into outpatient care. Additionally, the Governor proposes to eliminate the HCRA private payer commitment to Graduate Medical Education (GME) and to redistribute those funds as indigent care payments for teaching hospitals.

Changes of the magnitude proposed have not been made since 1988. The proposal makes highly complex technical changes that would cut hospital inpatient payments by $300 million, in the aggregate, but the re-distributional impact would be much greater—$425 million. Specifically, the Budget would:

- rebase hospital inpatient rates to 2005;
- replace the current Medicaid methodology with a “Medicare-like” methodology;
- eliminate hospital supplemental payments for workforce recruitment and retention, GME enhancement, rural workforce funds, and various priority restoration and transition pools;
- implement a severity-adjusted Diagnosis Related Group methodology; and
- accelerate the phase-in for inpatient detoxification reform.

Moreover, this proposal would result in significant redistribution of funding. The majority of hospitals would experience significant payment cuts under this proposal, notwithstanding a temporary and small transition funding pool. Major public hospitals are the most disproportionately and adversely impacted group.

Graduate Medical Education (GME): $283 Million Re-distributional Impact on Hospitals

The Budget also redirects the remaining GME pool payments for teaching hospitals ($283 million) to indigent care payments. New York State is home to many of the country’s most prestigious academic medical centers and community teaching hospitals. These facilities provide an invaluable service by training the next generation of physicians, and medical resident programs. These programs receive federal matching funds, bringing much-needed federal funding into our health care system.

Yet, even as physician shortages propagate in most regions of the state, the Governor has proposed extraordinarily deep cuts to physician training funds. His proposal effectively eliminates the private payer funding pool for GME by discontinuing the Professional Education Pool, transferring those funds ($283 million) to the indigent care pool, and distributing the funds as Disproportionate Share Hospital payments to teaching hospitals based upon the value of services provided to uninsured patients. The State would save $141 million through this change. Additional funding for indigent care is a quality proposal and should be implemented but it should not be at the cost of training tomorrow’s teachers.

The Governor also proposes to reduce “unspent” GME funding by 20% ($23.4 million). New York’s teaching hospitals are a critical resource for developing the State’s future supply of physicians, as well as disproportionately treating the State’s indigent populations. Preservation of this Graduate Medical Education asset is important for both reasons. The State benefits, moreover, because the Federal government still provides the bulk of the support. The Federal government—through Medicare payments and its 50% (or greater) share of Medicaid payments—supports roughly 55% of the costs of GME within academic medical centers and other teaching hospitals.

Health care in New York and, more specifically, the training of physicians, is also an important component of the economy. Many of these prestigious institutions are among the top employers in their regions and serve as centers for biomedical research that attract billions of dollars in federal grant funding and support thousands of New York jobs. In fact, according to an analysis of the Association of American Medical Colleges, the economic contributions of New York teaching hospitals and academic medical centers in 2005 totaled more than $66 billion.

Outpatient Investment

The Administration's proposal also includes reinvesting of a portion of the amount cut from acute care services into outpatient care. Primary care and other outpatient care certainly need investment, but taking money from hospital inpatient care and providing a reduced amount of that taken to outpatient care is not investing in primary care.

For the acute care sector, the Administration contends that its "transformational reimbursement" actions seek to better promote outpatient, preventive care as a means to improve public health and generate inpatient hospital savings. Although the plan assumes that today's investment in outpatient care will reduce the demand for inpatient care today, the reality is that this takes time.

It does not make sense to promote primary care delivery by reducing inpatient reimbursement by more than $250 million and reinvesting half of it back in ambulatory care. That loss will result in fewer, not more services.

Nursing Home Rebasing Changes: $294 Million Cuts to Nursing Homes (In addition to $596 million in Deficit Reduction Plan cuts) -The Executive Budget would renege on the nursing home rebasing plan enacted by the Legislature in 2006 and implemented just this year. Instead, the Governor seeks to replace it with a new regional pricing-based methodology, effective March 1, 2009. The Governor's proposal effectively breaks the commitment made in 2006, which was reaffirmed in the 2008-2009 State Budget agreement, even as nursing homes have begun to implement the rebasing plan.

The Governor's proposed nursing home reimbursement scheme would provide substantially less funding overall than under the plan previously approved by the Legislature and, by implementing a regional, pricing-based methodology, would create substantial redistributions, disproportionately affecting certain categories of nursing homes (e.g., major public hospitals, safety net homes, hospital-based, and those with more than 300 beds) and regions.

Specifically, the Budget proposes to:

- move to a 2005 base year with nearly $300 million in reductions;
- adopt a 100% regional price, with eight regions and no wage equalization factor;

- eliminate adjustments for hospital-based and large nursing homes and other safety net adjustments;

- not include hold-harmless provisions or appeals, which would ensure fairness; and

- build in a Medicaid-only case mix and a 25% reduction for Physical A and Physical B residents.

The proposed Budget would also eliminate up to 6,000 nursing home beds in exchange for the addition of up to 6,000 assisted living beds, establish a nursing home quality of care incentive pool, and make changes to the financially disadvantaged nursing home pool.

Home Care Reimbursement Methodology Changes: $56 million cut to Home Care (In addition to $340 million in Deficit Reduction Plan cuts and taxes)

The Budget proposes a new, per-episode pricing methodology based on patient condition under Medicaid, similar to the Medicare prospective pricing system. Under the new system, per-episode payments would be established for 60 days, and base payments would be based on claims paid in the 2007 base year. To determine case mix, each patient would be measured based on factors in the Outcome and Assessment Information Set (OASIS). A 3.5% across-the board rate reduction would be imposed until the proposed, new payment system is implemented.

Other major home care provisions include a prohibition on subcontracting with another entity for home health aides, elimination of the moratorium on the establishment of new Certified Home Health Agencies (CHHAs), and the creation of a quality of care incentive pool for home care.

The consequences of home care cuts of the magnitude proposed cannot be overstated.
Home care services are critical for transitioning patients from the hospital to home, and in some models, providing an alternative to traditional nursing home care. As a proven, cost-effective alternative to institutional settings, home care targets Medicaid resources efficiently and fulfills a critical role in enabling patients to stay in their own homes. The proposed cuts are contrary to public policy objectives to expand home-and community-based services.

Child Health Plus and Family Health Plus

The Governor's budget proposes expanding Family Health plus eligibility for adults to include people who make 150% of the Federal Poverty Level to 200% of the FPL. Additionally, the Governor proposes to eliminate many of the barriers to enrollment in the Family and Child Health Plus Programs, through eliminating requirements to conduct face to face interviews, finger imaging, and asset tests.

Despite the success of Child Health Plus and Family Health Plus in achieving sizeable enrollment increases, the number of uninsured New Yorkers has been resistant to major reduction. In 2007, 13.2% of New York's population (2.5 million) were uninsured, down from a high of 15.3% (or 2.9 million) in 2002. While the growth in public sector coverage has been impressive, it has been partly offset by reductions in employer-sponsored coverage—and that trend is troubling.

The Doctors Across New York program

The Doctors Across New York program is a first step in addressing the physician shortage, particularly in under-served areas, and it is good to see that the Governor did not propose to reduce program spending from the levels of the current fiscal year. Doctors Across New York is being lauded nationwide as a model program. More than 100 physicians should be placed in under-served areas of New York State by the program during 2009. It is unfortunate, however, that the Governor's budget proposal does not explicitly specify funding for inclusion of a second round of physicians that could be placed in under-served areas during 2010. The funding commitment to the program should be increased so that we can continue our progress in addressing a need that greatly outweighs our first year's response.

Working Families in the Healthcare Field

Moreover, the Medicaid cuts and taxes on all three sectors—hospitals, nursing homes, and home care providers—represent 35,000 jobs. These are jobs and services that the state can ill afford to lose, at a time when the State and nation are looking to stimulate employment—especially when there is more than adequate new federal funding (through the FMAP increase) to avoid it. Additionally, the loss of these health care sector jobs will have a ripple effect through the economy of the state. A direct loss of 35,000 health care jobs results in at least 51,000 jobs lost in total throughout the State. Clearly, further cuts of this magnitude will only contribute to the economic downturn and make it that much harder for the State's economy to recover.

Child and Family Welfare

The number of people on public assistance has dropped significantly since New York State passed the Welfare Reform Act. In January of 1995, over 1.6 million people were on public assistance and by September of 2008 that number had fallen to 501, 000, the lowest number in 40 years.

Youth Programs Block Grant Program

The Governor proposes $90 million for a Youth Programs Block Grant to provide local districts flexibility in funding their youth programs based on local district priorities. Programs that were previously funded through discrete appropriations that would now be included in the block grant are Detention Services, Youth Development and Delinquency Prevention (YDDP), Special Delinquency Prevention Programs, Runaway and Homeless Youth Act, Alternatives to Detention and Alternatives to Residential Placement.

Raising the Basic Allowance

The current basic allowance for a family of 3 on public assistance is $291 a month. This money is used to pay for expenses such as transportation, over the counter medicines, diapers, clothing, gasoline and food costs not covered by food stamps. The Governor proposes to raise the basic allowance by 10 percent for each of the next three years, effective January 1, 2010. Under the Governor's proposal the basic allowance would be raised by nearly $100 to $387 in January 2012.

Reduction in Supplemental Social Income benefit

The Governor's Budget contains a proposed reduction in the Supplemental Social Income of between $16 and $28 for recipients living in the community, effective June 1st, 2009. A recipient's total monthly SSI benefit would still be $9-$34 higher then in 2008 as the result of the offsetting impact of a 5.8% cost of living adjustment to the federal benefit.

Closure or Reduction in Office or Children Family Services Facilities

The Governor's Budget proposal contains saving attributed to the closure or downsizing of 11 facilities, due to a significant decline in the population as evidenced by a 67% system wide utilization rate and 500 vacant beds. These closures are accompanied by the elimination of 60 of the 100 State funded NY/NYIII beds reserved for former foster care youth.

Elimination or Reduction of Non-Mandatory Services

The Governor eliminated or reduced various non mandated services such as Advantage After School, Home Visiting, Amy Watkins, caseload reductions and Kinship/Caretaker Relative. The Governor also eliminates funding for Community Optional Preventative Services(COPS) which support a variety of other non-mandated programs.

Stalling the Foster Care COLA

The Budget proposal also eliminates the SFY 2009-2010 Cost of Living Adjustment for foster care and adoptive parents, which is proposed to resume in April of 2010 and to extend until 2012.

JUSTICE & 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 causes for this minority jail population are largely due to difficulty securing adequate representation as counsel and drug prevalence in urban communities. Five years ago the Legislature was able to accomplish some reforms to the Rockefeller Drug Laws but these reforms do not go far enough. The Rockefeller Drug Laws require comprehensive reform.

Incarceration remains a costly and ineffective manner to address chemical dependencies. Many prisons still lack programs that assist inmates in dealing with the addiction that has lead 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 begun to help divert low-level drug offenders away from prisons into rehab programs. These programs ensure that these offenders receive the treatment they desperately need while ensuring they receive appropriate supervision. While Drug Courts and the changes in the Rockefeller Drug Laws from 2004 are a step in the right direction, they are no substitute for comprehensive reform of the Rockefeller Drug Laws.

It is important to consider the establishment of a state public defense commission. It would go a long way toward 1) providing client-centered representation, 2) decreasing racial disparity, and 3) ensuring equal justice to those unable to afford counsel.

Civil Legal Services

The Executive Proposal provides for only $1 million in support for civil legal services and eliminates all legislative monies previously used to restore and support civil legal services. In FY 2007-2008, the State, through a combination of legislative restoration monies, provided close to $16 million in support for civil legal services. Despite that, less than 20% of the civil legal needs of low income New Yorkers were being met. In FY 2008-2009, the amount of support was reduced to approximately $9 million, of which approximately $8 million was provided by the Legislature.

The Executive proposal for $1 million in support cannot possibly enable our not-for-profit providers to continue to assist low income New Yorkers. State funds are the core support for legal service providers through New York State. This Executive Budget proposal puts New York at the bottom nationwide in state funding per poor person for civil legal services at a time when the poor are hurting the most.

THE DEATH PENALTY

Many opponents of the death penalty believe it should not be reinstated on moral grounds, because human life is sacred, because it is racist or because of the risk of killing the innocent. 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 are 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 achieve. There are many more important uses for the money than to try to kill human beings with it.

New York State Interest on Lawyer Account Fund: Concerns for civil legal service programs do not end with the lack of state financial support. The unpredictable nature of IOLA income makes it impossible to view IOLA as a reliable funding source. At a time when the need for civil legal services is exploding, as economic woes have a disproportionate effect on the vulnerable poor, IOLA funds are evaporating. The amount of funds generated by attorney escrow accounts is a function of the Federal funds rate, which is at a historic low (zero to 0.25%), and economic activity. Based on the information provided by IOLA at the Public Protection Budget Hearing this year, if the economy remains in distress and interest rates don't undergo a significant increase, IOLA's 2009 projected revenues, available for grants in 2010, will drop dramatically. As a result, there will be a need for greatly increased state support in the 2010 fiscal year in order to prevent a collapse of the civil legal service programs funded through IOLA.

In our current economic crisis the need for legal services is expected to explode due to for closures and debt collection actions. Investing in civil legal services saves the State money. They secure client benefits, help the state avoid high costs, help generate economic activity and jobs, and create efficiencies in the courts among other benefits. In light of the financial crisis and its crushing impact on the most vulnerable of our State's population, 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.

Programmatic needs

- Restore the $4.24 million for civil legal services
- $609,000 for domestic violence legal services programs
- Redirection of the legal services assistance fund for its original purpose, to support civil legal services programs.

PROGRAMS THAT HAVE REQUESTED RESTORATIONS

- New York State Defenders Association $ 1,700,000
- Neighborhood Defender Service of Harlem $ 1,000,000
- Indigent Parolee Representation Program $ 1,600,000
- Prisoners' Legal Services of New York $ 5,000,000
- Aid to Defense $11,174,000
- Civil Legal Services $10,400,000

Women’s Issues

As of August 2008, all funding was reduced by 6% and is reflected in the 2009-2010 Executive Budget. The Governor however, continues to support:

Childcare services at the State and City Universities of New York as well as Child Care Centers at community and senior colleges; Breast Cancer Detection and Education; Breast Cancer Research; Cervical Cancer Vaccine; Cervical Cancer Screening and Prevention; Osteoporosis Prevention Education; Domestic Violence Hotlines and Training and Technical Assistance.

The 2009-2010 Executive Budget proposes to eliminate funding for the Batterer Intervention Program and Breast Cancer Hotlines.

The following are listed in the Budget:

Family Planning Services	$30,895,000
Emergency Contraception Education and Training	$ 2,406,000
Community programs to prevent adolescent pregnancy	$11,259,000
Women, Infants and Children (WIC)	$34,182,000
Sickle Cell Disease Screening	$ 226,000
Prenatal Care Assistance: Non-medical services	$ 2,432,000
Grants for Women’s HIV clinics: ob-gyn	$ 1,935,000
HIV services for infants and pregnant women	$ 4,625,000
HIV counseling and testing by family planning	$ 3,180,000
HIV outreach prevention services to teens and women	$ 921,000
Rape Crisis Centers	$ 1,999,000

IMMIGRATION

Immigration recommendations brought forward by advocate groups include:

Education

The Governor's proposed budget **slashes expected education funding by over $3 billion**. Education cuts represent more than a quarter of all the proposed cuts. With an actual cut of approximately $1 billion and a roll back in promised increases as a result of the Campaign for Fiscal Equity settlement, this represents the biggest education cut in the State's history. These actions set the clock back in delivering on the constitutional rights of our kids by four more years to 2015 instead of 2011.

These cuts will be devastating for our most at-risk students. Even though graduation rates for English Language Learners (ELLs) have continued to plummet, **school districts are now scheduled to receive approximately $360 million less in expected Foundation Aid that was intended to help ELL and immigrant students**. The Big 5 Cities and several districts on Long Island and throughout the Hudson Valley will be hit the hardest by these cuts.

The Budget **preserves the Contracts for Excellence (C4E)** for districts that completed them this year; however, these districts will receive approximately **30% less funding than the current school year due to the proposed budget cut**. However, considering the number of districts that failed to use the full (or any meaningful) amount of ELL-generated funds (from the 0.5 formula weight) on actual ELL programs, the Budget still failed to include language requiring all ELL-generated funds to be spent on ELL and immigrant kids.

The Budget also preserves funding for the **Bilingual Categorical Grants Programs at $12.5 million** to support BETACs and ELL initiatives.

Adult education funding in the State Education Department was cut by $2 million (26% less) for **Adult Literacy Education (ALE), while Employment Preparation Education (EPE) was preserved at $96 million.**

Citizenship & Refugee Services

The FY'10 Executive Budget applied a **20% cut to the New York State Citizenship Initiative** bringing it down to **$1.854 million** (down 26% from $2.5 million under former Governor Spitzer with this and other recent mid-year cuts). This program funds approximately 20 non-profit organizations to offer citizenship application and interview assistance and English instruction for a few thousand of the 1.1 million New Yorkers eligible to apply for citizenship. The FY'10 Executive Budget **gut the NYS Refugee Assistance Program by 50% down to $1.854 million**.

Health Care

The FY '10 Executive Budget, like last year's budget, continues with strong reforms that redirect health funding towards improving primary and preventive care in community and outpatient settings, and improving care for the uninsured. Included in the Budget are important administrative reforms that eliminate some burdensome and unnecessary requirements for individuals and families who apply for public health insurance programs, making it easier for low-income New Yorkers to apply for these important benefits.

The Health Budget eliminates burdensome application requirements for public health insurance:

- **Eliminate the requirement for a face-to-face interview at application for public health insurance.** A face-to-face interview is not a federal requirement, and New York is only 1 of 5 states with this requirement.
- **Eliminate the adult asset test for public health insurance.** Few low-income adults have significant resources. Adults applying for Medicaid and Family Health Plus will no longer have to document additional resources other than income.
- **Eliminate the finger-imaging requirement.** Fingerprinting has not been found to reduce fraud.

The Health Budget also includes proposals to expand coverage, and to simplify eligibility levels for public health insurance:

- **Expand eligibility for Family Health Plus to adults who make up to 200% of the federal poverty level (from 150%).** This expansion would allow a family of four making up to $42,400 a year to be eligible for insurance.
- **Adjust income eligibility levels to be based on gross income, rather than net; eliminate deductions.** Applicants will no longer need to provide burdensome documentation of deductions, such as child care.

Also included in the Budget are significant changes to how hospitals and nursing homes are reimbursed. Significantly, the Budget redirects $282 million of state money to the Indigent Care Pool. In order to receive these funds, hospitals will have to prove they actually provide services to uninsured patients. This emphasis on providing services to uninsured patients reinforces the groundbreaking Hospital Financial Assistance Law, in effect for one year, which requires all hospitals to offer deep discounts to low-income uninsured patients, regardless of immigration status.

Revenues

In light of the huge budget deficit facing our State, the Governor's proposed budget still failed to include progressive revenue-generating options such as a reinstatement or increase of the income tax surcharge on high-income earners. The Governor insists on balancing the budget on the backs of immigrants and students, while not asking high-income New Yorkers to do more in sharing this fiscal burden.

On December 16, 2008, Governor David Paterson submitted his first Executive Budget and the third Executive Budget of the Spitzer/Paterson Administrations. In submitting this budget plan, Governor Paterson estimated that the State faced a budget gap of $13.7 billion for the 2009-10 fiscal year which will begin on April 1, 2009. During the first week of February, the Governor estimated that this projected gap had been reduced to $13 billion as a result of the ongoing savings to be realized from the Deficit Reduction Package, that the Legislature had adopted on his recommendation, to balance the State's Budget for the current 2008-09 fiscal year.

These "projected" budget gaps of $13.7 and $13 billion represent the **difference** between the Division of the Budget's best estimates, at the time those estimates are made, of (a) what state expenditures would be during 2009-10 if all state funded programs were continued as required by the laws currently on the books; and (b) what state revenues would be during 2009-10 under the laws currently on the books.

The current projected budget gap of $13 billion is substantially larger than the projected gaps of $1.608 billion for 2007-08, $2.995 billion for 2008-09, and $5,089 billion for 2009-10, that the Spitzer/Paterson Administration, in February 2007, estimated that it had inherited from the Pataki Administration. While there are hundreds, if not thousands, of individual factors that have contributed to the growth of the projected budget gap for 2009-10 from $5.1 billion to $13 billion, the most significant of those factors is the plummeting of projected tax revenues as a result of (a) the deep national recession and the meltdown of the financial sector of the economy that have clobbered the national economy in recent months; and (b) the continuing economic problems that various economists are projecting to continue to late 2009, sometime in 2010 or even later. For example, Governor Spitzer's 2007-08 Executive Budget projected personal income tax receipts for 2009-10 to be $41.37 billion; while Governor Paterson's 2009-10 Executive Budget projects personal income tax receipts for 2009-10 to be $34.391 billion. This swing of $6.979 billion is repeated in other parts of the State's revenue structure with the difference between current projections for 2009-10 and the projections of two years ago for 2009-10 down by $1.6 billion for business taxes, and by $400 million for the sales and use tax. Overall, taking increases and decreases in other categories into consideration, projected tax revenues for 2009-10 are down by an estimated $9.4 billion since January 2007.

A second important cause of the growth of the projected budget gap for 2009-10 from $5.1 billion to $13 billion, involves the important new commitments that have been made without being paid for. For example, in 2007, Governor Spitzer proposed and the Legislature, with only minor modifications, adopted a comprehensive statewide solution to the Campaign for Fiscal Equity that included a projected increase in school aid of $7.7 billion over four years and a rigorous new accountability system (referred to as Contracts for Excellence). That same year, the Governor proposed an income-based increase in the State's STAR (School Tax Relief) program which, after negotiations with the Legislature, became the Middle Class STAR Rebate Checks program which is projected to grow in cost to about $1.9 billion a year when fully implemented. While this rebate check program has many flaws, such as not providing any aid to renters who clearly pay a portion of their buildings' property taxes through their rent, few would argue that it does not address an important objective. Overall, important new commitments such as these, including the expansion of health insurance coverage, account for the increases in state spending that are sometimes cited by critics as a cause of the State's current fiscal problems. Aside from the areas of education, health care and transportation in which the State has made important new investments (some of which we would have configured in different ways), state spending from 2004 to 2008 grew at less than 2.9 percent a year, barely the pace of consumer inflation.

At the time that he submitted his 2009-10 Executive Budget, Governor Paterson proposed to close the budget gap of $13.7 billion, that he was projecting at the time, with $9.15 billion in spending cuts, $3.076 in revenue increases and $1.137 billion in "non-recurring actions (i.e., one-shots). This plan was very similar to (a) the budget balancing plans recommended by the Governor and adopted by the Legislature in the early 1990s and (b) the budget balancing plan submitted by Governor Pataki in 2003 when he finally addressed the deficit that the State faced as a result of the recession and the "job-loss" recovery of 2001 through 2003, in that it relied much more heavily on budget cuts than on revenue increases, and that the revenue increases that were being recommended were heavily weighted toward increases in fees and consumption taxes.

Governor Pataki's 2003-04 Executive Budget proposed $5.2 billion in General Fund spending cuts including a $1.27 billion cut in school aid, a $1.02 billion cut in Medicaid, a $1 billion cut in other local assistance programs, a $1 billion cut in state government operations, and the use of over $500 million of federal family assistance funds to cover portions of the cost of the Tuition Assistance Program and other programs that were traditionally funded with state revenues. This year, Governor Paterson is proposing $9.15 billion in General Fund spending cuts including a $1,872 billion in school aid, $246 billion in other education aid, and $1,668 billion in School Tax Relief for a total of $3.786 billion; and $2.626 billion in health care cuts, not including an additional $315 million in health care funding cuts outside the General Fund.

Back in 2003, Governor Pataki attempted to justify his policy choices by (1) asserting a relationship among taxes, government spending and the economy that is inconsistent with basic economic principles, and (2) presenting a mythical and incorrect rendition of New York State's economic history. This year, Governor Paterson is doing the same.

The 2003-04 Executive Budget's policy choices were premised on an incorrect assumption - - that tax increases (particularly income taxes based on the "ability to pay" of taxpayers at different income levels generally have a more negative effect on the economy than service cuts. This is particularly mistaken during a recession. If, for no other reason, this misconception should have been dispelled by the results of the temporary high-end income tax increase enacted over Governor Pataki's veto in 2003. Despite Governor Pataki's claim that this temporary 3-year increase (for the calendar year tax years of 2003, 2004 and 2005) in New York's top income tax bracket would result in an exodus of high income earners from New York State, the number of NYS personal income tax returns with income of $200,000 or more grew steadily from 300,815 in 2002, to 309,547 in 2003, to 352,949 in 2004 and 395,952 in 2005. Over this same period, the tax liability on these high income returns grew steadily from $9.5 billion in 2002 to $11.3 billion in 2004, $14.3 billion in 2004 and $16.7 billion in 2006. The portion of this revenue attributable to the temporary high end surcharge has been estimated by the NYS

Division of the Budget at approximately $1.2 billion in 2003, $1.5 billion in 2005, and $1.7 billion in 2005.

In 2003, Governor Pataki and other critics of the temporary high end income tax increase claimed that it would result in a significant decline in high income taxpayers and, therefore, in state tax revenue. Now with this prediction having proven to be far from accurate, some revisionist historians are arguing that while the number of high income returns in New York did indeed grow rapidly during this period, that the number did not grow as rapidly in New York as in other states, that revisionist history ignore the fact that overall population growth in New York State was much lower than in most other states and that the growth in the number of high income returns in New York far exceeded New York's overall population growth. Moreover, as the following table indicates, New York's high end income growth was highest in the highest income categories. While the number of returns with income of $500,000 or more grew by 48%, the number of returns in the $40,000 to $75,000 range grew by only 1.2%.

NY Adjusted Gross Income Ranges			**2002 to 2005 Change in Number of Tax Returns**	
			#	**%**
40,000	to	75,000	21,558	1.2%
75,000	to	100,000	52,641	8.7%
100,000	to	150,000	82,610	16.8%
150,000	to	200,000	39,539	22.3%
200,000	to	500,000	54,009	25.2%
500,000	to	1,000,000	18,715	36.7%
1,000,000	to	5,000,000	17,621	56.8%
5,000,000	to	10,000,000	2,313	87.3%
10,000,000	and	above	2,479	165.2%
200,000	and	above	95,137	32%
500,000	and	above	41,128	48%
All Returns			93,843	2%

Moreover, as astounding as it may seem, estimates from the Executive Budget indicate that all of the income growth in New York State from 2002 to 2009 has gone to the wealthiest 5 percent of taxpayers, In 2009, the other 95 percent of households will have roughly the same amount of income that they had in 2002. When you factor in inflation, the combined income of the bottom 95 percent of New Yorkers actually shrunk.

How should New York State balance its budget during the current recession?

In reality, neither tax increases nor service cuts are desirable during a recession. Both take demand out of the economy - making recessions longer and deeper, and making recovery more difficult. But New York, like most other states, is required to balance its budget in both good times and bad.

So the states face a real dilemma during economic downturns - having to figure out what mix of spending cuts and tax increases will do the least harm. Ideally, during such periods, the Federal government, which is not required to run balanced budgets and which is responsible in our governmental system for overall macroeconomic management, will assist the states with some form of counter-cyclical financial assistance.

But what are the states to do during economic downturns absent federal aid or sufficient federal aid to avoid spending cuts and/or tax increases? Joseph Stiglitz, winner of the 2001 Nobel Prize in Economics, and Peter Orszag, then of the Brookings Institution and now the director of the U.S. Congressional Budget Office, in paper that they co-authored on this subject (***Budget Cuts vs. Tax Increases at the State Level: Is One More Counter- Productive than the Other During a Recession?***) conclude that a temporary increase in the tax on the portions of income over some relatively high level is the least damaging mechanism for balancing state budgets during recessions. On the other hand, they conclude that basic economic reasoning indicates 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. Increases in consumption taxes and fees will take more demand out of the economy than tax increases on the tax on the portion of income over some relatively high level but less demand than cuts in locally-produced goods and services or transfer payments to lower-income families.

The strategy that Governor Pataki proposed for balancing the 2003-04 budget was very similar to (a) the ways in which New York State balanced its budget during the recession of the early 1990s, and (b) the plan that Governor Paterson is proposing this year. Governor Pataki claimed that New York State balanced its budgets during the recession of the early 1990s with massive tax increases. And, he implied that these tax increases were of the kind that he was implicitly characterizing as "job killing" tax increases. A check of the budgets of the early 1990s shows quite a different story - - there were tax and fee increases during the early 1990s, but they represented less than 25% of the budget balancing actions taken during those years AND those tax and fee increases were overwhelmingly consumption and other regressive taxes and fees rather than taxes based on the “ability to pay” principle.

In 1989, the Coalition for Economic Priorities, a broad-based coalition co-chaired by the heads of the NYS Council of Churches, the NYS Association of Counties, and the NYS AFL-CIO, came together to lobby for the deferral of the remaining steps of the large, multi-year personal income tax cuts that had been enacted in 1987. This coalition consisted of organizations that foresaw the huge shift to local property and sales taxes that were inherent in the Governor's budget proposals, as well as organizations that were worried about the impact of the proposed budget cuts on the State's most vulnerable populations and on the quality of life for all New Yorkers. But the Governor and the Legislature refused to take the advice of this coalition. Instead, in 1989, the State government implemented a very large reduction in the State's personal income tax.

Based on Governor Pataki's expositions on the relationship between state tax policy choices and the economy, those large personal income tax reductions should have somehow stimulated the State's economy and insulated it from the accelerating recession. But, as we know, that did not happen. Instead, the State's economic situation got worse.

In 1990, the main budget, which was adopted in May, included a deferral of the scheduled income tax cuts but it did not include any increases in the progressivity of the state income tax. There were real and substantial state tax increases in the originally adopted 1990-91 budget but those tax increases were particularly misguided as the Fiscal Policy Institute stated in its analyses and its budget testimony during the remaining years of the Cuomo administration.

In December of 1990, the Legislature enacted a mid-year $1 billion deficit reduction package, with all the gap closing being done on the expenditure side of the ledger. In 1991, the State continued this approach to budget balancing with one small exception, a relatively small increase in the tax on incomes over $100,000, that paled in comparison to the emphasis during this period on closing the State's budget gap through service cuts and increases in fees and regressive taxes.

One important result of the State's budget balancing strategies during this 1989 to 1991 period was to place incredible pressure on the local property and sales taxes. From 1987 to 1992, local property tax revenues were up by 50% from $14 billion to $21 billion, while state income tax revenues increased by only 22%. There was a clear and massive shift from the income tax to the property tax during this period.

Learning from Experience: The Legislature's 2003 Better Choice

In May 2003, the Legislature passed the Governor's budget bills but with significant changes from what the Governor had originally proposed. By then, the 2-year budget gap had grown to $12.6 billion, due to revenue and spending re-estimates. Despite the growth in the size of the gap, the Legislature adopted a much more balanced approach to balancing the state budget, relying more heavily on revenue increases than the Governor had originally recommended and reducing many of the spending cuts that had been recommended by the Governor.

Ten days after the original legislative passage of its budget package, the Governor vetoed the Legislature's bill to raise state taxes, authorize transitional borrowing and allocate school aid and line-item vetoed 118 spending additions. Within 20 hours, the Legislature overrode every one of the Governor's vetoes on a bipartisan basis. The veto override votes were virtually unanimous in the Senate and overwhelming in the Assembly.

The Governor originally argued that the revenue increases enacted by the Legislature would not cover all of its spending restorations. But, shortly thereafter, the Congress adopted a significant but temporary "state fiscal relief package." With this infusion of Federal "budget balancing" aid, the Governor concluded that the 2003-04 state budget, as adopted, was credibly balanced.

The budget package adopted by the Legislature in May 1993 avoided the extremes that had characterized the budget balancing packages of the early 1990s and the plan proposed by Governor Pataki in January 2003.

As part of the 2003 enacted budget, the Legislature adopted a temporary 3-year increase in the State's top income tax rate from 6.85% to 7.7% on taxpayers with taxable incomes above $500,000 regardless of filing status, and 7.5% in 2003, 7.375% in 2004, and 7.25% in 2005 on married couples with incomes above $150,000 and single individuals with incomes above $100,000. The revenue raised from these temporary rate increases ($1.162 billion in the 2003-2004 state fiscal year, $1.535 billion in 2004-2005, $1.482 billion in 2005-2006, and $435 Billion in 2006-2007) contributed significantly to New York State being able to get through the economic downturn without economically counterproductive service cuts of the magnitude that Governor Pataki had proposed. Moreover, as we have indicated earlier in this section of Budget Equity, these tax increases did not have the negative impact on the State's economy or on the number of high income taxpayers in the state that Governor Pataki had predicted in vetoing them.

Does New York State have a spending problem or a revenue problem?

Some critics like to say that the State's structural budget gap is proof that New York State has a "spending" problem and that state spending is growing faster than state revenues. Their implication is that New York State agencies are not managed well and that spending is out of control. But a careful analysis of changes in the state revenues and expenditures over the last decade shows that revenues would have grown faster than expenditures if the State had not enacted multi-year, back-loaded tax cuts plans annually from 1994 to 2000, and then again in 2006; and if the important new spending commitments that have been made since 1997 - from the original STAR exemptions enacted in 1997 to the new Middle Class STAR rebate checks and the statewide solution to the court decisions in the Campaign for Fiscal Equity lawsuit – were accompanied by new revenues.

Important new commitments were made in the last several years. As these commitments are phased in over time, their costs will increase. Among the most important of these new commitments are the following.

- The state takeover of the full cost of the non-federal share of Family Health Plus and the capping of the growth in the counties' share of Medicaid costs will cost almost $1 billion during the current fiscal year, an estimated $1.35 billion in the fiscal year that begins on April 1, 2008, and more than $2.5 billion in 2010-11.

- The STAR program which began a decade ago cost $582 million in the first year (1998-99) of its implementation, $2.5 billion in the first year in which it was fully phased-in (2001-02), and $4 billion in 2006-07 ($3.32 billion for the original STAR exemptions as enriched, and $673 million for the first year of STAR rebates. The new Middle Class STAR rebates authorized in 2007, further enrichments to the original STAR exemptions, and underlying growth are estimated to increase the annual cost of the STAR programs to more than $6 billion in 2010-11.

- In 2007, Governor Spitzer proposed, and the Legislature adopted with a few modifications, a legitimate statewide solution to the court decisions in the Campaign for Fiscal Equity lawsuit. These reforms replaced approximately 30 individual aid programs (under which $12.5 billion was distributed in 2006-07) with a "foundation" formula that bases districts' aid on a calculation of the amount necessary to provide all pupils with a sound basic education. As enacted, the 2007 reforms called for a 4-year phase-in that would increase this general operating aid in four annual steps to $18 billion in 2010-11; and required districts receiving substantial aid increases to enter into Contracts for Excellence with the State Education Department to ensure that these new resources are used effectively to increase student performance. Another part of this initiative increased funding for the state's Universal Pre-Kindergarten program by 50%.

- In finalizing the 2006-07 State Budget, the Legislature put into place a solution, called Excel, to the school facilities part of the Campaign for Fiscal Equity law suit. The costs of honoring this important commitment grow each year.

While there may have been better ways of designing some of these new commitments, it is clear that they all addressed important priorities. But by adding these important new commitments to the State Budget without adding revenue to pay for them, the State will have structural deficits unless current revenues grow fast enough to both cover both the ordinary growth in the cost of existing programs and these new commitments. As this year's budget indicates, such rapid growth is not likely to be sustained.

Establishing a Fair, Adequate and Economically Sensible State-Local Tax System

State policymakers should reestablish a fair, adequate and economically sensible tax system rather than neglecting the State's human and physical infrastructure by not investing in the State's future. To address the unmet needs identified in this edition of Budget Equity, and to avoid those costs savings proposals advanced by the Governor that are likely to have negative effects on the State's economy or on the health of New York residents, state policymakers should consider steps that would make the tax system fairer while raising the revenue necessary to balance the budget in an economically sensible manner.

The most important steps in this direction would be for New York to reform its personal and corporate income tax structures. The additional personal and corporate income tax loopholes that Governor Paterson has proposed to close as part of his Executive Budget will make substantial improvements in the state's tax structure – evening the playing field between those who abide by the spirit as well as the letter of the law and those who are using provisions of the tax law for purposes that were never intended. In regard to the personal income tax, New York should consider approaches that will ensure that the wealthiest New Yorkers pay their fair share in state and local taxes, and which will allow the state to reduce the pressure that it is currently placing on local property and sales tax bases.

New York State should balance its budget during the current economic downturn in ways that will not make economic conditions worse. The Governor and members of the state Legislature should carefully analyze the budget balancing strategies of the early 1990s and those of 2003 and make policy choices that will take the least amount of demand possible out of the state economy. Among the many ways in which New York could move in this direction would be by reenacting the top brackets that were temporarily in place during 2003 through 2005, and/or by adopting the top brackets from New Jersey (8.97% on income above $500,000) and California (10.3% on income above $1 million

Reforming the STAR Property Tax Relief Program

In 1997, Governor Pataki got the message that by cutting the top rate on the State's progressive personal income tax; he was cutting the wrong tax, in the wrong way, at the wrong time. In his 1998 State of the State Address, he put a positive spin on this recognition of the fact that the income tax is a fair tax and that the overwhelming majority of New Yorkers do not feel oppressed by it. "Last year we knew it was time to build on the tax cuts of the first two years. From this podium, I told you that it was time to cut taxes again. Different taxes. Oppressive taxes. Property taxes." It is, however, unfortunate that this focus on oppressive taxes did not take center stage until after the state had cut the income tax by over $4.5 billion a year (now $7 billion a year) with only half of this amount, at most, staying in the New York economy.

While Governor Pataki's STAR plan was aimed at an important problem, it works in an inefficient and half-handed manner. By allocating property tax relief in a way that is unrelated to the amount of a household's property tax bill relative to its income, it delivers much less relief to those who are truly overburdened by property taxes than would a substantial expansion of the state's circuit breaker tax credit, at one-half the current $3.2 billion annual price tag of the STAR program, and much more to homeowners for whom property taxes represent a very small percentage of their income.

Under STAR, the amount of tax relief to which a homeowner is entitled can vary with the median home value in his or her county of residence, but not with the magnitude of that homeowner’s property tax burden relative to his or her income. The plan's one income test (whether a senior homeowner's income is above or below $60,000 a year, with that amount now adjusted annually to reflect changes in the cost of living) creates an illogical notch effect, while begging the question of a rational sliding scale based on income. While Governor Pataki argued for STAR on the basis that some people were literally being taxed out of their homes, STAR does not target its relief to such households. In addition, two taxpayers with the same income and the same size property tax bill could get widely varying levels of relief depending on where they happen to live.

The STAR plan is also flawed in that it provides relief only to homeowners. This ignores the fact that tenants also pay property taxes. While homeowners pay property taxes directly, tenants, through their rental payments, carry a substantial portion (usually estimated as being more than one-half) of the property taxes paid by the owners of their buildings. But under STAR, neither tenants nor landlords receive any relief. Only the owners of owner-occupied dwellings are helped by STAR. The result is extreme racial disparities. Over 62% of White households live in owner-occupied dwellings, while the comparable figure for Black households is 29%. Replacing

STAR with an expanded circuit breaker credit would also eliminate such unequal treatment since it provides relief to renters, as well as homeowners.

To ensure fairness, property tax relief should not discriminate on the basis of geography or on the basis of whether someone is a renter or a homeowner. STAR fails on both of these counts. Enriching the state's real property tax circuit breaker credit would provide a more targeted, cost-effective means of providing property tax relief to those who are truly overburdened by the current system.

As a key part of the 2007-08 Executive Budget, Governor Spitzer has proposed an increase in STAR benefits based on income. The Legislature adopted a version of his plan but provided the relief through a system of rebate checks rather than through increases in the basic and (senior) enhanced STAR exemptions. While the Middle Class STAR Rebate Checks program takes income into consideration, it is still not adequately targeted to be an effective and efficient property tax relief mechanism since (a) it does not take the size of a homeowner’s property tax bill into consideration; (b) it is still based on county and school district averages of important variables; and (c) it still excludes renters. A properly designed middle class circuit breaker could address all of these shortcomings. Under such a circuit breaker, a household could be eligible for a percentage (e.g., 70%) of the amount by which its property taxes (or 20% of rent as a renter’s “property tax equivalent” exceed a fixed percentage of its income.

Under the Middle Class STAR rebate program, two families living in the same school district get the same benefit if they both made $50,000—even if one has a property tax bill of $3,000 a year and the other had a bill of $6,000 a year. In addition, the Middle Class STAR rebate check program does not address the problem of two families with the exact same income and the exact same property tax bill getting substantially different benefits if they happen to live in different parts of the state. And, both STAR and the Middle Class STAR rebate program provide benefits only to homeowners even though it is clear that property taxes are paid on rental properties (frequently at a higher effective rate than owner-occupied residences) and that those property taxes are divided in some proportion or other between landlords and tenants.

Governor Paterson has proposed eliminating the Middle Class STAR Rebate Checks program as part of his Executive Budget. The Legislature can now take the next step by replacing this program with a properly targeted Middle Class Circuit Breaker that covers renters, as well as homeowners.

Seeking Federal policies that make it easier rather than harder for the states to balance their budgets

New York's government, labor, business and civic leaders should work with their counterparts in other states and at the national level to secure the enactment of federal policies that will make it easier rather than harder for the states to balance their budgets.

1. New York State leaders should work with their counterparts in other states to ensure that the Congress passes an economic stimulus bill that includes substantial “state fiscal relief,” of approximately $150 billion out of the total package of $800 billion, as proposed by President Obama. The Congress provided $20 billion in state fiscal relief during the last recession

under President Bush. The current recession is already much deeper than the recession of earlier this decade making the need for a more extensive package of state fiscal relief essential. Such assistance will reduce the amount of budget cutting and/or tax increasing that the states will need to do in order to balance their budgets during the current recession. Because the states have to balance their budgets in both good times and bad, such federal assistance during downturns is necessary so that the states are not forced to take actions that will counteract the federal government's efforts to stimulate the economy.

2. New York leaders should work to ensure that deductibility of state and local taxes on federal income tax returns is maintained. To eliminate this deduction would mean that taxpayers would be paying a tax on a tax. Federal deductibility of state and local taxes paid is essential to the workings of a federal system such as that which exists in the United States.

3. New York leaders should urge Congress to eliminate the current treatment, under the Federal Alternative Minimum Tax, of the deduction for the state and local taxes paid. As Senator Kay Bailey Hutchinson has pointed out, "For those in states with income taxes, their tax deduction benefit has been diminished by the alternative minimum tax, AMT. People can deduct their state and local income taxes when calculating their regular taxes, but not when determining the AMT. The difference often is the reason people must pay the higher alternative tax. In fact, state and local taxes account for 54 percent of the difference between the AMT and the regular tax calculation. This particularly hurts the 60 percent of AMT payers who are from states with higher income tax rates. Eliminating this discrepancy would go a long way toward reducing the number of people affected by the AMT." *Congressional Record*, February 27, 2003, Page S2924.

4. New York leaders should work for the repeal of the federal law (P.L. 86-272) that prohibits the states from taxing the income of corporations that have sales but no property or employees in a state. As more states, including New York, move to apportioning income solely on the basis of the portion of a firm's sales in the state (i.e., the Single Sales Factor proposal adopted by New York in 2005 to be phased in over the course of the next three years), P.L. 86-272 (an outdated 1959 law which was supposed to be temporary) has the affect of making an increasing portion of the U.S. income of multi-state and multi-national firms not subject to taxation by any state. At the present time, many of the same corporations that have lobbied for the Single Sales Factor at the state level are working to expand P.L. 86-272 to make even less corporate income subject to taxation by the states.

5. New York State leaders should build regional and national coalitions in support of legislation that would (a) repeal the limit that the Congress enacted in 2000 on the size of the loans that the federal government can make to state and local governments for tax revenue losses directly attributable to presidentially-declared major disasters, and (b) waive the requirement for the repayment of such loans when the losses involved are the result of terrorist attacks. This could provide both New York State and New York City with at least $1.6 in aid to make up for September 11-related tax revenue losses during the 2001-02 fiscal year. No reimbursements have yet been received for these losses even though a review by the U.S. Government Accountability Office (GAO) validated the reasonableness of the Pataki Administration's estimates of the amounts involved.

6. New York leaders should work for a permanent change in the Federal Medicaid Assistance Percentage (FMAP) in addition to supporting the effort for a temporary increase in the FMAP as an efficient and effective way to provide much needed “state fiscal relief” as part of the economic recovery bill which is now being debated in Congress. The FMAP, which determines the federal share of a state’s Medicaid costs, is currently based on only one factor – per capita income. On this one factor, New York is a relatively wealthy state and receives the minimum federal share of 50%. But New York’s unusual demographics underscore the problems with this formula. While New York, Connecticut and New Jersey, for example, are all among the 10 wealthiest states in the nation in terms of per capita income, when it comes to poverty rates, there is a wide divergence among the three states’ situations with New York having one of the highest state poverty rates in the nation and New Jersey having one of the lowest.