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MEMORANDUM

TO: NYSCOPBA Executive Board
FROM: Lippes Mathias Wexler Friedman LLP
DATE: January 15, 2019
SUBJECT: Executive Budget Proposal 2019-2020

KWS

On Tuesday, January 15, 2019, Governor Cuomo delivered his proposed Executive Budget for State Fiscal Year ("SFY") 2019-20.

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

On behalf of NYSCOPBA, we have conducted a preliminary review of the entire Executive Budget proposal for SFY 2019-20 and have provided a brief summary below for your review and reference. We will continue to review the Executive Budget proposal in the next few weeks and provide additional details as necessary. We will also thoroughly analyze the Governor's 30-day amendments when they become available since many of the details associated with the Governor's spending plan for 2019-20 will be contained within the amendments. If you have any questions or comments about any information contained within this memorandum, as always, please feel free to contact us.

New York State Financial Plan

Governor Cuomo proposes to spend \$102 billion in SFY 2019-20 on a State Operating Funds basis. This represents an increase of \$1.879 billion or 1.9% from the \$100.1 billion now projected to be spent in the current fiscal year.

On an All Governmental Funds basis (which includes Capital Projects and funding from the federal government that is not included in the State Operating Funds basis), Disbursements are projected to total \$175.2 billion, up \$3.5 billion or 2% from the current fiscal year projection.

DOCCS:

Of the \$102 billion mentioned above, \$2.619 billion is allocated to the Department of Corrections and Community Supervision (DOCCS). This represents an increase of \$11 million or 0.4% from the \$2.608 billion projected to be spent in the current fiscal year.

As you know, there is often a difference between a Department's legal authority to spend (defined as an Appropriation) and the amount the Division of the Budget (DOB) anticipates it will actually spend in cash during a given period. Regrettably, DOB does not provide the same programmatic breakdown of cash disbursements for DOCCS or other Departments as it does for Appropriations. So, to get at the most important DOCCS program (Supervision of Inmates), we must rely on the breakdown of Appropriations provided on the DOB web site.

On an All Funds basis, the Governor is proposing a DOCCS Appropriation for 2019-20 of \$3.380 billion.

Of this amount, \$2.854 billion or 84% is for State Operations. Of this amount, \$1.515 billion or 53% is allocated for the Supervision of Inmates program. This represents an increase of \$7.9 million or 0.5% from the current fiscal year.

DOB projects DOCCS will employ 29,175 Full-Time Equivalent employees (FTEs) at the end of the current fiscal year and is projected to grow by 153 to 29,328 at the end of SFY 2019-20. The Supervision of Inmates program is projected to see an increase of 116 FTEs or 76% of the total growth in projected employment.

The narrative on the DOCCS Appropriation further states "The Executive Budget recommends a workforce of 29,328 FTEs for the Department, an increase of 153 FTEs from FY 2019. This workforce level reflects an increase in program services and supervision of inmates staff related to the NYCLU SHU agreement and the DOCCS solitary confinement reform bill" which is explained below on page 4 of this memorandum.

The Governor proposes no facility closures in the SFY 2019-20 budget. The prison population is projected to remain at its current level (47,400) throughout all the years of the Financial Plan (through SFY 2022-23).

OMH:

Of the \$102 billion in the State Operating Funds Disbursements proposed for SFY 2019-20, \$2.501 billion is allocated to the Office of Mental Health (OMH). This represents a decrease of \$0.132 billion or 5% from the \$2.633 billion projected to be spent in the current fiscal year.

On an All Funds basis, the Governor is proposing an OMH Appropriation for 2019-20 of \$4.396 billion.

Of this amount, \$2.285 billion or 52% is for State Operations. Of this amount, \$0.330 billion or 14% is allocated for the Forensic Services program. This represents a reduction of \$1.7 million from the current fiscal year.

DOB projects OMH will employ 13,677 FTEs at the end of the current fiscal year with projected growth of 40 to 13,717 at the end of SFY 2019-20. Of this amount, 2,669 or 19.4% of the total are dedicated to the Forensic Services program. Total employment in this program is projected to grow by the entire 40 FTEs estimated for the entire agency.

Programmatically, “the Budget provides an additional appropriation of \$100 million to support the replacement of the Mid-Hudson Forensic Psychiatric Center in Orange County, which includes buildings over 100 years old and not designed for current standards of care.”

OPWDD:

Of the \$102 billion in the State Operating Funds Disbursements proposed for SFY 2019-20, \$1.787 billion is allocated to the Office for People with Developmental Disabilities (OPWDD). This represents a decrease of \$0.069 billion or 3.7% from the \$1.855 billion projected to be spent in the current fiscal year.

On an All Funds basis, the Governor is proposing an OPWDD Appropriation for 2019-20 of \$4.822 billion.

Of this amount, \$2.244 billion or 47% is for State Operations. Of this amount, \$0.645 billion or 29% is allocated for the Institutional Services program. This represents an increase of \$14 million or 2.2% from the current fiscal year.

DOB projects OPWDD will employ 18,572 FTEs at the end of the current fiscal year and projects no change by the end of SFY 2019-20. Of this amount, 2,906 or 16% of the total are dedicated to the Institutional Services program. Total employment in this program is not projected to change from the level projected on March 31, 2019.

Article VII Proposals

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

Prison Closures: The Governor has refrained from proposing any prison closures as part of his initial Executive Budget presentation. However, this does not necessarily mean that closures will not be proposed. As we indicated in prior correspondence,

several initiatives that the Governor is seeking to implement may in fact be included within his constitutionally permitted 30-day amendments. As such, he could still seek to close prisons in his soon-to-be-revealed amendments. We will review these amendments in the coming weeks to determine if closures are being proposed and will promptly advise the Board of the same.

SHU Reform Proposal: As part of his Executive Budget proposal relating to public safety, the Governor is proposing legislation to “create a more therapeutic based sanction” in relation to segregated housing than is currently utilized within the State’s prison system. The Governor is **not** proposing to codify the Legislature’s “HALT” initiative, which may not sit well with the Legislature. On behalf of NYSCOPBA, we have been advocating aggressively with the second floor for the past few years about our concerns with HALT. While we will continue to advocate for no new changes to SHU policy with the second floor and the Legislature, at a minimum the Governor is seeking to thwart the Legislature from implementing HALT by proposing this initiative. We will be reviewing the specifics of this proposal in the coming weeks and will apprise the union of our findings. In the meantime, some of the highlights of this proposal include the following:

- “Special population” inmates: As with HALT, the Governor’s proposal would prohibit any inmate deemed to be a part of a “special population” from serving any time in SHU. However, unlike HALT which defines “special population” inmates to include inmates 21 years of age or younger and inmates 55 years of age or older, the Governor’s proposal limits such definition to inmates in an adolescent offender facility and pregnant inmates.
- New SHU time limitations are proposed as part of this initiative and would take effect as follows: on and after April 1, 2021 no inmate could be placed in SHU for more than 90 days; on and after October 1, 2021 for no more than 60 days; and on and after April 1, 2022 for no more than 30 days.
- The proposal would require the establishment of “residential rehabilitation units” (“RRUs”) and would authorize the placement of inmates who have completed SHU within such RRUs when they are determined to be an unreasonable risk to safety and security of staff, other inmates or to the facility in general. Within these units, inmates must be provided with at least five hours of out of cell programming, activities, or recreation four days per week and at least two hours of recreation on other days.
- The proposal also defines a third unit – a “step down unit” (“SDU”) – that inmates could be diverted to from either SHU or RRU when they have shown a history of violence or substance abuse to help prepare them to return to general population or their respective community. Inmates in an SDU must participate in a multi-phase progressive program, earning increased incentives and fewer restrictions as they meet benchmarks and individual goals. They are granted the same out of cell hours as inmates in RRUs.
- This initiative also creates “adolescent offender separation units” (“AOSUs”) within adolescent offender facilities for inmates who receive disciplinary confinement sanctions or have been determined to be an unreasonable risk to the safety and security of staff, other inmates or the facility generally. Similar

out of cell hours are required for these adolescent inmates as those required for RRUs and SDUs.

- Finally, all staff assigned to an SHU, RRU, SDU or AOSU must receive specialized training to deal with this offender population, per the Governor's proposed initiative. Moreover, the superintendent of the facility would maintain the right to restrict employees from working on one of these units if the safety and security interests of the facility warrant such action.

As stated above, we will be performing a more thorough review of this proposal in the next several days and will inform the Board of our findings.

Protecting Personal Privacy of Union Members: In recent correspondence to the Executive Board, we indicated that we had been endeavoring to have privacy protections for union members incorporated into the Executive Budget proposal for SFY 2019-20. The Governor has, in fact, proposed legislation that would prevent public employers from disclosing personal information (i.e., home addresses, email addresses, telephone numbers) of public employees. However, an exception is proposed to allow such disclosure to the employee organization representing such employees, provided such disclosures do not occur more than quarterly. The Governor's proposal is designed to protect public employees from union busting campaigns following the *Janus* decision last year.

FOIL Reform: Once again, the Governor is proposing to reform the State's Freedom of Information Law ("FOIL") as part of his Executive Budget proposal for SFY 2019-20. As was the case last year, the vast majority of the proposed changes would only impact elected officials. However, once again, the Governor is proposing a change that would impact all collective bargaining units. Specifically, the Governor is proposing to make the proposed terms of a collective bargaining agreement available for public review. As we did last year, we will advocate to the Legislature for the removal of this language from the final version of the Executive Budget.

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

The proposals contained in the Governor's fiscal plan for 2019-20 limit the amount of reimbursement of Medicare Part B premiums in two ways. First, the dollar amount for reimbursement would be capped at a standard rate of \$135.50 per month, effective April 1, 2019. Should the Medicare Part B premiums be increased by the federal government in the future, the amount of the reimbursement by New York State would be subject to the budget process.

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

Sliding Scale Health Care Reimbursement: The Governor is proposing legislation that would impact health insurance for future State *civilian* retirees who begin their State employment on or after April 1, 2019. Uniformed employees in a service-based retirement plan would not be impacted by this proposal. (All current members of NYSCOPBA and the vast majority of NYSCOPBA’s future members would therefore not be impacted by this proposed plan.) For these prospective civilian retirees who retiree with less than 30 years of service, the State would provide health insurance coverage on a graduated scale based upon years of service. A similar program was proposed by the Governor several years ago but was not incorporated into the final Executive Budget.

Binding Arbitration Extender: The Governor is proposing to extend the provisions of the State’s binding arbitration law until July of 2024.

Gun Reform: As part of his Executive Budget proposal, the Governor is seeking to enact legislation that would prohibit the possession, manufacture, transportation, shipment and sale of items that accelerate the firing rate of firearms, rifles or shotguns. In addition, the Governor is seeking to establish a 10-day waiting period before a licensed gun dealer may deliver a firearm, shotgun or rifle to a purchaser when the sale has not been approved or denied by the National Instant Criminal Background Check System.

Compassionate Parole Initiative: The Governor is proposing legislation to authorize “compassionate parole” for certain inmates. To qualify for compassionate parole, an inmate must be at least 55 years of age and suffering from a chronic or serious condition, disease, syndrome or infirmity that is exacerbated by age and has rendered the inmate incapable of providing self-care within a correctional facility setting. Inmates serving a sentence due to certain murder charges or those serving a sentence of life without parole would be ineligible for the program, irrespective of their physical health.

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

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

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