



memo

TO: Business Council Members

FROM: Ken Pokalsky

SUBJECT: One House Budget Update

DATE: 3/19/12

Budget Update

Both the Senate and Assembly have introduced their respective budget proposals, and both included a significant number of changes to the Governor's Executive Budget. The following summarizes our initial review of major changes.

Both houses generally stayed within the spending parameter set forth the Executive Budget, although both offered up different arrays of tax reductions. The Senate package included tax reductions for small businesses, a new tax credit for new job creation, early repeal of the 18-A energy assessment, and a cap on year to year increases in total income tax revenues to the state along with mandated rebating of "excess" PIT income, among other changes. Overall, their tax cut package totaled over \$1 billion, not all effective immediately. The Assembly's main tax proposal is elimination of income tax liability for certain low income taxpayers, and a reduction in the PIT rate for joint filers earning under \$30,000.

On economic development issues, the Senate package reduces the Governor's proposed capital program, but expands tax increment financing, extends the state's small tech company incentive program by one year, and makes numerous development program changes. The Assembly imposes significant new disclosure and reporting requirements on the Governor's Regional Economic Development Councils and the state's new "consolidated funding application" process; adopts a new "Back to Work" program aimed at providing job services to persons who have exhausted their U.I. benefits, and extends the small tech company program through 2017.

We look forward to your comments on these issues, and any others of concern to your business that we should be aware of. Thanks.

CONTRACT PROCUREMENT

The Senate

- Deletes Executive Budget provisions regarding:
 - allowing lowest price procurement for service contracts;
 - allowing best value procurement for commodity contracts;
 - giving the OGS commissioner authority to decide which procurement practice, lowest price or best value, would yield the most cost savings for commodity or service centralized contracts;
 - requiring agencies to use centralized contracts for services before attempting agency or multi-agency contracts;
 - exempting centralized contracts from OSC pre-audit review;
 - expanding electronic bid submissions and allowing agencies to require it as the sole method to accept bids; and
 - making term appointments for expert services to fill vacancies when they are not available through and appointment from an eligible list.
- Amends Executive Budget provisions:
 - allowing extra weight to be given to small businesses and M/WBEs when determining bids for service contracts only after the OGS commissioner issues rules and regulations establishing criteria for identifying factors; and
 - gives OGS commissioner authority to create standards and a centralized contract for printing, but only allows the contract to be awarded based on lowest price.
- Adds language to:
 - Expand state M/WBE program to include contract preferences for combat veterans (S.6258-B, Part MM).

The Assembly

- Deletes Executive Budget provisions regarding:
 - allowing lowest price procurement for service contracts;
 - allowing best value procurement for commodity contracts;
 - giving the OGS commissioner authority to decide which procurement practice, lowest price or best value, would yield the most cost savings for commodity or service centralized contracts;
 - exempting centralized contracts from OSC pre-audit review; and
 - making term appointments for expert services to fill vacancies when they are not available through and appointment from an eligible list.

ECONOMIC DEVELOPMENT FUNDING AND PROGRAMS

The Senate

- Reduces total capital appropriations for economic development by \$445 million “without prejudice,” seeking additional details on the Executive proposal. Cuts included:
 - \$75 million funding for the “New York Works” fund;
 - \$130 million funding for regional economic development council projects; and
 - \$250 million for Albany Nanoscience center.
- allows school districts to agree to participate in tax increment financing bonds to support local development projects (S.6259-C Part S);
- Establishes the western New York power proceeds allocation act, to direct investment of proceeds from unallocated expansion replacement power (see also S.5835-A/Maziarz) (S.6258-B Part NN);
- deletes multiple program changes from the Executive Budget including increased bonding authority for NYC transit authorities, authority for UDC to sell Javits center property, expand UDC’s authority to make economic development grants, and modifications to corporate filing provisions.

The Assembly

- Increased total capital appropriations for economic development by adding:
 - \$50 million for “Restore NY Communities” program funding; and
 - \$150 million for unspecified high technology, research and development activities.
- Decreased funding by:
 - Reducing Economic Development Fund appropriations by \$30 million; and
 - Reducing Jobs Now funding by \$11 million.
- Dropped key provisions from the Executive Budget, including:
 - prohibition on PSC regulation of voice over internet protocols (A.9058-C Part I);
 - authority for UDC to sell Javits center property (A.9058-C Part Q);
 - expand UDC’s authority to make economic development grants (A.9058-C Part T; and
 - modifications to corporate filing provisions (A.9058-C Part CC).
- Limited extension of UDC loan authority for one year, instead of permanent expansion (A.9058-C Part R).
- Begins shifting unclaimed bottle deposits back to the Environmental protection Fund, with \$20 million shifted in FY 2013 to \$114 million by FY 2019 (Part EE).

- Mandates state financing of 12 Department of Transportation regional offices, requires 60 day notice to the legislature prior to any consolidations (Part A.9058-C, Part FF).
- Mandates a public health study of natural gas extraction using horizontal drilling and hydraulic fracturing, to include a minimum 180 day public comment period (A.9058-C, Part GG).
- Subjects regional economic development councils to the state's open meeting law, subjects applications submitted through the ESDC consolidated funding application system to the state's freedom of information act, and mandates annual reports to the legislature on the implementation of and effect of CFA-funded projects (A.9058-C, Part HH).
- Creates the New York Dairy Task Force to develop a comprehensive plan to meet expanding product demand. (A.9058-C, Part II).

ENERGY AND ENVIRONMENT

The Senate

- Adds language to:
 - adopt bottle bill anti-fraud provisions; begin shifting unclaimed bottle deposits back to the Environmental protection Fund, with \$20 million shifted in FY 2013 to \$114 million by FY 2019; adopt new criminal penalties for violations (S.6258-B, Part II) (See also S. 5403-A);
 - delay best technology retrofits for heavy duty vehicles until 12/31/2015 (S.6258-B, Part JJ);
 - delay implementation of low sulfur heating oil until 7/1/2105 (S.6258-B Part VV);
 - for certain sites in Queens and Long Island, makes repowering projects eligible for brownfield program "environment zones" and manufacturing-related tax credits (S.6258-B Part XX); and
 - requires NYPA to evaluate power purchase agreements with base load generators in western New York (S.6258-B Part YY).
- Deletes language that:
 - Modifies notice provisions related to the On-Bill Recovery Program (S.6258-B, Part DD).

The Assembly

- Adds language to:
 - sweep up to \$200 million in unallocated funds from NYSERDA to the general fund (A.9055-C, Part N);
 - begins shifting unclaimed bottle deposits back to the Environmental protection Fund, with \$20 million shifted in FY 2013 to \$114 million by FY 2019 (A.9058-C, Part EE); and
 - mandates a public health study of natural gas extraction using horizontal drilling and hydraulic fracturing, to include

a minimum 180 day public comment period (A.9058-C, Part GG), and provides \$100,000 in funding.

EXECUTIVE COMPENSATION/EXECUTIVE ORDER 38

The Senate

- o Deletes the Executive Order language in its entirety.
- o Adopts new Not-For-Profit Corporations Law criteria for “reasonable” compensation for executives of non-profits that are “providers of services.”
 - applies to grants/contracts with office of mental health, office of mental retardation and developmental disabilities, office of alcoholism and substance abuse services, department of health, office of children and family services and the state office for the aging; and
 - requires DOB to develop reports and recommendations regarding executive compensation by for-profit entities that “receive significant state financial assistance or state-authorized payments” and for non-profits and b) administrative costs of these entities, with reports due by January 1, 2013. (See S.6256-C, Part H).

The Assembly

- o Leaves EO 38 compensation and administrative expense criteria intact.
- o Limits these criteria to Office for People with Developmental Disabilities, Office of Mental Health, Office of Substance Abuse Services, Office for Children & Family Services, Office of Temporary Disability Assistance, Department of Health, Office for the Aging, Division of Criminal Justice Services, Office of Victim Services, and the State Education Department.
- o Disallows waivers, but allows post-hearing “deviations” for cause (See A.9056-C, Part H).

FINANCIAL SERVICES

The Senate

- o Includes language to:
 - increase the cap on assessments for the Life Insurance Company Guarantee Corporation to an aggregate of \$575 million (S.6259-C Part CC);
 - create a sixth “certified capital company” to promote investments in qualified seed funds, with an aggregate total of \$150 million in available tax credits for investors (S.6259-C Part JJ);
 - clarify applicability of Gramm-Leach-Bliley transition rules (S.6259-C, Part PP); and

- modify the tax treatment of certain captive insurance companies (S.6259-C Part QQ).

The Assembly

- Includes language to:
 - create a sixth “certified capital company” to promote investments in qualified seed funds, with an aggregate total of \$150 million in available tax credits for investors; and
 - extend the Bank Tax Gramm-Leach-Bliley transition rules through January 1, 2015. (A.9059-C, Part X).

REVENUE/TAX/TAX CREDITS

The Senate

- Deletes Executive Budget provisions regarding
 - suspension of STAR exemptions to persons with tax delinquencies;
 - withholding sales tax collection authority from taxpayers with any state tax delinquencies;
 - allowing the state to exchange real property tax data electronically; and
 - restrictions on bank fees on levied bank accounts.
- Adds new provisions to:
 - adopts
 - a new 5.2% Article 9A tax rate for taxpayers with entire net income of \$290,000 or less, and a \$1 fixed dollar minimum tax for Subchapter S taxpayers with New York receipts of \$1 million or less;
 - a personal income tax credit equal to 6.65% of qualified business income for a sole proprietor with net business income of less than \$250,000; and
 - a new, refundable Article 9A and 22 tax credit equal to 6.85% of wages, up to \$5,000, for three years for each newly created job, with the credit increasing to \$8,000 if new jobs are filled by persons drawing unemployment insurance, and to \$10,000 if a business hires a returning military veteran (S.6259-C, Part R).
 - repeals the 2008 increases in the Public Service Department’s 18-A assessment. This provision would reduce the 2% Section 18-a Utility taxes one year early, and reduces the permanent annual 18-A assessment from 1 to .333 percent of utility gross receipts (S.6259-C Part U);
 - extends the qualified emerging technology company tax credits by one year, through the end of 2012 (S.6259-C Part X);
 - includes PILOT payments as real property tax payments, when paid by a tenant of property subject to the PILOT,

effective for tax years beginning on or after January 1, 2006 (S.6259-C Part Y);

- amends standard for determining domiciled taxpayer under the personal income tax to exclude non-principal residences where the taxpayer has ninety or fewer overnight stays (S.6259-C Part Z);
- creates the "New York Open for Business" office in the Department of Tax and Finance to assist business apply for economic development tax credits (S.6259-C Part BB);
- continues to allow an adjustment to a taxpayer's federal adjusted gross income under the personal income tax for qualified transportation fringe benefits by the amount allowed under federal law in place as of December 31, 2011 (S.6259-C Part DD);
- increases the cap on the state's historic structure tax credit from \$5 million to \$12 million, for tax years beginning before January 1, 2015 (S.6259-C Part EE);
- exempts items priced under \$1.50 (up from \$0.75) sold through vending machines from the state sales tax (S.6259-C Part FF);
- includes public and free library associations, towns and villages in the definition of exempt employers under the MTA mobility tax (S.6259-C Part GG);
- provides a personal income tax exemption for damages to residential property caused by Hurricane Irene and Tropical Storm Lee (S.6259-C Part HH);
- creates a sixth "certified capital company" to promote investments in qualified seed funds, with an aggregate total of \$150 million in available tax credits for investors (S.6259-C Part JJ);
- allows "environmental zones" for purpose of the brownfield program and related tax credits to be named by the Department of Environmental Conservation through the end of 2012 (S.6259-C Part LL); Senate REV Part LL Environmental Zones;
- expands the Brownfield Program definition of environmental zone, and increase the tax credit for premiums paid for environmental remediation insurance up to the lesser of \$50,000 (from \$30,000) or 50% of the cost of the premiums;
- caps the year to year increase in total state personal income tax revenues at the higher of 2 percent or CPI increase less 1 percent, and require that all income tax revenues over the cap be refunded to taxpayers on per capita pro-rated basis (S.6259-C Part MM);
- amends the Article 9A definition of "manufacturer" to include taxpayers with at least 2,500 manufacturing employees (S.6259-C Part NN);
- clarifies applicability of Gramm-Leach-Bliley transition rules (S.6259-C, Part PP);

- modifies the tax treatment of certain captive insurance companies (S.6259-C Part QQ); and
- amends the solar sales tax credit to provide a refundable credit for a qualified solar and energy storage manufacturing facility; a 20% credit for research and development and manufacturing property, and a 10% credit for qualified research and manufacturing expenses. (S.6259-C, Part H).

The Assembly

- Includes new provisions to:
 - adopt a reduced personal income tax rate for taxpayers with adjusted gross income under \$30,000 for joint filers, \$22,500 for heads of households; and \$15,000 for individuals (A.9059-C, Part R);
 - create a sixth “certified capital company” to promote investments in qualified seed funds, with an aggregate total of \$150 million in available tax credits for investors (A.9059-C, Part S);
 - extend the application date for the “New York Youth Works” tax credit, adopted last December, from July 1, 2012 to December 31, 2012; extends the latest employment commencement date from July 1, 2012 to December 31, 2012 (A.9059-C, Part U);
 - make certain provisions of the New York City tax code related to hotel room remarketers, adopted in 2010, effective on and retroactive to September 1, 2009 (A.9059-C, Part V);
 - modify and extend through 2017 the qualified emerging technology company facilities/operations/training tax credit (A.9059-C, Part W);
 - extend the Bank Tax Gramm-Leach-Bliley transition rules through January 1, 2015 (A.9059-C, Part X); and
 - extend the sunset for tax exemptions for alternative fuels, including E85, CNG, hydrogen, and B20 to 9/1/14 instead of 9/1/17 ((A.9059-C, Part D).

TELECOMMUNICATIONS

The Senate

- Accepted the Executive Budget language to restrict the Public Service Commission from regulating voice over internet protocol (VOIP) services (S.6258—C, Part I).
- Has not accepted \$25 million in broadband funding (part of the \$75 million “NY Works” appropriation) without executive clarification of the program’s implementation.

The Assembly

- Deleted language restricting PSC regulation of VoIP services (A.9058-C, Part I).

TRANSPORTATION ISSUES

The Senate

- Adds language to:
 - mandate 11 regional Department of Transportation offices (S.6258-B, Part EE);
 - proposes the "BRIDGE" reform act to remove DOT snow plowing expense and certain DMV costs from the dedicated bridge and highway trust fund. (S.6258-B, Part GG) (see also S.6258-C);
 - requires DOT to issue annual reports on progress of capital projects and the condition of state roads and bridges (S.6258-B, Part LL); and
 - allow non-divisible load permits for certain NYC highways; exempts these vehicles from city regulation (S.6258-B, Part SS).

The Assembly

- Adds language to:
 - mandate state financing of 12 Department of Transportation regional offices, requires 60 day notice to the legislature prior to any consolidations (A.9058-C, Part FF).

TORT REFORM

The Senate

- Imposes a \$100 million cap on appeals bonds for cases related to the Tobacco Product Master Settlement (S.6259-C Part AA).

TOURISM ISSUES

The Senate

- Deletes provision in the Executive Budget regarding:
 - merger of the Division of Lottery and the Racing and Wagering Board;
 - collection of unclaimed pari-mutuel vouchers for deposit into the racing regulation account; and
 - transferring operations of Bellayre Mountain to the Olympic Regional Development Authority and providing more seats for regional representation on their Board.
- Amends provisions in the Executive Budget to:
 - provide an additional \$660,000 for state marketing programs and an additional \$340,000 for tourism marketing under the county matching funds program.

- Adds provisions to:
 - solicit private bid to reconstitute NYC off track betting.

The Assembly

- Deletes provision in the Executive Budget regarding:
 - transfer the operation of Bellayre to the Olympic Regional Development Authority;
 - merge the Division of Lottery and Racing and Wagering Board; and
 - the collection of unclaimed pari-mutuel vouchers for deposit into the racing regulation account.
- Adds provision to:
 - provide an additional \$30 million to the ESDC Capital Projects budget for a new economic development program to focus on local and regional economic development initiatives; including tourism destination facilities, downtown and rural commercial center projects, manufacturing, and workforce development.

OTHER ISSUES

The Senate

- Includes language to eliminate the annual notice and signature requirements of the Wage Theft Prevention Act (S.6259-B, Part V) (see also S.6063/Defrancisco).
 - Imposes a \$100 million cap on appeals bonds for cases related to the Tobacco Product Master Settlement (S.6259-C Part AA).
 - Requires state regulatory agencies to issue annual reports on their permit issuance time periods (S.6259-C Part W).
 - Authorizes mixed martial arts (S.6259-C Part II).
 - Increases the cap on assessments for the Life Insurance Company Guarantee Corporation to an aggregate of \$575 million (S.6259-C Part CC).
- The Assembly
- Deletes all language allowing the Governor to transfer funds among state agencies.