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2017-2018 Final State Budget

The final approved \$153 billion spending plan was nine days late after both houses agreed to a 2-month emergency spending plan that would have kept government running after the April 1 deadline.

The budget contains language that will allow mid-year cuts in the event there are federal cuts in state assistance. If there is an \$850 million or more reduction in Medicaid assistance, the NYS DOB will submit a specific plan to the legislature to make cuts in state spending. The legislature would have 90 days to enact their own cuts or the DOB plan would take effect. The bill would allow a similar process if there are cuts in non-Medicaid federal aid.

Enhanced State Tax Deduction for Union Dues

This will increase the number of union members in the state eligible to deduct their union dues on their state tax return. Right now, only a small percentage of union members that itemize deductions on their federal taxes take this deduction due to limitations built into the law. The state budget agreement removes those limitations at the state level. Members will still need to itemize at the federal and state level to take advantage of the deduction. For those who currently do itemize at the federal level, the state will get rid of the current limit on the deduction and allow the full amount of union dues to be deducted. Previously, only the amount more than 2 percent of an individual's adjusted gross income was deductible.

421-a Renewal with Wage Standards

As a long-term priority of the NYC Building and Construction Trades, wage standards for construction workers on affordable housing projects funded by taxpayer dollars was finally approved. This new law will amend and re-establish the 421-a affordable housing credit for 35 years. Developers will now be required to pay new wage standards for construction workers of \$60 per hour in the Manhattan zone and \$45 per hour in the Queens and Brooklyn zones, on most projects qualifying for 421-a tax breaks. The law increases those amounts by 5 percent in 3 years and an additional 5 percent every three years thereafter. The law also sets up a comprehensive payroll certification and monitoring process to ensure the new wage standards are adhered to.

Taxes, Fees and Revenue

Millionaire's Tax – Extension of the millionaire's tax which would have expired at the end of 2017 was a top priority of the NYS AFL-CIO. The final agreement extends through December 31, 2019 the top tax rate of 8.82 percent (up from 6.85 percent) on high income earners.

Child and Dependent Care Credit - The Governor proposes to double the child and dependent care tax credit for families earning between \$60,000 and \$150,000 a year.

County-Wide Shared Service Property Tax Savings Plans

The original proposal to require counties to submit a plan for merging and consolidating services with local governments to the voters in a November referendum was rejected. The NYS AFL-CIO strongly opposed that proposal. The new plan will require counties to establish a panel with representatives of each local government to develop shared services and to reduce property taxes. School districts that opt to participate may be included in the plans. Any local government that does not wish to be included in specific aspects of the plans can withdraw. Also, any proposed change that under normal circumstances would have had to be approved by voters, still will.

Workers' Compensation

The following measures which were proposed as part of the budget negotiations were defeated by the NYS AFL-CIO:

- Start permanent partial disability ("PPD") duration caps at the date of injury;
- Effectively eliminate schedule loss of use awards;
- Cut benefits for most injured workers by changing the average weekly wage calculation process;
- Quadruple the amount of time injured workers would be required to seek treatment from company doctors if they were subject to Preferred Provider Organizations ("PPOs") from 30 days to 120 days;
- Restrict which doctors can participate in the workers' compensation system;
- Eliminate the Aggregate Trust Fund, which incentivizes settlement and ensures that benefits for the most seriously injured workers are protected from carrier insolvency;
- Permit the Board to reassign cases to different administrative law judges ("ALJs") at will;
- Add penalties for injured workers' attorneys.

The final worker's compensation bill included the following measures:

Temporary Disability Limit for Permanently Partially Disabled Workers

This measure effectively limits the time it takes for injured workers to reach maximum medical improvement (MMI). The time at which an injured worker reaches MMI was established in 2007 as the point to begin the running of the duration cap on PPD benefits. This will have the effect of starting the PPD cap at 2.5 years after the date of a worker's injury. The MMI limit will only apply to injuries that occur on or after the effective date of the legislation and will not affect anyone currently awaiting classification. This is not a hard cap as we built in a "safety valve." After reviewing medical evidence, if the Board determines that the injured worker has not reached MMI, then the MMI cap will not apply and the PPD duration cap will not begin to run until the Board determines that worker has reached MMI. Thus, the new cap will only affect workers who are not at MMI due to procedural and/or administrative delays in the classification process.

Safety Net Improvements

Previously, only workers classified as PPD with a disability of 81 percent or greater could petition for an extreme hardship redetermination as they neared the end of their duration cap. This threshold has been lowered to 76 percent for all injured workers, those currently in the system and for all new injuries. It will allow significantly more workers to apply for an extreme hardship redetermination to be designated totally industrially disabled.

Additionally, this legislation provides a procedural safeguard; mandatory review by the full Board, for determinations that would drop injured workers out of the safety net because of a downward modification of an ALJ's degree of disability determination by a panel of the Board. These changes to the safety net and the safety valve procedure described above are designed to offset the impact of the MMI limit.

Attachment to the Labor Market

Workers classified as permanently partially disabled no longer must prove ongoing attachment to the labor market to maintain their benefits. This provision is effective immediately and applies to all injured workers currently in the system. This is a new protection to ensure injured workers maintain the benefits they are entitled to.

Extraordinary Stress

This legislation prevents the Board from denying claims of extraordinary stress incurred during emergencies by police officers, firefighters, EMTs, dispatchers and workers certified to provide emergency medical care based on a defense that the stress incurred is no greater than what would be expected on that job. This defense has been used to deny coverage to uniformed workers and first responders in the overwhelming majority of circumstances. This provision is intended to ensure that workers who suffer from PTSD after a work-related emergency get the benefits they are entitled to. It is a significant improvement that removes a barrier to coverage. This advancement sets the stage to obtain coverage for more workers exposed to stress in more circumstances.

Hearing Requirement

Because of this legislation, the Board must schedule a hearing within 45 days of a request by an injured worker who is not able to work and is not receiving benefits. Previously, the Board could schedule a hearing at its leisure, if at all.

Independent Medical Examination Study

The Board is required to conduct a study during calendar year 2018 to assess the use of company doctors to contest claims and its impact on system costs. The Board is required to submit its findings to an advisory committee comprised of members representing labor, business, carriers, employers and medical providers. The advisory committee will then meet and report on suggested changes during the following year. This is an opportunity to make long overdue changes to this broken process that unfairly delays and denies care and benefits for workers while adding costs to the system. We will work with affiliates to include their proposals for changes to the IME process.

Schedule Loss of Use Impairment Guidelines

Prior to this legislation, the Board had the authority to promulgate guidelines and was in the process of doing so. We have defeated and delayed the Board's previous attempts to unilaterally change guidelines to limit or eliminate schedule loss awards. Further, the Board could have adopted the guidelines at any time, without input from stakeholders and without the need to comply with the State Administrative Procedure Act. We, along with other stakeholders, demanded input in this process and the Legislature established a procedure for the Board to draft impairment guidelines based on medical evidence with review and input from stakeholders. The draft guidelines must be published by September 1, 2017 for January 1, 2018 implementation pursuant to the State Administrative Procedure Act.

Carrier and Self-Insured Employer Penalties

This authorizes the Board to establish performance standards for carriers and self-insured employers with respect to timeliness of payments, unnecessary delay and preparation for hearings. If carriers or self-insured employers fall below those minimum standards, the Board will be authorized to assess penalties in aggregate.

Additionally, this legislation removes the hearing requirement for the Board to assess penalties for carriers and self-insured employers that fail to either pay or controvert a claim on time.

Assumption of Liability Policies

The Board is now authorized to purchase assumption of liability policies to run off claims in special funds that were already closed to new cases. This creates significant assessment savings for employers while maintaining injured workers' benefits.

New York Compensation Insurance Rating Board

The legislative authority of CIRB has been extended 10 years, from 2018 to 2028. In addition, the loss cost increase hearing threshold has been lowered from 7 percent to 5 percent. Further, the independent Public Actuary is required to submit annual reports regarding this legislation's impact on employer premiums.

Drug Formulary

The Board is required to establish a prescription drug formulary by December 31, 2017. Prior to this legislation, the Board had the authority to create a formulary and was in the process of establishing one. This legislation simply requires that the formulary be established by a specific date.

Assessment Changes

The legislation permits the Board to adjust certain assessments on an annual basis as opposed to a quarterly basis. In addition, this legislation requires that the Board return a greater share of unused assessments to employers.

Economic Development / Energy

- **Buy American** - The final budget did not include the Buy American provisions proposed by the Governor or the NYS AFL-CIO legislation to create a preference for using iron and steel products made in the USA on all public works projects. This will be a topic for the end of session.
- **Empire Film and Tax Credit** - The agreement extends the \$420 million credit through 2022.
- **Clean Water Infrastructure Investment Act** - The budget proposes \$2.5 billion for municipal drinking water and waste water infrastructure projects.
- **Indian Point Task Force on Closure Impact** - A task force with labor representation is established to examine the impact of the closure of Indian Point on communities and the possible future reuse of the facilities. The task force will issue its first annual report by April 30, 2018.

Design Build

Current design-build authority for five state agencies was extended for 2 years. Proposals to expand design build to all other state agencies, every county and New York City were rejected. Authorization for eight specific projects at the state level, including the Wadsworth lab and a state police forensic lab were approved.

Public Employees

Retired State Employee Health Insurance Trust Fund - This establishes a state funded trust fund that will be used to pay for future health benefits for retired state employees. The Commissioner of Civil Service is the Trustee of the fund and the State Comptroller the manager. They are authorized to make investments with the fund and all assets and earnings of the fund are for the sole purpose of paying for retiree health benefits

Medicare Part B Cut Rejected - The Legislature rejected the Governor's proposal to cap Medicare Part B reimbursement for NYSHIP enrollees that retired before December 31, 2016 and end state reimbursement for those that retire on or after January 1, 2017.

Retiree Health Insurance Cut Rejected– This would have increased state retiree health insurance premiums based on years of service and salary grade at retirement.

Transportation

Ride Sharing - The Legislature and Governor agreed to authorize transportation network companies (TNC's) such as Uber or Lyft to operate outside of NYC and establish the necessary insurance and regulatory structure to implement. The law does not include language from previous bills that would have codified that drivers are independent contractors. It will provide workers' compensation for drivers through the New York Black Car Fund for the first year after the effective date. Those drivers will not lose coverage. However, this will expire in one year and the law will need to be extended by the end of the 2018 legislative session to continue for drivers hired after the expiration date.

Inspector General (IG) for Transportation – This creates a new IG to investigate and prosecute criminal and unethical conduct by senior officials at transportation entities located in New York City and where the Governor appoints at least one senior member. This will include the MTA, the Port Authority or the TBTA.

Health Care

Direct Care Worker Pay Increase - The budget provides a 6.5 percent increase over the next 2 years for direct care workers employed by not-for-profits.

Health Care Facility Transformation - The budget includes \$500 million in capital funding for the continuation of this program.

Enhanced Safety Net Funding-The agreement includes \$20 million in funding for safety net hospitals serving a disproportionate share of underinsured and uninsured individuals.

Education

School Aid and Foundation Aid Formula

The final budget includes an increase of \$1 billion in school aid, which includes an increase of \$700 million in Foundation Aid. Also, the original proposal to eliminate the Foundation Aid Formula was rejected.

Charter Schools

Proposals to eliminate and/or increase the cap on the number of charter schools and to unfreeze charter school tuition rates to grant a large funding increase were rejected. Proposals to grant statewide building aid and to require school districts to reimburse charters for cost of school-related professionals including nurses and food service workers were also rejected.

Charters will receive an additional \$500 in funding per pupil in 2017-18 that will be paid for by the school district but is fully reimbursable by the state in the following school year. Future charter school tuition payment increases are linked to the growth in per pupil spending in each school district, which is not reimbursable by the State. The percentage of facilities aid in New York City is increased from 20 percent to 30 percent.

Higher Education

Excelsior Scholarships

The budget includes \$87 million for the Excelsior Scholarship Program to cover the cost of tuition for eligible students at SUNY and CUNY four-year colleges and community colleges. Students must enroll in at least twelve credits per semester and complete at least 30 combined credits per year after they start. Students with disabilities will be eligible for the program with modified criteria.

After a 3-year phase-in, families with adjusted gross income up to \$125,000 in 2019-20 will be eligible. Students must live and work in New York State for a continuous number of years (equal to the duration of the award received) within six months of receipt of his or her final award payment.

SUNY / CUNY Maintenance of Effort

The budget includes a maintenance of effort provision from fiscal year 2017-18 through 2020-21. The language requires the state to provide state operating aid, including fringe benefits in an amount no less than the prior year. The provision could be suspended if the Governor declares a fiscal emergency.

Miscellaneous Labor Issues

Minimum Wage Implementation - \$284.6 million is included to assist not-for-profits with paying their employees the increased minimum wage enacted last year.

Empire State Apprenticeship Tax Credit - \$10 million for non-construction apprenticeship programs for employers certified to participate by the Department of Labor.

NYRA Board Returned to Private Control - The NYRA board is restructured to a 17-member board under private control, with appointments by the Governor, Assembly and Senate.

Workforce Development Institute - \$3.975 million in operations, \$3 million for manufacturing initiatives, \$400,000 for logging initiatives.

Cornell Workers Institute - This program received \$300,000.

Cornell Union Leadership Program and Domestic Violence Program - Each of these programs received \$150,000.

Child Care Facilitated Enrollment - \$2.185 million for Monroe, \$500,000 each for Erie and Onondaga Counties, \$2.549 for Capital Region/Oneida, \$3.754 million for NYC and \$500,000 for the 34th St, Corridor.

Raise the Age

The state will phase-in new measures that will allow youths 16-17 years old who commit non-violent crimes to receive intervention and evidence based treatment as opposed to incarceration. Individuals of the same age will no longer be housed in adult facilities and jails, but specialized juvenile facilities.

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