



## Civil Service Enforcement/ Research Department

**TO:** Executive Board Members and Statewide Labor-Management Chairs

**FROM:** Thomas Cetrino, Susan Mitnick, Stephen Connolly, Jeff Waggoner, Kristie Sammons, and Michael Marinello

**DATE:** January 20, 2006

**RE:** *Executive Budget SFY 2006-07 – Preliminary Summary of Major Provisions*

### STATE WORKFORCE IMPACT

Under the proposed SFY 2006-07 Executive Budget the State workforce will stay about the same as the current fiscal year, with job reductions being only slightly more than jobs added. **The SFY2006-07 Executive Budget proposes to decrease the State workforce by 400 FTE positions from 191,500 full-time equivalent (FTE) positions to 191,100 FTE positions.** It is interesting to note that the SFY 2005-06 Executive Budget projected that the State workforce would be at 191,425 FTE positions on March 31, 2006 and that the State workforce was at 190,925 positions on March 31, 2005. Attachment A is the DOB's *Workforce Impact Summary Report* for Executive Branch agencies in SFY 2006-07. It details the workforce changes for each Executive Branch and "off-budget" agencies. According to this report, there will be no position abolitions in any state agency in SFY 2006-07, **most position reductions will result from attrition** and a few will result from limited agency mergers. The Executive Budget assumes that due to their continued hiring freeze and "position control adjustment policies **2,194 FTE positions will not be filled across all agencies during SFY 2006-07.**

*It is important to note that the Executive Budget also assumes 1900 positions will be eliminated via attrition from unspecified agencies due to a shared services initiative administered by the Division of Budget.* Without these reductions the State workforce would increase by 1,500 FTE positions in SFY 2006-07 rather than decrease by 400 FTE positions. It is interesting to note that the position reductions that will result from the shared services initiative are linked to the Governor's proposed early retirement incentive discussed below. This is a significantly more expanded initiative than in prior years. The expanded shared services initiative will "consolidate the administrative, human resources, and business offices of certain (unnamed) agencies and expand the Office of General Services aggregate procurement program". This initiative will also:

- Negotiate shared service agreements between the Olympic Regional Development Authority and the Office of Parks, Recreation, and Historic Preservation and the Department of Environmental Conservation to streamline ORDA operations.
- Study the feasibility of consolidating agency mechanic and maintenance shops into multi-agency facilities under the management of the Department of Transportation.

- Integrate criminal justice technology to promote improved information sharing among law enforcement agencies.
- Develop a fingerprinting network that avoids “costly duplication of effort by agencies.”

Based on the information in Attachment A, the following agencies have the *largest net losses* in positions in SFY 2006-07:

- The Department of Correctional Services (DOCS) will **lose 104 FTEs through attrition in SFY 2006-07**. Thirteen of these position losses will occur in Program Services and the rest will occur in the Support Services (33 FTE losses) and Supervision of Inmates (91 FTE losses) programs. Health Services will gain 33 positions. According to DOCS, the net reduction of 104 items in 2006-07 includes the reduction of 110 items related to the Pharsalia closure (3.2 PEF items) and 114 reductions *that have already been accomplished* at minimum secure facilities and camps; offset by 103 new FTEs related to mental health expansion at 13 facilities (of which about 25 are PEF positions) and 17 new FTEs due to the expansion of the central pharmacy (most of which are PEF positions).
- The Division of Parole **will lose 40 FTE positions through attrition in SFY 2006-07**, all in the Parole Operations program. No justification is provided for this decrease.
- The Department of Education **will lose 37 FTE positions**; however these position losses are the result of the transfer of the positions to OMRDD due to the transfer of the Intermediate Care Facility at the School for the Blind to OMRDD.
- The Department of Agriculture and Markets will **lose 21 FTE positions through attrition in SFY 2006-007**; all of these position losses will occur in the Agricultural Business services program.

Based on the information in Attachment A, the following agencies have the *largest net gains* in positions in SFY 2006-07:

- The Office of Mental Health will **gain between 459 and 534 FTE positions** mostly in the Adult Services program. According to the Division of Budget, most of these positions will be forensic positions due to the Governor’s proposed civil commitment of sexually violent predators.
- The Office of Mental Retardation and Developmental Disabilities will **gain 248 FTE positions** mostly in the Institutional Services program.
- The Department of Transportation will **gain 179 FTE positions**; all but 2 of which are in the Design and Construction/Capital Projects program.
- The State Police will **gain 248 FTE positions**; 56 of which are in the Technical Police Services program.

## **MAJOR AGENCY PRIVATIZATIONS and TRANSFERS OF AUTHORITY**

**The Executive Budget once again proposes giving the SUNY Board of Trustees the power to privatize the three SUNY Health Science Centers pursuant to a plan approved by the Commissioner of Health.** This means it is possible that current hospital employees could no longer participate in the retirement system, could no longer be represented by PEF and could no longer have civil service system rights and protections. DOB claims that if this proposal was implemented, the State could reduce or eliminate its current SUNY hospital subsidy of \$139.5 million. Additionally, DOB claims that upon completion of the transfer of the hospitals to new not-for-profit corporations, the State's All Funds budget could be reduced by \$1.3 billion, the State workforce could be reduced by over 10,000 FTEs, and the SUNY hospital debt could be eventually removed from the State's debt cap. The bill directs the Trustees to submit a transfer plan to the Governor and the Legislature on or before October 1, 2006. **The Legislature rejected a similar proposal the last three years.**

The Executive Budget also proposes to allow the **Office of Children and Family Services (OCFS) to contract with a voluntary provider to manage one of its minimum security facilities; the budget does not name this facility.** According to the Division of Budget, this pilot project will be evaluated to assess **its possible expansion to other OCFS facilities in future years.** There is no separate appropriation for the proposed privatized facility and the Governor has not submitted legislation with the Executive Budget to authorize the privatization of an OCFS facility. It is possible the Governor can privatize an OCFS facility without authorization from the Legislature. If so, it will make it more difficult to stop this privatization in light of the recent Court of Appeals ruling that limits the Legislature's ability to add, amend or not enact language changes the Governor submits with his budget appropriation bills.

The Executive Budget once again proposes the controversial public/private transportation partnership program. This proposal would **allow the Department of Transportation (DOT, the Thruway Authority, and the MTA to enter into agreements with public or private entities to acquire, finance, build, operate, improve and maintain parts of the State's roads, bridges and railways.** These entities could impose new tolls and other charges on new construction or where capacity is increased, and increase tolls where they already exist. According to the Division of Budget (DOB) more than twenty-one states have similar arrangements allowing privatization of state transportation facilities. The \$1.8 billion, 99-year lease with a private consortium in Chicago for the 7.8 mile Skyway will double tolls within eight years. DOB also points out that more financial resources are needed to "fully fund the last two years of DOT's and the MTA's current five-year Capital Plan" and that the proposed partnerships are necessary to provide these resources in order to provide "financial relief for taxpayers". We believe these partnerships will lead to greater use of more costly consultant engineers in the design, construction, and inspection of transportation projects.

The Executive Budget also authorizes the DOT and the Thruway Authority (TA) to undertake a pilot design-build program and participate in a maximum number of design-build contracts (12 for DOT and 5 for the TA). Design-build contracts combine the design work and construction activities into a single contract. Last year, former DOT Commissioner Boardman admitted that this proposal would increase the State's reliance on more costly consultant engineers.

The Executive Budget also **transfers the authority of the Department of Labor (DOL) to license and regulate radioactive material and radiation equipment, with the exception of**

lasers, used for commercial or industrial purposes to the Department of Health (DOH). The proposal also provides for the transfer of 7 DOL employees to DOH pursuant to Section 70.2 of the Civil Service Law through a transfer of function. Lasers are not transferred under this proposal because the issuance of the certificate of competence and inspections are closely aligned with other functions of DOL.

### **PENSION, EMPLOYEE BENEFIT, and CIVIL SERVICE ISSUES**

**The Executive Budget proposes another Early Retirement Incentive (ERI) program in SFY 2006-07.** This bill would establish a retirement incentive for certain State Executive branch employees and local public employees. This program is very similar to the traditional retirement incentive previously offered by this State. Under this program, employees would receive one month of credit for every year of their service, up to a total of three years or 36 months. The criteria to be considered in determining whether positions should be eligible for participation in the retirement incentive program include whether the abolition of positions within a title would unacceptably reduce the level of patient care, pose health and safety risks, or result in adverse budgetary implications. The proposal requires the elimination of any position vacated by a State employee receiving the retirement incentive, other than a position supported by Special Revenue Funds. An exception to this rule is made where another State employee can be appointed, transferred or reassigned to the vacated position to avoid a layoff.

The SFY 2006-07 Executive Budget calls for 1900 FTE position reductions through organizational restructuring, streamlining and shared services efficiencies. According to DOB, this bill would “streamline the public sector workforce through the elimination of specific positions determined to be less critical to governmental operations.” PEF will continue to advocate for a broad based early retirement incentive that is not subject to manipulation as to who receives the incentive. More detail about this proposal can be found in a separate memo from President Benson.

The Executive Budget also proposes to create a New York State Pension Reform Task Force to examine methods to “modernize” the State’s public retirement systems. The task force will contain eighteen members from a number of stakeholder groups, including the Governor, the Legislature, the State Comptroller, the City of New York, local governments, the New York State Teachers’ Retirement System, retirees, and public employee unions. *There will only be two union representatives on the Task Force.* The Task Force will issue a final report with its recommendations no later than October 31, 2006. Topics to be discussed in the report will include but not be limited to: “benefit designs to support long-term workforce planning strategies; alternative and more affordable benefit designs; alternative defined benefit funding methodologies; establishment of a new defined contribution or hybrid defined benefit/defined contribution pension plan; and alternative governance and oversight structures.”

Unfortunately the Executive’s proposal to create the Pension Task Force and an Actuarial and Investment Oversight Board appointed by the Governor to review actuarial assumptions and investment decisions of the State’s retirement system, for which no specific current proposed Article VII legislation exists, are contained in the General Government appropriation bill as language authorizing the State’s payment to its retirement systems. The Legislature has rejected the Governor’s past proposals to create an Actuarial and Investment Oversight Board. However the inclusion of this and the Pension Task Force proposal in appropriation language will make it much more difficult for the Legislature to reject these proposals due to recent Court of Appeals’ rulings.

These do not allow the Legislature to change such language; they can only reject it and its appropriation. We are consulting with the Office of the State Comptroller on the implication of this language for the State's retirement systems.

The Executive Budget also proposes to amend Civil Service Law to **permit temporary appointments for up to 60 months, without examination, for individuals rendering professional, scientific, technical or other expert services on a full-time or a regular part-time basis in information technology positions.** Currently, temporary appointments are limited to 18 months. In addition, employees employed in these temporary positions *will automatically be enrolled in a new defined contribution retirement program* and are ineligible for membership in the State's other public retirement systems. DOB claims that this new authority is necessary to give the State the flexibility to use State employees rather than consultants for information technology projects that are scheduled to last for five years or less.

**The Executive Budget does not propose any explicit changes to State employee or retiree health insurance benefits.** Providing health insurance to State employees and retirees is projected to cost the State \$1.78 billion in SFY 2006-07, an increase of \$115.8 million over last year's State contribution. According to the Executive Budget, the State will actively seek savings in the health insurance program by "improving clinically-based utilization review of employee health services to reduce waste." The implications of this statement are unclear and we have asked the Division of Budget for an explanation of their intent.

The Executive Budget also proposes making permanent technical amendments enacted last year and the year before that clarified the authority of the Department of Civil Service regarding the administration of the Employee Health Insurance Program. This proposal would permanently clarify statute to codify the Department's longstanding practice of accounting for health insurance program dividends and making payments from the Fund without appropriation authority. We are continuing to study this proposal to determine whether making this authority permanent will have an impact on State employees' health insurance costs.

In addition, the Executive Budget proposes allowing the Health Insurance Fund, Dental Fund and Group Life Insurance Fund to retain interest earned on deposited monies. According to DOB, these funds have been allowed to keep the earned interest. However, certain accounting changes intended for other funds were implemented last year which inadvertently redirected interest earnings away from the Health, Dental and Life Insurance funds. According to DOB, the proposed correction will insure that the interest earnings be used as intended to benefit participants in these benefit plans. This proposal appears in the General Government appropriation bill as a \$32.9 million offset to the State's contribution to its retirement and group life insurance plans. We are studying this proposal to determine whether granting this new authority will have an impact on State employees' health insurance and pension costs.

Finally, The Governor submitted, as part of his Article 7 budget bills, legislation that would make extensive changes in the Workers Compensation law. Although it proposes an increase in the maximum weekly benefit, this bill would also include limits on benefits for workers, particularly those who have permanent partial disabilities due to workplace injuries. PEF is also very concerned about proposals to expand the use of alternate dispute resolution for workers compensation cases and proposed changes in workers compensation procedures in several ways that would limit a claimant's rights to a fair and full hearing.

## CONTRACTING OUT AND CONTRACT DISCLOSURE IN THE SFY 2006-07 EXECUTIVE BUDGET

In his veto message of the Contract Disclosure bill unanimously passed by both houses of the Legislature the Governor promised to provide greater disclosure of agency contracting out in the SFY 2006-07 budget. Unfortunately, this “greater disclosure” is minimal and amounts to a three paragraph defense of contracting out in budget documents that contain thousands of pages of information about every other aspect of State agency operations.

According to the Division of Budget, *“Over the last five years, the State’s overall use of outside consultants has declined from more than 9,500 contracts in SFY 2000-01 to 9,300 in SFY 2004-05. The average annual increase in spending for these services has been 1.9 percent. That change compares with average annual increases of 2.4 percent for inflation, 2.4 percent for increases to State employee salary levels, and 2.9 percent for total spending for State employee compensation over the same period.”*

This disclosure and analysis is flawed for several reasons. The SFY 2006-07 Executive Budget does not disclose how many consultant *employees* are working under contract in each state agency or the cost of those consultants and contracts. It does not matter if the *number* of consultant contracts has minimally decreased over the last five years if the *number of consultants employed under those contracts has increased*. In addition, **it is irrelevant that the cost of consultant contracts has grown at a slightly lower rate (1.9% vs. 2.9%) than the cost of State employees over the last five years when those consultants were making between 50% and 125% more than comparable State employees (including the cost of State employee benefits) in the first place.**

Nothing in the Division of Budget disclosure and analysis disputes the central findings that PEF has uncovered about contracting out. We believe that the State has more consultants employed under State contracts than they employed five years ago and that those consultants are paid significantly more than State employees who do the same work. The fact that DOB has failed to disclose either the number of consultant employees working in State agencies in SFY 2004-05 and five years ago or their total cost suggests that both the number and cost has increased or that DOB doesn’t know the number and cost. In either case, DOB’s own analysis makes it clear that the contract disclosure bill must be enacted so we know the true cost of contacting out for consultants in each State agency.

The good news is that the Division of Budget is responding to PEF’s *Go Public* campaign and according to the Executive Budget they have “begun assigning State employees to perform certain elements of work that previously required the use of outside contractors and are beginning to look at the wisdom of hiring consultants to do work that can be done by State employees.” Unfortunately, that cannot be confirmed or denied based on the information disclosed about consultant contracts in the Executive Budget. However, there are also many large increases in non-personal service and contractual services expenses in many State agencies that may indicate an increase in contracting out. Unfortunately the lack of disclosure about agency consultant contracts makes it impossible to know for sure what these large increased appropriations mean. Therefore we can only get this information by asking agency management in statewide labor-management meetings.

The detailed agency analysis spreadsheets sent to Executive Board members for the agencies they represent indicate when we notice a large increase in non-personal service or contractual services appropriations in agency programs and ask you to ask agency management for an explanation of these increases. ***If agency management indicates the spending is for consultant contracts for work similar to work that PEF members in your agency already perform you should ask for the name of the contractor or for a copy of the request for proposal and alert the Civil Service Enforcement/Research department at PEF.*** This will allow PEF to FOIL the contract or work with you to convince agency management to hire State employees to do the work.

The SFY 2006-07 Executive Budget contains new proposals that can increase contracting out. These proposals, including authorizing DOT to let “design-build” contracts for capital projects, have already been discussed in the *Privatization* section of this memo.

### **PROPOSED TAX CUTS IN THE SFY 2006-07 EXECUTIVE BUDGET**

The Executive Budget proposes another round of personal income and business tax cuts that will cost \$927 million in SFY 2006-07, \$3 billion in SFY 2007-08, \$4 billion in SFY 2008-09 and SFY 2009-10, and \$4.5 billion in SFY 2010-11. The total value of these tax cuts is somewhat offset by other proposed tax policy changes that would generate revenue. However, it is unlikely that these revenue increases will be enacted given Senator’s Bruno’s stated opposition and the Assembly’s support for the permanent repeal of sales tax on clothing. This will leave the State with a huge unfunded tax cut mandate. This appears to be an effort by Governor Pataki and his wealthy business allies to copy arch-conservative Grover Norquist’s “starve the beast” playbook by ensuring the State and the next Governor will not have the revenue to comply with the Court of Appeals ruling in the Campaign for Fiscal Equity lawsuit that could cost at least an additional \$8 billion in annual State school aid to New York City and other urban and poor school districts. Even the business-sponsored Citizens Budget Commission has admitted that tax cuts appear unaffordable.

DOB’s own analysis shows that 24 percent of the personal income tax cuts, credits and rebates would go to New Yorkers who earn \$200,000 or more, while more than half would go to the roughly 10 percent of New Yorkers who earn more than \$100,000. This does not include the proposal to repeal the State’s estate tax by 2010 which currently only applies to estates worth more than \$1 million. This proposal will cost the State \$329 million in SFY 2008-09. It is important to note that currently New York taxpayers with incomes over \$634,000 annually only pay about 6.5% of their income in State and local taxes while the rest of State taxpayers pay between 10% and 12%.

The Executive Budget’s personal income tax reduction proposals include:

- Eliminating the marriage penalty by raising the standard deduction and recapture rate; costing \$125 million in SFY 2006-07 and \$400 million annually by SFY 2008-09.
- Reducing the top tax rate to 6.75 percent from 6.85 percent and raising the income level that pays that top rate to \$30,000 from \$20,000 for individuals and to \$60,000 from \$40,000 for families. When fully phased in SFY 2008-09 this will cost \$950 million annually.
- Establishing a refundable credit for certain primary and secondary school expenses that will cost \$400 million annually beginning in SFY 2007-08.

- Expanding the Earned Income Tax Credit for non-custodial parents to save poor working families up to \$3.5 million in SFY 2006-07 and \$14 million annually when fully implemented in SFY 2008-09.

The Executive Budget also recommends retroactively indexing the STAR exemption for senior citizens to help this benefit keep pace with rising property values. This will cost \$72 million in SFY 2006-07 and grow to \$112 million in SFY 2008-09. The Executive Budget also proposes a new STAR PLUS rebate which will cost \$530 million in SFY 2006-07 and grow to \$625 million in SFY 2008-09.

Despite the fact that New York's big businesses pay a significantly smaller share of total State taxes than they paid thirty years ago the Executive Budget proposes additional tax cuts for business which will cost the State \$175 million in SFY 2006-07 and grow to \$926 million in SFY 2008-09. These proposals include:

- Allowing the immediate expensing of New York depreciable assets.
- Eliminating the additional Corporate Franchise tax imposed on subsidiary capital.
- Eliminating the S-corporation differential tax.
- Eliminating both the alternative minimum tax and Capital Base for corporations.
- Establishing a new credit for the purchase of alternative fuel vehicles and for the purchase of alternative fuel.
- Extending the existing Empire Zones credit for high technology research facilities.
- Increasing the allocation of the low-income housing credit and making the credit permanent.
- Decreasing the minimum and maximum limitations imposed on taxes paid by life insurance companies.
- Extending Empire Zone benefits to qualified businesses by accelerating the designation of Empire Zones in 12 counties.

The proposed Executive Budget does repeal the current law that beginning April 1, 2006, would exempt clothing under \$110 from State sales tax. This law would have saved working families \$605 million in SFY 2006-07. The Executive Budget proposes replacing the current sales tax exemption with a less generous two week exemption from the State sales tax for clothing under \$250. Neither of these approaches, if they allow localities the option to continue to charge sales tax on clothing, complies with the national streamlined sales tax agreement. This agreement would allow the State to collect sales tax on Internet and other remote sales which could generate billions of dollars in annual revenue.

It is likely that the Legislature will approve some tax cuts this year despite the fact that the Executive Budget proposes hundreds of millions of dollars in greater debt and will have budget deficits of \$1.886 billion in SFY 2007-08 and \$3.843 billion in SFY 2008-09 if all the proposed tax cuts are adopted. The Assembly has been advocating keeping the current sales tax exemption for clothing and criticizing the estate tax repeal while the Senate has said it hasn't seen a tax cut it didn't like. The challenge for unions is to insure that the Legislature only enacts tax cuts that do not significantly grow in future years so the State can fully fund its legal obligations for education aid and balance future budgets without making devastating spending cuts.

**THE STATE'S FOUR YEAR FINANCIAL PLAN AND HOW THE SFY 2006-07 EXECUTIVE BUDGET IMPACTS CURRENT AND FUTURE BUDGET GAPS**

**The SFY 2006-07 Executive Budget recommends All Funds spending of \$110.7 billion, a \$4.3 billion or 4.1% increase over last year's budget.** DOB points out that when spending is adjusted to exclude the incremental cost of the State Medicaid cap, Family Health Plus takeover, and the new STAR PLUS program, All-funds spending only increases by 2.9%, below the rate of inflation. State Operations, which accounts for the cost of running the Executive, Legislative, and Judicial branches of government, is projected to total \$17.351 billion in All Funds spending in SFY 2006-07, an increase of \$935 million (5.7%) from estimated SFY 2005-06 All Funds spending.

**DOB projects the State will end SFY 2005-06 with a \$1.991 billion surplus** which will be put in a separate "Spending Stabilization" reserve and used to reduce the SFY 2007-08 and SFY 2008-09 budget gaps. The State will also deposit \$73 million into the "Rainy Day Fund" (formerly known as the Tax Stabilization Reserve Fund), bringing this fund up to \$945 million. The main reason for the SFY2005-06 surplus is an underlying annual receipts growth of 11.2 % in SFY 2005-06 much of which was not forecasted in the Mid-Year Financial Plan update issued in November 2005. DOB attributes this growth primarily to personal income tax growth due to compensation gains for financial services companies and their employees, the personal income tax surcharge for high-income taxpayers which expired at the end of 2005, and continued rapid escalation in real estate market values. DOB projects that base tax receipts will grow by 8.2% in SFY 2006-07.

The Executive Budget projects that the State has to close **a \$751 million budget gap in SFY 2006-07**. This gap will be closed with \$1.983 billion in spending reductions (which grow to \$3.338 billion in SFY2008-09), \$227 million in non-recurring actions also known as "one-shots," \$94 million in additional fines and fees, offset by \$406 million in spending additions, \$844 million in net tax cuts, a \$250 million deposit into a Debt Reduction reserve and a \$53 million deposit into the Spending Stabilization reserve. If the Executive Budget is adopted as proposed the State will have \$3.8 billion in reserves at the end of SFY 2006-07, \$2.8 billion of which is to fund existing or planned commitments.

Spending reduction proposals in the SFY 2006-07 Executive Budget focus on the State Medicaid program. Changes in this program account for \$1.277 billion or 64% of the total proposed spending reductions. The Medicaid savings will grow to \$2.365 billion in SFY 2008-09. Other spending reductions include:

- Public Universities: authorize increased tuitions saving \$111 million in SFY 2006-07 and \$131 million in SFY 2008-09.
- Tuition Assistance: Performance/Eligibility Incentives/Penalties saving \$136 million in SFY 2006-07 and \$207 million in SFY 2008-09.
- Mental Hygiene: Patient Income Account; Audit Recoveries saving \$180 million in SFY 2006-07 and \$204 million in SFY 2008-09.
- Welfare: "Full-family" Sanctions; Work Participation Incentives saving \$39 million in SFY 2006-07 and \$102 million in SFY 2008-09.
- Public Safety: Camp Pharsalia closure and related workforce management actions saving \$75 million in SFY 2006-07 and \$55 million in SFY 2008-09.
- Economic Development Reductions which focus on eliminating certain unidentified legislative additions to the SFY 2005-06 budget, saving \$22 million annually from SFY 2006-07 to SFY 2008-09.

- Eliminating or modifying Public Health programs in the Department of Health saving \$15 million in SFY 2006-07 and \$24 million in SFY 2008-09.
- General State Charges adjustments including market rate on judgments; lower taxes on public lands and “use of interest earnings to lower health insurance costs” (which saves \$8 million annually on it own) saving an overall \$21 million in SFY 2006-07 and \$24 million in SFY 2008-09.
- DOT (Increase Dedicated Highway Fund Bonding) saving \$140 million in SFY 2008-09
- All Other Spending Restraint (Including Federal Maximization) saving \$107 million in SFY 2006-07 and \$64 million in SFY 2008-09.

All these actions will still result in a \$1.886 billion General Fund budget gaps for SFY 2007-08 and a \$3.843 budget gap in SFY 2008-09 as detailed in Table 1. Simply put, because of the proposed tax cuts the SFY 2006-07, the Executive Budget does very little to reduce the SFY 2008-09 budget gap despite proposing spending cuts that would total over \$3.3 billion in SFY 2008-09.

**Table 1**  
**PROJECTED BUDGET GAPS FOR**  
**SFYs 2007-08 AND 2008-09**  
(\$ in millions)

	<u>2007-08</u>	<u>2008-09</u>
<b>Gap (before 2006-07 Recommendations)</b>	<b>(3,155)</b>	<b>(3,895)</b>
<b>Value of 2006-07 Recommendations</b>	<b>1,269</b>	<b>52</b>
– <i>Spending Reductions</i>	3,136	3,338
– <i>Fines/Fees/Others</i>	155	154
– <i>Tax Policy Changes</i>	(2,210)	(3,268)
– <i>Spending Additions</i>	(834)	(1,194)
– <i>Spending Stabilization Reserve Use</i>	1,022	1,022
<b>–Remaining Gap (after Recommendations)</b>	<b>(1,886)</b>	<b>(3,843)</b>

It is important to note that these General Fund budget gaps are based on economic forecasts of greater growth in the State’s economy over the next two fiscal years. They will be significantly larger if the State experiences a slower recovery in the State economy than the Executive Budget forecasts. In addition, the proposed SFY 2006-07 Executive Budget only makes a relatively small down-payment (about \$1.025 billion in so-called Sound Basic Education Aid which would be in a reserve fund) on the out-year obligation to provide additional education aid to the State’s urban and poor school districts which could cost between \$5 billion and \$10 billion annually. When this bill comes due, the out-year budget-gaps will be much higher than projected and almost impossible to manage without significant additional spending cuts.

## **SUMMARY OF EXECUTIVE BUDGET PROPOSALS FOR MAJOR STATE AGENCIES**

This section highlights the most important recommendations in the Executive Budget for the State agencies for which major changes have been proposed. Executive Board members and Statewide Labor-Management Chairs will receive a more detailed analysis for these agencies in a separate mailing. Next week Executive Board members and Statewide Labor-Management Chairs will receive a detailed analysis for all of their agencies.

### **HEALTH AND MENTAL HYGIENE (S.6454/A.9554)**

#### **Office of Mental Health**

- **An increase of 459 FTEs over the adjusted SFY 2005-06 FTE level.** The adjusted level includes an increase of 340 FTEs in SFY 2005-06. The proposed increases include 5 FTEs in Administration and Finance; 441 FTEs in Adult Services (in addition to the 256 added in 2005-06); 5 FTEs in the Children and Youth Services Program (in addition to the 52 FTEs added in 2005-06); 8 FTEs in Forensic Services; and 4 FTEs in Research. While the budget documents indicate a year end FTE level of 17,506 (authorized fill), the actual year end level according to DOB will be 16,981. We expect the actual year end fill level to be the lower number.
- Additional funding for the care and treatment of violent sexual predator programs following civil commitment:
  - A new 500 bed facility for violent sexual predators on the grounds of DOCS Camp Pharsalia in Chenango County which will open in 2009 (\$135 million in capital funding).
  - \$26.8 million for operational needs for the care and treatment of sexual predators. The OMH budget analysis indicates that this will support 697 FTEs. This funding is included in the Adult Services Program.
  - \$35 million in capital appropriations for short term renovations related to sexual predators. This will include renovations at Central NY PC and conversion of a vacant building at St Lawrence PC. If the need arises, space at Rochester PC and Manhattan PC will be used.

Despite frequent references to civil commitment, there is no accompanying Article VII legislation that would provide for a civil commitment process for these offenders.

- No closures or consolidations due to “the leveling off of previously declining demand for inpatient services, utilization of current inpatient capacity, and the need to evaluate future inpatient capacity needs.”

#### **Department of Health**

- **An increase of 81 FTEs in SFY 2006-07 from the adjusted 3/31/06 FTE level** (this figure excludes the Medicaid Audit and Fraud Prevention program, which can now be found under the newly created Office of the Medicaid Inspector General (OMIG) – an independent entity within the Department of Health (DOH)).

- In SFY 2005-06 there was a net increase of 311 FTEs during the fiscal year than the FTE level authorized in the enacted SFY2005-06 budget (4 more FTEs in Administration & Executive Direction, 37 more FTEs in Community Health, 5 more FTEs in Elderly Pharmaceutical Insurance Coverage, 47 more FTEs in Environmental Health, 25 more FTEs in Health Care Financing, 51 more FTEs in Health Care Standards and Surveillance, 16 more FTEs in Laboratory and Research, 126 more FTEs in the Office of Medicaid Management).
- Proposed increases in SFY 2006-07 are in the following programs: 22 FTEs in Community Health; 5 FTEs in Elderly Pharmaceutical Insurance Coverage; 11 FTEs in Health Care Financing; 47 FTEs in Laboratories and Research; 6 FTEs in Managed Care; and 6 FTEs in the Office of Medicaid Management. Proposed decreases in SFY 2006-7 are in the following programs: 6 FTEs in Environmental Health and 10 FTEs in Health Care Standards and Surveillance.
- **An increase of \$5.2 million in personal service funding agency-wide.** Significant increases include: Health Care Financing (+\$3,202,000) and Wadsworth Laboratories and Research (+\$2,086,000).
- A decrease in the Institutional Management Program of \$10.6 million. Decreases include the following:
  - \$9.3 million or 13.6% decrease in the Helen Hayes Account
  - \$1.7 million or 7.6% decrease in the Oxford Veterans Home Account
  - \$892,000 or 3.5% decrease in the Lower Hudson (Montrose) Veterans Home Account
  - \$214,000 or 1.9% decrease in the Western New York Veterans Home Account
 The decreases should be addressed with Labor-Management. Additionally, the purpose for the increase in NYC Veterans Account of \$1.5 million (6.5% increase) should be clarified.
- Article VII legislation to further reduce Medicaid costs includes a provision prohibiting coverage for individuals working for businesses with more than 100 employees. This is associated with efforts to prevent companies such as Wal-Mart from taking advantage of government health care coverage rather than providing their own coverage. This change appears to put the onus on the employee rather than the employer, since it does not require the employer to provide health care coverage.

### **Office of Medicaid Inspector General**

- **An increase of 81 FTEs in SFY 2006-07 from the adjusted 3/31/06 FTE level.** In SFY 2005-06 there was a net decrease of 100 FTEs within the Department of Health (DOH) Medicaid Audit and Fraud Prevention program (which is now part of OMIG) during the fiscal year. According to DOH leadership these were not filled positions. Accounting for the 100 unfilled positions from 2005-06, even with the 81 “new” FTEs, there are effectively 19 less FTEs to fight Medicaid fraud, a mission for which OMIG was said to be specifically created to fulfill.
- The Executive Budget claims there is additional funding provided to fight Medicaid fraud, waste and abuse, including contracting out services. Specifically \$11.7 million can be identified within the Maintenance Undistributed funding as being related to fighting Medicaid fraud. This includes: \$5 million to contract with clinicians at the State University of New York to provide

clinical and medical expertise; and \$5 million that is likely to support the transfer of employees from various State agencies to OMIG. However, the increase of \$10.5 million for Maintenance Undistributed is offset by the \$10.7 million decrease in Special Revenue-Federal funding. This raises the issue of whether there really are additional resources to fight Medicaid fraud. This issue should be raised and clarified at statewide labor-management.

### **Office of Mental Retardation and Developmental Disabilities**

- **An increase of 248 FTEs over the adjusted SFY 2005-06 FTE level.** The adjusted level includes an increase of 239 FTEs in SFY 2005-06. The proposed increases include: 76 FTEs in the Community Services program (in addition to 178 FTEs in SFY 2005-06); 167 FTEs in the Institutional Services program (in addition to 61 FTEs in SFY 2005-06); and 5 FTEs in the Research in Mental Retardation program. Projected year end FTE levels range from 22,085 (DOB projection) to 23,287 (authorized fills). We expect the actual year end fill level to be the lower number.
- 5 new research positions in IBR for the study of autism, as well as two six person community homes serving people with autism in conjunction with IBR (\$3.2 million is provided for autism research and treatment as well as expanded Family Support Services, annualized to \$5 million).
- 22 new community beds for individuals with severe behavioral issues (allowing transition from institutional settings) and 15 new Multiply Disabled Unit openings for dually diagnosed OMH patients.

### **PUBLIC PROTECTION AND GENERAL GOVERNMENT (S.6450/A.9550)**

#### **Department of Correctional Services**

- **A net decrease of 104 FTEs, from the adjusted FTE workforce for 3/31/06. There will be an increase of 33 FTEs in the Health Services Program, a decrease of 13 FTEs in Program Services Program, a decrease of 91 FTEs in the Supervision of Inmates Program, and a decrease of 33 in the Support Services Program.**
- According to DOCS, the net reduction of 104 items in 2006-07 includes the reduction of 110 items related to the Pharsalia closure (3.2 PEF items) and *114 reductions that have already been accomplished* at minimum secure facilities and camps; offset by 103 new FTEs related to mental health expansion at 13 facilities (approximately 25 of which are PEF) and 17 new FTEs due to the expansion of the central pharmacy (most of which are PEF).
- **Camp Pharsalia will be closed** in order to transfer the property to OMH for construction of a 500 bed facility for civilly committed violent sexual predators who have completed their prison terms (\$130 million in capital funding is provided in the OMH budget). According to DOB the closure will begin on 4/1/06 and be completed by 7/1/06. Article VII language would exempt correctional facilities from the closure notification provisions enacted in 2005 if they are recommended to be closed and reused for another purpose.

## Division of Parole

- A year end workforce of **2,029 FTEs**, which represents a **decrease of 40 FTEs** from the estimated FTE workforce of 2,069 for 3/31/05. All reductions are in the Parole Operations Program, which is reduced from 1,962 FTEs to 1,922 FTEs. The 1,962 figure includes the 47 positions restored by the Legislature in SFY2005-06, which we know were not filled. The other 7 positions, if filled, might relate to the Governor's plan to increase levels of supervision for sex offenders under parole supervision. The budget indicates that additional funding is provided, however the personal services appropriation for Parole Operations is insubstantial (\$2.35 million, 2.1%), and also needs to accommodate contractual salary increases. This issue should be clarified at statewide labor/management.
- Additional services for sex offenders including increased levels of supervision and the use of polygraphs as a pre-emptive monitoring tool to predict predatory behavior. The budget states that \$3.2 million is added to Parole and local probation offices. There is a local assistance appropriation of \$1.3 million in the Division of Probation and Correctional Alternatives budget for intensive supervision of sex offenders, so we assume the remainder (\$1.9 million) is for Parole; however it is not specified in the budget. It is possible that the \$1.9 million is part of the increased contractual services appropriation in the Parole Operations program.

## EDUCATION, LABOR AND FAMILY ASSISTANCE (S.6453/A.9553)

### Office of Children and Family Services

- **An increase of 12 FTEs over the adjusted SFY 2005-06 FTE level.** The adjusted level includes an increase of 56 FTEs in SFY 2005-06, all in Youth Facilities. The proposed changes include 2 new FTEs in Central Administration, 20 new FTEs in Family and Children Services, 50 new FTEs in Systems Support and a decrease of 60 FTEs in the Youth Facilities Program. The decrease in Youth Facilities positions is likely associated with the closure of 3 community residences and the privatization of a minimum secure facility.
- A pilot project to contract with a voluntary provider to manage one of its minimum security facilities under a performance based contract. **The budget indicates that this pilot will be reviewed with "possible expansion to other facilities in future years." The location of this facility needs to be identified at statewide labor/management, we assume that "minimum security" means non-secure.**
- **Closure of three of six community residences (locations unspecified),** with partial savings (\$300,000 of \$392,000 in savings) reinvested into Evidence-based Community Initiative (EbCI).
- Savings of \$3.6 million associated with the use of State staff to replace consultants and contract staff. There is an increase of \$3.37 million in the personal service appropriation for the System Support program which appears adequate to support the 50 new FTEs for this program. The budget also shows a net decrease of \$465,000 in contractual services for the Support Services program, suggesting there are contractual increases offsetting the decreases

associated with the transfer of some positions to State Operations. This should be clarified at statewide labor/management.

### **State Education Department**

- **A net reduction of 37 FTEs from the adjusted FTE workforce for 3/31/06.** The decline of (-37) FTE reflects a reduction of staff through the transfer of the Batavia Intermediate Care Facilities (ICFs) from the Department to the Office of Mental Retardation and Developmental Disabilities (OMRDD) and the transfer of 3 FTEs in the Office of Higher Education and the Professions from the General Fund to Special Revenue-Other support.
- Workforce changes that occurred during SFY2005-06 include: *47 more* FTEs in the Office of Management Services Program; 38 more FTEs in the Elementary, Middle and Secondary Education Program; *5 more* FTEs in the School for the Blind; *8 more* FTEs in the Office of Higher Education and the Professions; *15 more* FTEs in the Cultural Education Program; and *10 more* FTEs in Vocational and Educational Services for Individuals with Disabilities.
- This year's Executive Budget calls for the creation of a new "Cultural Education Trust" within SED, for "the advancement and promotion of the public missions of the State Museum, Library and Archives." The creation of this special Trust needs to be monitored closely to make sure it does not set the stage for the eventual takeover of the museum, library and archives by the Executive office.

### **The State University of New York**

- The budget proposes an 8%, or \$459 million, increase in SUNY's State Operation budget, rising from \$5.7 billion to \$6.2 billion. PEF has been informed by reliable sources that SUNY significantly underestimated their request for hospital funding, particularly for employee fringe benefit costs. The Chancellor is supposed to be requesting additional funds in his presentation to the Legislature.
- Legislation will *again* be introduced to allow the SUNY Board of Trustees to transfer operations of the SUNY hospitals to one or more private, not-for-profit corporations.
- An overall increase at Stony Brook Health Science Center of \$93.1 million (13.7%). An overall increase at Brooklyn Health Science Center of \$64.5 million (17.4%). ***An overall decrease at Syracuse Health Science Center of \$5.8 million (-1.2%).***

### **Department of Labor**

- **An FTE level of 3,946 for SFY 2006-2007**, which is down by seven (-7) from the SFY2005-2006 estimated FTE level.
- The Department will lose 18 FTEs in the Administration program. These positions were funded by a General Fund appropriation. Seven of these position cuts are due to the proposal to transfer the authority of DOL to license and regulate radioactive material and radiation equipment used for commercial or industrial purposes – with the exception of lasers -- to the Department of Health. The additional 11 position cuts may be due to the

statewide shared services initiative administered by the Division of Budget. Clarification should be sought at statewide labor-management.

- **A \$25.3 million decrease in the federal funding for the Unemployment Insurance (UI) program funded in the department's Administration program.** Despite this decrease there are no FTE reductions projected for the UI administration program which will remain at 3,339 FTEs. A large reduction like this normally results in a reduction in FTEs and this issue should be clarified at statewide labor-management.

## **TRANSPORTATION, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL CONSERVATION (S.6455/A.9555)**

### **Department of Environmental Conservation** (more details available next week)

- A year-end **FTE** level of 3,378, which represents an **increase** of 43 FTEs from the Governor's *current* estimated FTE level for 3/31/06. Fifteen of these new FTEs will be used to implement stewardship projects.
- Changes in FTE levels are as follows: An increase of 14 FTEs in the Air and Water Quality Management program (Special Revenue-Other), an increase of 12 FTEs in the Fish, Wildlife and Marine Resources program (Special Revenue Funds-Other), an increase of 5 FTEs in the Forest and Land Resources program (Special Revenue Funds-Other), an increase of 5 FTEs in the Operations program (Special Revenue-Other), and an increase of 7 FTEs in the Solid and Hazardous Waste Management program (Special Revenue-Other). *Note, these 7 FTEs were proposed in the Executive Budget last year, but for a new wetlands program that was rejected by the Legislature.*

### **Department of Transportation**

- **An increase of 179 FTEs from the adjusted SFY 2005-06 year-end target of 9,475.** One hundred and seventy-seven of these FTEs are located in the Design and Construction Program (Capital Projects-Other) and two are found in Operations.
- The proposed budget also indicates that DOT will end the SFY with **294 more FTEs than was projected by the SFY 2005-06 year-end target of 9,475.** Specifically, this represents an increase of **216 FTEs** for Design and Construction and an increase of **79 FTEs** in the Preventative Maintenance program.
- Proposes legislation to authorize the DOT and the Thruway Authority to undertake a pilot design-build program and participate in a maximum number of "design-build contracts" (12 for DOT and five for the Thruway Authority). Last year Commissioner Boardman admitted that this legislation would increase the State's reliance on consultant engineers.
- Again proposes legislation that would permit a controversial public/private partnership plan. If passed, this bill would permit public and/or private entities to acquire, design, finance, construct, improve, operate and maintain transportation facilities, provide transportation services, and impose user fees for the use of the facilities or services.

## Department of Agriculture & Markets

- **A decrease of 21 FTEs from the adjusted SFY 2005-06 year-end target of 567.** The proposed decrease of 21 FTEs is entirely in the Agricultural Business Services Program (General Fund) and is accomplished through attrition. It is unclear which programs within the Agricultural Business program will suffer position reductions but the NY Farm Net/NY Farm Link appropriation is completely eliminated and there is a significant reduction in the Agriculture Producers Security personal service appropriation.
- Proposes legislation to establish a program of risk-based inspections of retail food stores, replacing the current annual inspection program. According to the Division of Budget this would save \$1.1 million in program costs. This savings is reflected in the elimination of the \$1.1 million maintenance undistributed appropriation in the Consumer Food Services program. In the past, the Legislature has rejected this proposal, however this year the proposal is not accompanied by a reduction in the number of inspector position in the Consumer Food Services program

## FINAL OBSERVATIONS

It is clear that the Executive Budget closes the SFY 2006-07 and out year budget gaps mostly through spending cuts and makes those gaps worse by proposing back-loaded tax cuts that will cost the State \$4.5 billion annually by SFY 2010-11. These cuts disproportionately favor the wealthiest New Yorkers who already pay the lowest percentage of their income in State and local taxes. The repeal of the permanent sales tax on clothing under \$110 puts a greater burden on working families who already pay more than their fair share of State and local taxes. *According to the Institute on Taxation and Economic Policy, in 2002 all New York's non-elderly taxpayers paid about 12% of their income in State and local taxes except the wealthiest New Yorkers, who make \$634,000 or more a year, who pay only about 6.5% of their income in State and local taxes. The Executive Budget will exacerbate this gap rather than close it.*

The Legislature is likely to add school aid to the proposed Executive Budget particularly if they make an effort to comply with the Court of Appeals' ruling in the Campaign for Fiscal Equity case. **Based on public comments by Speaker Silver and Senate Majority Leader Bruno, the Legislature will likely reject or modify many of the Governor's other spending reduction and revenue proposals including:**

- Extending the sales tax on clothing (\$456 million).
- Changes in the Tuition Assistance Program (\$136 million).
- SUNY tuition increases (\$111 million); and
- Medicaid and other health care cuts (\$1.277 billion) at least some of which will not be enacted into law.

This adds up to almost \$2 billion that the Legislature must find in additional revenue or spending cuts beyond what is proposed in the SFY 2006-07 Executive Budget. PEF will not only need to fight proposed program reductions and increased privatization, but will also have to fight back-loaded tax cuts that will eventually result in significant cuts to State agency operations as they will have to compete with education and health care needs when State resources will be significantly reduced. In addition, the Executive Budget appears to be trying to shift more health care and pension cost to State employees as the business community makes a major effort to scuttle the State's defined benefit pension system.

Further complicating the budget battle is a recent Court of Appeals ruling that limits the Legislature's ability to amend or not enact language changes the Governor submits with his budget appropriation bills. These language changes are within appropriation bills and/or in separate Article VII bills. It is unclear whether the Legislature can amend Article VII bills, but it is clear they cannot amend language in appropriation bills. Separate Article VII bills contain some of the proposals that PEF opposes like the privatization of the SUNY hospitals and the design-build and public/private partnership proposals in DOT. However, the changes regarding Pension Task Force and other issues are in either both the appropriation and Article VII bills or just the appropriation bills. Since the Legislature cannot delete these policy changes without deleting the entire appropriations for the agencies they affect, it will greatly complicate PEF's ability to stop these proposals.

In addition to this memo, we are forwarding to the respective Executive Board members and Statewide Labor-Management Chairs our department's line-by-line analysis of the Program Details-State Operations portion of the budget for the State agencies with the most significant changes in their budgets. This memo and the complete agency analysis will be placed on the PEF website next week.

Next week, we will distribute any revised drafts of the major agency summaries sent this week, as well as State Operations summaries for all other agencies. We will also include on PEF's website a link to Executive Budget Appendix I, which contains a summary of all agency budgets. Executive Board members and Statewide Labor-Management Chairs who do not have a computer to access PEF's website and want a copy of their agency's budget should call the Research Department at 1-800-342-4306 ext. 280 and request a copy.