

The 2018-19 Executive Budget and the Public Schools

FEBRUARY 2018

I. SCHOOL AID

Governor Andrew Cuomo’s 2018-19 Executive Budget proposes a \$769 million (3.0 percent) increase in School Aid. The increase is comprised as outlined in the table below.

Aid Category	Increase in Millions
Foundation Aid	\$338
<i>Includes new \$50 million Community Schools set-aside</i>	
Expense-Based and Other Aids	317
Fiscal Stabilization Fund	64
<i>To be allocated in final budget</i>	
Expanded Prekindergarten for 3 & 4 Year-Olds*	15
Empire State After-School Program*	10
Early College High Schools*	9
Smart Start Computer Science Initiatives*	6
Breakfast After the Bell*	5
Expanded AP/IB Access*	2.5
Other Initiatives*	2.5
Total	\$769

* Not customarily counted as "School Aid."

The proposed increase includes \$50 million devoted to categorical initiatives which have not customarily been counted within what is referred to as "School Aid." Of the remainder, \$64 million is proposed as a "Fiscal Stabilization Fund" to be allocated within the final, enacted state budget.

Aids appearing on School Aid runs would increase by \$651 million, or 2.6 percent.

Reaction: The annual school finance paper issued by the Educational Conference Board (ECB)¹ in December projected that a \$1.5 billion

increase in state aid would be needed to enable schools to maintain current services, based on assumptions developed from independent sources and the prospect of a 2 percent property tax cap. The ECB also recommended \$500 million in categorical funding to support expansion of prekindergarten, services for English language learners, improved college and career pathways, and other priorities.

In contrast, the Executive Budget would increase "regular School Aid" by \$719 million. But \$50 million of that sum would be restricted as an increased set-aside from Foundation Aid to support Community Schools activities, bringing the total increase potentially available to support current operations down to \$669 million. The value of that increase is further offset by a proposed shift of \$70 million in summer special education costs, dropping the sum available to fund current services to \$599 million, well less than half the increase the ECB estimated would be needed.

Below is a chart which compares the Executive Budget School Aid proposal and the ECB estimate and summarizes the assumptions supporting the ECB estimate.

The ECB’s assumptions add up to a 2.8 percent increase in total spending, offset by an increase of approximately \$400 million in local revenue. A major cost driver is an increase in the mandated employer contribution rate for Teachers Retirement System obligations of 8 percent.

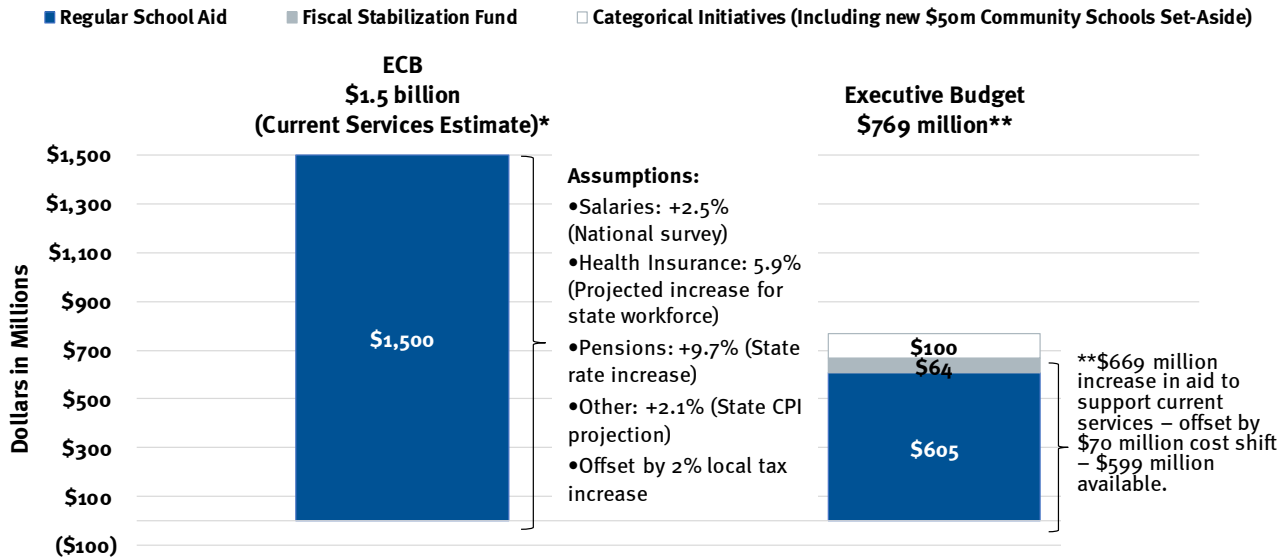
¹ New York State Educational Conference Board. *Public Schools Remain the Best Investment in the Future: To Continue Current Services, New York's Schools Need a*

\$2.0 billion state aid increase for 2018-19 and commitment to Foundation Aid. December 2017.

KEY POINTS

- The \$769 million increase in **total School Aid** recommended in the Executive Budget is inadequate. Using assumptions about school costs drawn from independent sources, the Educational Conference Board projects that schools would need a \$1.5 billion increase in aid to preserve current services.
- The total increase includes \$100 million in new categorical funding restricted in how it may be used by school districts. It is also offset by a proposed shift of \$70 million in special education costs from the state to districts. With these accounted for, the funding increase available to schools to meet ongoing costs drops to \$599 million.
- Included within the total increase is a \$338 million (2.0%) increase in **Foundation Aid**. The proposal generally provides larger percentage increases to lower wealth/higher student need districts, but the size of the increase simply does not go far enough. With the Executive Budget recommended increase, the state would remain \$3.9 billion behind in phasing in the 2007 formula enacted after the conclusion of the Campaign for Fiscal Equity litigation. THE COUNCIL supports a Foundation Aid increase of \$1.2 million.
- Council surveys show mounting concern among superintendents about the needs of students attending their schools. **Community Schools** are a strategy for schools to help meet the non-academic needs of children and their families. But THE COUNCIL is concerned by the expanding precedent of directing the use of Foundation Aid through set-asides. The budget proposes an additional \$50 million set-aside for Community Schools, reducing the Foundation Aid increase available as unrestricted operating support to \$278 million (1.7%).
- The Executive Budget proposes to **cap certain expense-based aids** commencing in 2019-20. Increases in BOCES and Transportation Aid would be capped at 2 percent for each district (i.e., districts would receive the lesser of a 2 percent increase or their calculated aid). Building Aid would be capped so that each district's aid would be reduced if aid statewide is due to increase by more than 2 percent.
- The **cap on BOCES Aid** would be especially damaging for the poorest school districts which rely on BOCES share services to provide opportunities for their students which they could not afford alone. The **cap on Transportation Aid** ignores the reality that mandates are a driving force behind cost increases – new bus driver licensing requirements, federal requirements for transporting homeless and foster children, and increases in the minimum wage.
- The **cap on Building Aid** is particularly capricious – a district could carefully restrain its own capital spending but still lose aid if increases by other districts trigger the cap. With the uncertainties created by the cap, district leaders would lose the ability to give voters any assurance that the state will reimburse a consistent share of a project's cost while debt is being paid down, either proposed projects or those already underway.
- Districts would need to absorb the proposed **shift of \$70 million in summer special education costs** within their budgets and tax caps. Under the proposal, the district share of costs would vary from 10% to 75% depending on local wealth; currently all districts pay 20%. 95% of districts would see their costs rise and over 100 districts would see their share of costs more than triple, going from 20% to 75%.
- A proposal to require 15 districts to gain **state approval for allocations among school buildings** would substitute the judgment of Albany officials for local leaders who are closer to schools and students. At best, the proposal is premature – the federal Every Student Succeeds Act will require every district to report its building allocations; this reporting will shed light on the decisions districts are making and the complications they encounter in doing so.
- Schools need an adequate increase state aid for 2018-19. They also need action on an agenda to assure a more financially sustainable future in the years beyond. A **financial sustainability agenda** should:
 - Commit to funding and updating the Foundation Aid formula;
 - Make adjustments to the property tax cap to enable better multi-year financial planning by district leaders;
 - Help schools control costs and maximize the benefit of current resources; and
 - Give schools access to reserves like those available to local governments, starting with a reserve for teacher pension obligations.

School Aid: Executive Budget Recommendation and Educational Conference Board Estimates



SOURCE: Compiled by the Council from ECB and NYS Executive Budget Documents

The Executive Budget Financial Plan states that the proposed \$769 million (3.0 percent) increase is “...double the 1.5 percent annual increase allowed under the updated personal income growth index for School Aid (but lower than the 3.9 percent index increase estimated in the Mid-Year Update).”² The Mid-Year Update, issued by the Division of the Budget in early November, projected a \$1.1 billion (4.3 percent) School Aid increase for 2018-19.

Foundation Aid

The Executive Budget would provide a \$338 million, 2.0 percent increase in Foundation Aid. Unlike a year ago, this budget does not propose repealing the formula enacted in 2007 as part of the resolution of the Campaign for Fiscal Equity litigation.

The increase would be allocated through a four-step calculation. First, each district would receive aid under the most favorable of three

tiers, one based primarily on district ability to raise local funds (measured by the Combined Wealth Ratio³), a second based primarily on student needs, and a third assuring every district a minimum increase of 0.25 percent. A total of 133 districts would receive additional Foundation Aid as an increased set-aside for Community Schools.

Excluding the additional funding provided as Community Schools set-asides reduces the Foundation Aid increase available to support current services to 1.7 percent.

Reaction: It is a positive that the 2018-19 Executive Budget does not reprise last year’s proposal to repeal the 2007 Foundation Aid formula. The distribution of the recommended increase in generally progressive, directing larger percentage increases to higher student need, lower wealth school districts. But the recommended increase of \$338 million simply

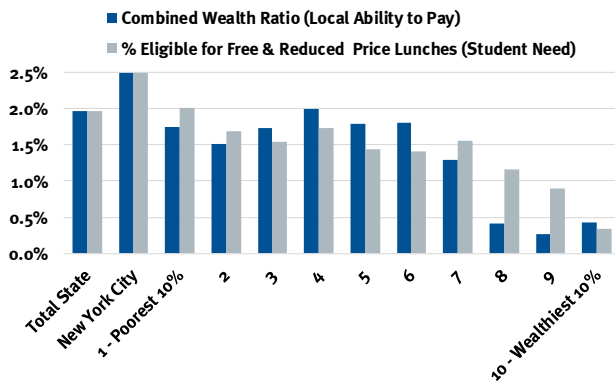
² NYS Division of the Budget. *FY 2019 Executive Budget Financial Plan*, p. 11.

³ The Combined Wealth Ratio is the most widely used measure of district ability to fund education from local

sources. It compares district property wealth and resident income per pupil (both weighted 50 percent) to statewide averages. A district with a CWR of 1.000 could be said to have average wealth; .500 could be said to indicate the district has half the average wealth.

falls far short of the amount schools need to preserve current services and student opportunities.

Distribution of Proposed \$338 Million Foundation Aid Increase
Districts Grouped by Measures of Ability to Pay and Student Needs



SOURCE: Council analysis of NYSED School Aid data

THE COUNCIL supports the ECB’s call for the state to commit to fully phase-in the Foundation Aid formula over three-years and to embark on studies to update elements of the formula, including the weightings used to account for pupil needs and the per pupil amount needed to prepare students for success.

We also support restructuring the index intended to recognize regional cost differences and eliminating the minimum limit on the Income Wealth Index which overstates the ability of some communities to support schools from local sources. The formula as it stands now does not work for many districts, including the 48 percent of average need districts and 44 percent of high need rural districts now on save-harmless.

The near complete elimination of the state and local tax deduction under the recent federal tax legislation is another change in circumstances since the formula was first enacted. This will affect the ability of some communities to support schools through local resources.

Community Schools Set-Aside

As noted above, \$50 million of the proposed \$338 million increase in Foundation Aid would be directed through a new Community Schools set-aside, coming on top of set-asides totaling \$150 million in 2017-18. Districts would receive additional aid and would be required to use that aid for Community School purposes.

A total of 133 districts would see increases in Community School funding. The budget would increase the minimum Community Schools allocation from \$10,000 to \$75,000, generating increased allocations totaling \$3.33 million for 98 districts.

The remainder of the \$50 million increase would be allocated to districts with either one or more schools designated as struggling or persistently struggling or dramatic increases in students who are English Language Learners or homeless.

Districts are required to use the set-aside for child and family support services, including before- and after-school programs, summer learning activities, medical and dental care, and other social services. Districts would not be allowed to use any increase in funding “...to support other costs incurred to maximize students’ academic achievement” as has thus far been permitted.

Reaction: THE COUNCIL’s seventh annual survey of superintendents on financial matters found evidence of growing concern about the needs of students are bringing to their schools.⁴ Community Schools can help districts offer pivotal extra support to children and families. But THE COUNCIL objects to the expanding precedent of directing use of Foundation Aid, which is intended to be unrestricted general purpose operating aid.

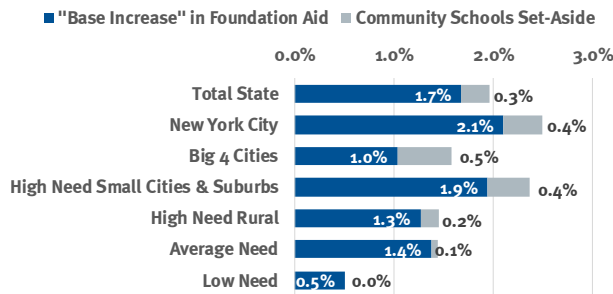
⁴ New York State Council of School Superintendents. *Losing Ground: Seventh Annual Survey of New York*

State School Superintendents on Financial Matters. October 2017.

Districts do require adequate funding for basic operations. Excluding the set-aside, the net proposed increase in Foundation Aid is only 1.7 percent and, for each of the high need cities of Buffalo, Rochester and Syracuse, only 1.0 percent.

Also, the Legislature should reject the Executive Budget proposal to deny districts the flexibility to use increased Community Schools funds to improve student academic achievement, as has been permitted in the past.

Foundation Aid Increase by Need/Resource Category



SOURCE: Council analysis of NYSED School Aid data

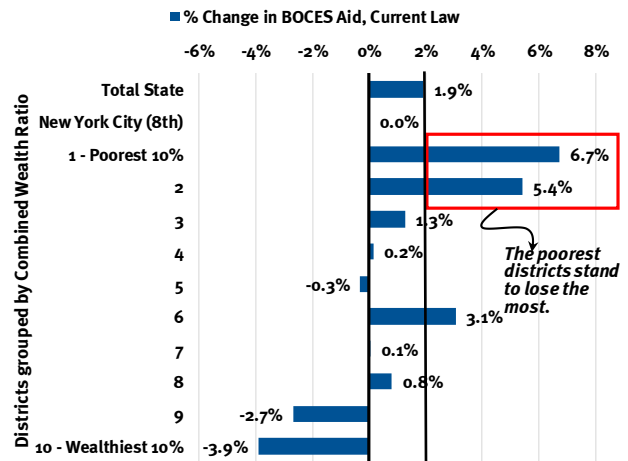
Expense-based and Other Aids

For 2018-19, with one small enhancement, the Executive Budget would fund expense-based and other aids according to formulas in current law, including Building, Transportation, BOCES, Excess Cost (special education) Aids. The enhancement would extend for an additional year supplemental Building Aid for school security improvements.

For 2019-20 and beyond the budget proposes to cap increases in certain expense-based aids. Increases in Transportation Aid and BOCES Aid would be capped at 2 percent for each district. In effect, districts would receive the lesser of a 2 percent increase or their actual calculated aid. Building Aid would be capped so that, to the extent Building Aid statewide increases by more than 2 percent, each district would have its aid pro-rated down. New York City would be exempt from reduction for projects approved prior to July 1, 2018.

Reaction: The proposal to cap increases in expense-based aids is alarming. The state’s poorest districts are increasingly reliant on the shared services supported by BOCES Aid. Some districts are experiencing sharp increases in transportation costs due to difficulties in finding bus drivers or to rising transportation costs for homeless students, both arising, at least in part, from new federal requirements.

Impact of Proposed Cap on BOCES Aid, if in Place for 2018-19 Aid (\$51 million loss)



The Combined Wealth Ratio measures district ability to fund schools from local sources.

SOURCE: Council analysis of NYSED School Aid data.

The impact of the proposed Building Aid cap would be particularly unpredictable and capricious. A district could be careful in its capital spending, holding its own increases below 2 percent, and still have its Building Aid reduced if other districts drive the statewide increase above 2 percent. The property tax cap has impelled all districts to carefully plan construction and try to smooth out local capital costs. An unpredictable Building Aid cap would make that impossible. It would also deprive district leaders of the ability to give voters any assurance that the state would reimburse a consistent share of a proposed project’s costs.

In addition to opposing a cap on expense-based aids, THE COUNCIL advocates changes in BOCES and Special Services Aids to promote expansion of Career and Technical Education opportunities.

Full-Day Kindergarten Conversion Aid

The budget proposes an additional incentive to encourage districts to implement full-day kindergarten, allowing districts implementing in 2018-19 to receive an additional year of conversion aid in 2019-20, equal to one-half its 2018-19 aid.

Reaction: Very few districts have yet to offer full-day kindergarten. This should be a low-cost initiative.

Fiscal Stabilization Fund

The School Aid appropriation includes a \$64 million “Fiscal Stabilization Fund” to be allocated through legislation to be enacted with the final state budget. Funding from this source is not reflected on School Aid runs.

Reaction: THE COUNCIL recommends prioritizing use of the Fiscal Stabilization Fund to increase Foundation Aid. But the Legislature will need to further increase School Aid above the Executive’s proposal to assure basic services to students are not reduced and allow schools to offer new opportunities for students.

State Aid Data Freeze

Once again, the Executive Budget proposes to limit each district’s aid (excluding Building and Full-Day Kindergarten Conversion Aid) for both the base year (2018-19) and estimate year (2019-20) to the *lesser* of amounts estimated within the proposed budget, or amounts calculated based on updated data.

The Governor also proposes to limit prior year aid claims by school districts. Commencing with the 2018-19 school year, any changes to aid data would need to be submitted by November 1 of the year in which the aid is to be paid.

Reaction: Freezing School Aid data as of the date the Governor’s budget is released has been rejected by the Legislature multiple times. Some data, through no fault of the school district, is not available in time to meet that deadline.

II. OTHER EDUCATION BUDGET ITEMS

Prekindergarten

The Executive recommend an additional \$15 million to be allocated through competitive grants to expand high-quality half-day and full-day prekindergarten for three- and four-year-old children in high-need school districts, with preference given to high need districts not yet offering pre-k.

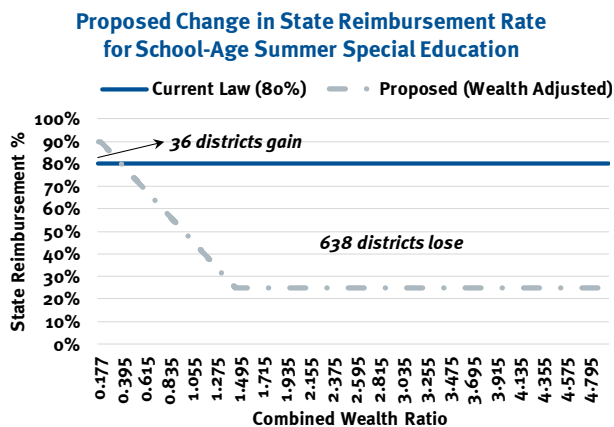
Reaction: THE COUNCIL supports additional funding for prekindergarten, but to successfully live up to the “universal” promise, much more is needed. The Legislature and the Executive should establish a funding mechanism the provides sufficient resources to offer full-day prekindergarten to all students in every school district. If the Legislature deems ongoing grants is the best method to expand prekindergarten, then grants should be limited to four-year old programs until universality is achieved.

THE COUNCIL continues to support consolidating into one program the Universal Prekindergarten and Priority Full-Day and Expanded Half-Day Prekindergarten Programs. A goal should be to enable districts to design programs best responding to the needs of their communities – for example, one solid full-day program for its four-year-olds, rather than a mix of inadequate programs for three and four-year-olds

Summer School Special Education

The Executive Budget proposes restructuring how summer special education services are funded for school-age children. Currently, the state reimburses 80 percent of costs for all school districts and recoups 10 percent from counties. The budget which adjust the state reimbursement of school costs on a wealth adjusted basis, ranging from 90 percent for very poor districts to a minimum of 25 percent for districts with Combined Wealth Ratios above 1.470.

Reaction: THE COUNCIL opposes this proposed cost shift, estimated by the Division of the Budget to increase school costs by \$70 million in the 2018-19 school year. As noted, this cost shift reduces the net statewide increase in School Aid available to support current services to just proposed in the Executive Budget to 2.3 percent. Districts would be expected to accommodate this cost within their budgets and tax caps. With few districts attempting to over-ride the tax cap, the probability is that most would need to cut other spending and services to accommodate this new state-imposed cost.



SOURCE: Compiled by the Council

After School Programs

The Executive Budget proposes an increase of \$10 million to support another round of Empire State After School awards to serve an additional 6,250 students. Of this funding \$2 million would be allocated to applicants in school districts in “at-risk” areas of Nassau and Suffolk Counties and remaining funds would be prioritized for high need communities with high rates of student homelessness.

Reaction: THE COUNCIL recognizes the value of after-school programs. They can divert young people from trouble in the afternoon and early evening hours and, if school-day attendance is required, serve as an incentive against absenteeism. But again, we note that the Executive Budget does not provide adequate funding to maintain regular school operations.

Early College High Schools:

The Executive proposes \$9 million to fund 15 new Early College High School programs, targeted communities with low graduation or college access rates, and will align new schools with in-demand industries such as technology, sports management and finance.

Reaction: THE COUNCIL supports efforts to promote more effective connections between high school and what follows, including funding to further expand the Early College High School program.

Expanding Access to Advanced Classes

The budget would increase from \$2 million to \$4 million state funding to subsidize fee waivers enabling low income students to participate in Advanced Placement and International Baccalaureate programs. The budget would also provide \$500,000 for grants of up to \$25,000 to school districts with no or very limited advanced course offerings to establish AP courses or equally rigorous classes.

Reaction: Again, THE COUNCIL supports efforts to promote more effective connections between high school and postsecondary learning or employment. Completing rigorous classes provides greater assurance of college and career readiness than performance on a standardized test.

Teacher Awards: Empire State Excellence in Teaching and Master Teacher Awards:

The Governor proposes \$400,000 to fund a third round of Excellence in teaching Awards of \$5,000 for high-performing teachers in each region of the state to continue their professional development and educational. The Executive also proposes expanding the Master Teacher program with an additional \$1 million to fund awards of \$15,000 annually over four years to high-performing teachers in high need school districts. Master Teachers are expected to

engage in peer mentoring and lead professional development activities.

Reaction: There may be more effective teacher professional development initiatives which could be supported with this funding.

Teacher Centers

The Executive Budget would eliminate funding for Teacher Centers, a reduction of \$20 million for the 2018-19 school year.

Reaction: Some superintendents value their local Teacher Centers as sources of professional development.

Smart Start Computer Science Program

The budget would create a \$6 million Smart Start Computer Science program. Grants would support professional development offered by higher education institutions or non-profit organizations to increase expertise in computer science, engineering, and educational technology among teachers in grades K-8. The aim would be for participating teachers to become in-house experts in their schools. High need districts would receive priority. Participating districts would agree to partner with their Regional Economic Development Council to tailor programs to local employer needs. The budget also proposes legislation to convene a working group of industry leaders and educators to develop model computer science standards for use by any school. The work group would submit a report to the State Education Commissioner.

Reaction: THE COUNCIL has no objection to the new funding proposal. The development of new academic standards should be managed from beginning to end by the State Education Department and Board of Regents, the constitutionally responsible state agency.

Mental Health Grants for Community Schools:

Under the budget, \$250,000 would be provided to enable selected Community Schools to improve mental health services to students by

including activities in wrap-around services, improving school climate, combating bullying or school violence, and promotion of social-emotional learning.

Reaction: THE COUNCIL's 2017 survey of superintendents on finance matters found mounting concern among superintendents over the mental health needs of students – the share choosing improving mental health services as a budget priority rose from 35 percent to 52 percent in one year. The Governor's proposal is a start toward addressing needs. THE COUNCIL is working with the Educational Conference Board to develop additional recommendations to address this need.

Gang Prevention Education

The budget would provide \$500,000 to fund locally run programs designed to deter middle and high school students from becoming involved with gangs.

Reaction: THE COUNCIL has no objection to this proposal but does caution against a profusion of small competitive grant programs. Some of the neediest districts have the least administrative capacity to continually complete grant applications.

State Education Department Operating Budget

Total funding for the State Education Department's agency operations would remain essentially flat and the number of full-time equivalent positions budgeted for the Department would not change under the Executive Budget.

Reaction: Flat funding of SED's operating budget would require some service reductions or structural changes to absorb increasing costs.

III. ARTICLE VII LEGISLATIVE PROPOSALS

School Budget Oversight

The Executive proposes requiring the State Education Department and the Division of the Budget to approve the methodologies used by the Big 5 cities and 10 other districts to allocate funding among school buildings. If a plan is not approved by these two state entities, the school district would forfeit its increase in state aid.

Districts to be affected by proposal to require state approval of school funding plans

Beginning in 2018-19

- Buffalo
- New York City
- Rochester
- Syracuse
- Yonkers

Beginning in 2019-20

- Binghamton
- Brentwood
- Elmira
- Hempstead
- Jamestown
- Newburgh
- Niagara Falls
- Rome
- Schenectady
- Utica

Reaction: This proposal would substitute the judgments of officials in Albany for those of local leaders who are closer to schools and students. Elected school boards are ultimately accountable to local voters. Even in districts where the school board is appointed by the mayor, voters still have a method to determine who their school board members are. When school boards make inappropriate budgeting decisions, be it at the district or school building level, voters have the ability to alter course.

The Executive’s proposal threatens to turn the local budget making process into a bureaucratic quagmire. Delays in state approval of allocation plans could hold up local decisions needed for the start of the school year. For districts subject to spring budget votes, adverse state action on allocations could result in local budgets which do not match what voters anticipated.

At best this proposal is premature. All districts will be required to report their school funding allocations in 2019-20 pursuant to the federal Every Student Succeeds Act. This reporting will shed light on the allocation practices of districts and complications encountered in determining allocations.

Charter Schools

The Executive seeks to eliminate supplemental charter school reimbursement to the New York City School district and capping reimbursement for charter school facilities costs. The elimination of supplemental tuition would cut over \$100 million from New York City in 2019-20. The Executive also proposes over \$6 million in reimbursement for charter school facilities costs and \$23 million in direct aid to New York City charter schools.

Reaction: Since the enactment of New York’s charter school law 20 years ago, THE COUNCIL has warned that whatever the state hopes to gain through charter schools must not come at the expense of district schools which continue to educate the vast majority of students. But under the original tuition system, public dollars going into charter schools have come out of district schools. More recently, direct state support has been provided to charter schools, a trend which the Executive Budget would continue.

THE COUNCIL calls for rejecting the elimination of supplemental tuition reimbursement to New York City and for rejecting proposals to decrease reimbursement of charter school facilities costs and increase direct state support for charter schools in New York City.

Special Education Flexibility

The Executive proposes authorizing school districts to apply for waivers from certain special education requirements.

Reaction: THE COUNCIL supports this proposal in order to provide some flexibility and relief to school districts regarding certain special

education requirements. While we know how critical it is to ensure extra educational protections for special education students, we do not believe allowing school districts flexibility to meet certain requirements in a different manner will in anyway endanger the rights of these students. This Executive has appropriately raised this issue over the last several years, and it is time for the Legislature to act.

Recovery High Schools

The Executive proposes to authorize the Big 5 and other non-BOCES districts to send students to Recovery High Schools for students with substance abuse disorders, provided that they have demonstrated a commitment to recovery.

Reaction: THE COUNCIL supports this proposal but notes that the Legislature must authorize a BOCES capital exclusion to the tax cap or another statutory mechanism that enables BOCES to build and operate facilities necessary to establish Recovery High Schools and expand programming for students.

Division of Human Rights Jurisdiction Over Public School Students

The Executive proposes expanding jurisdiction of the Division of Human Rights (DHR) over discriminatory practices against students at public schools and BOCES.

Reaction: THE COUNCIL opposes this proposal. In opposing this provision, THE COUNCIL in no way seeks to evade responsibility when students' civil rights are violated while at school. Our member superintendents do not condone these actions and we are confident will always do the right thing. Nonetheless, existing state and federal laws sufficiently protect students against civil rights violations and other acts of bullying. In addition to protection afforded under the federal civil rights and disability statutes, the state Dignity for All Students Act also provides state level protections.

Expanding DHR's jurisdiction in this manner will only benefit plaintiff lawyers. Monetary penalties are not the remedy that will reduce civil rights violations in schools. Education and compliance with existing statutes will best act to protect public school students.

Stop-Arm Cameras

The Executive would authorize school districts to purchase stop-arm cameras on school buses. These cameras would be used to enforce stopped school bus laws and ticket violators. Schools would be authorized to maintain all revenue or enter into revenue sharing agreements with local law enforcement.

Reaction: Most school leaders would agree that their first responsibility is to assure the safety of students, not just in school, but to and from the schoolhouse. Adding these cameras to school buses would help deter potential violators and save lives. Additionally, this is only an option and every community could weigh the pros and cons of installing stop-arm cameras.

School Meal Proposals

The Executive would prohibit any form of what is colloquially known as "lunch shaming." The budget would prohibit any differential treatment of students for school meal purposes regardless of whether their parents or guardians are up to date on school meal payments. Schools would also have to take additional steps to identify and enroll free or reduced price eligible students.

The budget further requires every school building with over 70 percent of students eligible for free or reduced price lunch to offer breakfast after the instructional day has begun.

The budget also offers increased school lunch reimbursement of 25 cents per meal served for schools that purchase at least 30 percent of their food from New York farmers and growers.

Reaction: Speaking to Superintendents, it is our belief that school districts in New York do not

have the same problems with “lunch shaming” as has been reported elsewhere. We do not object to these prohibitions. However, school meal programs should be self-sustaining, so the Legislature should either fund the shortfalls caused by limits on collecting lunch debts or enable schools an appropriate mechanism to recoup funds owed by parents and guardians for school meal costs.

The new mandate for certain school buildings to offer breakfast after the bell will likely increase costs to school districts notwithstanding initial start-up funding. Any additional costs that schools must absorb will result in either a higher tax levy, or reduced opportunities elsewhere. The Legislature and the Governor must either change the rules or fund the rules, but this proposal doesn’t appear to do either.

Be Aware, Be Informed Program

The budget would require the Education Commissioner to establish the “Be Aware, Be Informed” awareness, prevention and education program within the Department. This program would develop age appropriate model curriculum relating to sexual violence prevention, sex education, domestic violence and other important issues.

Reaction: THE COUNCIL supports efforts to better education young women on how they can protect themselves from violent situations that women too often encounter throughout their lives.

Sexual Harassment Policies and Settlements

The Executive requires all school districts to develop a sexual harassment policy to address claims and subsequent investigations. The budget further prohibits schools from paying a settlement or judgment involving sexual harassment by an employee.

Reaction: THE COUNCIL obviously supports the Executive’s goal of ensuring a safe workplace for all employees. However, these two proposals have problematic provisions. The sexual

harassment provisions regularly place enforcement and development provisions within the power of a school attorney. Because many small districts do not have a school attorney whom they regularly use, this would lead to increased costs. Requiring broad outlines for a sexual harassment policy is not objectionable, but the state should not be requiring a one-size fits all model controlled by an employee or independent contractor who is expensive to hire.

We also have concerns that prohibiting paying settlements for employees that committed acts of sexual harassment will do nothing to deter such conduct. This will only increase litigation costs as employees that are now personally liable will no longer agree to a settlement. There are better approaches to deter such conduct that would not have unintended and costly consequences.

IV. OTHER MAJOR BUDGET PROVISIONS

Federal Funding Contingency

The Executive proposes continuing provisions first enacted a year ago that authorize the Division of the Budget, absent an alternative legislative plan, to reduce state appropriations if the federal government reduces certain revenue streams by \$850 billion or more.

Reaction: THE COUNCIL opposed this proposal last year and continues such opposition. The Executive already maintains significant leverage in state budget negotiations and the Legislature should not divest itself of its budgeting authority. If state and federal receipts are less than anticipated, the appropriate action would be to call a special session and enact a deficit reduction act.

State Tax Receipts Contingency

This year, the Executive Budget would add an authorization for the Division of the Budget to reduce amounts of available for expenditure from local assistance appropriations by a

uniform percentage amount of up to 3 percent in the event that total state receipts fall short of budgeted amounts by \$500 million or more. Some local assistance appropriations would be exempt from this provision, including School Aid. Public schools do draw support from other state funding sources outside of School Aid.

Reaction: Again, our position is that the Legislature should not divest itself of a role in determining how to close a budget deficit resulting from a revenue shortfall.

Zero Percent Cap on STAR Benefits

Under current law, STAR property tax benefits may not grow by more than 2 percent. The Executive Budget proposes to cap STAR savings at the preceding year's amount, producing projected savings for the state of \$49 million.

Reaction: THE COUNCIL objects to this proposal and recommends that the existing cap on STAR reimbursement increase remain in place.

Cap on Taxes on State Land

The Executive Budget proposes to cap taxes the state pays to school districts and local governments on land it owns at the amount paid in the prior year multiplied by the allowable levy growth factor in the property tax cap. For affected school districts, this would mean that 2018-19 state payments would be determined by multiplying 2017-18 by 2.00 percent.

Reaction: THE COUNCIL opposes this proposal. To the extent that the value of state property increases by more than the allowable levy growth factor, school districts would receive less revenue than under current law or this would result in a tax shift to property owners.

30-Day Amendments to Address Impact of Federal Tax Legislation

In legislation submitted as 30-day amendments to the Executive Budget, the Governor proposes a series actions intended to address negative

effects of the recently enacted federal tax legislation on New Yorkers.

One proposal would establish two new **state charitable gifts trust funds**, one for education and one for health care. Depending on individual circumstances, taxpayers could claim donations to either fund as deductions on their Federal and State tax returns. In addition to the deductions, any taxpayer making a donation to the funds would be eligible to claim a state tax credit equal to 85 percent of the donation amount for the tax year following the year the donation is made. Money accumulated in the education trust fund would need to be appropriated in state budgets and would only be used for elementary and secondary education. The proposed budget does not include any estimates for the new state funds, explaining that any giving is not expected to have “a measurable impact” on state finances in state fiscal year 2018-19, that donations made in 2018 are not expected to be disbursed until SFY 2019-20, and that the cost of the new state tax credit will not be incurred until the 2019 tax year.

The legislation would also authorize school districts to establish **local charitable gift trust funds**. As with the state funds, taxpayers who itemize could claim a deduction on their state and federal tax returns. In addition, taxpayers in participating districts would be entitled to a tax credit from the district equal to 95 percent of the amount of their donations. Districts would be permitted to adopt a limit on the total amount of credits they would allow in any year. The local tax collector would reduce the tax liability on the taxpayer's property by the amount of the credit given. Monies within a local fund would be transferred to the district's general fund for expenditure and the bill provides, “the amount of taxes to be levied by the school district for any school year shall be determined without regard to any such transfer.”

The amendments would also authorize an optional **Employer Compensation Expense**

Tax (ECET) System. When fully phased-in, Employers would be subject to a tax of 5 percent on payroll expenses in excess of \$40,000 per employee. The state personal income tax would remain in place, but workers employed by payroll tax participants would receive a tax credit expected to lower their total tax liability.

The amendments would also decouple several aspects of the state and federal personal income tax systems to avoid increasing state taxes on New Yorkers due to changes in federal law. The net effect is to reduce future state tax receipts by roughly \$700 million annually, beginning in SFY 2019-20 from initial Executive Budget projections, though this prospective revenue windfall was only the result of federal tax reform legislation.

Reaction: We are inclined to support initiatives that reduce the federal tax bill for New Yorkers. THE COUNCIL was aggressive in opposing reductions in state and local tax deductibility when Congress was debating tax legislation.

As money contributed the state’s proposed education charitable fund would be distributed through the regular appropriation process, we support this proposal.

Regarding locally established school district charitable funds, we can support these funds because they would be optional and may partially avert increases to total tax burden that would occur for some taxpayers due to loss of SALT deductions. As constructed, the proposal could result in greater total revenue for districts (see the accompanying illustration). This would be an unexpected benefit to schools from the tax cuts. Districts should be cautious in proceeding, however, until the legality and operational aspects of the funds undergo further study and analysis.

Hypothetical Benefit to Taxpayer and School District from a Local Charitable Gift Fund

Example: Married couple filing jointly in 32% marginal tax bracket and itemized deductions more than \$24K

- School tax bill = \$20,000
- Taxpayer remits \$20,000 donation to charitable trust fund
- Charitable trust fund remits \$20,000 to school district and school district provides credit of \$19,000 (95%) to taxpayer, thereby reducing taxpayer’s liability to \$1,000
- Taxpayer remits an additional \$1,000 to school district
- Taxpayer will receive a benefit of \$6,400 from the federal government (32% of \$20,000 donation) and a total **benefit of \$5,400** (\$1,000 less because taxpayer remitted an extra \$1,000)
- School district and charitable fund receive \$21,000, a benefit of an additional **\$1,000**

V. A FINANCIAL SUSTAINABILITY AGENDA

In addition to advocating for adequate funding for the year ahead, THE COUNCIL supports a series of actions aimed at creating a more financially sustainable future for our public schools for the years ahead.⁵

A core theme of THE COUNCIL’s financial sustainability agenda is “*change the rules or fund the rules*”: if the state is not going to change rules that drive-up costs while restricting the ability raise local revenues to meet those costs, then it must fund the rules – assuring all schools the sufficient state aid to satisfy state requirements and to preserve and improve opportunities for all students.

⁵ New York State Council of School Superintendents. *A Sustainability Agenda for New York’s Public Schools*. January 2018.

1. Update and Phase-in Foundation Aid

A financial sustainability agenda should begin with a commitment to update and phase-in the Foundation Aid formula.

The 2007 formula was an under-appreciated accomplishment in public policy. It generally drove the greatest aid per pupil to the neediest districts – and still does. It promised more predictability in aid for all districts going forward. It used elements with a basis in facts – a per pupil amount tied to the cost of providing general education in successful schools, for example, making state funding decisions more transparent and decision-makers more accountable.

Even leaving aside arguments over what the state does or does not “owe” as a result of CFE litigation, something like the Foundation Aid formula is desirable in its own right, as a cornerstone in building a school finance system that supports more effective multi-year planning. Schools in other states have this and ours once did.

2. Adjust the Tax Cap

Advertised as a “2 percent tax cap,” the base for New York’s tax cap was below 2 percent for four straight years. If districts do not obtain voter approval, they may not increase taxes at all – in effect a zero percent tax cap every year. In contrast, Massachusetts – cited as a model for our law – allows communities to raise their tax levy by up to 2.5 percent *without requesting voter approval*.

Adjusting the tax cap is the second component in a fiscal sustainability agenda. The allowable levy growth factor should be set at 2 percent, not the lesser of 2 percent or the change in the Consumer Price Index over the prior calendar year. Most forecasts predict that inflation will be greater than 2 percent for the next several years, so this adjustment would not immediately affect anyone’s tax bill. This should be coupled with a more workable carry-over provision which would give districts an incentive to hold levy

increases below 2 percent in years when they can manage, allowing them to reserve the savings for use in a tougher year.

Two adjustments to the cap which passed both houses without a negative vote were vetoed by the Governor. One would have treated properties covered by payments in lieu of taxes (PILOTs) in the same manner as regular taxable property in the tax base growth factor; the other would have allowed districts to exclude from their tax cap expenses for shared Board of Cooperative Educational Services (BOCES) capital costs, just as they exclude district capital costs. Remedies to the problems those bills sought to fix must still be pursued.

3. Help Schools with Costs and Maximizing Resources

Repeatedly, we are told New York spends more per pupil on its public schools than any other state. Why do New York schools spend as they do? There are multiple reasons. We are high cost in many things, not just education. We are part of a high cost region, along with our northeastern neighbors. We have some of the absolute best public schools in the nation and the opportunities they provide their students are expensive. We more fully fund our pension obligations than most other states.

Another factor is that New York schools operate under rules not found in other states, like extensive special education requirements and the Triborough law which mandates that salary “step increases” continue even under an expired contract (other states do have laws requiring that benefits continue).

Debates over mandate relief are nearly always contentious and usually futile. Frankly, we have no expectation that significant help for schools in reducing or controlling costs and maximizing resources will be forthcoming in the near term. But to criticize school spending while taking no action on mandates that drive those costs is like

tying a runner's shoes together and then complaining he or she doesn't run fast enough.

THE COUNCIL'S financial sustainability agenda offers ideas for smaller scale assistance, including, for example, a voluntary moratorium on new unfunded mandates, authorizing transportation "piggy-backing" by allowing private bus contracts to serve multiple districts, and permitting the creation of regional high schools. We also recommend steps which might yield greater payoff in the future, such as establishing a joint labor-management committee to explore strategies to achieve savings in health insurance costs for both school districts and their employees and retirees.

4. Give Schools Access to Reserves Available to Municipalities

The final component in a financial sustainability agenda is to give school districts access to reserves like those available to the state's municipalities, starting with a reserve for Teachers Retirement System obligations.

Municipalities may set aside funds for pension obligations on behalf of all their employees. Schools may do so only for the roughly 20 percent who are covered by the Employees Retirement System (ERS), but not for teachers and certified administrators in the Teachers Retirement System. Yet schools are subject to more disclosure requirements and a tougher tax ap. Twice in recent years, statewide increases in TRS costs exceeded overall increases in spending, meaning that districts had to cut other expenses, on balance, to accommodate rising pension costs.

The tax cap has changed how school district leaders think about reserves – they are one remaining tool for exerting some control over future financial prospects for their schools.

