Better, But Still Bleak: State’s budget outlook better, but schools still face grim challenges

Summary and Analysis of the 2012-13 New York State Executive Budget for Education

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New York State Council of School Superintendents

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TABLE OF CONTENTS

Executive Summary .......................................................... 2
Commentary: Better, But Still Bleak .................................. 4
Overview ......................................................................... 8
School Aid ...................................................................... 9
Other Elementary, Middle and Secondary Education Programs .... 19
State Education Department Operating Budget .................... 19
Teacher and Principal Evaluations .................................. 20
Tenured Teacher Discipline Hearings (“3020a”) .................... 21
“Tier VI” Pension Reform ................................................ 22
Other “Article VII” Legislation ........................................ 24
EXECUTIVE SUMMARY

School Aid

- **Total Aid:** Governor Cuomo proposes an $805 million, 4.1% increase in total School Aid, consistent with the expectation set by the two-year appropriation for School Aid included in the 2011-12 state budget. The increase would be divided into three major pieces:
  - $290 million in additional general purpose aid, through a reduction in each district’s 2011-12 Gap Elimination Adjustment (GEA);
  - $250 million to expand competitive grants enacted last year to encourage and reward gains in student performance and management efficiency; and
  - $265 million to fund expense-based aids and other aids according to current law.

- **Gap Elimination Adjustment Restoration:** The additional $290 million in general aid provided through reduction in the GEA would be allocated according to a formula which considers pupil needs, local ability to fund education, and the size of the district’s 2011-12 GEA as a percentage of its budget.

- **Competitive Grants:** None of the $250 million in competitive grant funding has yet been allocated to specific school districts, and very little is likely to be allocated by the time districts must adopt budgets. Leaving this sum aside, districts can plan on state aid increases totaling $555 million, and averaging 2.9%.

- **Expense-based Aids:** Funding for major expense-based aid categories (Building, Transportation, BOCES, and Excess Cost for special education) would be distributed according to current law formulas, allowing districts to receive expected reimbursement for costs they have already incurred.

- **Foundation Aid:** Foundation Aid would be frozen for the fourth straight year. The state is now over $3 billion behind the funding level set for 2010-11 when the formulas was first enacted in 2007. High Tax Aid would also be frozen for the fourth consecutive year.

Other Education Programs

- **Preschool Special Education:** The Governor proposes programmatic reforms to the Preschool Special Education Programs, which has doubled in cost over 10 years. He also proposes shifting a share of future costs for the program to school districts.

- **State Education Department Operating Budget:** General Fund support for SED’s operating budget would be cut by 2.5%, but $8.5 would be provided to support continuation of current Regents Exams and other state assessments.

Legislation

- **Tier VI Pension Reform:** The Governor proposes to reduce pension costs for schools, local governments and the state by providing new hires the choice of a reduced traditional defined benefit plan or a 401k-like defined contribution option.

- **Teacher/Principal Evaluations:** The Governor proposes amendments to the 2010 teacher/principal evaluation law designed to end litigation between the teachers’ union and the State Education Department. Among other provisions, the proposal would require SED approval for local evaluation plans, and deny eligibility for aid increases to districts without an approved plan by January 17, 2013.

- **Tenured Teacher (“3020a”) Proceedings:** The Governor proposes legislation designed to reduce costs and delays in tenured teacher discipline proceedings. Among other provisions, the proposal would require districts and unions to split the cost of hearing, shifting the cost from the state.
## SUMMARY OF AIDS FINANCED THROUGH SCHOOL AID APPROPRIATIONS
### 2011-12 AND 2012-13 SCHOOL YEARS

<table>
<thead>
<tr>
<th>AID CATEGORY</th>
<th>2011-12 School Year</th>
<th>2012-13 School Year</th>
<th>Change Amount</th>
<th>Percent</th>
</tr>
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<tbody>
<tr>
<td>I. Formula-Based Aids:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foundation Aid</td>
<td>$14,693.62</td>
<td>$14,693.62</td>
<td>$0.00</td>
<td>0.00 %</td>
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<tr>
<td>Excess Cost - High Cost</td>
<td>475.17</td>
<td>456.69</td>
<td>22.52</td>
<td>4.82 %</td>
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<td>Excess Cost - Private</td>
<td>317.14</td>
<td>362.75</td>
<td>45.61</td>
<td>14.38 %</td>
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<td>Reorganization Operating Aid</td>
<td>2.86</td>
<td>2.86</td>
<td>0.00</td>
<td>0.00 %</td>
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<td>Textbooks (Incl. Lottery)</td>
<td>175.78</td>
<td>182.63</td>
<td>3.85</td>
<td>2.15 %</td>
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<td>Computer Hardware</td>
<td>37.39</td>
<td>39.27</td>
<td>1.88</td>
<td>5.03 %</td>
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<td>Computer Software</td>
<td>45.48</td>
<td>46.97</td>
<td>1.49</td>
<td>3.28 %</td>
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<td>Library Materials</td>
<td>19.14</td>
<td>19.60</td>
<td>0.46</td>
<td>2.40 %</td>
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<td>BOCES</td>
<td>704.23</td>
<td>720.88</td>
<td>16.65</td>
<td>2.36 %</td>
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<tr>
<td>Special Services</td>
<td>212.36</td>
<td>219.30</td>
<td>6.94</td>
<td>3.27 %</td>
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<td>Transportation (Including Summer)</td>
<td>1,611.69</td>
<td>1,675.71</td>
<td>64.02</td>
<td>3.97 %</td>
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<tr>
<td>High Tax</td>
<td>204.77</td>
<td>204.77</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Universal Prekindergarten</td>
<td>383.23</td>
<td>384.29</td>
<td>0.06</td>
<td>0.02 %</td>
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<tr>
<td>Academic Achievement Grant</td>
<td>1.20</td>
<td>1.20</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Supplemental Educational Improvement Grant</td>
<td>17.50</td>
<td>17.50</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Charter School Transitional Aid</td>
<td>27.35</td>
<td>30.98</td>
<td>3.63</td>
<td>13.27 %</td>
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<td>Full-Day Kindergarten</td>
<td>4.99</td>
<td>6.76</td>
<td>1.77</td>
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<tr>
<td>Academic Enhancement Aid</td>
<td>8.32</td>
<td>8.32</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Supplemental Public Excess Cost</td>
<td>4.31</td>
<td>4.31</td>
<td>0.00</td>
<td>0.00 %</td>
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<td>Gap Elimination Adjustment</td>
<td>(2,565.48)</td>
<td>(2,296.69)</td>
<td>268.79</td>
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<td>Building Aid/Reorganization Building</td>
<td>2,629.80</td>
<td>2,721.49</td>
<td>91.69</td>
<td>3.49 %</td>
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<tr>
<td>Total Formula-Based Aids</td>
<td>$19,222.86</td>
<td>$19,774.61</td>
<td>$551.75</td>
<td>2.87 %</td>
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<tr>
<td>II. Grant Programs and Additional Aid Categories:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Teachers of Tomorrow</td>
<td>25.00</td>
<td>25.00</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Teacher-Mentor Intern</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
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<td>Teacher Centers</td>
<td>20.44</td>
<td>0.00</td>
<td>(20.44)</td>
<td>(100.00)</td>
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<td>School Health Services</td>
<td>13.84</td>
<td>13.84</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Roosevelt</td>
<td>8.00</td>
<td>12.00</td>
<td>4.00</td>
<td>100.00 %</td>
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<td>Urban-Suburban Transfer</td>
<td>2.73</td>
<td>2.73</td>
<td>0.00</td>
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<td>Employment Preparation Education</td>
<td>96.00</td>
<td>96.00</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Homeless Pupils</td>
<td>17.23</td>
<td>16.23</td>
<td>1.00</td>
<td>5.80 %</td>
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<tr>
<td>Incarcerated Youth</td>
<td>19.50</td>
<td>20.50</td>
<td>1.00</td>
<td>5.13 %</td>
</tr>
<tr>
<td>Bilingual Education</td>
<td>12.50</td>
<td>12.50</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Education of OMH/OPWCD Pupils</td>
<td>76.00</td>
<td>80.00</td>
<td>4.00</td>
<td>5.26 %</td>
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<tr>
<td>Special Act School Districts</td>
<td>2.70</td>
<td>2.70</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Changebacks</td>
<td>(54.50)</td>
<td>(38.80)</td>
<td>14.70</td>
<td>NA</td>
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<td>BOCES Aid for Special Act Districts</td>
<td>3.70</td>
<td>0.70</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Learning Technology Grants</td>
<td>3.29</td>
<td>3.29</td>
<td>0.00</td>
<td>0.00 %</td>
</tr>
<tr>
<td>Native American Building</td>
<td>4.00</td>
<td>5.00</td>
<td>1.00</td>
<td>25.00 %</td>
</tr>
<tr>
<td>Native American Education</td>
<td>36.05</td>
<td>32.00</td>
<td>(4.05)</td>
<td>(11.23)</td>
</tr>
<tr>
<td>Bus Driver Safety</td>
<td>9.40</td>
<td>9.40</td>
<td>0.00</td>
<td>0.00 %</td>
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<tr>
<td>Total Formula-Based and Grant Programs</td>
<td>$19,506.74</td>
<td>$20,081.70</td>
<td>$554.96</td>
<td>2.84 %</td>
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<tr>
<td>Performance Grants</td>
<td>0.00</td>
<td>250.00</td>
<td>250.00</td>
<td>NA</td>
</tr>
<tr>
<td>SCHOOL YEAR TOTAL</td>
<td>$19,506.74</td>
<td>$20,331.70</td>
<td>$804.96</td>
<td>4.13 %</td>
</tr>
</tbody>
</table>

**SOURCE:** NYS Division of the Budget, Description of 2012-13 New York State Executive Budget Recommendations for Elementary and Secondary Education, p.21
The budgeting position of New York State has improved greatly from one year ago. But financial prospects for public schools have become grimmer, as perceived by most school district leaders.

**A better state budget outlook**

On taking office one year ago, newly elected Governor Andrew Cuomo and the Legislators were called upon to close a state budget deficit estimated at $10 billion, equivalent to 18 percent of projected spending. They did so with a 2011-12 state budget that minimized reliance on new revenues and “one-shots” (actions which would leave a gap to be filled the following year), and instead enacted sweeping cuts to spending, including School Aid.

For the coming year, the state faces a projected deficit of $3.5 billion. Nearly one half that gap was closed at a December special session of the Legislature called to approve a tax reform package proposed by Governor Cuomo. The plan lowered personal income tax rates for most New Yorkers, raised them for the highest earners, and generated $1.5 billion in additional revenue for the state’s 2012-13 fiscal year.

That additional revenue made it far easier for the Governor to follow through on a planned $805 million, 4.1 percent increase in School Aid, consistent with the two-year aid appropriation included in the current year’s state budget. In his first proposed budget, School Aid accounted for nearly a third of the proposed $8.9 billion in budget cuts. But in his second budget, School Aid would not absorb any of the $2 billion in budget cuts proposed by the Governor against anticipated spending.

The longer-term outlook for state finances is improved as well. A year ago, cumulative annual deficits were projected to total more than $64 billion over the ensuing four years. Now the Governor’s Budget Division estimates that structural deficits would total $7.4 billion, if his budget is enacted as proposed.

**But grim challenges remain for school leaders and voters**

Yet few school district leaders draw hope from the state’s improving fiscal outlook.

Their pessimism is partly a product of the budgeting ordeals they have had to lead their communities through over the preceding three years. The choices superintendents, boards and voters make to balance one year’s budget usually cannot be repeated the next year — the same job cannot be eliminated a second or third time and there are only so many times employees will agree to a salary freeze or other concession. So the choices leaders and voters must make going forward become harder and more painful the longer austerity endures.

This fiscal year was Governor Cuomo’s first state budget, but it was not the first tough year for school budgets. Districts have now been through three years of aid cuts and freezes: 90 percent of districts are now receiving less state aid than they were in 2008-09. Excluding Building Aid, only two districts in the entire state are getting as much help from the state as they were three years ago.

At the same time, districts have had to absorb surging costs for pensions and health insurance. They have worked hard to hold down spending and tax increases in the budgets they have asked voters to approve. Average spending increases in the last two years (1.4 percent and 1.3 percent, respectively) were about half of what their increases for just pensions and health care alone would have required. The implication is that districts cut all their other spending, on balance, to hold down the tax increases they proposed while absorbing cuts in state aid.
Governor Cuomo’s budget gives schools their best starting point in state budget deliberations in four years – the last three executive proposals all recommended cutting School Aid. But its benefits are diluted by several considerations.

- Districts have lost federal Education Jobs Fund allocations which allowed them to save positions in each of the last two years. For some districts, their proposed School Aid increase for next year is fully offset by the loss of Jobs Fund money they used this year.

- While the proposed School Aid increase totals $805 million and averages 4.1 percent, $250 million would go to competitive grants, nearly all of which is unlikely to be allocated before 2012-13 school budgets must be approved. This leaves $555 million which districts could plan on right now, an average increase of 2.9 percent.

- Cost pressures remain. Growth in some pension costs has slowed, but remains well above regular inflation, as do health insurance costs. The Council’s October 2011 At the Edge survey report on school budgeting found the greatest number of superintendents projected their district’s spending would rise between 3 and 4 percent if they attempted to maintain current services given knowable cost changes such enrollment, collective bargaining agreements, and health insurance premiums.

- Many districts have used reserves to avert the need for more drastic program cuts or tax increases in over the last three years. But reserves eventually run out. In the At the Edge survey report, 89 percent of superintendents said they were concerned or very concerned by their district’s reliance on reserves to fund recurring costs.

- Finally, in the coming year districts will operate for the first time under a property tax cap which creates an expectation among voters that taxes should not rise by more than 2 percent and bars districts from raising their property tax levy at all if voters do not approve.

Assuming the $555 million increase in School Aid currently allocated under the Governor’s proposal, a 2 percent increase in local tax levy, and spending increases averaging 3.5 percent, districts outside the “Big 5” cities would face budget gaps totaling close to half a billion dollars in 2012-13.

**Longer-term also discouraging**

The longer-term outlook for many districts is discouraging as well. The State Education Department has projected aggregate school budget gaps through 2016-17 based on long-term expenditure growth patterns and the new limitations on revenues enacted in 2011 through caps on both property tax levies and School Aid increases.
The Department estimates districts will face gaps approaching 30 percent of expenditures by 2016-17. The estimate assumes spending increases of 5.3 percent a year. That seems exaggerated given recent trends. But even if baseline spending increases average two points lower, districts would still face double-digit budget gaps starting next year.

### Potential Impact of State Aid and Property Tax Caps

(amounts in millions)

<table>
<thead>
<tr>
<th>Year</th>
<th>SED Cost Projection (+5.3%/year)</th>
<th>Cost Projection Based on Last 5 Years (+3.3%/year)</th>
<th>Projected Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>$58,523</td>
<td>$61,651</td>
<td>$79,984</td>
</tr>
<tr>
<td>2011-12</td>
<td>$64,946</td>
<td>$68,015</td>
<td>$71,110</td>
</tr>
<tr>
<td>2012-13</td>
<td>$68,417</td>
<td>$72,074</td>
<td>28% gap</td>
</tr>
<tr>
<td>2013-14</td>
<td>$72,074</td>
<td>$75,926</td>
<td>28% gap</td>
</tr>
<tr>
<td>2014-15</td>
<td>$75,926</td>
<td>$82,378</td>
<td>12% gap</td>
</tr>
<tr>
<td>2015-16</td>
<td>$71,110</td>
<td>$80,000</td>
<td></td>
</tr>
<tr>
<td>2016-17</td>
<td>$62,378</td>
<td>$80,000</td>
<td></td>
</tr>
</tbody>
</table>

**SOURCE:** NYSED, *School Finance for High Achievement: Improving Student Performance in Tough Times*, September 2011, p. 8; and Council analysis of NYSED Property Tax Report Card data.

### 2012-13 budget developments

Legislators profess determination to pass, not just an on-time budget, but an early budget, aiming for completion by March 22. Missing the April 1 start of the next state fiscal year seems unlikely at this stage.

Whatever his attachment to the proposal to spend $250 million on competitive grant programs, with it the Governor has diverted debate from *adding* money to his budget to *reallocating* money already in his budget. As noted, little of the grant funding would be distributed in time for districts to factor into their budgets.

It is hard to imagine Legislators agreeing to leave that money “on the table,” when it could be used to improve the budgets that will determine what services students get starting next September – two months before Legislators face elections.

Neither how much money should be added for School Aid, nor how it should be allocated among districts is a prominent budget issue at this time. The debate over pension reform has dominated attention. Like the expansion of competitive grants, the Governor’s Tier VI plan has altered the focus of budget debates, this time creating a fight between erstwhile labor and management allies for state aid increases.

The Council supports the Governor’s efforts to reduce pension costs. The savings it can produce for schools is long-term, but so are the financial challenges schools confront.
The Governor might have chosen another battle with public employee unions, one which would have both long and near-term financial benefits for schools – for example, amending the Triborough law to end “step” increases when a collective bargaining agreement expires.

Any hopes for quicker help on the cost side now rest with the joint executive and legislative Mandate Relief Council currently conducting hearings around the state.

This Council differs in structure from last year’s Mandate Relief Redesign Team. The Council is established in law as a permanent ongoing authority. Its membership is entirely comprised of state officials whose positions ensure continuing involvement with state policy. It provides a focus for mandate relief advocacy and debates. Its mission and membership should raise expectations that the state will finally put forward meaningful mandate relief.

**Conclusion**

Governor Cuomo has tempered his criticisms of school administration this year, but has continued to fault the productivity of public education – repeating the claim that New York is first in per pupil spending, but 38th in performance, measured by graduation rates.

Making interstate comparisons based on single measures over-simplifies complex circumstances and overlooks simple facts.

New York is a high spending state in education partly because education is labor intensive and New York has high labor costs overall, with among the highest average weekly wages for all workers of any state. That is not the only reason, however. It is also necessary to ask what other factors cause New York’s high education spending and whether they are the product of local choices or dictated by state mandates. In any event, the tax cap by itself will slow future growth in school spending.

New York is hugely diverse, in ways positive and negative. It is home to some of the nation’s finest public schools, and to schools that have struggled for too many years. New York perennially produces around one-third of all the national semi-finalists in the Intel Science Talent Search, and was recently reported to have the second highest percentage graduates scoring 3 or higher on Advanced Placement Exams.

There is evidence that the Governor’s criticisms have not gained real traction. A recent poll by Quinnipiac University1 found that 78 percent of voters rated the quality of public schools in their community fairly good or very good. Also, while the Governor’s overall job approval rating remains in the 70 percent range, the same poll found that only 45 percent of voters approved of his handling of education, with 42 percent disapproving. A majority of public school parents in the poll (51 percent) disapproved of his handling of education, with 39 percent approving.

So coming debates over education funding present perils of one kind or another for both schools and the Governor. Ultimately, challenging each other’s claims about interstate rankings in spending and performance is an unproductive debate. What both sides can agree on is more important: we must do better.

A more worthy and essential debate engage in now is to ask,* how can our schools produce the learning our students need, with the resources our taxpayers can provide?, and how must school practices and state policy change to achieve that goal?*

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SUMMARY AND ANALYSIS

I. OVERVIEW

Governor Andrew Cuomo’s 2012-13 Executive Budget follows through on the promise of an $805 million (4.1 percent) School Aid increase, consistent with the two-year aid appropriation in the current year’s enacted state budget.

The Governor’s proposal provides schools with the best starting point for state aid in four years. Each of the last three Executive Budgets initially recommended year-to-year cuts in aid. If enacted as proposed, it would provide the first increase in aid since 2009-10 and the largest aid increase since 2008-09.

Still, the outlook among school district leaders is grim, due to the cumulative impact of past aid reductions, exhaustion of reserves, continuing cost pressures, the loss of federal Education Jobs Fund allocations, and the anticipated challenges of adapting to the new property tax cap.

Focus on local financial challenges understandably obscures recognition by school district leaders of how much the state’s position has improved from one year ago.

In 2011-12, the Governor and Legislature had to close a projected deficit of $10 billion (equivalent to 18 percent of General Fund expenditures) and faced cumulative gaps totaling over $64 billion over four years.

For the coming year, the Governor and Legislature must close a $3.5 billion deficit, and face projected gaps totaling over $16 billion. If enacted, the Governor’s Budget Division estimates that his proposal would cut the latter figure by more than half.

<table>
<thead>
<tr>
<th>Year</th>
<th>Governor's Proposed Budget</th>
<th>Enacted State Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>-3.26%</td>
<td>1.91%</td>
</tr>
<tr>
<td>2010-11</td>
<td>-5.03%</td>
<td>-5.21%</td>
</tr>
<tr>
<td>2011-12</td>
<td>-7.34%</td>
<td>-6.13%</td>
</tr>
<tr>
<td>2012-13</td>
<td>4.10%</td>
<td>TBD</td>
</tr>
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</table>

SOURCE: Compiled by the Council from annual NYS Division of the Budget Descriptions of School Aid Programs. Excludes federal Education Jobs Fund.

How the Governor proposes closing the coming year’s deficit is also markedly different from his approach one year ago.

In his first Executive Budget, Governor Cuomo closed the $10 billion projected deficit with $8.9 billion in spending reductions, $340 million in revenue increases, and $810 million in non-recurring actions (‘one-
School Aid accounted for 31.7 percent of the spending reductions, roughly consistent with its share of total state spending. ²

To eliminate the projected 2012-13 deficit, the Governor proposes $2 billion in spending reductions, with none against School Aid, and $1.5 billion in additional revenues, generated chiefly by the tax reform package enacted in December 2011.

The Governor deserves credit for that demonstration of leadership – responding to changing circumstances to assure the revenues necessary to fund critical state expenditures, and presenting a proposal which the Legislature could swiftly approve.

The economic recovery for both the state and the nation remains fragile. An economic downturn would resurrect the state’s fiscal trauma and compound the already grim local choices confronting school district leaders, as could federal deficit reduction efforts. But for now, the state has made significant progress in moving its finances toward a more sustainable trajectory.

### Contrast the Governor's approach to deficit elimination 2011-12 vs. 2012-13 ($ in billions)

<table>
<thead>
<tr>
<th>2011-12</th>
<th>2012-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spending cuts, $8.86</td>
<td>Spending cuts, $2.00</td>
</tr>
<tr>
<td>Revenue actions, $0.34</td>
<td>Revenue actions, $1.50</td>
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<tr>
<td>One-shots, $0.81</td>
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</tr>
</tbody>
</table>

**School Aid share of cuts: 31.7%**

**School Aid share of cuts: 0%**

**SOURCE:** NYS Division of the Budget, 2011-12 and 2012-13 Executive Budgets

### II. School Aid

Governor Cuomo has proposed an $805 million, 4.1 percent increase in School Aid, representing the balance of the two-year appropriation for School Aid enacted in the current year’s (2011-12) state budget.

The School Aid increase reflects the new “growth cap” enacted as part of the 2011-12 state budget. The cap ties future growth in School Aid to growth in statewide personal income.

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² The state measures deficit reduction actions against projected revenues and expenditures based upon laws and practices scheduled to be in place for the year ahead. Accordingly, part of the 2011-12 School Aid cut was achieved by eliminating $2 billion in aid increases to be generated by formulas then on the books, but which no school official actually expected to receive. Still, the 2011-12 state budget did reduce School Aid by $1.3 billion below the prior year level. For 2012-13, the Governor’s budget would fund School Aid at the level the state has been projecting.
The Governor’s proposal is unusually straightforward. It can be thought of as a pie with three large slices:

1) $250 million for competitive grants designed to encourage and reward gains in student achievement and management efficiency,

2) $265 million to cover growth in expense-based aids and other aids which would be funded in accordance with the formulas now in law (“current law”), and

3) $290 million in additional general aid through a reduction in the Gap Elimination Adjustment (GEA) imposed this year.

As explained further below, the allocation of the $250 million in competitive grants is to be determined at a later date. At this moment, none have been awarded, and no more than $25 million is likely to be allocated to specific districts in time for inclusion in the school budgets voters will be asked to consider in May. Leaving the grants aside, the Governor’s proposal would provide districts with $555 million they can count on right now, an average increase of 2.9 percent.

The combined impact of expense-based aid increases and GEA reductions creates the appearance of an almost random distribution of aid when looking at changes in total aid across districts of varying wealth.

Wealthier districts typically have maintained higher usage of the expense-based aids and therefore show bigger increases in those categories. On the other hand, the GEA reductions are tilted toward higher need districts, with reductions in the cut of up to 25 percent for the neediest districts, tapering down to a guaranteed minimum reduction of 1 percent.
The budget would freeze Foundation Aid for the fourth consecutive year. Foundation Aid was the centerpiece of the reforms enacted in 2007 as part of the state’s effort to resolve the challenge to its school finance system brought by the Campaign for Fiscal Equity.

State Finance Law requires the Governor to submit a five-year financial plan with his budget proposal. The plan reports financial results for the current year and projects revenues and expenditures for the four ensuing years, assuming enactment of the Governor’s proposals. Below are the projections for overall general fund surpluses or deficits, and changes in School Aid.

### Projected State Surpluses/Deficits and School Aid Increases

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Projected School Aid change</td>
<td>$0.805</td>
<td>$0.711</td>
<td>$0.841</td>
<td>$1.006</td>
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<tr>
<td>% change</td>
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<td>3.5%</td>
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<td>4.6%</td>
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<tr>
<td>Overall Surplus/Deficit</td>
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<td>($0.715)</td>
<td>($2.974)</td>
<td>($3.721)</td>
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</tbody>
</table>

**SOURCE:** NYS Division of the Budget, 2012-13 Executive Budget Five-Year Financial Plan.

A few important points about these projections: (1) School Aid figures reflect the new permanent growth cap, which ties future aid levels to changes in statewide personal income. If projections for the latter change, so would those for School Aid. (2) No individual school district can count on receiving the percentage aid increase for any year; annual allocation formulas must still be adopted. (3) The state constitution requires the Governor to propose a balanced budget, so the Governor will need to close the projected deficits and that could result in lower School Aid levels. (4) They are projections, and will change as data is updated.

### Reaction – The School Aid Growth Cap:

With the 2011-12 state budget, the Governor and Legislature enacted what it envisioned as a permanent cap on the growth of School Aid costs. The cap would limit the growth in School Aid to growth in the personal income of New York State taxpayers. For 2012-13, the cap is based on the average annual percent change in personal income over the five years ending with 2009-10. This results in the 4.1 percent School Aid increase which the Governor budgets. For future years, School Aid growth would be limited to the increase in personal income over the preceding state fiscal year – potentially a more volatile calculation.

There is some rationality to the linkage created by the cap: growth in School Aid – the state’s largest single General Fund expenditure – would be linked to growth in the tax base for its largest single revenue source, the Personal Income Tax.

A similar cap has been applied to growth in the other major state expenditure, Medicaid.

Two divergent reactions:

On one hand, the permanent School Aid growth cap amounts to a concession by the state that it will not follow through on the school finance reforms enacted in 2007 to resolve the CFE litigation. The cap would also preclude New York from delivering School Aid increases of the magnitude which Massachusetts provided its school districts to smooth the transition to a property tax cap.³

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On the other hand, the “boom and bust” cycles in state aid have created budgeting challenges for school districts, and especially poor districts which tend to be most dependent upon state aid. Districts attempt to accommodate the state’s fiscal gyrations by building reserves in good years to moderate programmatic cuts or local tax increases in bad years.¹

If the new School Aid and Medicaid growth caps lead the state to do what school districts have been doing – build reserves in better times to reduce the need for severe cuts in down times – that would create more stability in state aid and greater predictability in financial planning for district leaders.

Expense-Based Aids

As noted, the major expense-based aids would be funded according to current law formulas.

These formulas partially reimburse districts for costs incurred in school construction and renovation, pupil transportation, special education, and shared services. The state reimbursement share varies with district wealth.

The categories include:

- Building Aid
- Reorganization Incentive Building Aid
- Transportation, Private Excess Cost Aid
- High Cost Public Excess Cost Aid
- Supplemental Public Excess Cost Aid,
- BOCES (Board of Cooperative Educational Services) Aid,
- Special Services Aids for the Big 5 cities and other districts which are not part of BOCES.

In total, the cost of these aids is projected to rise by $248 million, or 4.2 percent, under the continuation of current law formulas proposed by the Governor. There has been a marked fall-off in the growth of these aid categories in recent years. Based on historical patterns, a combined increase in the $350-400 million range was commonly anticipated. The lower growth in expense-based aids creates more space for additional general purpose aid within the overall School Aid growth cap.

As noted in the overview of School Aid, generally wealthier districts have maintained higher expense levels for these reimbursement-based aids, and therefore would receive larger aid increases. This pattern is generally consistent with overall proposed spending levels on Property Tax Report Cards for the budgets districts asked voters to consider last spring: the poorest 20 percent of districts (measured by property wealth per pupil) held their spending essentially flat, while the wealthiest 20 percent asked for spending increases averaging 2.2 percent.

¹ Politicians and the media have condemned schools for maintaining supposedly excessive reserves, despite the fact what state law allows school districts to maintain as a maximum unrestricted fund balance is less than what independent experts deem adequate as a minimum. State law permits districts to maintain an unrestricted fund balance of no more than 4 percent of budget. The national Government Finance Officers Association recommends an unrestricted fund balance of up to 15 percent of revenues or two months’ expenses. New York State municipalities have no percentage limit.
In addition to the slowing in year-to-year growth of expense-based aids, total School Aids costs for the current year have dropped by $143 million between the passage of the state budget last March and the November 15 State Education Department database update which was used for Executive Budget calculations. This also is a sharp reversal of historical patterns; cost over-runs in the $150 million range were common.

Estimates for Private Excess Cost aid have become especially volatile: the 2011-12 statewide cost for this aid has declined by 9.2 percent since the state budget was enacted, while a 14.4 percent increase is projected for 2012-13. The aid partially reimburses districts for the cost of placements of students in special education programs operated by private entities.

**Reaction – Expense-Based Aids:**

On the expense-based aids, the Governor has done what school officials commonly ask: “keep the promise” – do not propose changes to formulas which would reduce or deny districts state reimbursement for costs they have already incurred.

At the same time, no one can argue that every one of these aid formulas is perfect in every respect. Careful reconsideration of the formulas is appropriate. Any proposals for changes which emerge from such review should be phased-in, so that districts have time to adjust practices, and so that districts can assure voters of a consistent local cost share for specific longer-term reimbursements (e.g., Building Aid on a specific capital project).

**Gap Elimination Adjustment Restoration**

For the past three years, the state has reduced its costs for School Aid by freezing some aid categories (most notably Foundation Aid), funding others according to the formulas in law, and imposing lump sum reductions in the resulting total aid through calculations referred to as the “Deficit Reduction Assessment,” or, for the past two years, the “Gap Elimination Adjustment” (GEA).
Past Gap Elimination Adjustments have employed complex formulas to distribute reductions. All districts faced reductions between minimum and maximum percentages and adjusted based on local ability to fund education and pupil needs. The cuts were reduced if districts met criteria demonstrating high local tax effort, administrative efficiency, or high need status according to the State Education Department’s definition. These offsets employed precise eligibility cut-offs. As a result, small differences in characteristics could make a large difference in aid, if a district fell just short of qualifying for one of the offsets.

Past GEA calculations were criticized for inflicting high per pupil cuts on poor school districts. The chart below illustrates.

Governor Cuomo’s budget proposal would reduce the 2011-12 GEA to provide districts with $290 million in new general purpose aid.

Districts would be allowed to use the more favorable of two methods for calculating their reduction in the GEA and there would be percentage limits setting minimum and maximum reductions:

- **Option 1**: $214.50 \times \left[ \frac{\text{district Extraordinary Needs Percent}}{\text{state average Extraordinary Needs Percent (52.70\%)}} \right] \times \text{State Sharing Ratio} \times \text{2011-12 public school enrollment}^5$

- **Option 2** *(Available only to districts which had a 2011-12 GEA measured as a percentage of their total general fund expenditures (TGFE) which exceeded the state average of 4.76%)*: $90 \times \left[ \frac{\text{district 2011-12 GEA to TGFE ratio}}{\text{statewide average GEA to TGFE ratio (-4.76\%)}} \right] \times \text{State Sharing Ratio} \times \text{2011-12 public school enrollment}$

- **Percentage limits**: After determining the more favorable of option 1 or 2, districts would be guaranteed a reduction in their 2011-12 GEA of at least 1 percent and allowed a maximum reduction of no more than 25 percent.

The Governor’s Budget Division estimates that 76 percent of the additional aid generated by the GEA reduction would be targeted to districts meeting SED’s definition of high need, which combines measures of local ability to fund education and pupil needs.

The average GEA reduction is 11.3 percent. The poorest 10 percent of districts (measured by property wealth per pupil) would have their 2011-12 GEA reduced by an average of 21.5 percent, while the wealthiest would realize a reduction of only 1.5 percent.

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**Reaction – Gap Elimination Adjustment Restoration**: ~

The Governor’s proposed reduction in the Gap Elimination Adjustment can be evaluated in at least two ways:

1. on its own merits as a method of distributing additional general aid to school districts; or
2. in comparison to other options for delivering general aid.

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5 The Extraordinary Needs Percent is a measure of student needs based primarily on the percentage grade kindergarten through six students eligible for the federal free or reduced price lunch program. The State Sharing Ratio compares both property value and resident income per pupil for the district to the statewide averages and provides greater state share of aid per pupil as local wealth declines.
A total of 676 school districts receive regular School Aid. No one formula can perfectly address each district’s needs. However, the Governor’s proposed reduction in the GEA does apply the two major factors used in most aid calculations to produce a reasonable distribution of the sum the Governor recommends. Low wealth, high student need districts generally do receive greater percentage and greater per pupil aid restorations from the proposal, as the chart above indicates.

The proposal also relies less than past GEA adjustments on sharp cut-offs on eligibility for aid benefits. The use of precise cut-offs led to some large differences in aid caused by small differences in characteristics, when a district fell just short of qualifying for a benefit.

The proposed GEA restoration does include one such precise cut-off, allowing districts a second option for calculating the GEA restoration, if their 2011-12 GEA was greater than 4.76 percent of their 2011-12 total general fund expenditures. A handful of districts with GEA cuts slightly missing the threshold lose out on receiving up to $200,000 in additional aid. But these instances are much less common and smaller in impact than in past GEA calculations.

The second way of evaluating the Governor’s proposed GEA restoration is to compare it to other options for directing general purpose aid to schools. The Regents State Aid proposal is one example.

In their 2012-13, School Aid proposal, the state Board of Regents, proposed “re-starting” the Foundation Aid formula enacted as the cornerstone in the state’s effort to settle the Campaign for Fiscal Equity litigation. The
formula was launched in 2007-08, increased in 2008-09 (though somewhat less than scheduled), and frozen ever since.

The Regents propose folding the 2011-12 GEA into the base for Foundation Aid, guaranteeing all districts would receive no less aid than under that new base, updating the data used in the formula, and amending aid factors to generate a $376 million increase in Foundation Aid. The Regents also proposed a new targeted $58 million High Tax Aid formula, resulting in a $434 million increase in general purpose aid.

The Regents do not release School Aid runs with district-by-district results, nor have they provided an explanation of how they would calculate their Foundation and High Tax Aid formulas. So it is not possible to make precise comparisons of the effects of the Governor’s and Regents’ proposals.

But one strength of the Regents proposal is greater transparency. Paraphrasing Regents State Aid Subcommittee Chair James Tallon, it is confounding even to School Aid veterans to calibrate the interlocking effects of formulas that “giveth” aid and a formula that “taketh away” (the GEA). Discontinuing the GEA and instead regulating School Aid costs through changes in Foundation Aid and other traditional formulas would make state funding decisions easier to understand, evaluate and debate.

There is a third way to evaluate the effect of the GEA restoration or other approaches to increase state aid – the overall adequacy of funding proposed.

On that score, the Regents proposal is stronger, simply because it provides roughly 50 percent more general purpose aid.

As explained elsewhere in this report, after three years of aid freezes and cuts and surging employee benefit costs, districts have exhausted whatever painless budget cutting strategies there were. Despite these pressures, they have been holding down tax increases (below 3.5 percent on average over each of the last two years). But now the tax cap will force them to seek even lower increases. For some, the state aid increase they would receive from the Governor’s proposal would be more than offset by the loss of federal Education Jobs Fund money.

**Competitive Incentive Grants**

The third major “slice” of the Governor’s proposed School Aid increase is $250 million to support two competitive grants programs, to encourage and reward gains in student performance and in management efficiency.

The Performance Incentive Grants program requires districts to have a completed scope of work for the federal Race to the Top initiative, to demonstrate progress in implementing state reform initiatives, and to show the greatest gains in student performance on measures such as state assessments and graduation rates. They must also submit proof by the end of the current school year that they are in compliance with the state’s new evaluation requirements for teachers and principals. Funds must be used to implement a “high quality plan” in one of four priority areas.

A request for proposals (RFP) was issued for a first round of Performance Incentive Grants. Only 70 of the state’s 697 districts applied.

An RFP for the Management Efficiency program has yet to be issued but the law provides that grants would be awarded to districts demonstrating that they have implemented one or more long-term
efficiency in management, operations, or procurement. The Governor proposes to amend the law to award bonus points to districts which have implemented new evaluation procedures by September 1, 2012.

**Reaction – $250 million for Competitive Incentive Grants:**

In many districts, the school budgets which voters and large city governments adopt this year will compound past reductions in student services. While for now districts can count on School Aid increases averaging 2.9 percent as proposed by the Governor, that figure is less than baseline growth in personnel costs and will be offset by losses of federal funds. Finally, their ability to raise local revenues will be more limited due to the tax cap.

Holding aside up to $250 million to be allocated later would deny local leaders and voters resources that would enable them to make better choices now for schoolchildren in their communities.

Also, eligibility criteria preclude some districts from competing for funds and leaders in some poorer districts are unable to devote staff time to develop applications.

The Council supports moving at least $200 million of the competitive grant funding to general aid, as the Board of Regents recommended in its state aid proposal.

Promoting gains in student achievement and management efficiency are valid goals. But more than new incentives, changes in old rules are necessary – changes in state mandates which would allow schools to get more impact for students from the resources taxpayers can provide.

**Foundation Aid**

Foundation Aid accounts for over 70 percent of total School Aid. It provides general purpose operating aid to districts and has been frozen for the past three years. The Governor's Budget proposes to continue the freeze through 2012-13.

The Foundation formula was enacted in 2007 as part of a comprehensive resolution to the Campaign for Fiscal Equity's 13-year successful challenge to the constitutionality of the state's education finance system. Under the 2007 formula, and consistent with a state Court of Appeals ruling, the formula was due to be phased-in over four years, culminating with the 2010-11 school year. State law now provides that the phase-in of the formula will be determined annually in the state budget.

Foundation Aid is now funded at a level over $3.1 billion below what the original formula anticipated would be allocated in 2010-11.

**Reaction – Foundation Aid:**

The Foundation Aid formula was an under-appreciated achievement in public policy. It generally targeted the greatest aid increases to the neediest districts, while also promising all districts predictable increases in state funding. It also increased the state's accountability for school funding decisions, by prescribing in law a detailed phase-in schedule and by using factors which could be understood and debated.

During the Foundation Aid formula's two years of operation, the poorest school districts were able to propose budgets to the voters with the lowest average tax increases and the largest spending increases – closing gaps in resources for their students without over-burdening their taxpayers.
Residents from a collection of small city school districts have launched a new challenge to the constitutionality of the state’s education finance system (Hussein et al. v. State of New York). In defense, the state has cited the 2007 enactment of Foundation Aid and other reforms as demonstrating that “the Governor and the Legislature are making serious, good faith efforts to improve the system of public education in New York… (Hussein et al. v. State of New York, Brief for Appellant, December 5, 2011).” However, with four years of frozen aid and the permanent GEA described above, it is hard to find evidence of serious intent by the state to follow through on the 2007 aid reforms.

Other School Aid Formulas and Grant Programs
These School Aid categories would be funded according to the formulas currently in law:

- Charter School Transition Aid
- Reorganization Incentive Operating Aid
- Computer Software Aid
- Library Material Aid
- Textbook Aid
- Hardware and Technology Aid
- Full Day-Kindergarten Conversion Aid
- Universal Prekindergarten Aid

The Governor’s budget would continue funding for High Tax Aid at the level it has been at since 2008-09. Most grant programs included within School Aid would be funded at the same level as in 2011-12, or according to the funding formulas now in law. One exception is the Teacher Center program, which would have its funding of $20.4 million eliminated.

Reaction – Teacher Center Elimination: 
Teacher Centers receive widely varied reviews from superintendents. But research shows a stronger pay-off for effective professional development than for most other reform strategies. The state should be providing more support for teacher professional development, not less.

School Aid Data Freeze
The Governor proposes to limit aid payments to districts to the sums calculated based on data on file for the Executive Budget School Aid run released on January 17, 2012. For the most part, this data was submitted to the State Education Department by November.

Reaction – School Aid Data Freeze: 
The data freeze proposed in the budget would lock-in faulty aid calculations. In some cases, districts do not have access to up-to-date data until January or later – for tuition to private special education programs, for example. Further, the intent of freezing aid data is to spare the state from cost over-runs in School Aid, but in recent years, aid costs have actually declined after enactment of the state budget.
III. Other Elementary, Middle and Secondary Education Programs

State appropriations for School Aid total over $20 billion in 2011-12. Another $1.4 billion is distributed outside of School Aid to fund an assortment local elementary, middle and secondary education activities. Most of these programs are funded at the same level as in 2011-12, or according to formulas now in law. An exception is Preschool Special Education.

Preschool Special Education

The Governor proposes programmatic reforms to the state’s system for delivering special education to preschool children between ages 3 and 5. He also proposes changes in how the services would be funded, to require school districts to assume a share of the cost for the first time. Currently, the state pays 59.5 percent of the cost of services, and counties pay the balance. Spending on Preschool Special Education has increased by roughly 10 percent per year over the past decade.

Programmatic reforms would include:

- Increasing the role of counties when providers request an exception to existing payment rates;
- Requiring justification when a distant provider is chosen over closer, suitable providers; and
- Prohibiting, in most cases, evaluation of a child from being done by the same agency that provides that child’s educational services or by an evaluator with a less-than-arms-length relationship to the agency, to avoid the inherent potential for conflict of interest in these relationships.

The Governor’s budget would also cap the county share of costs at 2011-12 levels and divide responsibility for any growth in costs equally between the state, the county, and school districts. It is estimated that this shift would increase costs to school districts outside New York City by $5 million in 2012-13.

Reaction – Preschool Special Education: 📿

The Council supports the proposed programmatic reforms but opposes the plan to shift costs to school districts. Especially with the advent of the tax cap, any new mandate or cost shift amounts to an order by the state to school districts to cut spending on existing services to fund the priority it has imposed.

IV. State Education Department Operating Budget

The Executive Budget would cut General Fund support of the State Education Department’s operating budget by 2.5 percent, or $1.9 million. The budget does include $8.5 million to support student assessments. The funding is expected to allow for the continuation of all current Regents Exams, including those for January 2013. The Department would not receive funding it sought to strengthen test security or to develop new English language arts exams for grades 9 and 10.

As explained below, the Governor also proposes changes to the funding and procedures for tenured teacher discipline hearings pursuant to section 3020-a of the Education Law.

Reaction – State Education Department Operating Budget: 📿

SED has absorbed a series of steep reductions in its operating budget over the last several years, and would receive another smaller cut under the Executive Budget. Still, it is welcome that the proposed budget would guarantee continuation of existing Regents Exams.
V. **Teacher and Principal Evaluations**

Governor Cuomo made expediting implementation of new teacher and principal evaluations a personal priority. One factor complicating local efforts at implementation was the legal challenge by New York State United Teachers (NYSUT) objecting to the regulations adopted by the State Board of Regents. Also, the 2010 law which created the new evaluation procedures requires many items to be resolved at the local level through collective bargaining.

In his Executive Budget presentation, the Governor announced that he was giving NYSUT and SED 30 days to resolve their litigation. He said that if they failed to do so, he would amend his proposed budget to include provisions amending the 2010 evaluation law. He also proposed to withhold School Aid increases from districts which fail, by January 17, 2013, to submit documentation approved by the Education Commissioner demonstrating that it has fully implemented new evaluation procedures consistent with state law.

On the day of his deadline, the Governor, NYSUT and SED announced an agreement. The Governor submitted changes to his proposed budget to amend the 2010 law to accommodate elements of the agreement.

An SED news release explained key elements:

- State assessments can be used for up to 40 percent of the evaluation if the local 20 percent share based on state assessments is used differently and collectively bargained;
- The remaining subjective, collectively bargained 60 percent must consist of tightly defined, research backed measures. A majority (at least 31 percent) of the 60 percent must be based on classroom observations by a principal or trained administrator;
- There must be multiple observations and at least one observation must be unannounced;
- Teachers rated ineffective on student performance based on objective assessments must be rated ineffective overall. Teachers who are developing or ineffective will get assistance and support to improve performance. Teachers who remain ineffective can be removed from classrooms;
- All evaluations must be done annually by September 1;
- All evaluation plans are subject to review and approval by the Commissioner to ensure rigor, quality and consistency with standards;
- The Commissioner has the authority to require corrective action, including the use of independent evaluators, when districts evaluate their teachers positively regardless of students’ academic progress; and
- Appeals must be timely and expeditious and districts may terminate probationary teachers/principals or grant or deny tenure while an appeal is pending.

In addition, all teachers and principals will be rated either ineffective, developing, effective, or highly effective based on a scale of 100 points. Finally, districts would generally be required to submit their locally agreed-to evaluation plans to SED by July 1, 2012.

**Reaction – Teacher/Principal Evaluation:**

The Council is consulting with members to identify questions regarding the proposed changes to the evaluation law and continues to apprise the State Education Department and the Governor’s office of outstanding concerns.
The legislation would definitely remove one obstacle to development of district evaluation plans, simply by ending the litigation that created uncertainties that put local negotiations on hold in many districts.

According to SED’s news release, it would also preserve the authority of districts to “terminate probationary teachers/principals or grant or deny tenure while an appeal is pending.”

It would not reduce the volume of items required to collectively bargained under the original 2010 evaluation law, but would impose limits on the range of options which might be adopted.

Resolving procedures for appealing evaluations has been a major hold-up in local negotiations in districts of all sizes. The proposal would add a requirement that appeals must be “timely and expeditious” but would not limit which evaluations may be appealed nor to whom, as superintendents and school boards have sought.

The legislation would add a penalty for districts which do not have plans in place by January 17, 2013 – they would lose eligibility for state aid increases. The consensus among school district leaders is that this aid penalty will exert more pressure on districts to compromise than unions, since employees will retain their compensation and benefits, even if their district loses aid.

VI. Tenured Teacher Discipline Hearings

The Governor’s budget proposes steps designed to streamline procedures for tenured teacher discipline procedures as prescribed under section 3020-a of the Education Law.

School district leaders widely criticize the expense and time required to pursue a 3020-a case, and the resulting difficulty of removing poor teachers who have received tenure. The Executive Budget Briefing Book notes that “recent records show that the arbitration process lasts an average of 653 days (see p. 27).

The Education Department introduced a similar bill last session (A.6225/S.4629).

The Governor’s proposal would:

• Allow the Commissioner of Education to set maximum rates paid to arbitrators conducting 3020-a proceedings;

• Limit the number of study days allowed to arbitrators;

• Eliminate the court reporter requirement at arbitrations, instead hearings would be transcribed only if both parties agree prior to the start of the hearing and the cost would be paid by the requesting party, unless the sides agree to share the cost;

• Disqualify arbitrators when they fail to comply with timelines; and

• Require that the costs of 3020-a proceedings commenced after April 1, 2012 be shared equally between school districts and local unions, or the employee, if he or she is not represented by a union.

Currently, the cost of 3020-a proceedings is supported by an appropriation within the State Education Department’s operating budget. However, the appropriation has perennially been underfunded, creating a sizable deficit in the account and delays in paying arbitrators and stenographers. Under the Governor’s proposal, the appropriation would be used to pay down the deficit, not to support new 3020-a proceedings.
The Education Department program bill recommends these changes to 3020-a procedures:

- Allow for reciprocal discovery and clarify that discovery provisions at the pre-hearing conference applies to both parties;
- Permit termination without a 3020-a hearing if it can be demonstrated the educator lacks appropriate certification;
- Similar to the Governor’s proposal, authorize the Commissioner to set maximum rates and study days for arbitrators and to disqualify arbitrators who fail to comply with timelines;
- Authorize Article 78 review as opposed to Article 75 review for hearing decisions; and
- The state would fund the cost of 3020-a hearings up to the appropriation amount in the SED budget; any excess costs would be split equally between the school districts and bargaining unit (or employee if not represented by a union).

**Reaction – Tenured Teacher Discipline Hearings (3020-a Reform):**

The Council opposes shifting the cost of 3020-a proceedings to school districts, as proposed by both the Governor and SED. Because the SED proposal would retain some state responsibility for costs, it would be preferable if necessary to choose one or the other.

The Council supports each of the procedural reforms recommended by both the Governor and the Education Department.

**VII. “Tier VI” Pension Reform**

One of the issues dominating deliberations over the 2012-13 state budget is Governor Cuomo’s call for public employee pension reform, through a “Tier VI” to cover new hires. The Governor’s proposal would give public employees the choice of either a traditional defined benefit pension (DB) or a defined contribution (DC) option, similar to 401(k) plans found in the private sector.

The DB option would include these elements:

- 12 years would be required to vest (up from 10 in Tier V).
- The minimum retirement age would be set at 65.
- The final average salary (FAS) used to compute benefits would be calculated based on the highest paid five years (up from 3 years in Tier V). FAS would be capped at the Governor’s salary of $179,000. Overtime, sick, and termination pay would be excluded from FAS.
- The pension multiplier would be set at 1.67 percent times FAS for retirees with up to 30 years of service and 1.5 percent times FAS for service beyond 30 years. Tier V provides a multiplier of 2 percent times FAS for service between 25 and 30 years.

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6 Section 7 of article V of the state constitution provides, “After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.” Accordingly, benefit levels for anyone already in a system must be preserved and any benefit reductions or changes to retirement systems which would diminish benefits must be applied only to new hires. So reductions in benefit structures are enacted through new “tiers” applicable to employees subsequently entering a retirement system.
• The employee contribution rate would vary based on salary and performance of retirement system investments.

For the Teachers Retirement System, employees would contribute 4 percent of their salary if below $35,001, 5 percent if salary is between $35,001 and $69,000, and 6 percent if salary is above $69,000.

The proposal would also apply a “risk/reward” component to the employee contribution rate so that it would float based on system investment performance, as does the employer contribution rate. If the employer rate goes below 4 percent, the employee rate would be reduced by one-half the amount below 4 percent and if the employer rate exceeds 7 percent, the employee rate would be increased by half the amount over 7 percent.

The DC option would include these elements:

• The standard employer contribution rate would be 4 percent. Employees would not be required to contribute anything, but would be entitled to an employer match to contributions they make up to 3 percent, bringing the maximum possible employer contribution rate to 7 percent. The employer match would not apply to salary in excess of $179,000, or to over-time pay.

• Employees would vest after one year of service and whatever sum they have accumulated would be fully portable.

The Governor’s budget estimates that the Tier VI plan would save public employers outside New York City roughly $79 billion over a 30-year period. The budget estimates that Tier VI would reduce pension cost for school districts outside New York City by $25 million in 2012-13. The long-term estimated annual employer contribution rate is projected to be well below the rate 8.9 percent rate for Tier V TRS members, or 11.8 percent of Tier 4 members.

**Reaction – Tier VI Pension Reform:**

The Council supports efforts to lower pension costs and the Governor’s Tier VI proposal in particular.

Pension and health insurance costs have been a pivotal factor in school district budgets for at least 10 years. During part of the last decade, annual increases in those two costs roughly matched or exceeded increases in state aid, contributing to a series of higher than historically typical local tax increases. More recently, districts have strained to hold down spending and tax increases, despite absorbing state aid freezes and cuts.

In the last two years, increases in pension costs have roughly matched the average overall increase in proposed spending among districts operating with budget votes (i.e., 1.4 percent in 2010-11 and 1.3 percent in 2011-12). The implication is that districts froze all other costs, on balance. Add in health insurance increases, and districts must have cut all other spending on balance absorb cost increases in those two areas.

Under the state constitution, reductions in public employee pension benefits can only be applied to new hires. So pension changes take a long time to produce savings for public employers and their taxpayers. But with the new caps on property tax levies and School Aid growth, school districts face long-term budget challenges.

The State Education Department estimates that districts could face structural deficits averaging 28 percent of expenditures by 2015-16.7 Based on long-term trends, the Department assumes continuing expenditure

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growth of 5.3 percent per year. That seems exaggerated given recent patterns. But even if growth is 2 points lower – consistent with trends over the past five years – districts would still face gaps averaging over 12 percent.

The Governor’s proposal to give employees the option of a defined contribution (DC) plan is a departure from recent state initiatives to alter pension benefits and has drawn the most criticism from public employee unions, and from State Comptroller Thomas DiNapoli. However, State and City University professionals have had a choice for nearly 50 years, and roughly three-quarters choose the DC option.

The Comptroller said, “401ks were never intended to take the place of pensions. They were designed to be savings vehicles to supplement pensions and social-security income.” Nonetheless, the federal Bureau of Labor Statistics reports that among employees of medium and large private sector firms nationwide, 54 percent participate in defined contribution plans, while only 30 percent participate in defined benefit (DB) plans (some have both types, but 34 percent have no retirement benefits).

School districts are dependent on voter support for funding – very directly in the districts outside “big five” cities; they must obtain voter approval for tax levy increases. Employee benefits which are out of line with what residents receive risk losing voter support.

There are legitimate questions to be raised about the growing prevalence of defined contribution plans as a foundation for retirement. They reduce and stabilize costs for public employers and their taxpayers but do so by shifting financial risk to workers and retirees. But if the price of a viable defined benefit plan now is to require 12 years for vesting, that also undermines retirement security for those workers who do not stay for the whole span and then cannot make up lost time accumulating retirement savings or benefits. Setting such a distant horizon for vesting could also contribute to the departure of capable early career teachers on the fence about whether to continue in the profession. It is also likely to dissuade some professionals from making mid-career changes into education.

The Governor’s DC proposal would be improved by prescribing higher contribution rates for both employers and employees – closer to the rates for the DB option – to better ensure adequate retirement savings for workers choosing that option.

VIII. OTHER “ARTICLE VII” LEGISLATION

Statewide Contract for School Bus Purchases
The Governor proposes to establish a single statewide contract for the purchase of school buses, developed with input from school officials. Then, except under extraordinary circumstances, the state would only reimburse purchases made off the centralized contract.

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10 Article VII of the state constitution governs state budgeting and financial practices and authorizes the Governor to propose changes in law to implement provisions of the budget he or she proposes.
The Executive Budget Briefing Book explains, “This approach will enable both the state and the local school districts to benefit from the combined purchasing power of all school districts statewide. Prospectively, it will also eliminate technical obstacles to shared maintenance and other services between districts (See p. 26).”

**Reaction – Centralized School Bus Purchasing:**
Developing a statewide contract for bus purchases with input from school officials is an idea worth pursuing. But prohibiting reimbursement for any purchases could unfairly deny districts aid for purchases necessary to address unique local circumstances.

The proposal would limit reimbursement after June 30, 2012 to bus purchases made off the central contract. As the New York Association for Pupil Transportation has noted, the contract does not yet exist, so the deadline should be extended if the aid restriction is to be enacted.

**Contracts for Excellence**
As part of the 2007 School Aid reforms certain districts with high Foundation Aid increases and low-performing schools were required to prepare a “Contract for Excellence (C4E)” which required spending a share of their aid increases on certain activities deemed proven effective at raising student achievement.

The Executive Budget would continue the C4E program, requiring districts in C4E in 2011-12 to submit contracts for the 2012-13 school year unless all schools in the district are identified as in good standing.

**Reaction – Continuation of Contracts for Excellence:**
Though C4E was never perfect in design, conceptually there was a valid point to trying to ensure that districts deemed low performing used large Foundation Aid increases to implement sound strategies. But Foundation Aid is now facing its fourth budget with a freeze, the state has abandoned a prescribed phase-in schedule, and nearly all districts are receiving less total aid than they were three years ago. C4E should be repealed.

**Building Aid Claim Forgiveness**
The budget would provide an opportunity for districts which previously missed a filing deadline to regain eligibility for Building Aid for affected projects. The proposal would validate and ratify the prior claims, provided that a valid final cost report is filed with the State Education Department by December 31, 2012. Districts would be limited to reimbursement from the date a report was filed with SED.

**Reaction – Building Aid Claim Forgiveness:**
In September, the Governor vetoed several bills authorizing payment of Building Aid for individual districts forgiving for procedural errors in their handling of aid claims. In many cases, the penalties in lost aid seemed out of proportion to the mistakes committed by the districts. For example, Central Islip faces losing $2 million. This proposal would provide a mechanism for districts to receive most of the aid they would otherwise been paid.