Allocating NY’s Billion$ in Bank Settlements

New York State Association of Counties

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OVERVIEW

The 2015-16 State Fiscal Year is projected to include an infusion of over $5 billion in one-time windfall funds from various bank settlements, over charges of improprieties that prompted the prolonged recession and financial crisis that began in 2008.

NYSAC’s Position

The New York State Association of Counties (NYSAC) and member county leaders believe the windfall settlement funds should be dedicated to economic recovery efforts and allocated for infrastructure spending and other one-time uses, not recurring expenses.

2015-16 EXECUTIVE STATE BUDGET PROPOSAL

The most recent projections estimate that New York State will receive a total of $5.7 billion in settlement agreements from banks and insurance companies in 2015. Of this amount, $275 million has been set aside for the current fiscal year, making about $5.4 billion available for allocation in the 2015-16 State Fiscal Year or beyond. These funds are included in the Governor’s 2015-16 Executive State Budget, but are not part of the $141 billion in State Operating Funds.

That $5.4 billion is allocated in the following way:

- $3.1 billion for infrastructure
- $1.5 billion for Upstate economic revitalization
- $850 million for to be placed in reserves for potential federal Medicaid disallowances.

The Dedicated Infrastructure Investment Fund

The Governor’s 2015-16 Budget proposes the creation of a new capital fund called the Dedicated Infrastructure Investment Fund. The Fund will have two distinct accounts: Special Infrastructure ($3.1 billion) and Upstate Revitalization ($1.5 billion).

Exceptional Circumstances

While the fund is established for these specific purposes, there are provisions that would allow these funds to be transferred to the state’s general fund in certain situations that include an economic downturn, emergency response and readiness, and declines in federal Medicare and Medicaid revenues in excess of $100 million.

Economic Downturns: To cover state expenses in the case of an economic downturn. The commissioner of labor will be responsible to calculate and publish, on or before the fifteenth day
of each month, a composite index of business cycle indicators. If the composite index declines for three consecutive months, the commissioner of labor shall notify the governor, the speaker of the assembly, the temporary president of the senate, and the minority leaders of the assembly and the senate.

Upon such notification, the director of the budget may authorize and direct the comptroller to transfer from the dedicated infrastructure investment fund to the general fund such amounts as the director of the budget deems necessary to meet the requirements of the state financial plan, address emergency disaster readiness, response and resiliency, offset declines in federal Medicare and Medicaid revenues in excess of $100 million from anticipated levels.

**Medicare and/or Medicaid Disallowances:** It is unclear at this time if this authority is provided to address any future or existing federal Medicaid disallowances against the state. The state is currently appealing a $1.26 billion disallowance related to SFY 2011 for OPWDD Medicaid billings the federal government has objected to in the past (the state has already lost $1 billion in annual funding on a prospective basis related to this issue). In addition to the 2011 pending disallowance there are similar federal audits pending for 2012 and 2013.

**Special Infrastructure Account ($3.1 billion)**

The Governor is proposing the following uses for the Special Infrastructure Account:

- $1.285 billion for the NYS Thruway Authority to support critical repairs and maintenance, and offset a portion of the construction costs of the Tappan Zee Bridge and alternative transit options. The Thruway Authority has suggested that they intend to use the money for one-time capital expenses, and it will not be used to subsidize tolls directly.

- $500 million for the “New NY Broadband Program” to incentivize the private sector to expand high-speed broadband access in underserved and unserved areas. Broadband providers and communities will utilize this funding to deliver service in a given area. Broadband providers seeking to utilize this funding must provide at least a 1:1 financial match, which will push the size of the program above $1 billion.

- $400 million for grants to essential health care providers that facilitate mergers, consolidation, acquisition, or other significant corporate restructuring activities intended to create a financially sustainable system of care that promotes a patient centered model of health care delivery.

- $250 million for new Penn Station access in New York City. It will open a new Metro-North link directly into Penn Station, with the goal of providing enhanced system resiliency, improvement in regional mobility, and construction of four new Metro-North stations in the Bronx.

- $150 million for grants to local governments to help finance the most innovative shared services and government efficiency proposals submitted to satisfy year two requirements of the property
tax freeze. With counties acting as the lead unit of government for submitting these proposals, they are envisioned to be a primary applicant for the grants.

• $150 million for transit-oriented development, including funding to create new transit-oriented development, including but not limited to, the development of structured parking facilities at Nassau hub and Ronkonkoma hub.

• $150 million for Resiliency, Mitigation, Security, and Emergency Response. Within the last four years, New York State sustained damage from Hurricane Irene, Tropical Storm Lee, and Super storm Sandy. Acknowledging that more extreme weather events and natural disasters are likely, the plan provides $150 million in settlement funds to support preparedness and response efforts.

• $115 million for various infrastructure improvements to include undefined transportation, upstate transit, rail, airport, port, and other infrastructure improvements or economic development projects.

• $50 million for Southern Tier/Hudson Valley Farm Initiative to help landowners in the Southern Tier and Hudson Valley maintain and develop farming, agricultural, and related businesses.

**Upstate Revitalization Account ($1.5 billion)**

The plan includes $1.5 billion for a special competitive economic development program that resembles the current Regional Economic Development Council model. Under the one-time special initiative seven regional economic development areas are eligible to compete for one of three $500 million upstate revitalization grants: Mid-Hudson, Capital Region, Mohawk Valley, Central New York, North Country, Southern Tier and Finger Lakes. The goal is to provide a regional economic plan that focuses on strengthening critical infrastructure, revitalizing communities, bolstering workforce development, growing tourism, and improving quality of life. The timeline for applications and awards is yet to be determined.

**State Fiscal Reserve ($850 million)**

As mentioned, the Budget sets aside $850 million in reserves to help stabilize the State Financial Plan. It is expected that these reserves may be needed to partially settle potential Medicaid disallowances.
NYSAC POSITION

Target Funding for Locally Owned Roads, Bridges, and Culverts

Although state leaders have uniformly called for the $5.4 billion in state settlement funding to be allocated to infrastructure, virtually none of this funding has been dedicated to local roads and bridges. Additionally, the State Department of Transportation (DOT) capital plans proposal of a $250 million State Aid to Local Bridge Program has not been included in the State’s capital plans, while Marchiselli funding has remained flat for nearly a decade at $39.1 million. NYSAC supports that the State should allocate up to 50 percent of the $5.4 billion in legal settlement funds to local transportation and public works needs, in addition to the current CHIPS and Marchiselli fundings. Also, that the next 5 year Transportation Capital Plan should include a multi-year State Aid to Local Bridge and Culvert Program to direct the necessary state investment in locally-owned bridges and culverts, on a pay-as-you-go basis.

Eliminate Unlimited Transfer Authority

Unlimited transfer authority is disconcerting and could mean much of the funding is used for non-infrastructure purposes (At least $1.2 billion appears to be set aside for Medicaid purposes). Abruptly pulling funding from infrastructure projects could reverse progress, making the projects ultimately more costly, and there is no guarantee that funding will be reallocated at a later date.

Balance Upstate Revitalization

Since the economic downturn affected each region of the state, and some communities were harder hit than others, the $1.5 billion in Upstate Revitalization allocations must provide the biggest benefits for the largest number of individuals, families and communities. We believe the proposed allocation of these funds should be revisited in a way that ensures the most equitable distribution possible, and that it be prioritized for public infrastructure needs.

Clarify Anticipated Levels of Medicare and Medicaid Revenues

The Budget proposes that the director of the budget may authorize and direct the comptroller to transfer from the dedicated infrastructure investment fund to the general fund an amount not to exceed the decline from anticipated levels of federal Medicare and Medicaid revenues. Anticipated levels, and the methodology for finding these levels, must be clearly defined at the outset, and limited so as not to exceed a specific amount.
The New York State Association of Counties is a bipartisan municipal association serving the counties of New York State including the City of New York. Organized in 1925, NYSAC mission is to represent, educate and advocate for member counties and the thousands of elected and appointed county officials who serve the public.