

To: Clients and Friends

From: Manatt, Phelps & Phillips, LLP

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Subject: 2015 Legislative Session Preview

Introduction and Overview

A year that began with the poignant pairing of the second inauguration of Governor Andrew Cuomo with the death of his father, former Governor Mario Cuomo, promises to be an interesting and important year for New York State. As New Yorkers looked back on Governor Mario Cuomo's three terms as Governor, Andrew Cuomo's unprecedented dual inaugural addresses in New York City and Buffalo focused on what might be expected in the coming year. Critical issues involving education, healthcare, economic development, income inequality, criminal justice, public ethics, energy, and the environment appear likely to occupy the Legislature and the second term Cuomo Administration during 2015—and, if the past is any guide, a host of unanticipated issues are likely to emerge as well.

With the advent of a New Year and new legislative session, we thought it would be helpful to provide a brief summary of where we believe things stand in Albany as 2015 begins to unfold. As we await the Governor's State of the State Message (delayed until January 21st) and the release of the Governor's Executive Budget (expected on January 27th), this memorandum details our perspectives on the politics, the personnel, and the policies that we anticipate may shape the new year.

The Current Political Environment in Albany

Political context: After the 2014 elections, the Democrats retain overwhelming control of the Assembly (106 Democrats to 44 Republicans) under Speaker Sheldon Silver, while the Senate's 63 member body has a 33 member Republican majority (32 Republicans plus Senator Simcha Felder, a Democrat of Brooklyn, who conferences with the Republicans), led by Senator Dean Skelos. The Republican majority will be further supplemented by a continuing alliance with the five-member Independent Democratic Conference (IDC), led by Senator Jeffrey Klein—although the precise terms of the continuing alliance and the governance role to be

played by the IDC remains to be seen. The Senate Democrats, led by Senator Andrea Stewart-Cousins, have twenty-five seats and remain in the minority.

Governor Cuomo won a comfortable re-election victory (a 13% margin), but unlike the Democratic 2006 and 2010 landslides, Cuomo lost the Upstate vote to Westchester County Executive Robert Astorino, who carried the region by a 51% to 43% vote. Cuomo barely carried the suburban vote (Westchester, Rockland, Nassau, and Suffolk Counties) by a 50% to 47% margin, but won his decisive victory by carrying New York City by a margin of better than six to one. Without the New York City vote, Cuomo would have been narrowly defeated—in contrast to four years ago, when the Governor carried 55% of the non-New York City vote. The Governor's more modest showing may embolden the Legislature to test Cuomo's political ascendancy, perhaps as early as this year's Executive Budget—and may continue to focus the Administration on addressing Upstate needs to bolster his showing in that region.

Political trends and prospects in New York State: As the analysis above suggests, regionalism remains the fault line in New York State politics. In gubernatorial years, Upstate and the Suburbs are the engines driving electoral outcomes. Despite New York City being 42% of the State's population and 38% of the State's registered voters, New York City voters have not cast over 30% of the State's total vote in gubernatorial elections in 30 years.

In 2014, the NYC share of the total vote was only 27%, retreating back to the low water marks of the 1990's, down from the 30% level of three of the last four gubernatorial elections and in contrast to a 33% to 35% share in the last three presidential elections. Thus, Upstate (only 37% of the population and 39% of registered voters) cast a 48% share, while the Suburbs (Long Island, Westchester and Rockland, which contain 21% of the population and 23% of registered voters) cast a 25% share of the total vote. In brief, Upstate and the Suburbs were this election's regional winners on voter turnout, even though it was the Governor's overwhelming support in New York City that put him over the top.

Second, New York State remains a Democratic state, but it is not necessarily a liberal state. The Democrats have a 3.1 million voter registration advantage over the Republicans statewide, but 2.7 million of that edge comes from NYC. In Upstate, the Democratic registration edge is just over 150,000 and in the Suburbs, it is just over 220,000. The electoral outcomes outside of NYC are determined by the approximately 1 million independent (unaffiliated) voters Upstate, and the approximately 640,000 independent Suburban voters, given the rough partisan parity between Democrats and Republicans. These independent voters are quite moderate philosophically, rejecting the ideological extremes from both parties. Exit polls in New York State consistently reveal that self-described conservatives slightly outnumber liberals. New York State is a Democratic state only when Democrats avoid divisions and they hold their own amongst independent voters.

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Third, the 2014 election in NYS was the lowest turnout (approximately 3.9 million) in absolute numbers since 1934 (3.71 million) when Herbert Lehman defeated Robert Moses in a landslide and the extraordinarily low turnout ranked New York State as the fourth lowest in the nation. The low turnout meant that the election was not powered by the minority and multicultural majority from New York City, but instead by the nearly three quarters of the vote cast from outside the City's limits.

Given all of the above, the fact that Democrats did not win control of the State Senate and lost three seats in the House delegation (which is now 18-9 Democratic, after having been 21-6 Democratic after the 2012 election) may not be all that surprising. Republicans successfully persuaded Upstate and Suburban voters in both Congressional and State Senate races that the Democratic candidates were too beholden to NYC's interests. Meanwhile, however, the Republicans did not actually improve their statewide prospects for 2016. The Republicans continued in 2014 to lose minority voters by an over 4-1 margin and, for the fifth consecutive biennial election, were unable to win over more than a third of the female majority. In 2016, subject to many factors including who is running for President on the Democratic line, the overall turnout will likely surge to over 7 million voters from 3.9 million in 2014, which may expose some of these recent Republican weaknesses: the aggregate minority vote in New York State in 2016 is expected to exceed 30% of the total vote and the female majority vote will likely return to its 53% share.

Implications for the 2015 session and beyond: What does all of this mean for New York State government over the next several years? The Governor's achievement in ending Albany's dysfunction, evident during the terms of Governors Spitzer and Paterson, may be tested. Now that the GOP Senate has reacquired and supplemented its majority and the Democratic Assembly maintains its veto proof majority, the Legislature may be less likely to bend to Cuomo's will, especially on the timing and substance of the State Budget. No one should doubt this Governor's melding of governing and political skills, but second terms often become a time of testing for Governors. On time budgets in 2015 and beyond may not be a sure bet, even with the extraordinary institutional advantage possessed by the Governor under the State's Constitution.

Among the tests facing any second-term Governor is whether the Administration can retain the cohesion of its inaugural term. Staff turnover is to be expected, especially for a Governor who demands so much of himself and others. As is detailed below, the Governor faces the need to replace many members of his senior team in the Executive Chamber, as well as the Commissioners of several key agencies. Given the substantial turnover, it will be interesting to see if the Administration can remain focused and politically effective—and to see if Cuomo can avoid the second term political slump which have plagued many re-elected Governors in the recent past.

The Governor won't be the only one tested in the next several years. The Senate and the Assembly are under continuing pressure to reform themselves in the aftermath of the curtailed Moreland Act Commission, ongoing and apparently expanding investigations and prosecutions by the United States Attorney for the Southern District, questions regarding the handling of sexual misconduct charges against legislators, and record low assessments of the ethical standards of the Legislature. At a minimum, the retirement of key members in both houses has resulted in the need to appoint new chairs to key committees, which results in the domino effect of shifting members to new assignments; creating more vacancies to fill. And a host of central and committee staff changes are also anticipated in both the Senate and the Assembly, including the departure of Simonia Brown, the Assembly Majority's Deputy Secretary for Health.

In the final analysis, the seemingly still waters of New York State's politics, reflected by the returning incumbents in both the Executive and the Legislature in 2014, may only mask deep and potentially turbulent tides. The political challenges facing Cuomo, Silver, Skelos, and Klein will not only generate some interesting political theater, but could also have significant impact on the important policy choices New York State will make in the years ahead.

Recent staff changes in Governor's Office and the Executive Agencies

As noted above, some turnover is to be expected as an Administration rounds the final leg of its first term and heads toward its second. What may be noteworthy, however, is the extent to which departures from the senior levels of the Administration are occurring virtually simultaneously. In addition to the departure of his first term Lieutenant Governor, the Administration lost or is about to lose its Secretary (the top advisor to the Governor, equivalent to the President's Chief of Staff), its Counsel, its Director of State Operations, and its Budget Director—namely, each of the most powerful positions in the Executive Branch and, accordingly, a host of tough jobs to fill, particularly if replacements need to be identified all at the same time. A host of other departures, some of which are referenced below, depleted the Governor's legal and program staff and have led either to recent hirings or to continued vacancies in key program areas.

To make the Governor's role as chief recruiter even more daunting, several key state agencies—including those dealing with health, labor, motor vehicles, developmental disabilities, public assistance, and the Thruway—are without permanent heads at the moment and will necessitate formal appointments and confirmations by the State Senate. At the same time, the Board of Regents has embarked on a search for a new Commissioner of Education, after Commissioner John King left to take a position in the Obama Administration. At a time when key new policies are being implemented by these agencies, the absence of actual Commissioner-level leadership will be noticed.

The following is a reasonably current listing of the recently filled, current and impending vacancies in the Administration:

Title	Former	Current
Lieutenant Governor	Robert Duffy	Kathy Hochul
Secretary to the Governor	Lawrence Schwartz (expected to leave early in 2015)	TBD
Counsel to the Governor	Mylan Denerstein	Seth Agata (Acting, expected to leave early in 2015)
Director of State Operations	Howard Glazer	Jim Malatras
Deputy Director of State Operations	Fran Reiter	Andrew Kennedy
Deputy Director of State Operations	N/A	Joe Rabito
Chief of Staff	John Vlasto	TBD
Press Secretary	Matthew Wing	TBD
Director, Division of Budget	Robert Megna (expected to leave early in 2015)	TBD
Assistant Secretary for Health	Sally Dreslin	Rose Duhan
Deputy Secretary for Education	Ian Rosenblum	Elana Sigall
Assistant Secretary for Education	N/A	Jay Quaintance
Deputy Secretary for Public Safety	Thomas Abt	Terry O'Leary
Assistant Deputy Secretary for Public Safety	Mary Kavaney	TBD
Assistant Secretary for Energy	Tom Congdon	Kara Allen
Assistant Counsel for Transportation	N/A	Ali Chaudhry
Assistant Counsel to the Governor	N/A	Julia Pinover-Kupiec
Assistant Counsel to the Governor	Meredith Weill	TBD
Director of Regional Affairs	Cassie Prugh	TBD
Commissioner of DOH	Nirav Shah	Howard Zucker (Acting)
Medicaid Inspector General	James Cox	Thomas Meyer (Acting)

DOH Executive Deputy Commissioner	Sue Kelly	Sally Dreslin
Commissioner of OPWDD	Courtney Burke (last confirmed Commissioner)	Kerry Delaney (Acting)
Commissioner of Education*	John King	Elizabeth Berlin (Acting)
Commissioner of OTDA	Kristin Proud	TBD
Commissioner of DMV	Barbara Fiala	TBD
Commissioner of Labor	Peter Rivera	TBD
Executive Director of NYS Thruway	Thomas Madison	Jennifer McCormick (acting)
Chief Financial Officer of NYS Thruway	John Bryan	TBD

* Appointed by the Board of Regents, not by the Governor.

The Fiscal Context

State budget projections: Putting aside some very substantial one-time infusions of revenue from settlements with banks (discussed below), the projected revenue and expenditures for the SFY 2014-15 appear to be more or less on target, leaving New York State in its usual deficit-closing mode as we approach the budget season. As of November, Comptroller Thomas DiNapoli reported that state tax collections of \$38.4 billion were \$14.4 million lower than projected in the most recent Financial Plan update, but were more than \$1.6 billion above initial projections from the Enacted Budget Financial Plan. Tax collections through the first seven months declined 0.6 percent, or \$234.4 million, from a year earlier, mostly because of lower personal income tax collections in April. Spending from All Funds through the first seven months of the fiscal year totaled just under \$77 billion and was up by 3.7 percent, or \$2.8 billion, from a year earlier primarily because of Medicaid and the timing of the state's pension contribution.

As a result, DiNapoli projects a budget gap of \$1.8 billion in SFY 2015-16, which does not take into account the anticipated capacity of the Governor and the Legislature to extend cost containment through the Governor's limit on overall state spending and a global cap on Medicaid, or the unbudgeted infusion of the bank settlement funds.

The bank settlements: Much of the pre-budget discussion in Albany has focused on the approximately \$5.1 billion that the State has or will receive as a result of settlements with

various banks and other financial institutions over the mortgage foreclosure crisis, money laundering, and related allegations. In the case, for example, of French bank BNP Paribas, the settlement is the result of company employees concealing \$190 billion in transactions between 2002 and 2012 for clients subject to U.S. sanctions, including Sudan, Iran, and Cuba. Once the federal government and New York City receive their shares of these settlements, the balance of over \$5 billion will be available to be spent by New York State—prompting, as one might expect, a host of competing ideas of how the money might be spent. Proposals for the one-time windfall have included investments in infrastructure (perhaps including some portion of the Tappan Zee Bridge project, as well as roads, bridges, and water mains across the State), deficit reduction, economic development, restoration of education budget cuts, and a host of other ideas. As much as the additional revenue is welcome, the disposition of the excess revenue could prove to be a particularly contentious issue and may make a resolution of the overall state budget much more complicated.

2015 Legislative Session

Overview: During the course of the 2014 legislative session, 658 bills passed both houses, seven more than last year, but continuing a trend of relatively few bills passing the Legislature and reaching the Governor during recent years. Of those bills, Governor Cuomo signed 550 into law, vetoed 102 (or nearly nineteen percent), while the remaining five bills were delivered to the Governor for action on December 30. All of the Governor's vetoes occurred after this Fall's election: the Governor vetoed 45 percent of the bills submitted to him post-November 4th.

The 102 bills vetoed thus far by the Governor substantially exceeded the veto totals of each of his prior three years in office—but reflects a trend among recent Governors of vetoing more bills in the final year of their term: Governor Paterson vetoed 147 bills in his last year in office and also issued a whopping 6,692 budget-related line item vetoes, while Governor Pataki vetoed 211 bills in his final year in office.

With the work of the 2014 legislative session behind us, we examine below what remains undone from 2014 and what may be the focus of the 2015 session.

Unfinished Business: Campaign Finance Reform. The Public Trust Act of 2014, enacted as part of the SFY 2014-15 budget, established a public campaign financing experiment with the State Comptroller race in 2014—an experiment that Comptroller Thomas DiNapoli sidestepped and that established minimum contribution limits that his Republican challenger, Bob Antonacci, was unable to satisfy. The Act also included a new reporting requirement for

non-profit and for-profit organizations regarding “Independent Expenditures,” established a new felony of “Corrupting the Government”, when a public servant or a person acting in concert with a public servant defrauds the state or local governments to obtain property, services, or actual resources, and established a new Office of Chief Enforcement Counsel within the new Division of Election Law Enforcement at the State Board of Elections to investigate and enforce violations of the State Election Law. Despite the enactment of these provisions, the Governor and the Legislature were criticized for not enacting sufficiently comprehensive reforms to address public corruption and public ethics—concerns that were heightened after Governor Cuomo disbanded the Moreland Act Commission that he had tasked with investigating public corruption.

Governor Cuomo has vowed to continue to push for public financing of political campaigns for all state offices, while also publicly acknowledging that the Senate Majority is unlikely to support it. The Governor is also likely to seek legislation that would close the loophole that allows Limited Liability Companies to be free of the same contribution limits as corporations, which would lower the corporate contribution limit to \$1,000 and restrict elected officials use of campaign contributions for personal purposes. It was reported that during discussions over a possible December 2014 special legislative session, the Governor had tied the issues of campaign finance reform with what would have been the first legislative pay raise since 1999. Since that didn’t materialize, a legislative pay raise will not be in the offing for the next two years—but the press for additional campaign finance and public ethics reforms is likely to continue through 2015.

Unfinished Business: DREAM Act. Passage of the DREAM Act has become a signature issue for Hispanic legislators in recent years and held a prominent position in the Governor’s 2014 reelection platform. The DREAM Act would provide access to state financial aid for undocumented students who enroll in a college or university within five years of receiving a high school diploma or a GED. The proposal would build upon a 2002 law that extended in-state tuition rates to undocumented students attending public institutions. Although the legislation passed easily in the Assembly in 2014, it has not enjoyed the same level of support in the Senate and was not uniformly supported by the Democratic minority. Proponents of the DREAM Act will continue their campaign in 2015 and advocates have pressed for the inclusion of the legislation in the Governor’s SFY 2015-16 Executive Budget. However, even if they are successful, it is likely that the measure will continue to face opposition in a Republican-controlled Senate.

Unfinished Business: Nurse Staffing Ratios. Legislation to establish nurse-to-patient ratios within hospitals in New York State will remain in play during the 2015 session. Proponents of the bill point to better quality care, better patient outcomes, and reduced hospital

stays. Opponents of the bill caution against a statewide mandate that would codify a one-size-fits-all approach to hospital staffing and patient care, which fails to consider patient acuity or the professional expertise of hospital staff, and could have substantial fiscal implications. Although the proposal failed to pass during 2014, the long-debated Safe Patient Handling Act was enacted as part of the SFY 2014-15 State Budget. At the close of the 2014 legislative session, the New York State Nurses Association made it clear that the legislation would be its top priority for 2015 and launched a campaign to draw more attention to the issue during the summer of 2014—prompting a coalition of opponents of the legislation to redouble its efforts.

Unfinished Business: Women’s Equality Act. The Women’s Equality Act remains another piece of unfinished business in the Governor’s portfolio. First introduced in 2013, the Governor presented the package as a series of reforms promoting gender equality and included provisions to strengthen laws against human trafficking, domestic violence, and sexual harassment in the workplace. The most controversial of those reforms remains a proposal that sought to codify federal protections regarding reproductive choice. While the package was supported and passed by the Assembly, the reforms were ultimately divided by the Senate into ten separate proposals, nine of which (excluding the reproductive choice element) were passed in the Senate in 2013 and 2014. The Women’s Equality Agenda became a high-priority item during the Governor’s re-election campaign, leading to the creation of the Women’s Equality Party. Passage of the ten point legislative package comprising the Women’s Equality Agenda will likely remain a priority issue for the Governor and advocates going into 2015, but they will continue to face the opposition of the Republican State Senate.

New Business: Income inequality. In his inaugural address, Governor Cuomo identified the need to address chronic high poverty in New York State, “from the South Bronx to Rochester,” through policies such as a higher minimum wage and education reform that will confront failing schools in poorer neighborhoods. The Administration has been working with local officials and legislators in affected areas of the State to develop an anti-poverty agenda that may be incorporated in the SFY 2015-16 Executive Budget and policy proposals that he will be advancing this year. In his October reelection platform, the Governor also proposed new initiatives in affordable housing and in youth employment programs to address these issues.

New Business: Infrastructure. Studies have highlighted the deficiencies of much of New York State’s infrastructure, including roads, bridges, water and sewer lines, dams and levees, , subways, railways, and airports, and the insufficient capital funds available from Federal and State sources to undertake these critical projects. Proponents for these capital needs, including associations of local governments, have requested that the Governor and Legislature direct the State share of the more than \$5 billion in bank settlement funds toward infrastructure improvements. The Governor also called for the creation of a New York State Infrastructure

Bank to coordinate and prioritize the funding of these improvements. The Governor and Legislative leaders have indicated their support for devoting a portion of these funds to infrastructure but, while there was some discussion of an agreement being reached prior to the end of 2014 regarding the allocation of these funds, the issue will now be addressed as part of the SFY 2015-16 State Budget process.

New Business: Economic Development. In his policy platform released just weeks before his re-election, Governor Cuomo called for a renewed effort to revive the Upstate economy through a \$1.5 billion revitalization fund aimed at replicating the success of the so-called “Buffalo Billion.” His agenda also called for promoting small businesses through a summit on small business, the creation of a business assistance team, and the appointment of a New York State Chief Small Business Officer, along with proposals to expand innovation through new venture capital funding and start-up supports.

New Business: Healthcare. The Cuomo Administration’s multi-year effort to redesign the Medicaid program continues with the implementation of the Delivery System Reform Incentive Payment (DSRIP). In the next phase, it is expected that the Administration will refocus on the entire healthcare system, including the elements funded by private insurance, with similar reform through the State Health Innovation Plan (SHIP). The Governor described this next component in his October platform as an effort that would build on the Administration’s success in reforming the Medicaid program, which would now be extended “to align the entire health care system, including private insurance, to further improve quality, keep costs low, and improve the health of all New Yorkers.” The plan envisions collaborating with stakeholders to develop a five-year strategic blueprint for the overall healthcare system reform—with the expectation that savings in the billions of dollars will be identified. In addition, the Administration has launched an important effort to end the AIDS epidemic and may be called upon to provide more resources to prepare the healthcare system for Ebola and other modern public health threats. Assemblyman Richard Gottfried, meanwhile, has been travelling the state seeking input and support for his proposal for a single payor system in New York State—a proposal that may be considered by the State Assembly, but likely not the State Senate, in the coming year.

New Business: Criminal Justice. In the wake of public unrest surrounding the deaths of Michael Brown in Ferguson, Missouri and Eric Garner in Staten Island by police officers, Governor Cuomo vowed in his inaugural address to pursue criminal justice policies directed at building greater trust between law enforcement and poor and minority communities, while at the same time urging greater protection for police officers in the wake of the assassination of two New York City police officers. While the details of these proposals remain to be seen, it is anticipated that the Administration may be considering police body cameras, change of venue for sensitive cases, and potentially some greater transparency relating to grand jury proceedings.

Attorney General Eric Schneiderman has proposed giving the Attorney General the authority to investigate and prosecute situations where police kill civilians, effectively removing such cases from the jurisdiction of the local District Attorney. Members of the State Assembly have backed removal of police killing cases from Districts Attorney and indicated they will introduce a package of criminal justice reform bills during the 2015 legislative session. The Senate, meanwhile, has scheduled public hearings to examine police safety and public protection. The Legislature is expected to consider juvenile justice reforms as well, including a proposal to raise the age for adult criminal responsibility from sixteen to eighteen.

New Business: Teacher Certifications and Evaluations. In the final days of 2014, the Governor vetoed his own program bill that intended to adjust the APPR teacher evaluations to compensate for the rollout of the Common Core curriculum. Teachers had been concerned that the rollout of Common Core would result in a high number of teachers being rated as ineffective. That, however, did not materialize in this year's results, with only 1% of teachers being rated ineffective. Governor Cuomo stated that the high scores on the APPR made his bill unnecessary, as it was clear that the rollout of Common Core did not have a substantial impact on teacher's ratings. In mid-December, the Director of State Operations, Jim Malatras, sent a letter to the State Education Department that focused on teacher evaluation and failing schools and signaled the Administration's interest in making education reform a major priority. These reforms potentially include overhauling the APPR, creating a one-time competency test for all current teachers, increasing the amount of time a teacher must spend on probation prior to being granted tenure, and addressing the 3020-a process that governs the removal of ineffective teachers.

This all occurs at a time when the Department recently lost its Commissioner to the Obama Administration. At some point in the tenure of recent Governors, consideration has been given to enlarging the Governor's role with respect to education in New York State, which remains the province of the autonomous State Education Department and the legislatively-elected Board of Regents. Whether Governor Cuomo will seek greater oversight of the Department in the coming session remains to be seen.

New Business: Making Higher Education More Affordable. Huge student debt loads and the increasing costs of higher education have made higher education increasingly unaffordable—a cost compounded by the fact that students frequently are unable to complete their education in four years. In addition to encouraging reforms that lead to on-time completion, the Governor will be proposing a “Get on Your Feet Loan Forgiveness Program,” which will give New York State residents who graduate from college and remain in the State the option to pay little or nothing on their student loans if their income is not high enough to cover their student loans without significant hardship.

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New Business: Sexual Assault Policies. Sexual assault policies in institutions of higher education has been a hot topic in both New York State and nationally. Media coverage of sexual assault proceedings has grown over the past year in the wake of several high profile cases, which has prompted federal action in the form of a number of Title IX complaints against institutions of higher education, as well as action in New York State, with the formulation of a new sexual assault policy for CUNY and SUNY institutions that centers on ‘affirmative consent’. The Governor has indicated that the SUNY and CUNY policy will serve as a model for legislation that will require private colleges and universities to similarly adopt ‘affirmative consent’ policies, stricter reporting requirements, and a student bill of rights. The Governor has indicated that this will be a standalone piece of legislation, and will not be the ‘eleventh plank’ of the Women’s Equality package of legislation.

If you have any questions or comments on the foregoing, please do not hesitate to contact the Manatt Albany office at 518-431-6700.