



## CFE's Analysis of Governor Pataki's 2006-2007 Executive Education Budget:

### Governor's Continuing Contempt of Court Trumps Needs of State

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For years, Governor Pataki has shirked his responsibility to provide basic funding for New York's schools by insisting that the money was not available. But a healthier economy this year has presented Pataki with a \$3.3 billion surplus<sup>1</sup> and an historic opportunity to make good on his word to improve education throughout the state. The substantial surplus means enough dollars are available in the state budget to make a meaningful down payment in the 2006 legislative session toward resolving the long-running *CFE v. State* lawsuit and ending the state's unconscionable defiance of the Court of Appeals' order. The surplus would more than pay for the first year of the Schools for New York's Future Act, which will fully fund the court order on a statewide basis. The bill, already in the assembly, calls for \$2.1 billion to fund the first year of statewide reforms.

Instead, the governor's executive budget proposal for 2006-07 continues, for the second year in a row, his contempt of court. The state's primary obligation in regard to the surplus is to use it to cover its unresolved constitutional obligation to the Court of Appeals and to New York's schoolchildren. Only after that debt is paid, should the governor and the legislature consider tax cuts and new programs.

In the place of real funding reform, Governor Pataki's budget recommends an additional \$634 million in school aid. Some \$375 million of the increase is allocated as sound basic education (SBE) aid, which was first implemented last year. The SBE aid is presented as a reserve to help fund a future solution to CFE. In reality, SBE aid is a fraction of the billions more that are needed, and its funding is at least partially contingent on anticipated revenues from future video lottery terminals (VLTs). Moreover, the SBE reserve is not specifically allocated to New York City and other high-need districts, which means it is likely to be carved up into the traditional "shares" and will ultimately have no reform impact whatsoever.

While described by the governor as a "record increase," the proposed general aid increase consists of just \$259 million in traditional aid, 1.6 percent above last year's budget. This 1.6 percent increase in traditional state funding makes no attempt to meet the State's court-mandated obligation in the *CFE* case to considerably augment aid for underfunded schools. Indeed, it will not even allow districts around the state to maintain their current level of services; it does not come close to protecting districts from significant rising costs of heating, mandated pension payments, health insurance premiums, salaries, and other inflationary expenses. An analysis by the Educational Conference Board (ECB) found that over \$2 billion is needed in additional funding this year to cover these costs.

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<sup>1</sup> The governor's forecast of a \$2 billion budget surplus assumes a series of surplus-reducing actions to be enacted this year. The actual surplus is \$3.3 billion. For more details, see the senate's analysis of the governor's proposed budget at <http://www.senate.state.ny.us/SenateReports.nsf/6DD2F2819E02BB6185256EBD004E2D20/9373ECD80AEDB8028525710000761DA8?OpenDocument>.

The hope of educational stakeholders was that the governor, in his last budget proposal, would deploy the surplus to deliver fairness into the state's corrupt funding system and budget a meaningful increase for our children. The hope was that the long-term interests of the state would trump the governor's perceived short-term political gains.

In the face of the governor's short-sighted lack of investment in the state's future, districts across the state are relying on the state legislature to put their weight behind the Schools for New York's Future Act.

There can be no more excuses; the money is there and there is no purpose more critical to the long-term welfare of the state than education. The multi-billion dollar surplus must be deployed to substantially increase the education budget so that every school in New York can provide its children the opportunity for a sound basic education. CFE is calling on the legislature to enact and fund the Schools for New York's Future Act this year.

### **Education Budget Summary**

Under the governor's proposal for 2006-07, New York State's total budget for the coming year, including all funds, is \$110.7 billion. State support for public schools makes up \$16.95 billion (excluding federal aid).<sup>2</sup>

The proposed school year increase for 2006-2007 is \$634 million -- a 3.9 percent increase over last year. The increase is made up of two components: \$259 million in traditional state aid (a 1.6 percent increase over last year) and \$375 million in so-called sound basic education aid.

The SBE aid is a transparent attempt to inflate the state's minimal efforts to comply with the *CFE* decision. Though the SBE aid invokes language from the decision, the \$325 million that was appropriated last year -- and the additional \$375 million recommended this year -- are far below the funding levels ordered by the courts. Last year's "SBE fund" turned out to be nothing more than a building block for distributing education aid through the unconstitutional "shares" approach, and the "SBE" amount identified for this year is likely to do the same. As for the new funding, the governor failed to outline a formula for how it would be allocated. Absent a concrete plan, it is impossible to know how much will actually go to high-need districts across the state, and much of it will probably be dissipated through the unconstitutional and inadequate "shares" agreements.

What is clear in the governor's budget is that the SBE aid will be at least partially generated through projected revenues from future video lottery terminals (VLTs) -- a volatile prospect that has been rejected by the legislature in previous years. The budget explicitly states that two facilities slated to open in October 2006 and 2007 respectively are expected to produce the majority of the growth in VLT revenue.

Further, the new SBE aid will be placed in a reserve and allocated "pursuant to a plan to promote the provision of sound basic education in schools throughout the state." The governor's most recent "sound basic education plan," however, has already been rejected by the legislature and the court.

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<sup>2</sup> In New York, approximately 46 percent of education spending is funded by the state; 47 percent is funded by local districts; and 7 percent is funded by the federal government.



In its analysis of the budget increase, the assembly attacks the governor for concealing an estimated \$278 million in cuts primarily to reimbursable expenses. The assembly explains that these are expenses that school districts have already incurred, such as special education, BOCES, and building aid.

### **The Actual Costs of Providing a Sound Basic Education in New York State**

#### *The CFE Decision*

In a landmark June 2003 decision in the *CFE v. State* lawsuit, the Court of Appeals struck down the state's school-funding system as unconstitutional. As a remedy, they ordered the State to determine the actual cost of a sound basic education and to reform the school finance system to ensure that every child receives the education to which they are entitled under the state constitution. The court gave the State ample time, 13 months, to enact the reforms. The July 2004 deadline came and went, however, without any action on the part of the State.

In March 2005, to fill in the political vacuum left by lawmakers, State Supreme Court Justice Leland DeGrasse ordered the State to ensure that students in the New York City public schools receive an additional \$5.6 billion in operating aid (phased in over four years) and \$9.2 billion in building aid. The governor is currently appealing this follow-up compliance ruling, clearly using a strategy of delay to avoid adequately funding New York's schools until he is no longer in office.

CFE, together with a statewide coalition of organizations, drafted legislation last spring that took the same methodology and underlying principles that the court employed to determine funding requirements for New York City and applied them statewide. The result was the Schools for New York's Future Act. The bill was introduced into the assembly last June as A-100. It calls for \$8.6 billion to be phased in to schools across the state over four years. Of this amount, New York City would receive \$4.6 billion. For year one, the bill calls for an additional \$2.1 billion for districts across the state. No district would suffer any cuts in state aid.

#### *Maintaining Services*

In an analysis released in January 2006, ECB, a coalition of eight statewide education leadership groups, estimated that maintaining current services and programs for schools across New York State in the coming year will require an additional \$2.153 billion. The ECB estimate is based on conservative assumptions: a 4.1 percent increase in salaries, a 12.5 percent increase in fringe benefit costs, a 35 percent increase in energy costs, and a 3.2 percent increase in other costs.

To avoid an exorbitant rise in local property taxes, the group found that the state would have to cover half, or \$1.076 billion, of these costs -- almost 60 percent above the governor's proposed increase this year.

Failure to provide this increase would force many districts to shoulder more of the burden in financing their schools. This could result in districts having to choose between dramatically increasing property taxes or cutting programs to offset the rising costs.



The ECB found that if the state assumes its 50 percent share of the \$2.153 billion, local property taxes would increase by 4.6 percent on average. If the state does not provide its fair share -- the unfavorable scenario under the governor's proposed budget -- local taxes would rise by at least 9.3 percent on average.

An analysis released in January by the Fiscal Policy Institute (FPI) further explains how the costs that districts must incur just to maintain services are increasing at a much faster rate than the Consumer Price Index (CPI). In fact, Governor Pataki had his own experts testify to this during the hearings before the special masters in the *CFE* case in 2004. The State's experts testified that many districts in New York have to spend much more than inflationary increases to provide their students the opportunity for a sound basic education. In the Standard & Poor's costing-out analysis advanced by the governor, 177 of the 639 districts analyzed needed to increase spending above these inflationary levels just to maintain services.

In a telling analysis, the FPI shows that out of 680 districts assessed, only one district requires less than 4 percent to maintain services for the coming year. Most districts, over 534, require an increase of between 5 and 6 percent. The statewide average increase that districts must implement this year to maintain services is 5.6 percent, 4 percent below the governor's statewide increase.

These analyses shed important light on the governor's so-called "record" increase. If enacted, the governor's budget would essentially become a partial reimbursement -- and a very small one at that -- to many districts who are just trying to preserve programs and services.

Of course, the above estimates from ECB and FPI on do not include any of the billions of dollars in additional funding that are needed to respond to the *CFE* decision.

### **The Governor's Flex Aid Plan**

The governor has once again proposed the state's major operating aid program through a flex aid plan that merges operating aid with six other targeted formulas, including extraordinary needs aid, limited English proficiency aid, summer school, educationally related support services, and minor maintenance aids.

While flex aid makes some headway in simplifying the state's convoluted aid system, it is a far cry from the much-needed structural reforms that were mandated by the courts in the *CFE* case. The bottom line is that despite flex aid, politics are still a major determining factor for state aid allocations. Flex aid does not come close to matching either the Regents' efforts to enact a fair formula that collapses 29 of the current funding streams or the similar approach put forth in the Schools for New York's Future Act.

The Schools for New York's Future Act proposes collapsing 40 of the state's budget categories into a single foundation formula. The formula, developed by CFE and a statewide coalition of organizations, assigns a base cost for the provision of a sound basic education, and then adjusts that figure according to districts' needs and a regional cost of living factor. The bill's foundation formula is similar to those being used in 40 other states. Its adoption in New York would have a tremendous impact in delivering transparency, fairness, and flexibility into the school system. The bill would



mean that school funding would be doled out through predictable formulas that have a clear connection to the actual needs of schools.

To fund the flex aid program, the governor proposes the same \$8.5 billion that was allocated by the legislature last year. The only addition to the program is a proposed “efficiency improvement incentive award” that would give districts a 2 percent increase in flex aid provided they adopt a budget within the contingency cap. To be within the cap, districts would have to hold their spending increases below the lower of 4 percent *or* 120 percent of the average national CPI -- a virtually impossible feat for most districts whose costs are increasing at a much faster rate than the CPI.

### **New York City**

The preliminary budget provides New York City a \$111 million increase in state aid out of the \$259 total statewide increase, a mere 1.09 percent increase over last year. Absent the increases for transportation and building aid, the city’s increase is just \$58.25 million, or 1.17 percent. New York City Mayor Michael Bloomberg, in a legislative hearing on the budget in January, testified that the actual figure is even more negligent than it appears: Of the total increase for New York City, \$40 million is slated to cover debt service costs.

The governor’s budget states that New York will receive \$195.65 million of the \$325 million of last year’s sound basic education aid. It remains uncertain exactly what percentage of the additional \$375 million in new aid the city will receive, which is based on tenuous revenue sources. Even if the money comes in, the overall increase is an unacceptably small fraction of the \$5.6 billion that the State Supreme Court said is needed to bring every city school up to constitutional standards.

### **The Big 4**

Of the Big 4 districts, Buffalo, Syracuse, and Yonkers would all receive modest increases of around 3 and 4 percent, including transportation and building aid. Rochester, on the other hand, takes a cut of 0.28 percent in its total state aid and joins 225 other school districts across the state that would incur a loss of aid this year under the governor’s proposal.

Under the Schools for New York’s Future Act, after full implementation, Buffalo would see an increase of 67.4 percent. Rochester would receive a 82.4 percent increase, Syracuse would receive a 64.8 percent increase, and Yonkers would see an increase of 44.5 percent.

### **Tuition Tax Credit**

New in the governor’s budget this year is the proposal of \$400 million in education “tax credits.” This funding would provide up to \$500 to low and middle income families in districts that have at least one failing school who choose to send their children to private or religious schools.

Several critics have already questioned the constitutionality of the tax credits, referring to a recent ruling by the Supreme Court in Florida that declared a similar system in that state to be unconstitutional. Others have accused Pataki of introducing a disguised voucher system as a cynical tactic to please the conservative base across the country.



In fact, Pataki's "tax credit" proposal is nothing more than a diversion from adequately funding the solution required by the *CFE* decision. The tax credit misses an opportunity to directly provide resources to school districts that are most in need of increased funding. Even worse, it would drain resources from schools at a time when poor children in New York receive about \$2,000 less per pupil than their wealthier counterparts -- the largest per pupil funding gap between its wealthy and poor students in the nation.

### **Building Aid**

The governor proposes a \$1.6 billion in state support for the construction of school facilities, an increase of \$77 million statewide, or 5 percent over last year. The State's failure to substantially increase building aid for New York City, which needs a multi-billion dollar influx of school construction dollars to alleviate severe overcrowding, is unconscionable.

The New York City Council, in a letter to Governor Pataki criticizing his inadequate education budget, highlighted the \$1.8 billion shortfall in capital funds that the city faces in FY 2006. This means that 23 new schools slated to begin construction will not be built, and that \$238 million of repair work and \$365 million for planned educational enhancements, including the construction of libraries and much-needed laboratories, will not take place.

The slight from the governor on building aid flies in the face of the State Supreme Court. In his 2005 ruling, Justice Leland DeGrasse ruled that New York City needs \$9.2 billion in capital resources to be able to provide its children with adequate facilities. The Schools for New York's Future Act, if enacted, would meet New York City's capital needs and provide an additional \$1 billion in building aid to districts across the state.

### **Next Steps**

New York's refusal to comply with the Court of Appeals' *CFE* order, makes it the only state out of more than two dozen where courts have invalidated state education finance systems to so blatantly defy a specific ruling in a school-funding case. The governor's continuing slight to the courts is an abuse of power. With each day that passes with no action on *CFE*, the situation only worsens -- for our children, the integrity of our entire court system, and for the future of our state.

Last year, the legislature passed an inadequate budgetary increase for education of \$848 million. Pataki's proposed budget this year is just 75 percent of last year's unlawful sum. *CFE* calls on New York's leaders to step up, fill the vacuum of leadership, and use the state's surplus to pass school-funding legislation this legislative session.

