



To: Greater Rochester Chamber of Commerce Members
From: Marc Cohen, Chief of Staff
Date: April 11, 2022
Re: FY2023 NYS Enacted Budget Brief

Summary: The New York State Legislature finished passing the FY2023 \$220 billion budget on April 9, 2022. The budget includes \$600 million in state money for a new Buffalo Bills stadium, a three-year allowance for alcohol-to-go, \$31.5 billion in total school aid, a \$4.2 billion environmental bond act, \$25 billion investment in housing, expanded investment for childcare, \$2 billion in pandemic recovery aid, criminal justice reform, middle class tax cut acceleration, and a gas tax holiday. Much of the new money being spent is a result of federal investment following the pandemic. The following brief is not intended to be a comprehensive overview of the entire FY2023 budget but rather a high-level view of the most relevant items to Greater Rochester Chamber members.

Issue Overview:

Buffalo Bills Stadium: The enacted budget includes \$600 million in state funding to a new stadium for the Buffalo Bills (the bulk of which to come from the state's share of \$565 million in gambling revenue collected from the Seneca Nation of Indians). The language authorizes the transfer of the Bills Stadium from Erie County to the newly formed Erie County Stadium Corporation, which is a subsidiary of Empire State Development. Additionally, the budget establishes that any appropriation and expenditure of funds after January 1, 2022 shall be subject to a contractual agreement between the Erie County Stadium Corporation and the Bills for a minimum of thirty years that would prohibit them from relocating. This agreement would further provide additional claw back provisions if the contract is breached in any way.

Alcohol to Go: The enacted budget allows for the sale of alcohol-to-go with the following conditions: (1) purchase has to include a substantial food item; (2) the container has to have a sealed lid; (3) the beverage is subject to open container law; (4) the delivery or takeout can only occur during normal business hours; (5) the price must be the same as the price on premise; (6) full bottles of liquor or wine cannot be sold; (7) the licensee cannot advertise or display full bottles of wine or liquor for the promotion of to go sales; (8) delivery vehicles must comply with existing Alcoholic Beverage Control Law; and (10) drivers must ID the recipient to ensure they are at least 21 years old. In response to strong objection from liquor stores, the budget allows liquor stores to operate on Christmas Day. "A substantial food item is defined as sandwiches, soups, or other foods, whether fresh, processed, precooked or frozen. Other foods are foods which are similar in quality and substance to sandwiches and soups; for example, salads, wings, or hotdogs would be of that quality and substance."

Infrastructure Investment Act: The enacted budget extends the Infrastructure Investment Act for five years by adding a project labor agreement (PLA) for all projects with a construction cost of more than \$25 million, and requiring a PLA feasibility study for any project with a value of less than \$25 million

ConnectALL Initiative: The enacted budget repeals the fiber optic fee.

Brownfield Cleanup Program: The enacted budget extends the Brownfield Cleanup Program by expanding the definition of Affordable Housing Project, providing more comprehensive language for why DEC may waive a \$50,000 nonrefundable program fee, and clarifying that stadiums/baseball parks/basketball courts shall be considered buildings for purposes of the Tangible Property Tax Credit.

Additional ERAP Funds: The enacted budget includes an additional \$800 million to supplement the Emergency Rental Assistance Program, which provides direct payments to landlords for renters in arrears and tax credits or direct payments to utilities for arrears accrued during the pandemic.

Clean Water, Clear Air, and Green Jobs Bond Act of 2022: The enacted budget includes \$4.2 billion for the environmental bond act. It further makes changes to the suballocation of the categories of projects that the funding can be used on and adds categories for water and air pollution and zero emission bus conversion. Lastly, it provides prevailing wage and project labor agreement requirements.

Extended Producer Responsibility: Absent from the enacted budget is the proposal to require any company that produces packaging or paper product and sells them in the state to file, with DEC, either individually or as a partnership, a plan to provide for the collection and recycling of such material.

Building Benchmarking Act of 2022: Absent from the enacted budget is the proposal requiring new construction be zero emission no later than 2027.

Healthcare Workforce Bonuses: The enacted includes a one-time \$3,000 bonus for hands-on front line health care and mental hygiene practitioners, technicians, assistant, and aides with an annual salary of \$125,000 or less.

Medicaid Global Cap: The enacted budget updates to the calculation metric used to determine allowable Medicaid disbursements under the Global cap. The metric is changed from the 10-year rolling average of the Medicaid component of the Consumer Price Index to the 5-year rolling average of the Medicaid spending annual growth rate projections within the National Health Expenditure Accounts set by the Office of the Actuary in the Centers for Medicare & Medicaid Services for the preceding five years. The authority for the Cap is extended until 2024. The enacted budget further includes the Vital Access Provider Assurance Program, Home Care, Personal Care and, CDPAP to the category of service metrics required to be reported within the quarterly Medicaid Global Cap report and strengthens the Global Cap reporting requirements.

Medicaid Trend Factor - The enacted budget includes a 1% across the board rate increase for Medicaid fee-for-service rates beginning April 1, 2022.

Statewide Health Care Facility Transformation Program IV: The enacted budget establishes a new \$1.6 billion Statewide Health Care Facility Transformation Program IV to provide capital to fund (1) unfunded project applications under Statewide III; (2) \$200 million for health care providers for modernization of an “emergency department of regional significance;” (3) \$750 million for health care providers to fund capital projects, build innovative, patient-centered models of care, increase access to care, improve quality of care, and ensure financial stability of providers; (4) \$150 million for technological and telehealth transformation projects; (5) \$50 million for residential and community-based alternatives to the traditional model of nursing home care such as the “Green House” nursing home initiative to deliver nursing home level care in small residential settings.

FAST NY: The enacted budget includes funding to develop shovel-ready sites to attract high-tech manufacturing, particularly semiconductor-related businesses, while increasing the state's attractiveness to large employers.

Regional Economic Development Councils: The enacted budget includes \$150 million which will be combined with tax credit funding and existing agency programs for a 12th round of REDC awards.

Downtown Revitalization: The enacted budget includes \$100 million for another round of the Downtown Revitalization Initiative.

New York Forward: The enacted budget includes \$100 million for the New York Forward program which is similar to the Downtown Revitalization Initiative (DRI), but for smaller communities like hamlets and villages, and will operate in the same fashion as the DRI.

Restore New York Communities Initiative: The enacted budget includes \$250 million in grants awarded to municipalities for the demolition and rehabilitation of vacant, abandoned, surplus, or condemned residential properties in urban and rural areas under the Restore New York Program. The enacted budget also includes a provision for increasing the amount of affordable housing units available to low- and moderate-income households.

Nursing Home Reforms - The enacted budget modifies the Executive proposal to amend the “70/40” direct care minimum spending requirements for nursing homes to exclude from the revenue formula provider assessments and the capital per diem portion of the reimbursement rate for nursing homes that have a four or five star rating from the Center for Medicare and Medicaid Services (CMS) by: (1) exempting from the revenue restrictions any grant funds from the federal government for reimbursement of COVID-19 pandemic related expenses; (2) including in the revenue restrictions any amount of the capital per diem portion of the reimbursement rate attributable to a capital expenditure made to a corporation, or other entity or individual, with a common or familial ownership to the operator or the facility; (3) establishing for year 2022 that residential health care facilities who fail to comply with the “70/40” direct care minimum spending requirements will only be assessed on a pro rata basis.

Human Services Cost-of-Living Adjustment: The enacted budget provides a 5.4% cost-of-living adjustment (COLA) in FY 2023 for eligible human service programs.

Home Health Care/CDPAP: The enacted budget requires the Department of Health to enter into contracts with fiscal intermediaries which were not selected as part of an RFO process initiated in 2020 intended to consolidate the Fiscal intermediary market. Fiscal intermediaries that provided services to at least 200 consumers in NYC or 50 consumers in other areas of the state between January 1st, 2020 and March 31, 2022. The enacted budget also raises the minimum pay for home care workers and Consumer Directed Personal Assistance Program (CDPAP) home care aides by \$3 so the hourly wages to \$18 in New York City and \$16.20 upstate. The \$3 raise would be rolled out over two years with home care aides getting a \$2 increase in the first year and \$1 per hour raise in the second year. The increase would be decoupled from reimbursement to providers.

Workforce Development and Education: The enacted budget increases foundation aid by \$1.6 billion to New York’s 673 major school districts and provides for the expansion of pre-k for four-year old’s. The enacted budget includes funding for the part-time tuition assistance program (TAP), restores TAP for incarcerated individuals, and allows the use of 529 college savings plans for apprenticeship programs.

Casino Licenses: The enacted budget authorizes three additional Vegas-style casinos.

Database of Deals: The enacted budget includes Empire State Development Corporation’s database of deals detailing all economic development benefits, loans, grants, subsidies, and tax incentives. It also expands the scope of the database to all state agencies and authorities that provide these incentives. The language also makes available specific information regarding contract documents, award timelines, full-time and part-time jobs created, and expenditure and recapture of funds.

Criminal Justice Reform:

Gun Trafficking Laws: The enacted budget decreases the number of firearms that a person must illegally sell within a one-year period from 10 to 3 to be guilty of Criminal Sale of a Firearm in the First Degree, a class B violent felony, and from 5 to 2 to be guilty of Criminal Sale of a Firearm in the Second Degree, a class C

violent felony. The budget also amends PL § 265.15 to decrease the number of firearms that a person must possess to create presumptive evidence of intent to sell from five or more to three or more. The enacted budget adds the following crimes to the list of bail eligible offenses: (1) Criminal Possession of a Weapon in the Third Degree (prohibits a person from knowingly possessing a machine gun, firearm, rifle, or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine gun, firearm, rifle, or shotgun; and (2) Criminal Sale of a Firearm to a Minor.

Bail for Repeat Arrestees: The enacted budget expands the ability for courts to set bail on offenders who commit another offense while a criminal case is pending. Judges will now be able to set bail where an offender commits a felony, class A misdemeanor, or the offense of Criminal Possession of a Firearm while released on his or her own recognizance, released under conditions, or has yet to be arraigned after the issuance of a desk appearance ticket.

Offenses Eligible for Arrest: The enacted budget authorizes officers to arrest a person charged with the following offenses, rather than being required to issue a desk appearance ticket: (1) criminal Possession of a Weapon on School Grounds when the offender is eighteen years of age or over; (2) an offense charged as a hate crime as defined in PL 485.05, when the offender is eighteen years of age or over; and (3) The offense is bail eligible under CPL 510.10(4)(t), which allows bail to be set on offenders who commit certain types of offenses while released or after having been issued an appearance ticket on a separate offense

Factors for Courts to Consider when Making Custody Determination: Under current law, violations of orders of protection and a history and use or possession of firearms can only be considered for offenders charged with family offenses. The enacted budget adds additional factors that courts may consider when making a custody determination: (1) any violation by the principal of an order of protection issued by any court; (2) the principal's history and use or possession of a firearm; and (3) whether the charge is alleged to have caused serious harm to an individual or group of individuals

The enacted budget also extends Kendra's Law for five years through June 30, 2027, includes reform to discovery, and mental health in the criminal court system.

Revenue Breakdown

Gas Tax Holiday: The enacted budgets suspend certain gas taxes from June 1, 2022 to December 31, 2022. This proposal would suspend the State motor fuel tax (8 cents per gallon) and sales tax (8 cents per gallon) but does not suspend the petroleum business tax (17.3 cents).

Middle Class Tax Cuts: The enacted budget accelerates by two years the phase-in of middle-class tax cuts.

Tax Credits for Farmers: The Farm labor Wage Board voted to lower the overtime threshold for farmers from 60 hours per week to 40 hours per week. In response, the enacted budget increases the Investment Tax Credit for Farmers and increases the farm Workforce Retention Credit from \$600 per to employee to \$1,200 through 2026. The enacted budget also allows payment of the credit in advance.

Small Business Tax Relief: The enacted budget provides tax relief for small businesses by increasing the small business subtraction modification from 5% to 15%.

Tax Credit for Small Business COVID-19 -Related Expenses: The enacted budget creates a tax credit for small businesses with up to \$2.5 million in gross receipts for qualified COVID19 capital costs incurred between January 1, 2021 and December 31, 2022. Businesses are eligible for a credit of 50% of their qualifying costs, up to \$25,000. The program is capped at \$250 million.

New York Youth Jobs Program Tax Credit: The enacted budget extends the New York Youth Jobs Program Tax Credit for an additional five years.

Extend the Empire State Apprenticeship Tax Credit: The enacted budget extends the Empire State Apprenticeship Tax Credit for an additional five years.

Restaurant Return to Work Tax Credit: The enacted budget provides an additional restaurant return to work tax credit. Restaurants may claim the credit if they can demonstrate a net employee increase above 10 full-time employees as measured from March 31, 2022 to December 31, 2022. Qualifying businesses are eligible for a tax credit of \$5,000 per new worker hired, up to \$50,000 per business. A business that ceased operations on or before March 31, 2022 is not eligible.

Empire State Digital Gaming Media Production Credit: The enacted budget includes an Empire State Digital Gaming Media Production Tax Credit. The credit is worth up to 25% of the qualified production costs. The aggregate amount of credit available is \$5 million annually (until December 27, 2027).

Cannabis Business Expense Deduction: The enacted budget allows for the deduction of business expenses related to the production and distribution of cannabis products from corporate franchise and personal income tax.