Testimony of
Kenneth Brynien
President

The New York State Public Employees Federation

To The
Assembly Ways and Means and
Senate Finance Committees

Workforce Hearing
February 10, 2010

Mr. Chairman, committee members, I want to thank you all for allowing me to speak on this issue that is vital to all New Yorkers.

I am Kenneth Brynien, and I am president of the 58,000 member New York State Public Employees Federation. We represent the professional, scientific and technical state employees.

As you know, this year the Executive Budget calls for a reduction of 674 full-time equivalent positions in the state workforce.

This continues a two decade long reduction in what the State spends in employee wages and salaries. Yet, there are groups in this state who every year call for an extra pound of flesh from state workers. These groups insist state agencies and the state work force are huge contributors to the state's fiscal woes. However, a different picture appears when you examine the facts.

[SLIDE 1]

- There has been zero growth in the state operations budget for state agencies since 2008. When compared to every other part of the budget, state agency budgets have grown at the lowest rate over the last 10 years.

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- In constant, 2009 dollars, the amount spent on state employees has fallen by about $300 million since fiscal year 1989-90. That's an average decline of $15 million per year.

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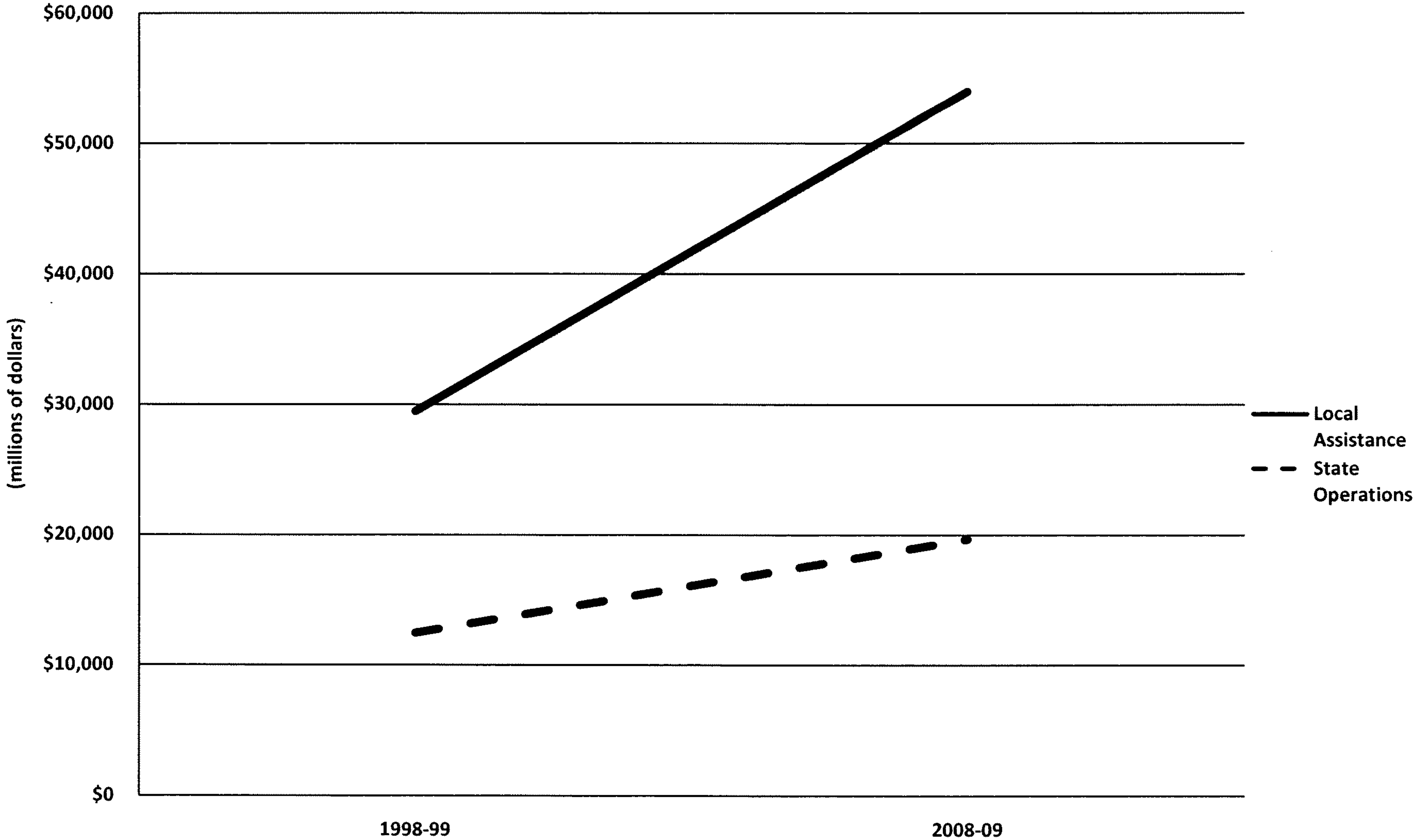
- If the governor's budget is enacted, the state work force will be the same size it was ten years ago and more than 15,000 positions smaller than in 1994, despite an increased need for state services.

The knee-jerk response to any fiscal crisis especially over the past two decades has been to target the state workforce; unfortunately, the Executive Budget is drawn from the same playbook – the play, go after the state workforce.

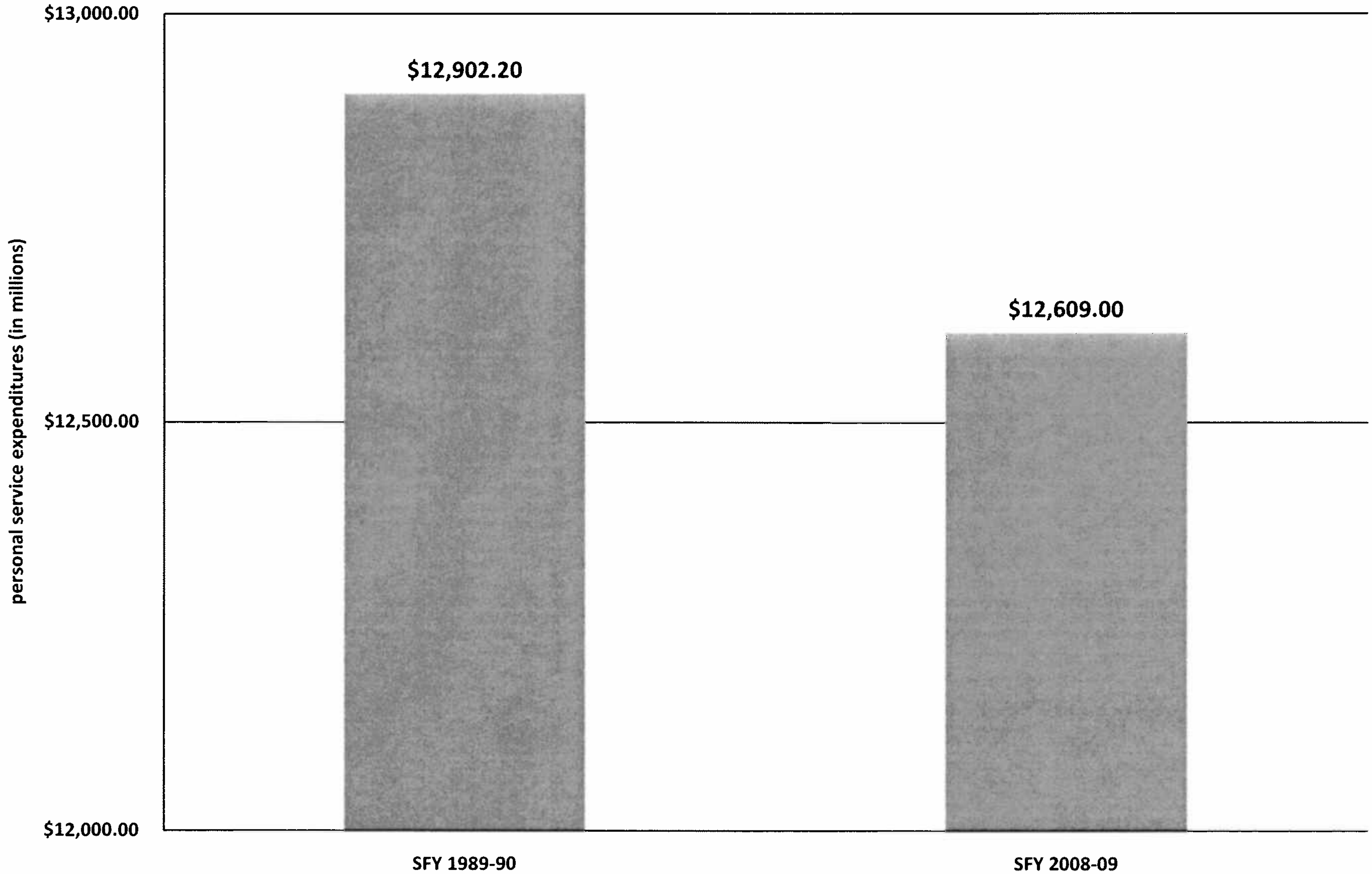
It makes this call despite the fact that state workers provide a much better "bang for the buck," than high cost consultants who too often replace civil servants. The average consultant performing work my members do costs the state $82.42 an hour or $160,719 a year. That's 62% more than the average $50.80 average hourly cost for equivalent state employees including fringe benefits.

State operations budgets have grown at a lower rate than the local assistance budget.
(Spending Growth Over Ten Years)

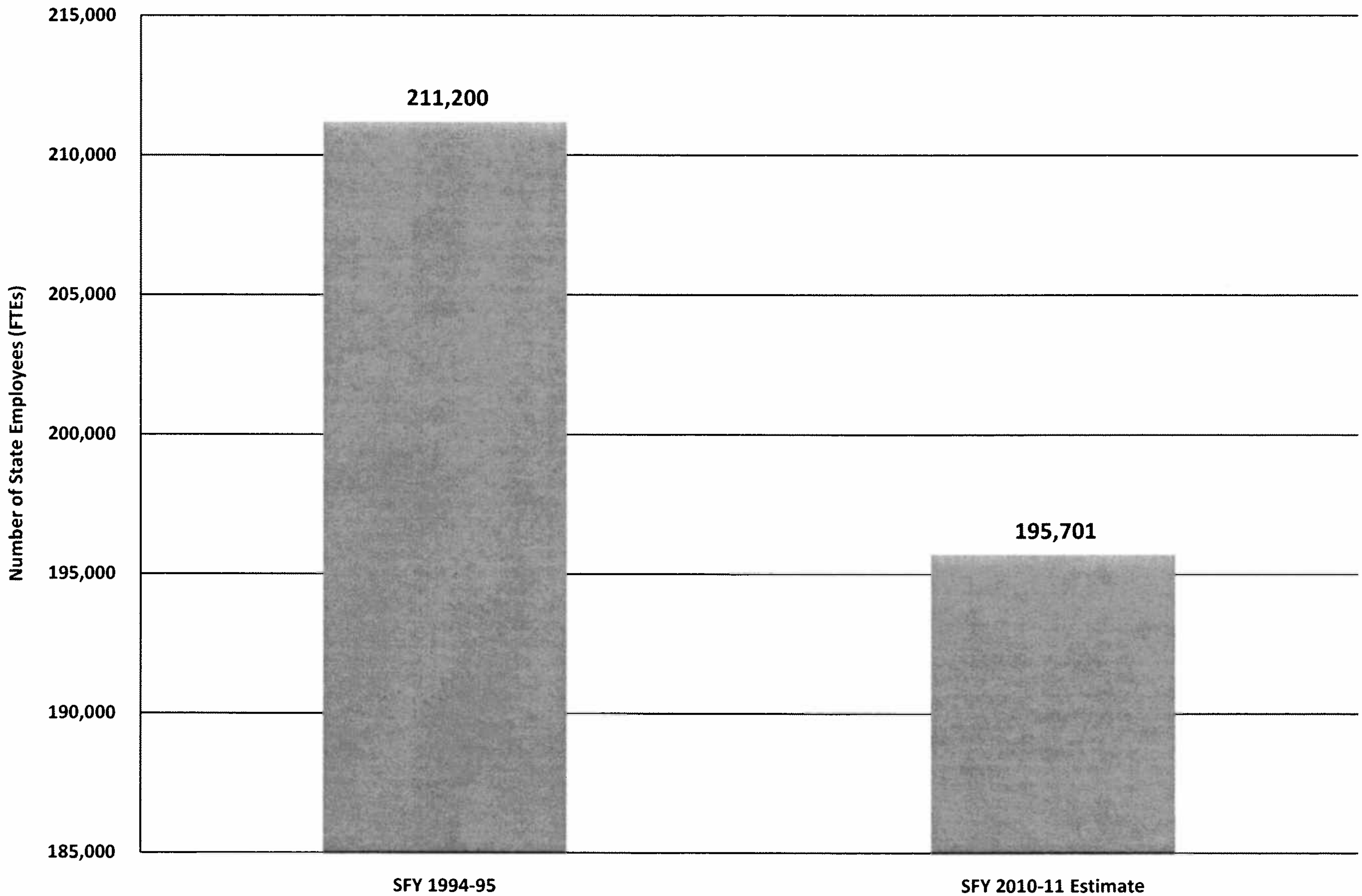


Source: SFY 2010-11 Financial Plan Overview, Executive Budget

New York State spends almost $300 million less for employee wages than it did in 1990 (in 2009 dollars).



Since 1994, the State workforce has been reduced by over 15,000 positions.



New York State has one of the smallest state workforces per capita in the nation. It is 32% below the national average and smaller than all of its neighboring states as well as most others. Only six states have smaller state workforces per capita than New York.

Despite this, the proposed budget is striking, once again, at the public servants who deliver vital services; all this while the state wastes hundreds of millions of dollars each year on consultants.

To their credit, the governor and the legislature, through the efforts of Assembly members John and Destito and Senator Savino, and the support of the leadership, have begun to institute policies to start reducing the states use of high price consultants, particularly in information technology. However, the governor must more aggressively take on the consultants that are draining agency budgets, especially in the Department of Transportation.

PEF has a plan that will start saving the state $375 million annually by 2012-13. Phased in over three years this plan will save the state $656 million over that three year time period. These savings together with others we are proposing will more than pay for any restorations PEF is seeking.

Before I explain how PEF proposes to do this, I would like to go over some specific concerns PEF has with the Executive budget.

State Employee Salaries and Benefits

The Governor proposes a $250 million cut in the salary and benefits of state employees and to shift the payment of Medicare part B premiums to the state health insurance plan.

PEF opposes these cuts and cost shifts. State employees and retirees are middle class taxpayers who will be affected by the spending cuts and fee increases in the proposed budget, just like any other resident of New York. The Governor's proposal to impose further cuts on State employees and retirees imposes a double burden on them.

The proposed elimination of salary increases and a pay lag violate negotiated labor agreements. Contracts negotiated in good faith must be honored. The governor is not trying to renegotiate any other binding contracts the state has except for state employee contracts – that's an unfair double standard.

State employees have already borne the brunt of cuts. Since 2008 the State workforce has been cut by 4,500 positions. In 2009 PEF and CSEA agreed to a new pension Tier 5 that will save the State and local governments $35 billion over 30 years.

If the state workforce must be cut further, rather than lay off workers, the state should expand the voluntary severance program it offered last year. The governor originally proposed to reduce the workforce by 4,500 positions by offering a $20,000 severance payment. Only 1,200 positions were eliminated through the severance program and over 1,000 employees were denied participation. At a minimum these 1,000 should be offered the severance which would save the state over $52 million in FY 2010-11. A number of agencies refused to offer the severance plan at all. They should be mandated to offer it. If the state eliminated another 2,300 positions through the severance program, meeting the governor's initial target, the state would save an additional $120 million.

In addition the state saves hundreds of millions of dollars in health insurance costs when its retirees begin to receive Medicare. That is why they have historically reimbursed retirees for the cost of their Medicare part B premiums. The Governor's proposal is to make this cost an obligation of state employees and retirees through the health insurance plan.

The Legislature should reject salary and benefit cuts, restore funds to allow the State to honor its contractual obligations and amend the budget bill by continuing the state responsibility to pay Medicare Part B premiums.

PEF **Supports** the Following Governor's Cost Savings Proposals For Employee Benefits:

- Allowing state and local governments to amortize their pension payments.
- Allow NYSHIP to self-insure for employee health benefits
- The Governor also proposes several agency consolidations that save a total of $10 million that PEF does not oppose.

Reduce State Employee Overtime Costs

Many of you have raised the issue of the state's excessive overtime spending for state employees. We agree with you and worked with you to limit mandatory overtime for nurses. It is important to understand that overtime is the result of short-staffing in state agencies. We have reduced the state workforce but not its workload. State Agencies still have to complete mandated work and its institutions must meet safe staffing levels mandated by accreditation agencies.

That's why state agencies spent more than $500 million dollars on overtime pay in 2008-09. We recognize that some overtime is inevitable, but we believe that as much as 60% of this overtime could be eliminated by hiring entry level state employees, saving at least $33.5 million annually, or over $100 million over 3 years.

State Employee Facility Closures & Position Reductions

PEF opposes the proposed closure of Office of Children and Family Services (OCFS) facilities in Annsville and the downsizing of the Tyron and Lansing facilities.

The closure and downsizing may result in young people being placed in privately operated programs that cannot meet their needs, leading to greater recidivism and higher costs.

One-third of youth placed by OCFS in private facilities fail in these placements and are transferred to OCFS facilities. If the State wants to reduce recidivism they should fully implement the Governor's Juvenile Justice Task Force Report's recommendations to improve staff/youth ratios in OCFS facilities so more intensive services can be provided by teachers, counselors, and other staff.

The downsizing of these facilities might result in small, short term gains, but be far more costly over the long haul.

PEF is also opposed to the proposed Department of Correctional Services (DOCS) closures at Lyon Mountain, Butler, Moriah Shock Incarceration and Ogdensburg.

DOCS already has thousands of double bunks in medium security facilities, many of which were not constructed to accommodate double-bunks. Additionally DOCS is using a large number of temporary beds in their facilities.

Closing these facilities may lead to future capacity shortages and hazardous situations such as even more double-bunking.

In addition these OCFS and DOCS closures will further deteriorate the already fragile economies of the upstate communities in which they are located and will result in the wholesale relocation of hundreds of families, and more vacant homes and closed businesses.

PEF also opposes the elimination of 34 positions at the Department of Agriculture and Markets.

It is troubling that during a time when there are increasing public health scares owing to illnesses caused by food borne pathogens, the State wants to cut 29 positions out of Agriculture and Markets Consumer Food Services programs and another 13 positions in its Agriculture Business Services program.

These cuts involve ending kosher food inspections and farm products grading services. The state claims that it must end kosher food inspections due to a court decision. However, the final court decision on kosher inspections was issued seven years ago and should have no impact on how inspectors have done their job since it was issued.

The loss of Farm Products Grading Inspectors will have a major negative impact on the state's agriculture business and it's agricultural exports. There are no private entities to perform the farm grading services that Agriculture and Markets Farm Products Grading Inspectors provide, as the Executive Budget has claimed. The USDA does not and will not perform this service for New York State. In order to export products such as apples and maple syrup, a USDA certification is required and Agriculture and Markets Farm Products Grading Inspectors provide this service.

PEF opposes these cuts in programs that are important to consumer protection and food safety. The legislature should restore $543,000 for these positions.

Department of Transportation

[SLIDE 4]

What has happened in the Department of Transportation over the last three years is a case study of why hiring freezes often result in greater costs for the state. The proposed budget cuts 91 positions at the Department of Transportation. If this cut is approved, DOT will have lost 1,011 positions since 2008. What's worse is that DOT's design and construction program, which employs state engineers who design and inspect our roads and bridges, has lost 1,464 positions since 2008.

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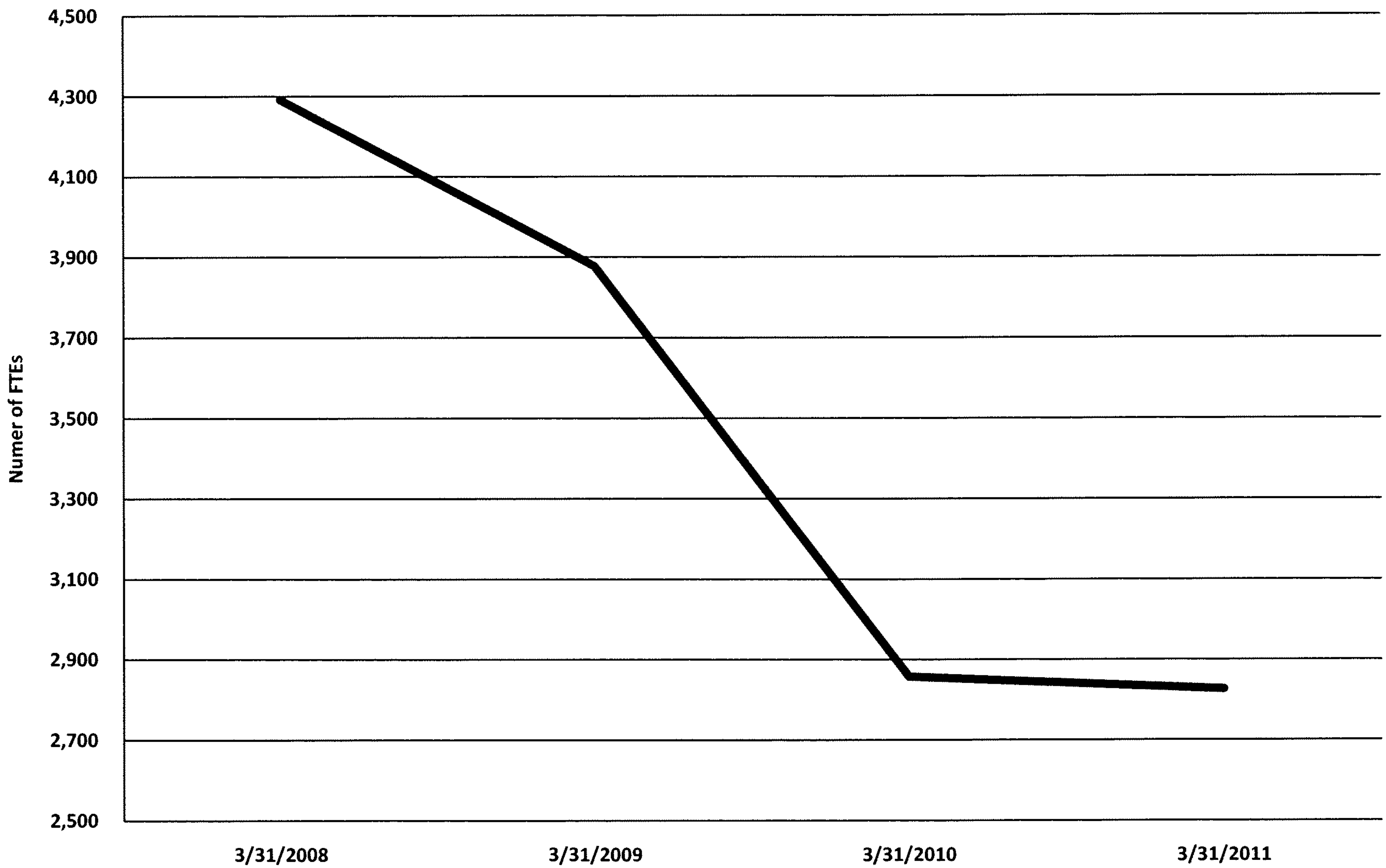
Meanwhile, last year DOT spent over a quarter billion dollars on consultant engineers to do work similar to that formerly performed by state-employed engineers. That's $24 million more than it spent in 2008 and $52 million more than it spent in 2004.

[SLIDE 6]

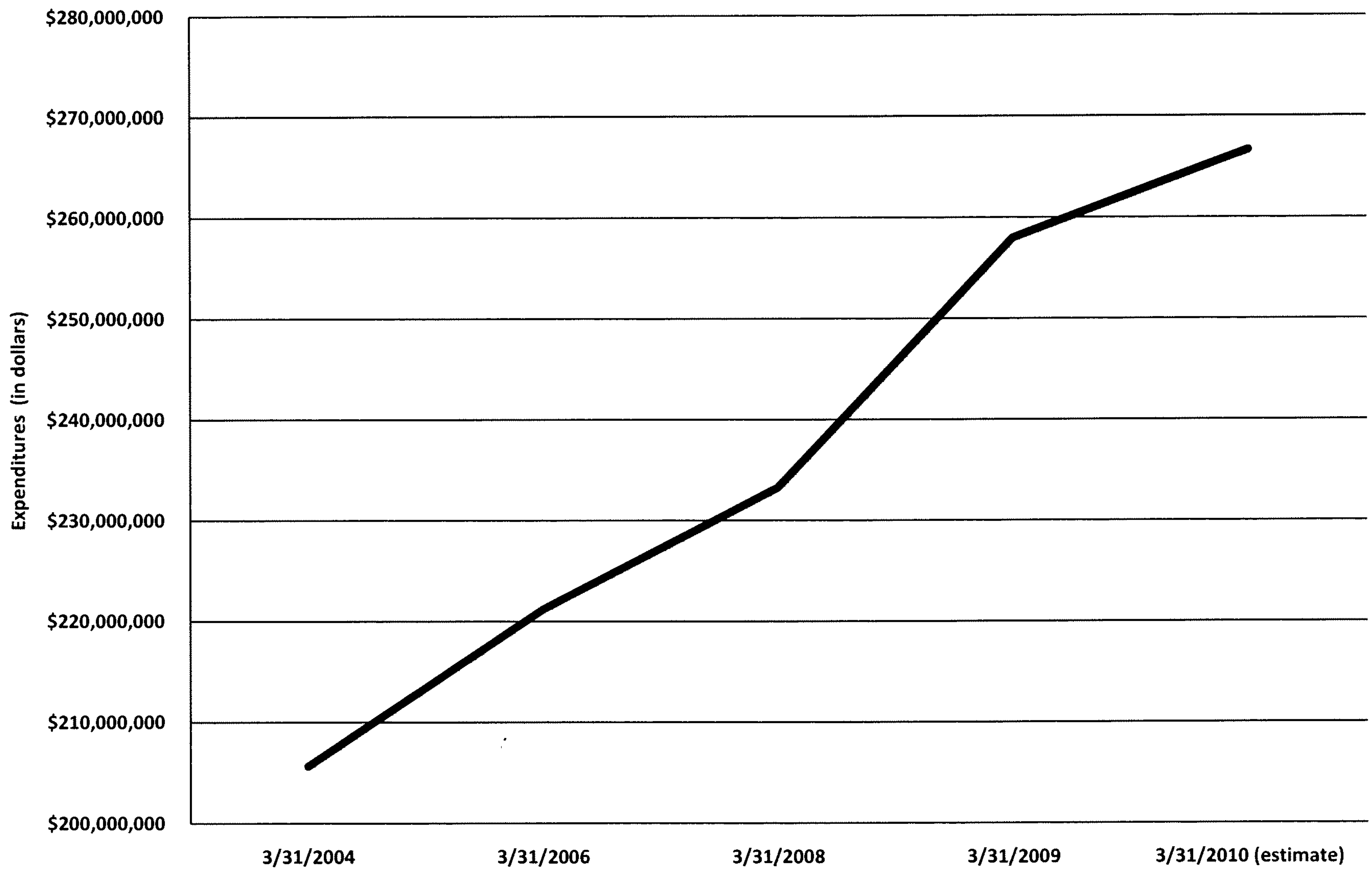
Multiple studies by the State comptroller and other analysts have demonstrated that consultant engineers cost between 50% and 70% more than state employee engineers who do the same work. Based on information collected by the Comptroller's office DOT spends an average of $82.09 an hour for a consultant engineer; 64% more than its cost for a comparable state employee engineer including the cost of their benefits.

Despite these facts DOT admits that currently 60% of its engineering work is done by consultants. PEF strongly believes that DOT engineering positions should be restored, to pay for them DOT should be directed to reduce its hiring of consultants by at least 50% over a three year period, beginning now. The state could save up to $82.4 million a year in DOT by following this plan.

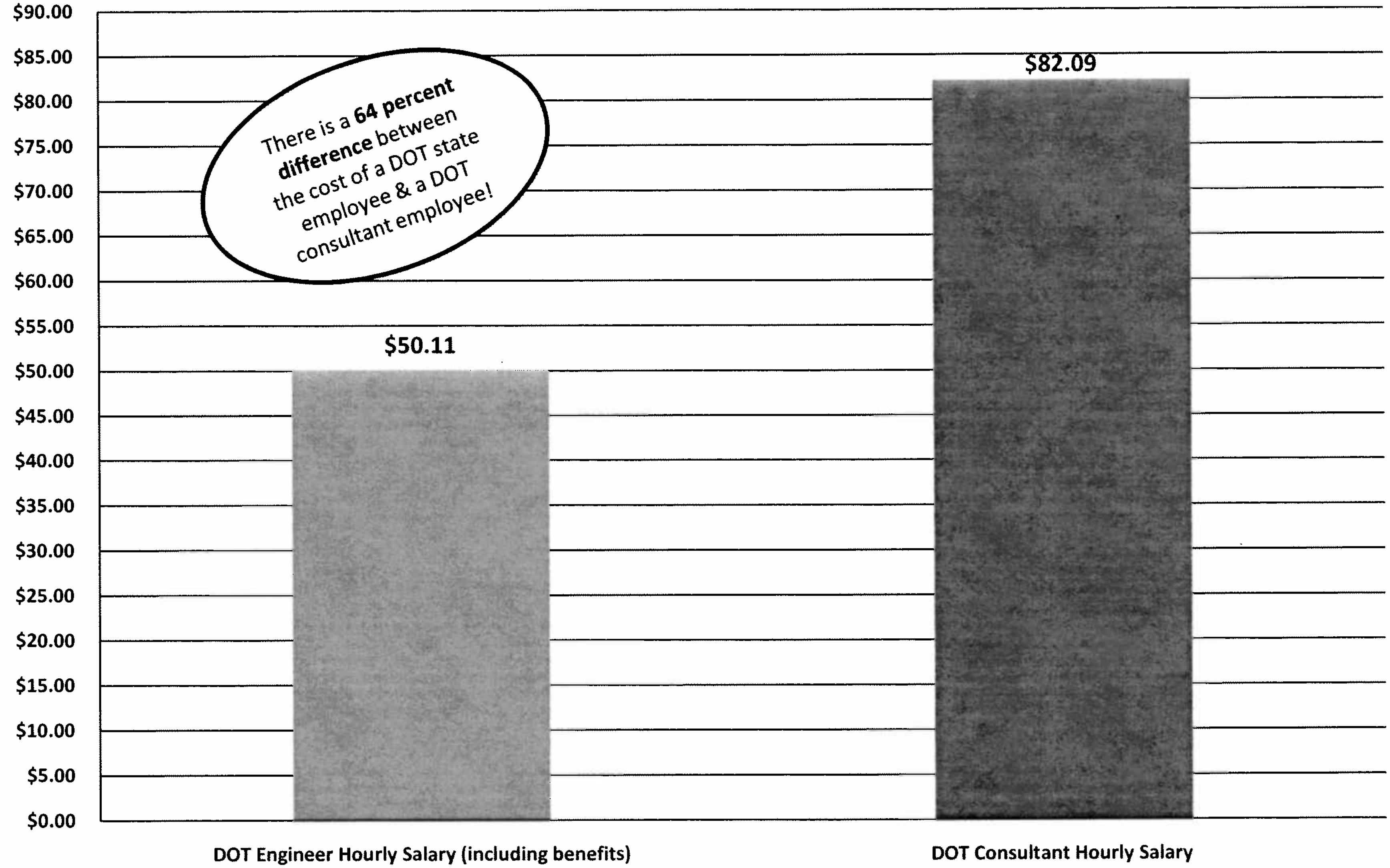
DOT Design and Construction State Employees have decreased by 1,464 FTEs since 2008.



DOT Consultant Engineering expenditures are expected to be up by as much as 30 percent since 2004.



Hourly Rate Comparison
DOT State Employee vs. DOT Consultant Employee



Consultant Reduction Plan

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As we have shown in DOT the best way for the state to save money is by cutting its use of private consultants.

In a time when the state is facing severe fiscal constraints, spending on all consultants, including support staff and graduate assistants, in SFY 2008-09 rose to $2.9 billion; a $100 million increase over the previous fiscal year.

That's the equivalent of 23,329 full time consultants working for the state, over 2,500 more consultants than the previous fiscal year.

During the first three quarters of this fiscal year the state's spending on consultants is $8 million more than it spent in the first three quarters of SFY 2008-09.

Mr. Chairman, committee members, why is it that the governor wants to cut the number of public servants, while his agencies are increasing the number of consultants, which actually cost the state MORE than public employees?

For more than a decade, the State Comptroller's Office, private auditing firms and public employees' unions have been pointing to the state's irresponsible and essentially uncontrolled spending on high cost private consultants, but so far only the tip of the iceberg has been exposed.

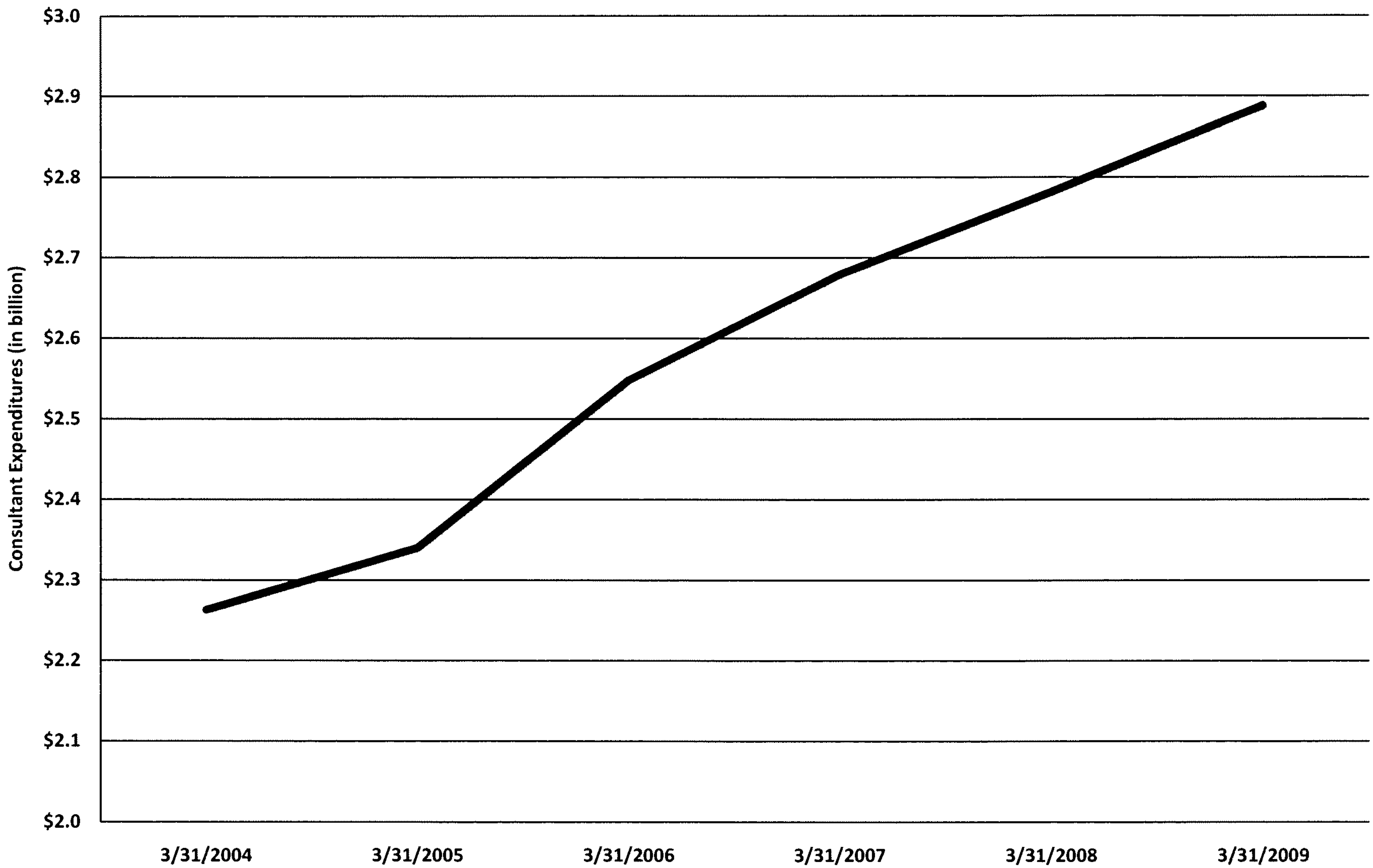
Based on reports filed with the Office of State Comptroller, which only cover 20% of total consultant expenditures, New York State continues to pay thousands of consultants performing professional services an average of $160,719 annually; 62% more than public employees doing similar work cost, and that includes benefits.

The recently enacted Information Technology Consultant Reduction plan and the implementation of the Governor's Task Force on Personal Service Contracting Issues recommendations should further reduce the state's wasteful spending on consultants. The State needs to build upon these initiatives.

The State should enact a Consultant Reduction Plan with a goal of saving $375 million annually by 2012-13. Phased in over the three years, this plan could save the State over $656 million.

The plan should:

Overall consultant expenditures have increased by $100 million over the previous fiscal year and have increased by $625.6 million since 2004.



- Require the Division of Budget to set savings targets for each state agency for consultant spending, focusing on information technology and engineering services as these categories will achieve the greatest savings.

- Institute a freeze on new and renewed state agency consultant contracts over $100,000 until a cost benefit analysis is completed by an agency and reviewed, and a waiver is approved by the Division of Budget.

- Require the Department of Transportation, as part of their Consultant Reduction plan, to conduct at least 90% of their bridge inspections with state employees within three years.

- Provide for enactment of a law that requires state agencies to perform a Cost/Benefit analysis before entering into any consultant contract more than $100,000; and

- Provide for enactment of a law that requires penalties for failure to file reports under consultant disclosure law. DOB and the Office of the State Comptroller (OSC) should also take the necessary steps to improve the consultant reporting as recommended by the Governor's Task Force on Personal Services Contracting.

Revenue Proposals

PEF supports the governor's proposed Excise Tax on Syrups or Simple Syrups, Bottled Soft Drinks, or Powders or Base Products which will raise $465 million in revenue. We also support his proposal to increase excise tax on cigarettes by $1 a pack which will raise $210 million.

However, these revenue measures are insufficient to close the state's budget gap in a fair manner. The governor has proposed that revenue measures only be used to close 16% of the budget gap while proposed spending cuts would close 72% of the gap. Last year we closed the budget gap through roughly equal measures of spending cuts, revenue increases, and federal assistance. We need to follow a similar course this year.

It is important to note that big businesses' share of state tax revenue relative to state personal income has declined by 50 percent since 1980 as they've taken advantage of loose tax laws which allow big corporations to dodge their fair share of taxes in New York. In addition the wealthiest 1% of new Yorkers pay about 7% of their income in state and local taxes while the rest of us pay between 10% and 11%

I have attached to my testimony revenue ideas advocated by New Yorkers for Fiscal Fairness which would generate billions of dollars annually. They include keeping part of the stock transfer tax that the state now completely rebates, closing corporate tax loopholes, and a Financial Crisis Responsibility Fee (FCRF) Hold Harmless Tax. New York State and City should impose a FCRF Hold Harmless Tax on the financial institutions that have a federal FCRF liability, and the Federal government should allow such payments to New York State and New York City to be credited against federal FCRC liability.

These include proposals to insure that the financial institutions, whose greed and recklessness caused the state's fiscal crisis, pay their fair share of the cost of getting us through the crisis.

In conclusion, PEF has proposed a means to achieve the workforce savings identified in the executive budget proposal without the negative impacts that come from cutting state services to the bone and beyond and still honoring the states contractual commitment to its employees.

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These are:

- **<u>Institute a Consultant Reduction Plan</u>** This can **save $656 million over the next three years.**

- **<u>Expand the Voluntary Severance Program</u> If offered without restriction, the severance could save the state more than $52 million in FY 2010-11 and if the governor's initial target of 4,500 employees for the severance program was met the state could save another $120 million.**

- **<u>Institute a Workplace Injury Reduction Program</u>** Workplace injuries cost the state between $113 and $227 million per year in direct and indirect costs. A 20 percent reduction resulting from comprehensive prevention efforts to address causes of the injuries could result in **$45 million in savings.**

- **<u>Capture Overtime Savings.</u>** Reduce overtime by 60% by hiring entry level state employees, saving at least $33.5 million annually, or over $100 million over 3 years.

Mr. Chairman, committee members I very much appreciate the opportunity to speak to you today and look forward to working with you to craft a budget that truly asks for equal sacrifice from everyone.

Thank you.

Achievable Savings Proposals

- <u>Institute a Consultant Reduction Plan</u>

  $656 million in savings over the next three years.

- <u>Expand the Voluntary Severance Program</u>

  Offered without restriction, more than $52 million in savings in FY 2010-11.

  Fully implemented with the Governor's original target of 4,500 employees $120 million.

- <u>Institute a Workplace Injury Reduction Program</u>

  Comprehensive prevention efforts, 20 % reduction in injuries, $45 million in annual savings.

- <u>Capture Overtime Savings.</u>

  $33.5 million annual savings, or over $100 million over 3 years.

PEF **Memo**

TO: State Senators and Assemblymembers

DATE: January 28, 2010

RE: ***SFY 2010-11 Budget Priorities of the Public Employees Federation***

PEF asks the Legislature to modify the Governor's budget in these areas:

State Employees and Retirees - Salary and Benefits

Salary and Benefit Cuts - The Governor proposes to impose through the budget a cut of $250 million in the salary and benefits of state employees. The Governor proposes to achieve this by negotiating modifications to labor contracts such as a five-day "lag" in payroll or a delay or reduction of pay raises that are due to take effect on April 1, 2010. State agencies budgets have been reduced by $250 million to reflect this proposal even though no negotiated agreement has been reached.

Medicare Part B premiums - The Governor also proposes to shift part of the cost of Medicare premiums ($30 million) from the State to State employees and retirees. The budget estimates that it would increase premium costs to workers and retirees by $30 per year for individuals and $85 for families, but these amounts could increase in the future.

PEF Position: PEF opposes these cuts. State employees and retirees are middle class taxpayers who will be affected by the spending cuts and fee increases in the proposed budget, just like any other citizen of New York. The Governor's proposal to impose further cuts on State employees and retirees is unfair since it imposes a double burden on them. The proposed elimination of salary increases and lagging of pay would be a violation of negotiated labor agreements. Contracts that were negotiated in good faith must be honored.

State employees have already borne the brunt of cuts. Since 2008 the State workforce has been cut by 4,500 positions. In 2009 PEF and CSEA agreed to a new pension Tier 5 that will save the State and local governments $35 Billion over 30 years.

The Legislature should reject salary and benefit cuts, restore funds to allow the State to honor its contractual obligations and amend S6606/A9706 by deleting Part U (Medicare Part B).

PEF Supports the Following Governor's Cost Savings Proposals For Employee Benefits:

Pension amortization - This proposal would allow the State and local governments to amortize part of the increase in employer pension costs that are projected to occur because of investment losses in the stock market. It would have the benefit of reducing the volatility of employer costs.

State budget savings: $217 million in 2010-11, $475 million in 2011-12. The legislature should enact S6606/A9706 Part V.

Allowing NYSHIP to self-insure for employee health benefits - This would reduce costs without negatively affecting benefits. State budget savings; $15 million in 2010-11, $30 million in 2011-12. The legislature should enact S6606/A9706 Part T.

State Employee Layoffs & Facility Closures

Office of Children and Family Services (OCFS) - Effective January 2011 the Annsville non-secure facility will be closed and consolidated with the Taberg non-secure facility, the Tryon campus will be downsized by closing the limited secure boys program and downsizing the Lansing non-secure center. The budget estimates 75 position abolitions that could lead to layoffs, but the actual number could be higher.

PEF Position: PEF is opposed to these proposed closures. In some cases, this may result in young people being placed in privately operated programs that are not really able to address their needs, leading to greater recidivism and often to higher costs. One-third of youth placed by OCFS in private facilities fail in these placements and are transferred to OCFS facilities. If the State wants to reduce recidivism then they should fully implement the Governor's Juvenile Justice Task Force Report's recommendations to improve staff/youth ratios in OCFS facilities so more intensive services can be provided by teachers, counselors, and direct care staff as well as the proposed enhancement of mental health staff. These closures will have a serious negative impact on workers, their families and their communities. The Legislature should restore $2.9 million to keep these facilities open and avoid employee layoffs.

Department of Correctional Services (DOCS) – Due to a significant projected decrease in the inmate population the Executive Budget proposes a January 2011 closure date for the Lyon Mountain minimum secure facility and the minimum security facility at Butler Correctional Facility and an April 2011 closure date for the minimum security Moriah shock incarceration facility and the medium security Ogdensburg Correctional Facility. These closures will reduce the DOCS workforce by 637 positions.

PEF Position: PEF is opposed to these proposed closures. Currently DOCS has thousands of double bunks in medium security facilities, many of which were not constructed to accommodate double-bunks. DOCS is also using a large number of temporary beds in their facilities. In addition, minimum and medium security beds should be more widely used to transition inmates out of maximum security facilities and into our communities. Closing these facilities may lead to future capacity shortages and hazardous situations such as increased double-bunking. In addition currently 1,231 federal prisoners are housed in county jails. The state should explore moving these federal prisoners to state facilities as a way to reduce local governments' cost of housing these federal prisoners and keeping DOCS facilities open.

Although the department has committed to working with PEF to find positions for the displaced employees, these closures will have a serious negative impact on workers, their families and their communities. In many cases in order to keep a job employees will have to relocate hundreds of miles away from their current homes which could involve relocating their entire families. The legislature should restore the $3 million necessary to keep these facilities open this fiscal year.

<u>Department of Agriculture and Markets -</u> 34 position abolitions/layoffs. This reflects the reduction of 29 positions in the Consumer Food Services program which is primarily due to proposed reduced Kosher Enforcement staffing due to a court decision that limited the State's role in performing religious inspections and 13 position reductions in the Agriculture Business Services program due to the proposed discontinuation of farm products grading.

PEF Position: PEF opposes these cuts in programs that are important to consumer protection, food safety and the state's agricultural industry. The final court decision on Kosher inspections was issued seven years ago and should have no impact on how inspectors have done their job since it was issued. The loss of Farm Products Grading Inspectors will have a major negative impact on the state's agriculture business and it agricultural exports. There are no private entities to perform the farm grading services that A&M Farm Products Grading Inspectors provide. The USDA does not and will not perform this service for NY. In order to export products, such as apples, a USDA certification is required and NYS A&M Farm Products Grading Inspectors provide this service. The Legislature should restore $543,000 for these positions.

<u>Office of Mental Retardation and Developmental Disabilities (OMRDD)</u> - The budget eliminates 20 positions for research scientists at the Institute for Basic Research (IBR). These scientists are currently conducting important research to help combat Alzheimer's disease, fatal brain disorders in infants, and other genetic diseases. Although the budget states these positions will be reduced through attrition, there is a risk that layoffs may result and the research program at IBR will be impaired.

OMRDD also will transfer 10 positions that are responsible for conducting Medicaid compliance reviews of its not-for-profit provider network to the Office of the Medicaid Inspector General (OMIG). This may lead to contracting out this audit function to consultants at a much higher cost to taxpayers

PEF position: The legislature should restore $1,538,000 to keep these 20 positions in IBR and reject the transfer and contracting out of audit functions.

<u>Additional Problems with the Executive Budget</u>

<u>Department of Economic Development (DED)</u> - The Executive Budget proposes to merge two entities that deal with economic development- the Department of Economic Development (DED) and the Empire State Development Corporation (ESDC) into a new public authority to be known as the Job Development Corporation. PEF represents professional employees in the Department of Economic Development. We do not represent any employees in ESDC, which is a public authority rather than a state agency. ESDC employees are not civil servants.

PEF Position - PEF supports the goal of improving the effectiveness of the state's economic development programs by integrating these agencies. However, we believe that the language of this bill needs to be modified to provide that the agency will be staffed by qualified civil service professionals. The proposed language partially addresses this issue, but S6609/A9709 Part L must be modified to protect workers' rights and to protect the public interest.

<u>State University of New York (SUNY)</u> - The Governor proposes language to alter the relationship between SUNY and the State government by giving SUNY greater authority to enter into contracts and leases and to buy and sell real estate and enter into "public-private partnerships" without prior review by the Comptroller, Attorney General or the Legislature. It would also give SUNY authority to increase tuition and to spend money raised from tuition and other sources without legislative appropriation.

PEF Position: PEF opposes this "flexibility" language as it relates to contracts for services and public-private partnerships. It goes too far in removing oversight and accountability. The review of contracts for services by oversight agencies like the Comptroller and Attorney General exists for a good reason- to make sure that the public interest is protected. The proposed language is so broad it could lead to unanticipated results that could alter SUNY's operation without real public input. For example, parts of SUNY campuses could be leased out to private operators, or SUNY professional employees could be replaced by contractors. SUNY has never demonstrated the need for this proposal. The legislature should amend S6607/A9707 by deleting Part E. A more limited version of flexibility for SUNY should be considered.

Roswell Park Cancer Institute: The budget amends PHL § 2807-v to discontinue HCRA funding for the Roswell Park Cancer Institute Anti-Tobacco Program. This will cut $13.6 million in funding that will negatively impact research at this noted cancer research center.

PEF Position: The legislature should reject this change in S6608/A9708 Part E and restore the $13.6 million in funding for RPCI.

Department of Transportation (DOT) – The budget cuts 91 positions in DOT. If this cut is approved, DOT would have lost 1,011 positions since 2008. Meanwhile DOT continues to spend millions of dollars on contracted consultants to do engineering work similar to that formerly performed by state-employed engineers. Multiple studies by the State comptroller and other analysts have demonstrated that the State could save millions of dollars by reducing the use of consultants in DOT.

PEF Position: The DOT engineering positions should be restored and DOT should be directed to reduce its hiring of consultants by 50% over a three year period, beginning now. This could produce cost savings of up to $84.2 million annually.

State Spending Cap - The Governor proposes to enact a cap that would limit increases in state general fund spending to no more than the average of inflation over the prior three years. This is an impractical measure that pretends to reduce spending without indentifying any actual spending cuts. It would prevent the State from fulfilling its most basic obligations and would prevent the State from responding to changing conditions.

PEF Position: PEF is opposed to a spending cap. The legislature should amend S6610/A9710 by deleting Part Q.

Authorize State agencies to enter into memoranda of understanding with Cornell University to procure services and technical assistance - This proposal would authorize State agencies to enter into memoranda of understanding (MOUs) with Cornell University (Cornell), instead of contracts, to procure services and technical assistance.

PEF Position: PEF is opposed to this language that would reduce accountability and oversight and may lead to increased costs due to contracting of services to high-cost consultants. The legislature should amend S6609/A9709 by deleting Part U.

Disproportionate Share Hospital Auditing - The budget proposes authorizing the Department of Health (DOH) to contract, without a competitive bid or request for proposal, with one or more firms for the purpose of conducting audits of Disproportionate Share Hospital payments and audits of hospital cost reports.

PEF position: PEF has demonstrated that in most circumstances, state employees can do as good a job as outside contractors, and at a better value for the taxpayer. Instead of contracting out these functions the state should utilize civil service employees to provide this function. The legislature should amend S6608/A9708 by deleting Section 51 of Part B.

PEF Supports the Following Proposals

Pharmaceutical Industry Regulation - Prohibits inappropriate gifts and payments from pharmaceutical companies to physicians and other prescribers, and requires that information provided to prescribers by pharmaceutical companies about their products be accurate and not misleading. The legislature should enact Sections 38 through 38-b of Part B of S6608/A9708.

Social Worker/Mental Health Professional License Exemption - Extends current social worker and mental health professional licensing exemptions for the Department of Mental Hygiene, the Office of Children and Family Services, and local government programs. The legislature should enact Part R of S6607/A9707.

Increase Excise Tax on Cigarettes by $1 a Pack - This proposal will further reduce the incidence of smoking, especially among young people, and result in an additional $210 million in revenue in 2010-11. The legislature should enact Part B of S6610/A9710.

Impose An Excise Tax on Syrups or Simple Syrups, Bottled Soft Drinks, or Powders or Base Products - This excise tax is equivalent to one cent per ounce on syrups and soft drinks. Based on the New England Journal of Medicine estimates, on average, this tax will increase the price of sugar-sweetened beverages by 17 percent, which will reduce consumption by approximately 15 percent. It will improve nutrition, reduce obesity and recover some of the health costs caused by consumption of high calorie, nutrient poor foods and beverages. It will raise $465 million in revenue in 2010-11 and $1 billion in revenue in the out years. The legislature should enact Part C of S6610/A9710.

For more information, contact the PEF Legislative Department • 800-724-4997 • Fax 518-432-7739

Revenue Raisers	Description	Estimate of Dollars Raised
Support Call for Additional Federal Aid to States	*Progressive State's Network, in coordination with AFSCME and other key national allies, are launching a campaign for state legislators to call for a new federal jobs plan that includes fiscal relief to state and local governments in order to foster economic growth and create and maintain jobs.*	
NYS Financial Crisis Responsibility Fee (FCRF) Hold Harmless Tax	*The President announced his intention to propose a Financial Crisis Responsibility Fee that would require the largest and most highly levered Wall Street firms to pay back taxpayers for the extraordinary assistance provided so that the TARP program does not add to the deficit.*	
Brownfields Clean-Up Program	*On July 23, 2008, Governor David A. Paterson signed into law legislation to reform certain aspects of the State's Brownfield programs. This legislation amends Chapter 1 of the Laws of 2003, which established the Brownfield Cleanup Program (BCP). The BCP, among other things, provides BCP tax credits in return for the cleanup and redevelopment of BCP sites. The principal reforms enacted relate to restructuring the tax credits to provide balance between remediation and redevelopment credits. Legislation was passed in 2008, but the cap for tax credits is still set too high. In a report by the Comptroller in June 2008, current projects could cost the state $3 billion. New York and Connecticut have redevelopment incentives as well as cleanup incentives, while MA, NJ, PA, and VT only have cleanup incentives. Tax credits should be more aligned with the amount of remediation and level of clean up that happens, rather than the cost of redevelopment. The problem remains that many programs that were grandfathered in to the program prior to the changes will still receive exorbitant redevelopment credits which could cost the state billions. This program needs to be further reformed so we are not excessively subsidizing redevelopment.*	approximately $1 billion
Eliminate the Empire Zone Program	*Empire Zone program sunsets in 2010 and should be eliminated in its current form. This would save the state approximately $600 million per year. This program has proven to be ineffective and fraught with abuse. We have advocated its elimination for years. The governor is proposing a new program to replace it that he states is more linked to job creation than the current program. We already have IDAs at the local level (that also need to be reformed) but would serve the same function as a statewide program.*	$600 million
Reduce/Eliminate Contracting Out to Private Consultants	*In SFY 2008-09, the state spent $2.9 billion on consultants and paid them an average annual rate of $160,719. Consultants charge 62% more than state employees who do the same work including the cost of state employee benefits. Consultant spending for the first half of this year is at the same rate as last year. The state should reduce the use of these high priced consultants before any state employee loses their job or pay. Replacing half of these consultants with state employees will save the state over $656 million over the next three years.*	approximately $200 million per year

Support Bulk Purchase of Pharmaceuticals	*Language inserted into last year's budget allows the Department of Health to negotiate directly with drug companies for lower cost drugs. According to recent studies, New Yorkers spend over $20 billion a year on prescription drugs. Approximately $4 billion (or more) of this spending is in the Medicaid program. We should use our purchasing power to force drug companies to provide us with lower cost drugs. We could save hundreds of millions or more if we were able to get drugs for what the federal government currently pays. The Progressive States Network has model legislation for states that are attempting to reign in prescription drug costs.*	approximately $200-$500 million
Make Permanent the Temporary PIT Increase	*Passage of a tax increase on wealthy NYers was included in last year's budget. Rates went from 6.85% to 7.85% for families making between $300,000- $500,000 and to 8.97% for families with incomes over $500,000. This income tax increase was put in place for 3 years and will sunset in 2011. It should be made permanent.*	no fiscal impact till 2012
Collect Taxes that are due on Cigarettes	*The impact of price on cigarette consumption is well documented. The more expensive tobacco products are the more people will want to quit smoking. The good news is the Empire State now has one of the highest cigarette taxes in the nation at $2.75 per pack. But there's a problem. Hundreds of millions of dollars in cigarette taxes aren't being collected. New York has been unable or unwilling to collect taxes on tobacco products sold at Native American retail outlets. This torrent of tax free cigarettes is both a significant public health problem and economic burden to all New Yorkers. But a new law allows the state to collect all cigarette taxes before the products reach the reservation and put an end to this public health embarrassment. Native Americans would be provided coupons to purchase tax free cigarettes while sales to non-native Americans would be subject to the tax. We also support the increase on cigarette taxes the Governor has proposed.*	approximately $500 million
Soda Tax	*A 1 cent per ounce tax on sugary soft drinks could result in an additional $1 billion in revenue. The basic argument is that each New Yorker now drinks the equivalent of 11 cans of soda a week, up from five cans a week in 1970. Three of the six additional sodas per capita are sweetened with sugar. Three cans per week adds up to "13 more pounds of straight sugar" a year according to Doctor Richard Daines (NYS Department of Health Commissioner). That's about 21,000 calories worth of sugar. Daines also points out that 34% of NY children are overweight or obese. This year, Gov. Paterson proposed adding a syrup/sugar tax on sugar-sweetened drinks (raising $400+ million this year a billion next) as part of a package of spending cuts and tax hikes aimed at closing the state's yawning budget gap. Polls at that time found New Yorkers opposed to the new tax by a margin of 60% to 37% but that should not deter the legislature from supporting this tax this year.*	$1 billion

Plastic Bag Tax	*In an effort to reduce the use of plastic bags in our state we could institute a per bag tax. The average person in NYS uses approximately 333 plastic bags per year. While a small percentage of these bags get recycled most are simply thrown away. This tax is an excellent way to help the environment and generate dollars for the state. Other countries/states/cities already have this type of tax (most notably San Francisco – and Ireland charges .33 cents for each bag) and Mayor Bloomberg tried to get a .05 cent tax per bag enacted in NYC. The Mayors efforts were in vain as the state would not approve such a tax at the time. It is estimated that a tax of between .05 cents and .25 cents would generate between $340 million and $3 billion. New Yorkers currently use approximately 6.3 billion plastic bags per year.*	$340 million with a 5 cent tax
Severance/Extraction Tax on Marcellus Shale Natural Gas	*Most states with significant mineral resources levy a tax on the extraction of those resources. State severance taxes compensate state residents for the extraction of valuable mineral resources. "If" drilling is allowed in the Southern Tier of NYS, a severance tax would have substantial benefits and few drawbacks. As NYS is one of the few states in the nation with possible significant mineral wealth that does not have a severance tax it will not make us uncompetitive. The creation of a severance tax could compensate state and local governments for costs associated with natural gas production, provide funds to mitigate potential environmental hazards, and serve as a valuable source of revenue. The tax would be paid by oil and gas developers, many of whom may be from out-of-state. The Governor has proposed a 3 percent tax that would be imposed on natural-gas producers in the Marcellus and Utica Shale formation in the Southern Tier and central New York using a horizontal well. The state doesn't expect any revenue in the 2010-11 fiscal year, but estimates $1 million in the following fiscal year. These estimates are far too low and should be subject to a much higher tax rate. We should work with the state of Pennsylvania to ensure that our taxes are similar to theirs.*	$100 million conservatively
Stock Transfer Tax	*The stock transfer tax is basically a sales tax on Wall Street. Any stock transaction involving the New York Stock Exchange, American Stock Exchange or NASDAQ is subject to the tax. The tax is technically already in effect but unfortunately the money is currently tallied, assessed, collected - then handed right back to the brokers who paid it. "Usually, the investors get it back the same day," explains Frank Mauro, executive director of the Fiscal Policy Institute. "The broker fills out a return and the state wires the money right back." Mauro says that the state must momentarily take possession of the tax to fulfill the arcane requirements of its bond agreement with the Municipal Assistance Corporation. In order to discourage speculation, supporters of the Stock Transfer Tax should also consider tying the tax to trading volume: the lower the trading volume, the lower the tax. A side benefit of the plan would be to lessen the frenzied volatility that caused many of the recent problems on Wall Street. NYS currently rebates 100% of the $16 billion in Stock Transfer taxes back to Brokers right after it is paid. We suggest that 80% be rebated and the State retains the other 20% which would result in $3.2 billion annually in state revenue.*	$3.2 billion

Increasing filing fees for large LLCs and other partnership entities	*In 2003, the maximum Limited Liability Company (LLC) filing fee was increased from $10,000 to $25,000. Initially authorized for two years and then extended for two more, the higher maximum was in effect for tax years 2003-06. The fee structure was still on the member basis at this point. Filing fee collections, which are paid as part of New York State's Personal Income Tax, increased from $26.5 million in 2002 to an average of about $72 million for 2003-06. In 2008, however, the member basis was replaced with a fixed fee structure and the maximum lowered to $4,500, even for entities with New York source gross income of $25 million or more. (The same fee structure applies to the fixed dollar minimum tax for S and C corporations.) In 2009, filing fees were established for non-LLC general partnerships on the same fee structure as for LLCs. The revenue projection for this change was estimated by the State Tax and Finance Department at $50 million. The State should consider restoring the $25,000 maximum filing fee and have it apply to both LLCs and general partnerships over some very high business receipts or income threshold. An alternative would be to add one or more additional brackets at the top end of the graduated fee structure. Given the number and size of such entities in New York, such a change might generate $50 million to $100 million in additional revenue.*	$50-$100 million
Taxing Nonresident Hedge Fund Management Fees	*In his 2010 Executive Budget proposal, the Governor proposed to "expand the nonresident personal income tax to include income received from hedge fund management fees." The revenue impact was estimated at $60 million. This was not included in the enacted budget but should be considered. As the Governor's proposal explained, "Currently, only a small portion of such income is taxed as compensation, with the remainder deemed tax-free capital gains. This proposal would result in equal treatment of this income for residents and nonresidents.*	$60 million
Eliminating the Carried Interest Exemption under New York City's Unincorporated Business Tax	*While not a state revenue item, it would be important in helping New York City to close its Fiscal Year 2010 budget for the State Legislature to eliminate the carried interest exemption loophole in the City's Unincorporated Business Tax. This would put the taxation of private equity and hedge funds on the same footing as that of thousands of smaller businesses. The City taxes the fees received by managing partners in private equity and hedge funds but exempts "carried interest" from taxation. Carried interest refers to the profit share received by managing partners, usually 20 percent of the profits generated by the pooled investment of the limited partners. In his Executive Budget for FY 2010, the Mayor has proposed generating over $900 million by increasing the city sales tax rate by half a percent and by eliminating the sales tax exemption for clothing and footwear. This proposal is extremely regressive, and would impose an effective tax burden on low- and moderate-income households that is twice that for high-income households. Eliminating the carried interest exemption is needed on tax equity grounds but it would also help the City avoid or at least lessen its reliance on extremely regressive taxes. While any estimate of the possible yield of such a change is very rough, eliminating the carried interest exemption could generate upwards of $50 million annually.*	$50 million
Extend sales tax to services not currently covered	*Consider extending the sales tax to some of the services that are currently exempt from sales taxation*	will depend in items covered

Adopt a Throwback Rule	*Pending resolution nationally of the creation of "nowhere income" by the workings of PL 86-272, New York State should adopt a throwback rule. NYS should not continue the flawed idea of Single Sales Factor; and/or Single Sales factor should be suspended until PL 86-272 is repealed (or revised enough to ensure that SSF does not result in a huge increase in "nowhere income"); and/or the Tax Department should be required to do detailed annual reporting on the revenue and distributional impacts of SSF; and/or a temporary commission to evaluate the impact of SSF should be established.*	
Broader Tax credit reform	*There is currently a huge and growing bank of unused tax credits. This is a very dangerous phenomenon. Tax Credit reforms should take into consideration: (1) the limit on the carry over of unused credits should be changed back to the 5-year limit contained in New York State's 1987 corporate tax reform legislation; (2) an employment ratchet must be added to the ITC; (3) a moratorium should be placed on the creation of any new credits until a thorough review and reform is completed in regard to the existing credits.*	
Adopt Corporate Tax Disclosure	*Corporate tax disclosure should be adopted for publicly traded firms subject to taxation under 9-A and 32 and any successor taxes.*	
Qualified Production Activities Income (QPAI) Decoupling	*This action would conform New York to the practices of 18 other states that have decoupled from the federal deduction related to qualified production activities and require taxpayers to add back this deduction for New York tax purposes. The deduction was originally intended to provide a tax incentive to manufacturers by preserving and promoting domestic manufacturing jobs and domestic production. However, the deduction is now allowed on a vast array of activities which go beyond the familiar concept of manufacturing. It is possible that a multi-state firm could use the deduction to reduce its New York taxes without having a single production employee in the State.*	$25 million
Bad Debt Deduction	*This deduction would conform New York to federal rules and the practices of other states that allow certain banks to deduct only bad debts that have been actually written-off rather than amounts placed in reserve. The amount placed in reserve to cover such debt is based upon the historical bad debt experience of the taxpayer. Currently, a bank is allowed to take deductions based on an estimate of debts that are expected to become worthless in the future - providing a deduction for debts before they actually become "bad" or uncollectible. This approach generally inflates the amount of the deduction and thereby reduces taxable income.*	$25 million

Bank Subsidiary Capital	*This action would require the add back of expenses related to subsidiary capital under the bank tax, and eliminate the 20 percent reduction in the wage factor portion of the apportionment formula to ensure the bank tax appropriately reflects a bank's presence in New York. Eliminating this discounting of the wage factor would ensure a bank's tax liability appropriately reflects that bank's level of activity and presence in New York. Under current law, bank taxpayers are allowed to deduct 17 percent of interest income from subsidiary capital, 60 percent of dividend income and net gains from subsidiary capital, and 22.5 percent of income from government obligations from income subject to tax. However, unlike corporate taxpayers that are allowed similar deductions, bank taxpayers are not required to add back to income the expenses related to these deductions. In addition, banks use a three-factor formula of wages, deposits and receipts to apportion income to New York. However, under current law, the wage factor is discounted such that only 80 percent (rather than 100 percent) of the bank's total New York wages are included in the apportionment formula.*	$35 million
Cooperative Insurance Companies	*This proposal would limit the exemption under the insurance tax for cooperative insurance companies. This proposal would ensure that insurance companies that provide the same types of services are treated equally under the Tax Law. It would also deny the insurance tax exemption to companies that have expanded their activities beyond those intended for eligibility for the tax exemption and remove the unfair advantage afforded to these companies under current law.*	$23 million
Tax Full Cost of Remote Booking of Hotel Occupancy	*The Budget would require travel companies that rent hotel rooms online or by telephone to collect the sales tax on the markups and service fees charged to customers. When the travel company books the room, it pays the hotel for all applicable taxes based on this discounted price and the hotel remits the sales tax to the State. The travel company then places additional service fees and markups on top of this discounted price and bills its customers. No State or local tax is collected on these fees or markups.*	$15 million