TESTIMONY OF NEW YORK CITY COMPTROLLER BRAD LANDER

RESPONSE TO THE PROPOSED
2022-2023 NEW YORK STATE
EXECUTIVE BUDGET

February 9, 2022

Good afternoon, Chair Krueger, Chair Weinstein, and members of the Committees and the Legislature. I'm honored to be here for the first time as New York City Comptroller, and grateful for the opportunity to discuss the State's Executive Budget for Fiscal Year 2023.

The numbers suggest that we are, at last, turning the corner on two long years of a pandemic that has been devastating for so many New Yorkers and shined a harsh spotlight on inequities in our economy. In New York City, the unemployment rate is 8.8%, more than twice the nation's, and jobs are more than 400,000 below February 2020. But as the Omicron surge wanes, we see many signs that the economic recovery, though incomplete, continues.

However, there are serious concerns about how the value of that recovery will be shared and the critical questions are: Are we on path for an **inclusive** recovery? How is the Executive Budget facilitating it?

We have a unique opportunity to spend one-time federal funds and surplus state tax revenue to address the impacts of the pandemic, to confront the inequalities it exposed and in many cases exacerbated, and to prepare for the future.

That means, at both the City and State level, we must make smart investments in the critical supports that our communities need to recover and thrive, while also preparing now for future crises, both by building up reserves and strengthening climate resilience.

Invest in an inclusive, resilient recovery

First and foremost, we must prevent further harm to New Yorkers who are currently struggling to stay in their homes, feed their families, and access health care.

It is critical to replenish funding for the Emergency Rental Assistance Program (ERAP) and the Excluded Workers Fund. We should not neglect the thousands of New Yorkers who were denied relief simply because funds ran out before their turn.

The next round of rental assistance funding should also address the exclusion of New York City's public housing residents who are unable to access funds before the needs of tenants in private housing are met, in accordance with federal guidelines.

And we must move quickly to protect tenants who are facing rapidly escalating rents and the threat of eviction by passing Good Cause eviction protections, as proposed by Senator Julia Salazar and Assemblymember Pamela Hunter.

Next, we must raise the floor for low-wage, cash economy, and gig workers to help New Yorkers weather the next crisis.

During my time in the City Council, I sponsored and passed legislation to create a minimum pay standard for app-based for-hire drivers and delivery workers. But a far better answer would be for the State to pass legislation to properly classify gig workers and other misclassified workers as employees, so they would be guaranteed the minimum wage, workers compensation, unemployment insurance, and the access to health care that all workers need and deserve.

In the meantime, I urge you to support the Fund Excluded Workers campaign, which provides an alternative to unemployment insurance for undocumented workers, supports street vendors, combats wage theft, ends the subminimum wage for restaurant workers, and extends health care insurance to low-income undocumented residents through the Coverage for All proposal.

As part of our work toward universal healthcare coverage, the State should also follow the lead of New York City and provide direct funding for abortion access, recognizing that the Supreme Court is likely to gut Roe v. Wade in June and New York will be among the states that people will travel to access care.

One of the best tools for ensuring an inclusive recovery is our public universities. I support the Governor's proposals to expand tuition assistance, but we should go further by passing The New Deal for CUNY, as proposed by Senator Andrew Gounardes and Assemblymember Karines Reyes, which would expand access to a quality education and a proven opportunity at upward economic mobility. My office will also be looking into the question of whether the City's private higher education institutions, which are exempt from the property tax, could enter into payment agreements that provide additional funding to CUNY.

The pandemic has also underscored the critical need for parents and caregivers to be able to access quality, affordable child care. Pre-existing problems, exacerbated by the pandemic, have caused caregivers to drop out of the labor force and about 1,500 child care providers to close in New York State.

With the prospects of federal funding for universal child care fading, the State must meet the moment – for both families and providers. In the short term, I urge you to support the swift adoption of a cost estimation model and the establishment of a $500 million workforce compensation fund. Current subsidy rates do not support the true cost of quality care, leaving too many providers in the publicly-funded system underpaid. This is a necessary down payment toward stabilizing the sector and building a system of universal child care that will both support the next generation and enable parents to support their families.

It is also time to revisit the minimum wage, which reached $15 for all city workers at the end of 2019. With inflation eroding purchasing power, we cannot leave people at the bottom of the income ladder behind. As of December, consumer prices were up 4.4% in the New York metro area over last year, including a 6.0% increase in the cost of food at home, posing a burden for low-wage workers.

These investments in a more inclusive economy must go hand in hand with investments in the services and infrastructure our communities need for stable, safe, and prosperous neighborhoods.

Provide truly affordable housing

I was pleased to see the Governor's focus on housing in the budget, including permitting and legalizing accessory dwelling units, repealing the FAR limit, promoting transit-oriented development, and converting hotels and office buildings into housing. These proposals must come along with strong affordability requirements and tenant protections.

This year, we have a unique opportunity and responsibility to fix New York City's broken property tax system. The City's property tax commission was a good start. It confirmed that the current system is unfair and regressive and proposed concrete solutions.

The time is now for the legislature to act. The expiration of 421-a creates the opportunity. The supposed need for that $1.7 billion tax giveaway is, very largely, the disparate taxation of homeownership and rentals, which discourages rental housing development in favor of condos.

So we should not tinker around the edges, with slightly different numbers and letters. The changes proposed by the Governor would continue to provide billions in subsidy to developers, offer very little affordability in return, and still fail to fix the underlying problems. The new outer-borough condo and co-op program would not include one single unit affordable to the 75% of New York City families who earn below 130% of AMI.

Instead, the legislature should allow 421-a to expire, and set a deadline of the end of this calendar year to achieve long overdue comprehensive property tax reform that would eliminate the inequities among different Class 1 properties, condos and co-ops (the deeply unfair imbalance which undertaxes the homes of my neighbors and me in Park Slope, while overtaxing homeowners in the Bronx, southern Brooklyn, and Staten Island), create parity between rentals and condos for future development, and allow the City to target its scarce affordable housing resources to achieve real affordability. I would be delighted to work with legislators on such a plan. We can achieve it this year.

And finally on housing, the State's budget cannot exclude NYCHA's 400,000 residents, who have suffered decades of neglect and mismanagement. While we continue to push for the federal funding that NYCHA residents deserve, we simply cannot wait any longer for bold action. Both the State and the City have the responsibility to provide additional funding.

But even with federal, state, and city support, the need remains gaping. I believe the NYCHA Preservation Trust is a promising approach that merits very strong consideration. It is critical that it would have very strong resident engagement, tenant protections, and oversight. In the coming months, my office will engage with residents about the proposal, and in particular about how they could be actively, meaningfully, and permanently involved in oversight.

Address the climate crisis with bold goals and funding

As we look past the current crisis, it is clear that climate change is the biggest long-term crisis we are facing. The State's goal to achieve 100% zero-carbon electricity by 2040 is as ambitious as it is necessary. I am happy to report that my office is poised to complete full divestment from fossil fuel reserve owners within the first half of the year and within the original timeline announced at the outset of this process. But there is much more to be done and we will not meet our goals unless public funding matches the urgency of the crisis.

To start, I urge you to support Assemblymember Kevin Cahill and Senator Liz Krueger's legislation to eliminate $330 million in state fossil fuel subsidies, as well as Senator Kevin Parker and Assemblymember Robert Carroll's Build Public Renewables Act, which would create the groundwork for a 100% renewable, publicly-owned state energy system. We hope to get started on this work in the city through our model for Public Solar NYC.

We also need stronger building codes and efficiency standards, emissions benchmarking for large buildings, and an accelerated timeline for banning on-site greenhouse gas emissions for new construction, following the lead of New York City. And let's finally bring the $4 billion Clean Water, Clean Air and Green Jobs Environmental Bond Act to the voters.

I was pleased to see a mandate on zero-emission school buses in the budget, but again we need real funding to make it happen. We need additional cost sharing between the State and school districts to meet this urgent goal as quickly as possible.

Support our schools

Thanks to the budget agreement last year, New York City schools are set to receive close to $9 billion in Foundation Aid, finally settling a crusade that spanned decades. I commend Governor Hochul for honoring this commitment in the budget and for adding new funding to address learning loss and provide mental health supports.

Reject rollbacks to bail reform

Another top priority must be the humanitarian crisis in our jails. My office is paying close attention to the staffing issues that have led to increased violence and problems accessing medical care and legal rights. Instead of making more people subject to bail and pretrial detention, we should make sure that judges are complying with the 2019 reforms, considering a defendant's ability to pay and applying the least restrictive means necessary to ensure that defendants return to court. No one should be detained before trial simply because they cannot afford to pay.

In this moment of anxiety about public safety, we must pursue investments in evidence-based approaches to addressing the root causes of violence, not fueling punitive strategies that have produced the era of mass incarceration.

Adjust transit financing for new realities

The Federal government has filled the MTA's budget gaps in the short term, but we must confront the fact that ridership and farebox revenue may never recover to pre-pandemic levels. Additional revenue will be needed. The State and the MTA need to begin considering new revenue sources that do not rely on fare hikes and increase the burden on riders. Like my predecessor, I think that a higher percentage of the gas tax should be allocated to transit rather than road building.

With implementation of congestion pricing finally on the horizon, I also urge you to maintain a firm commitment toward equity. Any additional exemptions to the charge should be rejected. New carveouts will dilute the impact of the fee, decrease critical revenue for the MTA's capital plan, including improvements to signal upgrades and accessibility, and unfairly raise the price for everyone else.

Reverse years of syphoning money from New York City

For the first time in modern history, the State's financial plan forecasts baseline surpluses in every year of the plan. Yet, the Executive Budget makes the sales tax intercept of $200 million per year to fund distressed hospitals permanent. Cost shifts, unfunded mandates, and revenue intercepts that continue in this year's budget will cost the City of New York more than $1 billion per year.

First, I urge you to stop the damage. Second, it is time to rectify harms from the past. State-imposed costs, including increased tuition rates to special education providers and charter school tuition mandates, should be funded by the State.

Focusing on fiscal resilience

Accumulating reserves is crucial to ensuring that budgets can absorb fiscal stress during recessions. In this financial plan, rainy-day reserves are projected to reach to 15% of operating funds by Fiscal Year 2025, providing a significant cushion. My office will work to propose a more structured and rule-based framework for the City's rainy-day fund with the objective to provide the needed fiscal resilience.

We also need to make sure that the State and the City's spending on economic development is targeted, transparent, and provides the maximum benefits for New Yorkers. While I am broadly supportive of the goals of the Penn Station General Project Plan, full clarity and City buy-in is needed on the financing to ensure that real transit benefits are achieved, that risks are well understood and managed, and that development is not over-subsidized.

I also urge you to reject the City's request to increase the Transitional Finance Authority (TFA) debt limit by $19 billion, more than doubling the current authorization of $13.5 billion. This request is premature – City projections show sufficient borrowing capacity over the next three years. Any request to increase the City's borrowing capacity should be predicated on a clear assessment of the City's infrastructure needs, available sources of funding, and shortfalls in current capital project management plans.

Modernize state retirement law

Finally, I would like to discuss one legislative priority that impacts the ability of our public pension funds to deliver for our retirees as well as for the State and City budget. We need the State to modernize Section 177 of the New York State Retirement and Social Security Law (RSSL), the so-called "Basket Clause".

The law – which was established in 1960, in a dramatically different investment context – fails to reflect the realities of the modern investment world and hampers our ability to prudently diversify our portfolio, maximize our risk-adjusted returns, and save money in the long term.

The permissible types of investments for public pension funds, as well as the applicable asset percentage limitations on those investment types, are set forth in state law. RSSL § 177 contains what is known as the "Basket Clause," which permits up to 25% of a public pension fund's assets to be invested in types of investments that are not otherwise expressly authorized by the RSSL, or that exceed permitted percentage limitations. The Basket Clause allocation of 25% has not been adjusted since 2006, when it was adjusted from 15% to 25%.

Notwithstanding the static nature of the law, significant structural changes in financial markets have occurred since RSSL § 177 was last updated. There has been an increase in the relative size and importance of private and global markets as compared to public markets.

Of note, a number of leading U.S. public pension funds and private endowments invest more than 25% in assets that would count against the "Basket Clause" as defined in state law. Yale's portfolio, for example, is well over half invested in such private market assets and has achieved returns that consistently outpace other portfolios.

The State should amend the law by either: 1) increasing from 25% to 35% the permitted "prudent investment basket" portfolio allocation (known as the "Basket Clause"); or 2) raising the cap from 10% to 30% on foreign equities exempt from the "prudent investment basket." Either of these requested legislative changes would allow public pension funds in New York State to prudently diversify their portfolios based on current market conditions and obtain potentially greater returns while maintaining a consistent, prudent level of risk.

Conclusion

Thank you for opportunity to speak today. I look forward to working in partnership with all of you to secure a fairer and more sustainable future for all New Yorkers.