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**THE LEAGUE
OF WOMEN VOTERS**
of New York State

**JOINT LEGISLATIVE PUBLIC HEARING
ON 2015-2016 EXECUTIVE BUDGET PROPOSAL:
ELEMENTARY & SECONDARY EDUCATION
TESTIMONY SUBMITTED TO THE
ASSEMBLY WAYS AND MEANS, SENATE FINANCE AND
ASSEMBLY AND SENATE EDUCATION COMMITTEES**

FEBRUARY 3, 2015

Good afternoon. I am Marian Bott, Education Finance Issue Specialist for the League of Women Voters of New York State. Our State Finances position¹ encompasses the operation and impact of 1) state school aid distribution, 2) the State’s School Tax Relief (STAR) and property tax cap programs, and 3) charter schools. The League is a nonpartisan political organization devoted to promoting active and informed involvement of individuals in government. We thank the Legislature for this opportunity to provide recommendations about the 2015-2016 proposed Pre-K-12 education budget as set forth in Appropriations bills S. 2003 and A. 3003 and related Article VII Education, Labor, Housing and Family Assistance bills (12572-01-5).

This year, the Governor’s budget mandates the bundling of policy and budget decisions for education. For example, a higher education Dream Act budget appropriation of approximately \$28 million and an Education Tax Credit budget appropriation of \$100 million are presented as a pre-requisite for a final decision on funding levels (\$377 million vs. \$1.1 billion) in the Pre-K – 12 budget. Separate committees deliberate Elementary/ Secondary Education and Higher Education. The latter’s members should have knowledge of the deliberations and input from today’s hearings, and vice versa. We respectfully request that you post all testimony received both today and at the Higher Education committee on an appropriate website accessible to the public. In light of substantial political distractions during this hearing week, we want to ensure that Higher Education committee members, who are hearing testimony on the Dream Act, understand our strong objections to the \$100 million Education Tax Credit. One important point is that the relative budgeted amounts are quite different—this should not be

¹ The League also holds positions on Election Law, Government, Health Care, Judicial, Natural Resources, Social Policy, Women’s Issues. See pp. 158-189, lwvny.org, http://lwvny.org/advocacy/impact/SF_Full.pdf.

a bundled trade. In 1998, the legislature traded the STAR program for the LADDER program with similar result: STAR grew exponentially while LADDER was bargained down. This should be a cautionary thought for supporters of the DREAM Act who would consider supporting both it and the ETC in tandem.

We will address the bulk of this year's testimony to this part of the education budget.

The Education Tax Credit—Why It Should be Excluded from the Final Budget

Very Poor Transparency

In our last year's testimony we went off-script to respond to the previous speaker, who had advocated inclusion in the final budget of an Education Tax Credit. We said then, and we say again now, the League vehemently objects to this initiative. What is being proposed is a tax credit, not a charitable deduction, at a disturbingly high level of \$1 million for individuals and corporations. This violates one of our core principles of transparency in budget allocations, and should not be permitted to become law.

The Executive Budget proposal, adding a new Article 25 to the Education Laws, which absolves the Legislature of responsibility for the inner workings of \$100 million of privately directed school aid. Donors would never be identified, and even recipients would not be fully identified on a timely basis. Disclosure is not required until May 31 of the following calendar year after the implementation of the law. At that time, a joint report rendered to the Governor, committee chairs of the finance and education committees will know the:

of applications; # of and aggregate value of certificates issued, geographical distribution by county "to the extent feasible" of applicants and public education entities, school improvement organizations, local education funds, and educational scholarship organizations listed on certificates, # of eligible pupils that received scholarships, # of eligible pupils, average value of scholarships, etc. The information "shall be allowed...to be shared...with designated employees of the department of education."²

There is no guaranty that any legislator will know who designated any schools in their district, or whether such schools received any funds for either scholarships or other permitted programs. There is no requirement that reports break down the type of private school (parochial or non-parochial), the size of donation to each type of school (public vs. private/scholarship), or the number of designations by size to charter school management organizations. Why would a legislator agree to a blind pool for the state's schools writ large, while at the same time attempting to serve the best interests of all schools in her or his legislative district?

Private Schools Already Receive Substantial Aid

The Education portion of Aid to Localities, appropriates approximately \$170 million to nonpublic schools, a 3.7%³ increase over last year's Executive Budget. We interpret this as funding over and above the \$374 million in Private Excess Cost Aid for special needs students, which we assume would be

² See subdivision (k) of proposed new section 42 of the tax law, Proposed §1214 also mentions a report due from each donation recipient by January 31 of each calendar year, "in the form and manner prescribed by the commissioner in consultation with the commissioner of taxation and finance."

³ The Executive Budget Opportunity Agenda proposes a 4.8% increase in aid to the comprehensive attendance program, from \$16 MM to \$16.768 MM.

allocated in accordance with previously disclosed State Education Department aid formulas. We recommend that you weigh these substantial resources already provided as you evaluate new non-targeted aid through a tax credit. Will there be measures of the wealth of the private school community? Will there be limits on geographic concentration? We see no evidence that the Executive Budget has safeguarded against black box windfalls to just a few local education funds, designated schools or scholarship organizations.

Fiscal Impact on New York State

Taxation and Finance's most recent Tax Expenditures report shows, among other things, the cost of income tax credits granted to individuals and corporations. Income tax credits for 2014 are estimated to cost our state \$3.4 billion⁴. Charitable contributions (totaling \$12 billion as of 2010⁵) probably can be pro-rated up to \$15 billion for 2014. They will create a "tax expenditure" tied to an estimate of the average income tax rate. At 5%; those will cost the state \$750 million in 2014. State income tax credits primarily go to large classes of individuals in need, such as the Earned Income credit (\$1.1 billion), the Empire State Child credit (\$.7 billion), and Family Tax Relief (\$.4 billion). Business tax credits encourage economic development, and are directed at classes of business. Charitable contribution deductions are much less costly to the State.

First-come, first-serve has no place in determining tax expenditures. Either an entire class of individuals or businesses should receive a credit or none should be granted for the purpose. As has been shown in Florida and Georgia, the corporate programs in particular are insidious because the tax relief offered encompasses numerous taxes owed by businesses. If a corporation does not owe income tax, it can instead get credit for sales taxes, for example. If this type of policy started in New York, it could quickly invade valuable sources of non-property-based revenues. IBM Corporation declined to apply for a credit in Georgia, in protest of this poor tax policy. Since 400,000 students attend non public schools and 3,000,000 attend public schools, there is likely to be a much greater appetite for this credit than \$100 million, creating constant pressure in the future, as we have seen with STAR. Given the ease with which non-profits are being encouraged to form, an entire industry attracting donors to the credit will form. If carried to its logical conclusion, the wealthiest New York donors would directly dictate the distribution of the \$100 million, not the legislature or the State Education Department.

Fiscal Impact on Taxpayers

An individual taxpayer's charitable contribution benefit depends upon the taxpayer's adjusted gross income bracket. Higher tax bracket taxpayers are granted a lower percentage of itemized deductions.⁶ A corporate taxpayer's charitable contribution is a business expense with no reduction in value. Tax credits are equally valuable to both groups, and the ability to carry over unused credits, as in the proposed ETC, make it attractive for donors to be charitable even when generating paper losses. A rational taxpayer would always opt for the tax credit, but if all donors to education charities were to request them, the cost would be a substantial percentage of the \$15 billion estimated above since colleges, universities, and private schools are very popular donation targets for charitable giving. This is why states with ETC programs have established maximums on these programs.

⁴ Source: <http://publications.budget.ny.gov/eBudget1415/fy1415ter/TaxExpenditure2014-14.pdf>.

⁵ Source: http://www.tax.ny.gov/pdf/stats/stat_pit/pit/analysis_of_2010_personal_income_tax_returns.pdf, p. 42.

⁶ Source: 2014 IT-201-1, www.tax.ny.gov, pp. 34-35, Resident Itemized Deduction Schedule worksheets.

Substantially Greater Maximum compared with Other States

No other state has enacted a program with such a large maximum individual contribution.⁷ Georgia's recently passed program allows a maximum of \$2,500 per married couple or 75% of taxpayer liability; the program cap is \$58 million. Virginia's individual taxpayer maximum is \$125,000, allowing 65% of the value of the donation; the program total cap is \$25 million. Florida, which has the largest scholarship program, has no individual income tax. Corporate taxpayers in Florida⁸ may make unlimited donations and receive tax credit against various state taxes. Their credit cap will increase to \$447 million for 2015-16.⁹ The Florida law is being challenged in court, and the League of Women Voters of Florida is a named plaintiff.¹⁰ One key plaintiff argument in this case is that in terms of constitutionality, directly funding scholarships with state funds vs. indirectly funding them using tax credits is a distinction without a difference.¹¹ Both education tax credits and charitable contributions for education are tax expenditures for a state, indirectly funding education, but the former costs the state much more. Another argument in the lawsuit is that religious schools have been shown to be the predominant user of the program. In New York State taxpayers would have to wait for an audit to discover the actual winners of these tax expenditure benefits.

The remainder of our testimony will simply be bullet points. Our website contains our prior testimony and discusses the charter school cap. We don't believe that there should be a rush to lift it.

- **Fund Foundation Aid**
- **Implement Circuit Breakers at lower income level; Phase Out STAR**
- **Reverse Unintended Negative Consequences of the Percentage Tax Levy Cap¹²**
- **Seriously Fund Pre-K—don't underestimate the cost of a good program**

We urge you to consider these views of a good government organization that stands to gain nothing but a better educated citizenry, capable of participating fully in the civic and economic future of New York State.

⁷ Source: www.opportunityined.org, Education Tax Credit Programs: An Analysis of Provisions by State. The Foundation for Opportunity in Education, October 2013, pp 6, 8.

⁸ Tax credit cap in 2013-14 was \$286 million; it went to \$358 million in 2014-15.

⁹ <http://www.floridaschoolchoice.org/information/ctc/>

¹⁰ <https://www.facebook.com/pages/Dump-Florida-Corp-Tax-Credit-Scholarship-Fund/448126818582981?fref=nf>

¹¹ See McCall v. Scott, §50. "Instead of paying moneys already within the state treasury to private schools, the Scholarship Program provides for the public funding of private education through "tax expenditures"—by establishing a process through which taxpayer funds that otherwise would be paid into the public fisc are redirected to the SFO intermediaries for transmission in the form of warrants to participating private schools.

¹² A percentage cap is affected by the size of the levy, which varies considerably among districts. According to the Regents' calculations last year, the wealthiest districts would be allowed a levy increase approximately nine times greater than the poorest districts. The property tax cap as designed, while intended to encourage fiscal discipline, encourages cap evasion behavior, exacerbating the difference in total resources available to students in wealthier vs. poorer districts. The League predicts further growth of private efforts, be they through local education tax-exempt foundations or through ad hoc organizations, which will make it difficult to evaluate expenditures per pupil in the future.