FIRST, A LOOK BACK: THE BASICS OF THE 2011 REAL PROPERTY TAX CAP

> **Fundamental limitation:** The amount of taxes that may be levied by a “local government” shall not exceed the “tax levy limit,” which is (a) no more than a 2% increase in the previous year’s tax levy, or (b) the “inflation factor,” whichever is less. However, the permitted increase will not be less than 1%.

> “Local government” is defined as a county, city, town, village, fire district or special district.

> In order to adopt a budget that results in a tax levy that exceeds the tax levy limit, the governing board must first enact a local law approved by 60% of the governing board to override the tax levy limit (school districts have similar public vote requirements).
EXCLUSIONS FROM THE TAX LEVY LIMIT CALCULATION:

> “Available carryover”: the amount by which the tax levy for the prior fiscal year was below the applicable tax levy limit, up to 1.5% of the levy limit.

> Tax levy attributable to tort judgments that exceed 5% of the levy for the prior school year.

> Retirement System contribution rate increases that exceed 2% from the previous year.

> The “capital tax levy” excluded for school districts only.

ALLOWANCE FOR TAX BASE GROWTH

> Calculated by the Commissioner of Taxation and Finance. A measurement of the “physical or quality change” in the school district’s full value taxable real property as a result of new development or re-development.

> If the Growth Factor percentage is positive, it will be multiplied by the previous year’s tax levy to create the new base levy amount then subject to the tax levy limit calculation.
HOW LONG IS THE TAX LEVY CAP EFFECTIVE?

> The 2011 Tax Levy Cap law was effective through 2016.

> The Tax Levy Cap law has now been extended through June 16, 2020.

> The Comptroller has warned municipalities that the 2016 inflation factor will be 0.73%, which is half of the 2015 figure and the lowest since the Tax Levy Cap was established.

THE NEW WRINKLE: THE 2014 “REAL PROPERTY TAX FREEZE”

> Adopted with New York State Budget Bill (Part FF of Ch. 59 of Laws of 2014).

> Provides a direct “rebate” to any property owner who receives a STAR exemption on primary residence.

> Generally offsets any actual increase in real property taxes (*Exceptions discussed later)
THE 2014 “REAL PROPERTY TAX FREEZE”


> To qualify for rebate, the property owner’s local taxing jurisdiction must stay within its adjusted tax cap during first year of freeze. Each taxing jurisdiction is treated separately.

> In the second year the taxing jurisdiction must stay within tax cap and implement programs with savings of at least 1% of levy each year over three-year period (i.e., a “Government Efficiency Plan”).

> The law allows each municipality to submit a qualifying Efficiency Plan, but “strongly encourages” development of a single county-wide or BOCES-wide Efficiency Plan for all governmental units within the county or BOCES.
THE 2014 “REAL PROPERTY TAX FREEZE”

> A “Governmental Efficiency Plan” may consist of savings from “cooperation agreements, shared services, mergers, and efficiencies.” (7/14/2014 Guidance, NYS Dept. of Taxation and Finance).

> “Efficiencies” are defined as “actions taken … to improve completion of existing processes or functions or the delivery of existing services that result in lower costs.”

THE 2014 “REAL PROPERTY TAX FREEZE”

> For school districts, savings measured over 2016-17 through 2018-19 school years. For other local governments measured over fiscal years beginning in 2017 through 2019.

> Past activities may be credited towards the Efficiency Plan savings requirements if implemented since effective date of the tax cap (i.e., fiscal year beginning in 2012).
The 2014 “Real Property Tax Freeze”

> Restricted to property owners with incomes of $500,000 or less.

> Rebate checks to be issued (conveniently) in October.

> Certification requirement to Department of Tax and Finance and State Comptroller by 21st day of fiscal year to which the rebate applies for tax cap compliance, and June 1, 2015 for Efficiency Plan compliance.

The rebate amount is equal to the greater of:

1. Increase in taxes (excluding usage charges, new construction, removal or reduction of exemptions, above-average reassessment increases); or

2. The prior year’s taxes multiplied by the allowable levy growth factor under the tax cap.
REAL PROPERTY TAX FREEZE RESULTS?

> In the first year of the Tax Freeze, 97% of school districts were within the tax levy cap.

> Over 2.3 million homeowners received more than $220 million in property tax relief.

> The entire Tax Freeze program is expected to result in approximately $1.5 billion in property tax relief.

THE FUTURE OF THE REAL PROPERTY TAX FREEZE?

> The current Tax Freeze program expires in 2016.

> There was no extension of the program in the State’s last adopted budget.

> In January 2015 Governor Cuomo proposed an additional tax relief program, which would provide a credit of up to $2,000 to taxpayers who had real property taxes equal to 6% or more of income.
BARGAINING STRATEGIES FOR THE POST “TAX-CAP/TAX FREEZE” WORLD

> Educate the union’s negotiators on the operation and implications of the tax cap.

> “Begin with the end in mind” – Identify the maximum new revenue within the cap, and alternatively under a contingency budget, and then work backwards from that for purposes of bargaining.

> Consider whether wage proposals and other significant financial items must be “conditional” in some way.

BARGAINING STRATEGIES FOR THE POST “TAX-CAP/TAX FREEZE” WORLD

> Contract “re-openers” upon adoption of a contingency budget?

> Include tax cap status in assessment of whether permissible to make “regressive” bargaining proposals

> Consider public and/or union member communications strategies during bargaining.
THE TAX CAP/TAX FREEZE AND SHARED SERVICES

> Intermunicipal cooperation under General Municipal Law Art. 5-G

> Joint service or contract for services

> Remember tax cap law contains provisions for adjustment of tax cap amounts upon transfer of programs or functions

THE TAX CAP/TAX FREEZE AND SHARED SERVICES

> Subcontracting issues that arise from intermunicipal agreements:

> **PERB standard:** “Exclusive” work substantially similar to that performed by union? If so, balancing test applied to weigh the respective interests of the union and the municipality.

> **Contractual standards:** What does the CBA say about subcontracting?
QUESTIONS?

Presented by:

Jeffrey F. Swiatek, Esq.
jswiatek@hodgsonruss.com
716.848.1449
GASB No. 75
Postemployment Benefits Other Than Pensions

November 6, 2015

Harbridge Consulting Group, a BPAS Company
Solving Tomorrow’s Benefit Plan Challenges...Today

GASB No. 75
Why a New Standard?

• Improve usefulness of financial statements for state and local governmental plans
  ▪ No longer focus on the funding-based model
  ▪ Require consistency in measurement & disclosure
  ▪ Require more comprehensive measures of OPEB Liability and Expense
  ▪ Improve comparability
  ▪ Improve understandability and decision-usefulness
  ▪ Improve information for assessing accountability and interperiod equity
  ▪ Increase supporting information and disclosures
GASB No. 75

Agenda

• When is the Effective Date
• What are the Significant Changes
  ▪ Liability shown on face of financial statement
  ▪ Elimination of ARC
  ▪ EAN Funding Method
  ▪ Discount Rate
  ▪ Additional Disclosure Items & Required Supplementary Info.
  ▪ Miscellaneous Changes
• Transition

GASB No. 75

Other Items Briefly

• OPEB plans administered through a Trust
• Special Funding Situations
  ▪ Non-employer Contributing Entities
• Cost-sharing & Agent Employers
• Defined Contribution OPEB Plans
• Insured OPEB Plans
GASB No. 75 - OPEB Trust

- OPEB Trust must meet all three:
  i. Contributions, as well as earnings on those contributions, are irrevocable
  ii. Dedicated to providing OPEB to plan members AND
  iii. Protected from creditors

- Not currently allowed in NYS

DC OPEB Plans

- Defined Contribution
  - Amount of employer contribution is defined
  - Individual Account
  - OPEB depends on contributions & earnings
  - GASB No. 75 ¶230 - 242

- Defined Benefit
  - Amount of employer-provided benefit is defined
Insured OPEB Plans

- Insured OPEB Plans
  - Premium paid to insurer while active employee
  - Insurer assumes OPEB obligation
  - GASB No. 75 ¶227 - 228

GASB No. 75 – Effective Date

- Fiscal Years beginning after 6/15/2017
• **OPEB Liability**
  - the portion of the Present Value of projected benefit payments to be provided to participants that is attributed to past service

• **Net OPEB Liability**
  - Recognize a Net OPEB Liability on the face of the financial statement
  - OPEB liability - OPEB assets = Net OPEB Liability

---

**GASB No. 75 – Significant Changes**

**OPEB Expense**
- Recognized on Income Statement
- Illustrates sources of changes in OPEB Liability

<table>
<thead>
<tr>
<th></th>
<th>Total OPEB Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at 6/30/2018</td>
<td>851,095</td>
</tr>
<tr>
<td><strong>Changes for the Year</strong></td>
<td></td>
</tr>
<tr>
<td>Service Cost</td>
<td>16,712</td>
</tr>
<tr>
<td>Interest on OPEB</td>
<td>33,898</td>
</tr>
<tr>
<td>Changes of benefit terms</td>
<td>(203,619)</td>
</tr>
<tr>
<td>Differences between expected and actual experience</td>
<td>58,936</td>
</tr>
<tr>
<td>Changes in assumptions or other inputs</td>
<td>45,945</td>
</tr>
<tr>
<td>Benefit Payments</td>
<td>(23,983)</td>
</tr>
<tr>
<td><strong>Net Changes</strong></td>
<td>(72,111)</td>
</tr>
<tr>
<td>Balance at 6/30/2019</td>
<td>778,984</td>
</tr>
</tbody>
</table>
GASB No. 75 – Significant Changes

• OPEB Expense
  ▪ Changes recognized immediately
    ▪ Service Cost
      ▪ The portion of the actuarial present value of projected benefit payments that is attributed to the period of employee service
    ▪ Interest on the total OPEB liability
    ▪ Effects of plan changes

• OPEB Expense
  ▪ Changes recognized over current & future periods
    ▪ Differences between Actual and Expected experience
    ▪ Changes in actuarial assumptions
      ▪ Recognized over a closed period = average of expected remaining services of all employees (active and inactive)
    ▪ Portions of these changes not recognized in OPEB Expense are reported as deferred outflows / inflows
    ▪ Expect increased volatility
GASB No. 75 – Significant Changes

• OPEB Expense
  ▪ Alternative Measurement Method
    ▪ All changes are reflected immediately

• Actuarial Funding Method
  ▪ GASB 45
    ▪ Choose among 6 methods
      ▪ Level percent of payroll, or
      ▪ Level dollar amount
    ▪ Projected Unit Credit most common
• Actuarial Funding Method
  ▪ GASB 75
    ▪ Entry Age Normal (EAN) Funding Method as level % of pay
      o No variation from this (e.g. EAN Level dollar not allowed)
      o Best reflects long-term nature of the exchange of EE service for OPEB by attributing service costs over employment period rather than attributing benefits to the employment period
      o Most likely result in increase in OPEB Liability vs. PUC
    ▪ Single method will:
      o Improve comparability and understandability
      o Reduce complexity of information

Actuarial Funding Method – GASB 45
GASB No. 75 – Significant Changes

• Actuarial Funding Method
  ▪ Entry Age Normal (EAN)
    ▪ EAN Normal Cost amount will increase each year as payroll increases and as present value of future benefit increases
    ▪ Each year, the EAN Normal Cost amount is a level percent of that year’s payroll

• Actuarial Funding Method
  ▪ Entry Age Normal (EAN) vs. Projected Unit Credit (PUC)
    ▪ Method Type
      ○ PUC is a Benefit Allocation Method
        • Benefits are allocated to a particular year and the present value of the allocated benefit portion is assigned to each year
        • Normal Cost = increase in the accumulated benefit each year
      ○ EAN is a Cost Allocation Method
        • Prospective benefit at retirement is estimated, the present value at the entry age is estimated and the cost is allocated to a particular year
        • Normal Cost = present value of prospective benefit ÷ pay spread over all years
GASB No. 75 – Significant Changes

• Actuarial Funding Method
  • Entry Age Normal (EAN) vs. Projected Unit Credit (PUC)
    o Normal Cost Patterns
      • PUC Normal Cost is not level; increases with interest and aging
      • EAN Normal Cost is a level percent of pay (but most likely an increasing dollar amount)
    o Normal Cost
      • PUC captures the present value of benefits as they accrue
      • EAN create level contributions throughout the working career of the employee

GASB No. 75 – Significant Changes

• Actuarial Funding Method – Compare Normal Cost
  • Entry Age Normal (EAN) vs. Projected Unit Credit (PUC)

![Graph comparing EAN and PUC Normal Cost](image)
GASB No. 75 – Significant Changes

• Actuarial Funding Method – *Compare AAL*
  ▪ Entry Age Normal (EAN) vs. Projected Unit Credit (PUC)

![Graph showing EAN AAL and PUC AAL comparison](image)

• Discount Rate
  ▪ Unfunded OPEB
    ▪ High quality 20-year tax-exempt municipal bond yield (AA or higher)
  ▪ Funded OPEB
    ▪ Until assets no longer cover expected OPEB payments
      ▪ Long-term expected yield on assets
      ▪ Investment strategy must designed to achieve that yield
    ▪ After assets no longer cover expected OPEB payments
      ▪ Yield or index for 20-year tax-exempt general obligation municipal bond yield (AA or higher)
This index is based on an average of certain general obligation municipal bonds maturing in 20 years and having an average rating equivalent of Moody’s Aa2 and Standard & Poor’s AA.

Federal Reserve Economic Data
Link: http://research.stlouisfed.org/fred2/series/WSLB020/

- Additional Disclosure Items
  - GASB recognizes OPEB assumptions will vary from actual experience
    - Determination of assumptions must comply with ASOPs to enhance consistency
    - Therefore, additional disclosures are required to assist users’ understanding of the impact of the uncertainty of OPEB assumptions
GASB No. 75 – Significant Changes

• Additional Disclosure Items
  ▪ Total OPEB Liability
  ▪ Net OPEB assets (if there is a Trust)
  ▪ Reconciliation of deferred outflows and deferred inflows of resources related to OPEB
  ▪ Dates of experience studies on which assumptions are based
  ▪ Inputs for the determination of Discount Rate

GASB No. 75 – Significant Changes

• Additional Disclosure Items
  ▪ OPEB Liability using +/- 1% healthcare trend
  ▪ OPEB Liability using +/- 1% discount rate
  ▪ Info about employer’s contribution policy and the basis for determining contributions
  ▪ Effects of changes in OPEB Liability during the period
• Additional Required Supplementary Information for each of the past 10 Years
  ▪ BOY and EOY OPEB Liability balances
  ▪ Effects of changes in OPEB Liability
  ▪ OPEB plan’s assets
  ▪ OPEB Liability and ratios:
    o Payroll
    o OPEB Liability as a % of Payroll
    o OPEB Plan’s fiduciary net position as % of Payroll

• Schedule of Contributions
  ▪ Difference between actuarially determined contributions and actual contributions
  o Payroll
  o OPEB Contributions as a % of Payroll
GASB No. 75 – Miscellaneous Changes

- **Frequency**
  - Triennial valuations no longer allowed
  - Alternative Measurement Method Valuations must also be biennial
  - Size of the Govt does not change the significance of the OPEB information

GASB No. 75 – Miscellaneous Changes

- **Community-rated Medical Plans**
  - No community-rating exception to the implicit subsidy recognition
    - Conforms with ASOP 6
    - No guarantee that the employer will be able to continue in the community-rating pool
  - Previously, if the medical plan was community-rated and retirees contributed 100% of the premium, the GASB 45 liability = $0
GASB No. 75 - Transition

- Period of time where comparisons to prior years will be difficult

GASB No. 75 - Transition

- Funding NYS OPEB Plans
  - NYS Comptroller Thomas DiNapoli proposed legislation to create an optional investment pool fund OPEB, April 2015
    - ~$68.2 billion unfunded for NYS
    - ~$68.3 billion unfunded for Local Govts outside of NYC
    - 30+ other states allow funding
    - DiNapoli's proposed OPEB Fund would meet GASB 75 definition for Trust
      - [https://www.osc.state.ny.us/press/releases/apr15/041315.htm](https://www.osc.state.ny.us/press/releases/apr15/041315.htm) (press release)
      - [http://www.osc.state.ny.us/press/releases/june15/061615.htm](http://www.osc.state.ny.us/press/releases/june15/061615.htm) (DiNapoli op-ed)
GASB No. 75 - Transition

• Funding NYS OPEB Plans
  ▪ NYS Comptroller Thomas DiNapoli proposed legislation to create an optional investment pool fund OPEB
    ○ State-administered OPEB Fund would be separate/distinct from Common Retirement Fund
    ○ Several investment options provided
    ○ Separate accounts for the State and any participating Local Govt
    ○ Fund amounts commingled for investment purposes
    ○ Actuarial assumptions and contributions determined by participating Local Govt
    ○ Administrative fee charged to participants