

# Spending in the Shadows

## NONSPECIFIC FUNDING IN THE FY 2019 NEW YORK STATE BUDGET – ENACTED BUDGET ADDENDUM

Although New York State is facing increasing budget pressures, the Governor and Legislature, in passing the FY 2019 Enacted Budget, added \$937 million in nonspecific funding to the Executive Budget. That figure is comprised of \$454 million in lump sum appropriations controlled by specific elected officials, and \$483 million to economic development and infrastructure funds, both of which have limited instructions for spending and very little public oversight. In fact, most of the \$937 million total is subject to the ultimate control of one or more individual elected officials, as nearly all of the added economic development and infrastructure funds appropriation was to the State and Municipal Facilities Program. Much if not all of those funds are made available for projects requested by individual legislators.

When the additions are combined with the nonspecific lump sum appropriations and economic development and infrastructure appropriations of the Executive Budget, the Enacted Budget contains \$12.7 billion in appropriations in these two categories (See Table 2 on page 6).

### Breakdown of Lump Sum Additions Controlled by Elected Officials

Of the \$454 million added in the Enacted Budget that is subject to the control of one or more individual elected officials, \$176 million was added for education, to be spent pursuant to either a Senate or Assembly resolution. Of this \$176 million, \$97 million is new funding and the remainder is reappropriations from prior budgets that were not in the Executive Budget but were added into the Enacted Budget, almost certainly at the behest of the Legislature. These funds are labelled as part of the Aid to Localities category but can be found at the end of the Capital Projects Budget bill (S.7504-D/A.9504-D).

Another \$233 million consists of reappropriations from prior years to something called the Community Projects Fund. Of these reappropriations, \$149 million is to be spent pursuant to a memorandum of understanding among the Governor, Assembly Speaker and Senate Majority Leader, \$74 million pursuant to a “list” submitted by the Secretary of the Senate Finance Committee, and \$9 million pursuant to a “list” submitted by the Secretary of the Assembly Ways and Means Committee (See Table 3 on page 7). The remaining funds are sprinkled among various agencies and consist of both new funding and reappropriations. The full list of these lump sum items is in Table 3.

All of the appropriations added in the Enacted Budget lack specificity. For example, several of the appropriations are labeled as grants and contracts for certain municipalities and not-for-profit organizations, but no further explanation is provided. The education appropriations are labeled as additional grants to certain school districts, public libraries, and not-for-profit organizations. And the Community Projects Funds appropriations are labeled as grants or contracts with certain not-for-profit agencies, universities, colleges, school districts, corporations, and/or municipalities.

### **Breakdown of Economic Development and Infrastructure Additions**

The Enacted Budget added nearly \$8 million to the 2015 appropriation for the Transformative Investment Program, which includes no requirement for how the money is to be spent. The other and far larger addition, \$475 million, was new funding for the State and Municipal Facilities Program (See Table 4 on page 9). This funding stream began in 2013 and since then at least \$350 million a year has been appropriated to the program. This year’s funding is the largest amount added in any year since inception. Including reappropriations from prior years, the State and Municipal Facilities Program contains over \$2 billion in appropriations in the FY 2019 Enacted Budget.

As we have discussed in prior reports, and as has been covered in the media, much if not all of the funds appropriated for the State and Municipal Facilities Program is available for spending on projects requested by particular legislators.

### **Conclusion**

The Enacted Budget contains almost a billion dollars in additional funding that was not included in the Executive Budget, largely available to be spent at the behest of individual legislators, though the leadership would have to give its blessing. Making that much money available for unclear purposes with no public accountability is a recipe for

mischievous, or worse. New Yorkers, who have been reading for months about how looming deficits and cutbacks in federal funding can be so harmful to the State, should be concerned that at this moment the Legislature sought the ability to spend so many more public dollars out of the view of normal budget oversight. The added funding increases opportunities for legislators to allocate funds for political and personal reasons. That such opportunities can lead to corruption has been, and will be, on display in a series of trials running through the first half of this year. Several of the trials involve the type of nonspecific funds listed in Citizens Union's report. Even beyond potential misuse of funds, however, the public has a basic right to know how and where its taxpayer dollars are being spent.

The Governor and Legislature had the opportunity to provide more transparency in the Enacted Budget but they did not. Both the Senate and Assembly one-house budget proposals included increased reporting on economic development projects, but those recommendations did not make it into the budget as enacted, and would have accomplished only a small part of what is needed. Citizens Union urges that the recommendations set forth in its *Spending in the Shadows* reports be implemented.

### Recommendations for Reform

To improve the public accountability of State spending, Citizens Union urges the Governor and Legislature to do the following:

1. **Publicly post comprehensive information regarding the distribution of nonspecific lump sum funds**, including detailed purposes, criteria for spending decisions and who requested the spending. This would include criteria established by State agencies.<sup>1</sup> Such a listing should indicate specific purposes, any geographical or other eligibility criteria, and whether the funds will be allocated according to a competitive process or some other means.
2. **Amend the State Finance Law** to require that elected officials, both executive and legislative, who seek to make awards from lump sum appropriations or reappropriations affirm:
  - a. that the contract or grant is for a lawful public purpose;
  - b. that the elected official has not and will not receive any financial benefit;
  - c. that there are no conflicts of interest; and,

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<sup>1</sup> For an example of a requirement that an agency report on how awards that are granted meet objective criteria established by a commissioner, see the terms of the reappropriation to the Department of Mental Hygiene, Office of Alcoholism and Substance Abuse Services in the FY 2018 Enacted Budget to support efforts regarding substance abuse treatment and recovery, S.2003-D/A.3003-D (Aid to Localities Budget), p. 747-8.

d. that the elected official is in compliance with all financial disclosure requirements in the Public Officers Law.

**3. Require comprehensive online disclosure of all grants and contracts awarded under nonspecific lump sum appropriations and reappropriations.** Such project-by-project disclosure should:

- a. be traceable by budget appropriation;
- b. be in a user-friendly format that is machine-readable, in order to permit the independent analysis of:
  - i. all MOUs, plans, resolutions and other agreements;
  - ii. funds distributed and the amount of funds that remain; and
  - iii. the identity of recipients (including information such as key staff and, where relevant, their board of directors), and the elected official who sponsored the spending.

In addition, the budget language should contain requirements for future reporting on what was accomplished by each grant or contract.

**4. Create public disclosure by allowing budget bills to age for three days** (as is generally required for legislation) and identifying the legislative sponsor of nonspecific lump sum funds during the aging period.

**5. Enact legislation to limit contributions by people and entities doing business with the State** (including decision-makers of those entities and their immediate families). Some guidance in drafting this legislation can be drawn from the New York City Campaign Finance Act, which addresses contributions by persons and entities with business dealings before the City.<sup>2</sup>

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<sup>2</sup> See, e.g., NYC Campaign Finance Act, Section 3-702(18).

## Appendix

**Table 1. Additions to FY 2019 Executive Budget Included in Enacted Budget**

<i>Lump Sum Funding Allocations</i>		
<b>A.</b>	<b>New Appropriations and Reappropriations</b>	
	New Appropriations	\$120,062,650
	Reappropriations	334,215,907
	<b>Total</b>	<b>454,278,557</b>
<b>B.</b>	<b>Mechanisms for Allocating Lump Sum Funds Controlled by One or More Elected Officials</b>	
	i. MOU between Governor and legislative leaders	1,900,000
	ii. MOU between Budget Director and Chairs of Senate Finance and Assembly Ways & Means Committee	149,000,000
	iii. Approval by Budget Director and Majority Leader, plus Senate resolution	131,114,650
	iv. Consultation with Senate Majority Leader	58,900
	v. List prepared by Secretary of Senate Finance Committee	74,375,000
	vi. Approval by Budget Director and Speaker, plus Assembly resolution	68,657,000
	vii. List prepared by Secretary of Assembly Ways & Means Committee	28,052,007
	viii. Consultation with Assembly Speaker	1,121,000
	<b>Total</b>	<b>\$454,278,557</b>

<i>Economic Development and Infrastructure Funds</i>	
State and Municipal Facilities Fund	\$475,000,000
Addition to Reappropriation from 2015 to Transformative Investment Program (was \$150,000,000 in Executive Budget)	7,710,000
<b>Total</b>	<b>\$482,710,000</b>

<b>Total of Lump Sum Funding and Economic Development and Infrastructure Additions</b>	<b>\$936,988,557</b>
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**Table 2: Total Lump Sum Appropriations Controlled by Elected Officials and Economic Development and Infrastructure Funds in Executive and Enacted Budgets, FY 2019**

	<b>New Appropriations</b>	<b>Reappropriations</b>	<b>Total</b>
<b>Executive Budget</b>			
Lump Sum Appropriations Controlled by Elected Officials	\$0	\$2,116,341,000	\$2,116,341,000
Economic Development and Infrastructure Funds	1,424,084,000	8,205,915,000	9,629,999,000
<b>Total Executive Budget</b>	<b>1,424,084,000</b>	<b>10,322,256,000</b>	<b>11,746,340,000</b>
<b>Additions in Enacted Budget</b>			
Lump Sum Appropriations Controlled by Elected Officials	120,062,650	334,215,907	454,278,557
Economic Development and Infrastructure Funds	475,000,000	7,710,000	482,710,000
<b>Total Additions</b>	<b>595,062,650</b>	<b>341,925,907</b>	<b>936,988,557</b>
<b>Enacted Budget</b>	<b>\$2,019,146,650</b>	<b>\$10,664,181,907</b>	<b>\$12,683,328,557</b>

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**Table 3: Budget Appropriations Listing One or More Elected Officials – Additions in 2019 Enacted Budget**

Budget Bill	Page	Agency	Approving Mechanism	Description	Amount	Original Year of Appropriation
Aid to Localities S7503D/A9503D	83	Criminal Justice Services	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Law enforcement, anti-drug, and anti-violence	2,971,000	New
	83 131	Same	Same	Domestic Violence	1,609,000 3,000	New 2012
	84	Same	Same	Equipment and technical enhancements	860,750	New
	87	Same	Approval by Budget Director & Assembly Speaker, plus Assembly Resolution	Drug violence, crime control	300,000	New
	87 124 124	Same	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Same	300,000 41,000 32,000	New 2013 2012
	91	Same	Same	Domestic violence and veterans legal services	950,000	New
	112	Same	Same	Family court domestic violence services	78,000	2012
	112	Same	Same	Domestic violence training of law enforcement personnel and judges	70,000	2012
	143	Same	List submitted by Secretary of Assembly Ways & Means Committee	Grants or contracts to certain municipalities and not-for-profit organizations	977,324	2000
	183	Economic Development	Same	Contracts with universities, colleges, municipalities, not-for-profit organizations	3,000,000	2000
	521	Health	Approval by Budget Director & Assembly Speaker, plus Assembly Resolution	School based health clinics	3,823,000	New
	523 602 607 610	Same	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Recommendations of Senate Task Force on Lyme and Tick-borne Diseases	1,000,000 270,000 210,000 230,000	New 2017 2016 2015
	524 602 607 609	Same	Same	Women's health services	5,000,000 195,000 204,000 250,000	New 2017 2016 2015

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	527	Same	Same	Public health improvement initiatives	900,000	New
	806	Labor	Approval by Budget Director & Assembly Speaker, plus Assembly Resolution	Substance use disorder programs	1,500,000	New
	889	Parks	Budget Director in Consultation with Senate Majority Leader	Heritage trail projects	58,900	2005
	899 899	Same	List submitted by Secretary of Assembly Ways & Means Committee	Grants or contracts to certain municipalities and not-for-profit organizations	1,771,000 1,890,500	2002 2000
	932	State	Same	Same	3,969,615 3,225,842	2002 2000
	978	Transportation	Same	Same	1,514,548	2000
	981	UDC	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Military base retention	3,000,000	New
	998 998	Same	List submitted by Secretary of Assembly Ways & Means Committee	Grants or contracts to certain municipalities and not-for-profit organizations	1,394,000 934,178	2002 2000
	1020	Community Projects Fund	List submitted by Secretary of Senate Finance Committee	Grants or contracts with certain not-for-profit agencies, universities, colleges, school districts, corporations, municipalities	74,375,000	2009
	1020	Same	List submitted by Secretary of Assembly Ways & Means Committee	Same	9,375,000	2009
	1020 1021 1021 1021	Same	MOU – Budget Director and Secretaries of Senate Finance and Assembly Ways & Means Committees	Same	56,000,000 44,000,000 25,000,000 24,000,000	2006 2005 2004 2003
	1022	Community Service Provider Assistance Program	MOU – Governor, Assembly Speaker, Senate Majority Leader	Grants to certain not-for-profit organizations, municipalities	1,900,000	2001
	1023	Higher Education Opportunity Program	Budget Director in consultation with Chair of Assembly Ways & Means Committee	SEEK program, educational opportunity program, etc.	1,121,000	2011



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Capital Projects Budget S7504D/A9504D (listed as Aid to Localities)	969	Education	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Additional grants to certain school districts, public libraries and not-for-profit institutions	40,000,000	New
	993				17,848,900	New
	1014				40,000,000	2017
	1025				8,072,000	2017
	1027				2,000	2016
	1031				4,065,000	2016
	1035				959,000	2015
	1039				347,000	2014
	1044				636,000	2013
	1047				815,000	2012
	1076				94,000	2011
	1083				102,000	2006
	970	Same	Approval by Budget Director & Assembly Speaker, plus Assembly Resolution	Same	40,000,000	New
	1025				590,000	2017
	1035				41,000	2015
	1039				11,403,000	2014
	1047				9,121,000	2012
	1079				1,879,000	2009

**Table 4: Economic Development and Infrastructure Funds Added in FY 2019 Enacted Budget**

Budget	Page	Agency	Description	Amount	Year
Capital Projects S7503D/A9503D	883	UDC	Transformative Investment Program	7,710,000 (added to existing \$150,000,000)	2015
	928	State and Municipal Facilities Program	Construction/improvement of facilities; purchase of assets, economic development projects, etc. by eligible entities	385,000,000	New
	930			90,000,000	New