

Spending in the Shadows

**NONSPECIFIC FUNDING IN THE FY 2019 NEW YORK STATE
EXECUTIVE BUDGET**

MARCH 2018

WRITTEN AND PUBLISHED BY CITIZENS UNION



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Executive Summary

Governor Cuomo’s Fiscal Year 2019 Executive Budget, like other budget bills and enacted budgets, is readily accessible to the public and in many cases outlines narrow instructions for how State funds should be spent. Yet, a significant portion of funds are set out in the budget with no real criteria for spending, no indication of who controls funding decisions, and little reporting

requirements to tell whether money has been well spent – or spent at all. This nonspecific funding invites misuse and corruption and raises serious concerns about the integrity of State spending.

Spending in the Shadows: Nonspecific Funding in the FY 2019 New York State Executive Budget examines some of the State funds in this year's Executive Budget that have no specific purpose or oversight. The report shows that the Governor's proposed budget contains at least \$11.7 billion in these opaque funds.

Key Findings

The \$11.7 billion identified in the report is comprised of:

- \$2.1 billion in which individual elected officials control spending decisions with little constraint or public oversight; and
- \$9.6 billion for economic development or infrastructure that also lack spending criteria and accountability.

In the case of the \$2.1 billion left to the discretion of individual elected officials, spending decisions can be made with virtually no oversight because they are made outside the budget process. With the \$9.6 billion for economic development and infrastructure, the budget contains no specific instructions for spending, no indication of who controls funding decisions, and few reporting requirements.

The report also identifies other types of government funding outside the budget that lack sufficient oversight. These include revenue from public authorities, monetary settlement proceeds, emergency response funds, and tax incentives. They amount to billions of dollars that, though they are not budget appropriations, clearly can have a major fiscal impact on the State.

Implications

Without spending criteria or accountability mechanisms, budget items have little clarity or finality. For these funds, the public cannot tell which legislator(s) sought the expenditure, whether there are conflicts of interest, what the final costs of the funded project is, if the project served the purpose for which funds were sought, and even whether it was completed.

For economic development programs there are metrics that can be used to determine the effectiveness of the funded projects, like the number of jobs they created or retained and the amount of private investment they triggered. If information like that is not collected and made public, New Yorkers have no way of knowing if the nearly \$10 billion in economic development and infrastructure funding is being spent fairly and effectively.

This lack of accountability enables corruption. Without narrow constraints and oversight mechanisms set out publicly in the budget, State money can be spent at the discretion of individual officials for personal gain, outside the public interest. This is not a speculative outcome; the two most recent legislative leaders, Dean Skelos and Sheldon Silver, were both indicted on corruption charges related to their control over opaque State funds. The recent conviction of Joseph Percoco, a former top aide to the governor, also related to his involvement in State spending decisions.

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.¹ 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,

¹ 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.²

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

SPENDING IN THE SHADOWS

NONSPECIFIC FUNDING IN THE FY 2019 NEW YORK STATE EXECUTIVE BUDGET

Introduction

Governor Cuomo's Executive Budget for fiscal year 2019 contains over \$2.1 billion in nonspecific lump sum "pots" for which spending decisions are not outlined in the budget. Instead, language in the budget leaves these decisions to a determination by one or more particular elected officials at a later date, generally outside the public view. In addition, the budget includes nearly \$9.6 billion in appropriations for general economic development or infrastructure purposes that are also nonspecific. While these latter funds do not identify specific elected officials with the discretion to make spending decisions, they lack criteria for spending and means of accountability. Thus, at least \$11.7 billion in appropriations and reappropriations in the FY 2019 Executive Budget are in these opaque funds.

These sums do not include other funding categories – all in the billions of dollars – that are also available to spend without sufficient oversight, including off-budget sources like public authorities and settlement proceeds, as well as large budget items related to coping with past and future disasters. Also not included in the tally are tax incentives, which, while not budget items, nevertheless have a significant impact on State finances.

The lack of criteria and accountability does a disservice to New Yorkers, who cannot determine how billions of dollars of state funds are spent. There is no effective way of tracing how funding decisions are made and for what specific purposes. In addition, there is no way of discerning the results of these funding decisions. How can the public know if these billions of dollars are being spent effectively and appropriately?

The availability of billions of public dollars without sufficient accountability also provides opportunities for corruption. Thirty-four state legislators have left office since 2000 due to corruption or ethical lapses, and another was recently indicted. Each month during the first half of 2018 will feature a trial of one or more government officials on corruption-related charges. Even beyond

criminal activity, the easy availability of these funds can lead to their use for improper purposes, such as rewarding contracts to individuals and entities in exchange for political contributions, or as a favor to friends and family. Such behavior runs through the indictments for both the current and pending criminal trials of elected and other high-ranking officials. It is no wonder that surveys repeatedly show the public lacks confidence in New York State government.

The Governor and Legislature have the ability to build robust reporting criteria and safeguards into spending decisions. Indeed each entity has proposed such safeguards in past budget proposals, but none were adopted. Citizens Union urges the adoption of a series of recommendations (see pages 17-18) to provide more accountability and to limit contributions by persons and entities doing business with the State.

Discussion

For the last five years, Citizens Union has examined both the Executive Budget and Enacted Budget to identify lump sum appropriations³ that lack specificity or accountability. Since 2016, our *Spending in the Shadows* reports have included an analysis of funds allocated for economic development and infrastructure programs that also lack adequate criteria or accountability. The Executive Budget for FY 2019, submitted by the Governor in January, continues the extensive use of such appropriations.

Nonspecific Lump Sum Appropriations

The FY 2019 Executive Budget sets out \$2.11 billion in appropriations in which one or more elected officials are identified as having the responsibility to decide how the funds should be spent. Table 1 (see page 19) shows the breakdown in appropriations between the Aid to Localities Budget⁴ and the Capital Budget.⁵ Of the \$2.11 billion:

³ Appropriations are authorizations to spend. Many of these authorized expenditures, particularly reappropriations, are not included in the Executive Budget financial plan for spending in FY 2019, though any appropriation can be spent during the fiscal year.

⁴ S.7503/A.9503.

⁵ S.7504/A.9504.

- Approximately \$723 million of these appropriations are spent pursuant to memoranda of understanding (MOU) among the Governor, the Senate Majority Leader and the Assembly Speaker⁶;
- \$522 million is subject to decisions by either legislative leaders or resolutions passed by one house of the Legislature; and
- \$778 million is subject to decisions made by the Governor and either the SUNY or CUNY Chancellor.

The balance is apportioned through other mechanisms. A breakdown of the mechanisms used is in Table 2 (see page 19) and a full list of the budget items is in Table 3 (see page 20).

All of these funds are reappropriations, meaning line items made in prior years' budgets that have not been fully spent. No new spending pots were included in the FY 2019 Executive Budget, similar to last year's Executive Budget. However, additional pots were added in the FY 2018 Enacted Budget, which passed after negotiations between the Governor and legislative leaders. The additional pots included over \$600 million in additional lump sum funding, subject to decisions by elected officials without spending criteria and accountability. Such additions are not unusual and therefore the upcoming Enacted Budget should be carefully reviewed to see if more such appropriations are added.

The \$2.11 billion appropriated this year is \$2.2 billion less than in last year's Executive Budget. Virtually the entire difference can be explained by the inclusion last year of nearly \$2 billion in appropriations for a multi-year housing program, which the FY 2018 Executive Budget showed as subject to an MOU among the Governor, Senate Majority Leader and Assembly Speaker (this funding was originally included in the FY 2017 Enacted Budget). By the time the FY 2018 Enacted Budget was passed, the Governor and legislative leaders had reached an agreement on the allocation of the funds, allowing appropriations to be itemized in the Enacted Budget.

The balance of the difference between last year's and this year's total generally consists of funds having been spent from certain reappropriations over the past fiscal year, thus leaving less money to be reappropriated in this year's budget.

⁶ Different budget appropriations and reappropriations refer to the Temporary President of the Senate and the Majority Leader of the Senate. The same individual holds both titles and in this report we use the term "Majority Leader".

The \$2.11 billion tally of funds under control of one or more elected officials only includes appropriations where specific officials are mentioned in the appropriation language.⁷ However, other funds in the budget are spent in accordance with the wishes of particular legislators or members of the Executive Branch. For example, much if not all of the State and Municipal Facilities Fund, which consists of \$1.6 billion in reappropriations, is spent on projects requested by specific legislators. A list of projects is shown on the website of the Dormitory Authority of the State of New York,⁸ as that agency has the ultimate responsibility for disbursing the funds, but the requesting legislator is not listed and there is no explanation of whether the projects were completed and what the results were. These funds have been the subject of news reports as “pork” programs for legislators.⁹ We have included the State and Municipal Facilities Fund in the section of this report on Economic Development and Infrastructure Funding (below).

Economic Development and Infrastructure Funding

The FY 2019 Executive Budget includes \$9.64 billion in appropriations for economic development and infrastructure programs, broadly defined and without criteria for spending and accountability. Approximately \$1.3 billion is in new spending and the balance consists of reappropriations from prior years. Of the \$9.64 billion, \$9.4 billion is for projects included in the Capital Budget, and \$220 million is listed in the Aid to Localities Budget as “services and expenses” related to various agencies and initiatives (see Table 1). A list of the appropriations is in Table 4 (see page 24).

The amount of economic development and infrastructure funding in this year’s Executive Budget is about the same as it was in last year’s Executive Budget. New appropriations added to the budget were offset by the spending of funds from prior appropriations. In FY 2018, the new appropriation Citizens Union identified consisted of \$385 million added to the State and Municipal Facilities Fund during the budget negotiations and included in the Enacted Budget.

⁷ We also included appropriations for which the Governor, in last year’s Executive Budget, included language requiring funding requests from legislators under those appropriations to include specific information on the project, and conflict of interest disclosure (for more information on this provision see page 6). Inclusion of this language suggests these funds were available for individual legislators’ purposes even if the text did not state this explicitly. Such funds are only a small percentage of the total.

⁸ <https://www.dasny.org/sites/default/files/inline-files/SAM%20Posting%20Report%2022-18.pdf>.

⁹ See, e.g., Vielkind, *Capital projects bill includes new earmarking funds*, PoliticoNewYork, April 7, 2017.

This list of funds does not include appropriations for a specific economic development or infrastructure purpose, such as the Javits Center renovation, as the list focuses on allocations that appear to be usable for multiple purposes under a particular theme. Additionally, we may not have identified all funds that can be used for economic development or infrastructure purposes, and we do not include funds in other areas that may be used for broad purposes and lack sufficient spending criteria or accountability.

While there are many areas of the budget where funding pots are set forth with little in the way of criteria or accountability, we have chosen to focus on economic development and infrastructure funding. These types of economic development and infrastructure expenditures are both among the highest profile funds the government distributes and have figured in indictments and convictions of high-level officials. For example, the trial and conviction of Joseph Percoco, a former top aide to Governor Andrew Cuomo, and the guilty pleas related to that trial involved charges of a kickback scheme relating to awarding contracts from the “Buffalo Billions” funds. The indictment also shows potential contractors making contributions to the Governor’s campaign, the timing of which could not be coincidental.¹⁰

Economic development and infrastructure funds have also been used to provide funds for projects designated by individual elected officials, although there is no wording in the appropriations indicating that this is the case. The State and Municipal Facilities Fund (discussed on page 9) is a major source for such projects. Another example is the Transformative Investment Program (TIF), of which \$150 million is not allocated to any specific project. This appropriation is to be devoted to “regionally significant economic development initiatives that create or retain private sector jobs.”¹¹ The TIF was placed in the budget in 2015 at the initiative of then-Senate Majority Leader Dean Skelos, and the appropriation includes no requirement as to how it is to be spent. Indeed, there was a news report that funding for a project originally slated to be from the TIF was withdrawn from another discretionary pot when the Senate complained that the TIF was to be set aside for other projects, with the Senate Majority involved in the decision-making.

¹⁰ Sealed Complaint, U.S. v. Percoco, September 20, 2016.

¹¹ S.7504/A.9504, p. 725-6.

Other Funds Susceptible to Influence by Elected Officials

Public Authorities

Public authorities operate with few of the limits imposed on state agencies, and over the last several decades use of authorities and their fiscal power have increased greatly. The Governor generally appoints their boards and board chairs. According to a January 2017 report by the State Comptroller, in the reporting period covered by the report the 324 identified state-level authorities and subsidiaries generated \$44.8 billion and had \$42.9 billion in expenditures.¹²

A number of authorities, such as the New York Power Authority (NYPA), the New York State Energy Research and Development Authority and the Thruway Authority, have been used to bring in revenues and cover expenditures in ways that stretch the bounds of what the authority was created to do. As one example, operation of New York's canals was transferred from the Thruway Authority to the NYPA even though the connection between canals and the mission of the NYPA is tenuous at best.

Settlement Proceeds

Since FY 2015, New York has received \$10.7 billion in monetary settlements from financial institutions and Volkswagen.¹³ According to the Division of the Budget, all these funds have been allocated to projects. However, a significant concern is that much of those funds were placed in the Dedicated Infrastructure Investment Fund (DIIF), created by 2014 legislation, which has excessively broad spending criteria.¹⁴ Section 93-B of the State Finance Law, which created the DIIF, permits DIIF funds to be used for "projects, works, activities or purposes necessary to support state-wide investments as appropriated by the Legislature." It also provides that "nothing contained in this section shall be construed to limit in any way the projects, works, activities or purposes that can be financed from this account, including but not limited to loans to public corporations or under terms approved by the director of the budget." The substantial amount of money that has accrued to New

¹² NYS Office of the Comptroller, *Public Authorities by the Numbers*, January 2017, p. 1, 8.

¹³ NYS Division of the Budget, *FY 2019 Executive Budget Financial Plan, Updated for Governor's Amendments and Forecast Revisions*, February, 2018 p. 44.

¹⁴ NYS Division of the Budget, *FY 2017 Enacted Budget Financial Plan*, (2016), pp. 35-36.

York through these settlements, plus the nonspecific spending criteria of the DIIF, raise serious issues regarding how spending decisions are made regarding these funds and how New York's leaders can be held accountable for those decisions.¹⁵

Public Safety and Emergency Response

The FY 2018 State Operations Budget includes an \$8 billion reappropriation to address the impact of Superstorm Sandy and to mitigate the impact of future natural or man-made disasters. These payments can go to local governments, businesses and individuals, among other recipients. While at least most of the money comes from federal sources, which may include instructions on how the funds are to be spent, there are no criteria set forth in the State budget for making spending decisions. Furthermore, the reporting provision attached to these funds does not provide for any project-by-project accounting of their spending.

Tax Incentives

In addition to providing grants and loans, the State government can provide tax incentives to businesses. An analysis of tax incentives is beyond the scope of this report, but it should be noted that in FY 2017 alone nearly \$667 million in tax incentives were awarded by the Empire State Development Corporation to economic development programs.¹⁶ These sums are not budget appropriations but clearly can have a major fiscal impact on the State.

What is the Problem?

Citizens Union is not contesting the value of allocating funds to important State priorities. What concerns us is how the funding decisions are being made and how the results of the spending are tracked and reported to the public.

The categories of funds discussed above are major examples of appropriations with little specificity. When the specific funding decisions are

¹⁵ See NYS Office of the Comptroller, *Report on the State Fiscal Year 2015-16 Enacted Budget*, April 2016, pp 11, 24-27.

¹⁶ Empire State Development, *Annual Report 2017*, p. 91.

left to one or more elected officials, the budget lacks important specificity and finality. For example, instead of knowing how a funding pot will be allocated, a memorandum of understanding outlining the funding distribution is prepared at some future time in a manner not disclosed to the public. Spending may be arranged in consultation with the Senate or Assembly leader through some mechanism other than through the standard legislative process.

Budget bills and enacted budgets are readily accessible to the public, and in many cases include specific narrow instructions as to how the funds should be spent. The mechanisms described in this report lack such limitations. In addition, the public cannot identify which legislator(s) sought the expenditure, whether there are conflicts of interest, what the final cost of the funded projects is, and whether the project was completed and served the purpose for which the funds were sought.

The large economic development and infrastructure programs funded in the budget raise similar concerns. There are no real criteria for distribution, no indication of how funding decisions are to be made, and no accountability as to whether the funds have been spent. For economic development programs, there are measures that can be used to determine the effectiveness of these projects, including the number of jobs created or retained and the amount of private investment triggered by the project. Without information that is tallied or made public, New Yorkers do not have any way of knowing if the nearly \$10 billion in economic development and infrastructure funding is being spent effectively.

Beyond the lack of accountability to the public, making funding decisions out of public view invites corruption. The obvious concern is that funds are provided to entities in exchange for bribes and kickbacks. In the recent trial of Joseph Percoco, prosecutors showed that kickbacks were given in exchange for awarding contracts under one or more of the broad economic development funds in the budget. Short of such blatantly criminal conduct, funds could still be given to companies whose principals are relatives or friends of the decision-maker, or to entities that in turn make contributions to an elected official involved in the decision-making.

In any of these situations, New Yorkers would be right to question whether funding decisions are made in the public interest. With over \$11 billion at stake, these become very big questions. The Percoco trial included evidence and testimony of how political contributions play an integral role in government decision-making. Additional corruption trials in New York are scheduled to begin every month from through June 2018. Temptations are

great and public protection is weak. It is unsurprising 93% of New Yorkers surveyed in a 2016 Siena poll said corruption is a serious problem in New York.¹⁷

What Can Be Done?

The Governor and Legislature are capable of providing great specificity as to how funding decisions are made and how to report specific results of spending. Examples can be found throughout the Executive Budget. For example, detailed criteria are set forth for spending on various educational programs;¹⁸ and the annual reporting requirements for the State's multi-year housing program include project-by-project information.¹⁹ More such specificity should be included for the funds we are addressing. There are hundreds of references in the Executive Budget bills to reports and other spending information that must be filed with the Chairs of the Senate Finance and Assembly Ways and Means Committees, but none of this information is accessible to the public.

The Legislature and Governor have also instituted reporting requirements for some economic development funds.²⁰ However, most of the major funds we have listed in Table 4 (page 24) have no reporting requirement and, where they do exist, almost no reporting requirements make clear that the reports are for public view. In addition, according to a report by the State Comptroller's office, many of these reports have not been prepared.²¹ There are a number of reports on the Empire State Development website,²² some of which provide project-specific information. However, these do not link budget appropriations with specific projects, and do not cover the wide range of projects and programs that are reflected in budget appropriations.

When legislators request funding for a project, they should be required to disclose who is requesting the money and for what project. There should also

¹⁷ <https://www.siena.edu/news-events/article/passing-new-laws-to-address-corruption-in-state-government-is-voters-top-en>.

¹⁸ For example, see S.7503/A.9503 (Aid to Localities Budget), page 213.

¹⁹ S.7504/A.9504 (Capital Budget), page 309.

²⁰ See, e.g., UDC Act Section 16-s(6) (re: upstate agricultural economic development fund and healthy food / healthy communities initiative).

²¹ See NYS Office of the Comptroller, *Compliance with Outcome Reporting Requirements of Empire State Development*, May 2017.

²² See, e.g., Empire State Development, *2016 Annual Jobs Report on ESD's Loan and Grant Programs*, December 22, 2017.

be required a detailed description of the project, project cost, and what is to be accomplished. The legislator should be required to disclose any conflicts of interest, such as if the legislator or a family member would stand to benefit from the project. A final report of the project, including what was accomplished, should be both expected and delivered in a timely fashion.

When funding is requested for an economic development or infrastructure project, there should be disclosure of who is getting the funding and from what budget appropriation. The requesting official should disclose any conflicts of interest. There should be detailed reporting as to the total cost of the project and the benefits the project will generate. And there should be reporting during, and at the conclusion of, the project, including the results and any appropriate metrics, such as jobs created and retained.

These recommendations are not news to the Legislature and Governor. Indeed, in last year's Executive Budget, the Governor included a provision in every funding appropriation that involved a subsequent decision for one or more legislators that there be a disclosure statement regarding the project and possible conflicts of interest. Each legislator would have to specify in writing details about the project to be funded; that the proposed use is lawful; that the legislator will gain no financial interest or have a conflict of interest with regard to providing these funds; and that specific information about the request and the intended recipient be publicly posted on a legislative website for 30 days prior to the awarding of the grant or contract in question.

In their one-house budget proposals passed during the budget process last year, the Senate and Assembly rejected the Governor's conflict-of-interest language, but each sought to provide more accountability for the awarding of economic development funds with detailed reporting requirements for at least some economic development programs.

Neither the Governor's nor the one-house budget provisions were included in the Enacted Budget. This year the Governor did not even include the disclosure provisions in the Executive Budget, though both the Senate and Assembly budget proposals included some useful, but not sufficient, reporting requirements.²³

The only public accountability we were able to identify in last year's Enacted Budget remotely like those proposed in the one-house budget bills above was in Part UUU of the Revenue Bill (S2009-C/A3009-C), which requires the

²³ Senate Resolution 4168 (response to Article VII proposal S7508B, Parts KKK, LLLL, NNNN); Assembly bill A9508B (Parts JJ, KK, NN).

Department of Economic Development to prepare an “annual comprehensive economic development report,” to be posted on the department’s website. However, this report provides only aggregate information, not the kind of project-by-project information on spending and outcomes, or potential conflicts of interest, to which the public is entitled.²⁴ Recently the first such report was issued.²⁵ While it provided more specificity regarding projects than strictly required by law, it does not provide project-by-project information as to what specific entities received what funds from what budget lines, and what the results were.

The Legislature and Governor have demonstrated that they can include detailed reporting language for budget appropriations. They should include such provisions in the Enacted Budget or, better yet, in the State Finance Law where they would achieve more permanence.

This year, as last year, Governor Cuomo submitted legislation accompanying the budget that would bar persons or entities seeking a State contract from making contributions to an official in charge of soliciting, evaluating responses, or awarding the contract (or any candidate for that position).²⁶ If the entity receives the contract, the contribution bar would last for six months after the contract is awarded. The concept of barring or limiting contributions to candidates from those doing business with the State is important to include in New York law. With regard to the Governor’s proposal, however, the six-month timeframe may be somewhat short and the bill does not bar principals of entities, or their spouses and immediate family, from making contributions.

Perhaps of more importance, it is not clear for many contracts issued through the Executive Branch, or particularly a public authority, which “official” is awarding the contract. To the extent the law is interpreted as not applying to the Governor, who has the ultimate responsibility for all State contracts issued through the Executive Branch and appoints the heads of public authorities, the legislation would have little meaning. With regard to our concern about a narrow interpretation of this provision, we note the recent *New York Times* report of contributions made by persons receiving gubernatorial appointments. In this instance, the Governor’s narrow interpretation of the

²⁴ There was additional public disclosure provided in the Capital Budget appropriation of \$130 million for transportation infrastructure and facilities of regional and community importance (S.2004-D/A.3004-D, p. 616). This expenditure is to be made pursuant to plans provided by the Assembly Speaker and Senate Majority Leader and posted to the Department’s public-facing website. Again, there is no reporting requirement as to what is actually spent, by whom, and what the results were.

²⁵ Empire State Development, *Annual Report 2017*, February 2, 2018.

²⁶ FY 2019 New York State Executive Budget, Good Government and Ethics Reform Article VII Legislation, Part L.

executive order, to require only board appointments serving at the pleasure of the Governor to file financial disclosure reports to the Joint Commission on Public Ethics, would seem in conflict with the language of the order.²⁷

Recommendations for Reform

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 agencies.²⁸ 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
 - 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.** Project-by-project disclosure should:
 - a. be traceable by budget appropriation;
 - b. should be in a user-friendly format that is machine-readable and searchable, in order to permit the independent analysis of:
 - i. all MOUs, plans, resolutions and other agreements;

²⁷ New York Times, *Despite an Ethics Order, Cuomo Took \$890,000 From Appointees*, February 25, 2018, p. 1; *Cuomo Changes Rationale for Accepting His Appointees' Donations*, March 2, 2018.

²⁸ 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.

- 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 effective 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.²⁹

²⁹ See, e.g., NYC Campaign Finance Act, Section 3-702(18).

Appendix

Table 1: Lump Sum Funding Allocations in the FY 2019 Executive Budget

<i>Lump Sum Funding Allocations Controlled by One or More Elected Officials</i>	
	Reappropriations
Aid to Localities Budget	\$59,219,000
Capital Projects Budget	\$2,057,122,000
Total	\$2,116,341,000

<i>Economic Development and Infrastructure Funds</i>			
	New	Reappropriations	Total
Aid to Localities Budget	\$74,084,000	\$219,919,000	\$294,003,000
Capital Projects Budget	\$1,350,000,000	\$7,985,996,000	\$9,335,996,000
Total	\$1,424,084,000	\$8,205,915,000	\$9,629,999,000

Table 2: Mechanisms for Allocating Lump Sum Funds Controlled by One or More Elected Officials – FY 2019 Executive Budget

A.	INVOLVING LEGISLATIVE LEADERS	
	i. MOU between executive and legislative leaders	\$ 723,903,000
	ii. MOU between Senate Majority Leader and Assembly Speaker	7,574,000
	iii. Approval by Budget Director and Majority Leader, plus Senate resolution	109,596,000
	iv. Consultation with Senate Majority Leader	37,854,000
	v. MOU between Transportation Commissioner and Senate Task Force	6,122,000
	vi. Consultation with Assembly Speaker	1,617,000
	vii. Consultation with legislative leaders	10,000,000
	viii. Senate Majority Labor Initiative	123,000
	ix. Plans provided by Assembly Speaker and Senate Majority Leader	130,000,000
	x. Assembly involvement	165,801,000
	xi. Senate involvement	82,796,000
B.	Pursuant to plan developed by Attorney General	39,160,000
C.	Pursuant to plan developed by Governor and SUNY or CUNY Chancellor	778,075,000
D.	Funds to flow to organizations chosen by mayors of certain cities and Bronx Borough President	23,720,000
	TOTAL:	2,116,341,000

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Table 3: Budget Appropriations Listing One or More Elected Officials – FY 2019 Executive Budget

Budget Bill	Page	Agency	Approving Mechanism	Description	Amount	Original Year of Appropriation
Aid to Localities S9503/ A7503	57	Criminal Justice Services	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Law enforcement, anti-drug, and anti-violence	2,866,000	2017
	60				1,704,000	2016
	64				477,000	2015
	66				325,000	2014
	68				61,000	2013
	68				11,000	2012
	57	Same	Same	Domestic violence	1,609,000	2017
	60				513,000	2016
	63				98,000	2015
	66				88,000	2014
	68				4,000	2013
	57	Same	Same	Equipment and technical enhancements	720,000	2017
	62				229,000	2016
	64				146,000	2015
	64	Same	Same	Rape crisis centers	566,000	2015
	70	Same	Same	Drug violence, crime control	300,000	2017
	71				188,000	2016
	72				26,000	2015
	74				24,000	2014
	76	Same	Same	Domestic violence & veterans legal services	950,000	2017
	77				509,000	2016
	78				208,000	2015
	78				208,000	2014
	79				6,000	2013
	79				34,000	2012
	222	Environmental Conservation	Same	Invasive species	23,000	2015
	236	Family Assistance	Senate involvement	Community reinvestment program	473,000	2016
	672	Labor	Senate Majority Labor Initiatives	Training, etc.	57,000	2006
	672				66,000	2005
	677	Law	Plan developed by Attorney General	Settlement proceeds for foreclosure prevention, etc.	39,160,000	2014
	714	Mental Health	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Joseph P. Dwyer peer-to-peer pilot program	77,000	2016
	800	UDC	Same	Military base retention	2,334,000	2015
	837	Regional Economic Development Program	MOU – Governor, Senate Majority Leader, Assembly Speaker	Regional Economic Development Program	5,159,000	2005
Capital S7504/ A9504	27	CUNY	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Alterations & improvements	67,000,000	2014
	40	Same	Consultation with Senate Majority Leader	Alterations & improvements	28,500,000	2006

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	204 204 204 205	Environmental Conservation	MOU – Governor, Senate Majority Leader, Assembly Speaker	Brownfield cleanup	15,000,000 15,000,000 6,340,000 8,371,000	2006 2005 2004 2003
	441	State Police	Spending plan approved by legislative leaders	Records management system	10,000,000	2014
	465	SUNY	Approval by Budget Director & Senate Majority Leader, plus Senate Resolution	Improvements to existing facilities	28,292,000	2014
	466 468 471 473 476 486 498	Same	Projects identified & approved by Governor & SUNY Chancellor	Alterations & improvements ³⁰	16,500,000 16,500,000 16,500,000 15,377,000 14,913,000 5,000,000 17,289,000	2012 2011 2010 2009 2008 2007 2004
	479	Same	Same	Emerging Tech. & Entrepreneurial Complex	88,000,000	2013
	479	Same	Same	Medical school & biomedical science facility	11,047,000	2012
	480	Same	Same	Albany Emerging Tech. & Entrepreneurial Complex	42,000,000	2008
	559	Transportation	MOU – Governor, Senate Majority Leader, Assembly Speaker	Stewart Airport	1,500,000	1999
	606	Same	MOU – Commissioner & Senate Task Force	Rail & highway crossings	6,122,000	2006
	619	Same	MOU – Governor, Senate Majority Leader, Assembly Speaker	Multi-modal projects	33,175,000	2000
	625	Same	Plans developed by Senate Majority Leader & Assembly Speaker	Transportation infrastructure of regional & community importance	130,000,000	2017
	642 644	Same	MOU – Senate Majority Leader & Assembly Speaker	Highway, bridge & rail freight projects	6,000,000 1,574,000	2002 1999
	645 646	Same	MOU – Governor, Senate Majority Leader, Assembly Speaker	Multi-modal projects	152,500,000 13,821,000	2006 2005
	657	Same	Same	Highway & roads	3,467,000	2005

³⁰ The amounts listed for each year are the amount of appropriations set aside for university-wide projects, which are to be allocated subject to a plan developed by the Governor and SUNY Chancellor. This amount is part of a larger allocation, but as we cannot tell from the budget what funds are left we included the full university-wide allocation amount each year except that we lowered the amount listed to the amount left in the total appropriation for the years 2009 and 2008.

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699	Same	Same	Rail facilities	4,137,000	1996
702	Same	Same	Rebuild & Renew New York – aviation	1,486,000	2005
712	Same	Same	Rebuild & Renew New York – rail & ports	3,406,000	2005
717	UDC	Projects identified & approved by Governor & SUNY Chancellor	NY SUNY 2020 challenge grant	55,000,000	2017
720				55,000,000	2016
723				55,000,000	2015
724				45,590,000	2014
724				30,358,000	2013
725				29,221,000	2012
717	Same	Projects identified & approved by Governor & CUNY Chancellor	NY CUNY 2020 challenge grant	55,000,000	2017
720				55,000,000	2016
724				55,000,000	2015
724				55,000,000	2014
725				44,780,000	2013
729	Same	Assembly involvement	NYS Capital Assistance Program	165,801,000	2008
730	Same	Senate involvement	NYS Economic Development Assistance Program	82,323,000	2008
733	Same	Consultation with Assembly Speaker	Economic development & other projects ³¹	1,617,000	2006
733	Same	Consultation with Senate Majority Leader	Same ²	9,354,000	2006
741	Community Enhancement	MOU – Governor, Senate Majority Leader, Assembly Speaker	Community enhancement facilities	44,323,000	1997
742	Empire Opportunity Fund, etc.	Same	Empire Opportunity Fund, Restore NY, etc.	69,307,000	2004
742	Centers of Excellence	Same	Centers of Excellence	104,291,000	2002
744	NYS Economic Development Program	Same	NYS Economic Development Program	63,543,000	2005
744				12,468,000	2004
745	NYS Technology & Development Program	Same	NYS Technology & Economic Development Program	75,456,000	2005
753	Regional Economic Development Program	Same	Regional Economic Development Program	13,049,000	2005

³¹ The percent of the total appropriation to be spent pursuant to consultation with the Assembly Speaker and the Senate Majority Leader was 12.7% of the total appropriation. As that appropriation has been much reduced over the years and we cannot tell how much is left of the Speaker's and Majority Leader's shares, the appropriation we listed is 12.7% of the amount remaining in the total appropriation.

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	757	Empire State Poverty Reduction	Organizations selected by mayors of covered cities & Bronx Borough President	Empire State Poverty Reduction Initiatives	23,720,000	2016
	768	Strategic Investment Program	MOU – Governor, Senate Majority Leader, Assembly Speaker	Strategic Investment Program	78,104,000	2000

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Table 4: Economic Development and Infrastructure Funds – FY 2019 Executive Budget

Budget	Page	Agency	Description	Amount	Year
Aid to Localities S7503/A9503	795	UDC	Empire State Economic Development Fund – fees & expenses	26,180,000	New
	797			26,180,000	2017
	799			31,180,000	2016
	800			29,542,000	2015
	802			11,254,000	2014
	803			3,778,000	2013
	803			13,040,000	2012
	804			60,000	2010
	795	Same	Urban & community development – services & expenses	3,404,000	New
	797			3,404,000	2017
	799			3,404,000	2016
	800			3,404,000	2015
	802			3,404,000	2014
	803			3,404,000	2013
	803			3,555,000	2012
	804			448,000	2011
	804	127,000	2010		
	795	Same	Economic development initiatives – services & expenses	44,500,000	New
	797			39,662,000	2017
	803	Same	Jobs Now program – services & expenses	16,200,000	2012
	807			15,113,000	2006
	808			12,760,000	2005
Capital S7504/A9504	510	State	Downtown revitalization	100,000,000	New
	511			100,000,000	2017
	715	UDC	NY Works	200,000,000	New
	717			193,002,000	2017
	720			167,863,000	2016
	730			20,000,000	2015
	731			24,448,000	2012
	715	Same	Regional Economic Development Initiatives	150,000,000	New
	718			150,000,000	2017
	721			149,400,000	2016
	731			140,365,000	2015
	731			120,669,000	2014
	731			102,624,000	2013
	732			69,925,000	2012
	728			61,403,000	2011
	716	Same	Life sciences	600,000,000	New
	719			148,863,000	2017
	716	Same	High tech innovation	300,000,000	New
	717	Same	NY power electronics manufacturing consortium	10,000,000	2017
	718	Same	Cultural, arts fund to enhance business development & tourism	10,000,000	2017
	718	Same	Restore NY Communities	70,000,000	2017
	732			75,435,000	2016
	719	Same	High tech manufacturing – Chautauqua & Erie	242,974,000	2016
	719	Same	Economic development at Nano Utica	520,223,000	2016
	721	Same	Additional upstate revitalization	30,000,000	2016
	722	Same	Downstate Revitalization Fund	11,642,000	2008
	723	Same	NYS economic & community development program	4,059,000	2008

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	723	Same	Empire State Economic Development Fund	12,000,000	2013
	723			16,439,000	2012
	723	Same	Economic Transformation Program	32,000,000	2014
	728			17,561,000	2011
	725	Same	Nano Utica	120,000,000	2014
	725	Same	Onondaga revitalization projects	30,000,000	2014
	725	Same	Transformative Investment Program ³²	150,000,000	2015
	726	Same	Upstate Agricultural Economic Development Fund	10,291,000	2008
	727	Same	Upstate Regional Blueprint Fund	14,146,000	2008
	728	Same	Buffalo Regional Innovation Cluster	399,000,000	2017
	728			251,246,000	2014
	730			1,064,000	2012
	729	Same	Administration of life sciences initiative	320,000,000	2017
	737	Same	Upstate Revitalization Initiative	1,320,760,000	2015
	756	NYS Special Infrastructure Account	Additional upstate revitalization initiative	170,000,000	2016
	756	Same	Economic development & infrastructure projects	85,000,000	2016
	759	Same	NY Broadband Initiative	491,176,000	2015
	760	Same	Thruway Stabilization Fund	290,373,000	2016
	761	Same	Transformative economic development projects	147,750,000	2015
	761	Same	Infrastructure improvements to support transportation	65,431,000	2015
	761	Same	Southern Tier agricultural industry enhancement	27,601,000	2015
	762	State & Municipal Facilities Program	State & Municipal Facilities Program	398,500,000	2017
	763			341,426,000	2016
	764			261,801,000	2015
	765			335,000,000	2014
	766			254,536,000	2013

³² The total appropriation for the Transformative Investment Program is \$400,000,000, but \$250,000,000 was allocated to specific projects, so we have listed only the balance of \$150,000,000, which is designated for “All other projects.”