

CITIZENS UNION OF THE CITY OF NEW YORK

**SPENDING IN THE SHADOWS:
DISCRETIONARY FUNDING IN THE NYS BUDGET**

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Citizens Union of the City of New York
299 Broadway, Suite 700 New York, NY 10007-1976
phone 212-227-0342 • fax 212-227-0345
Peter J.W. Sherwin, Chair • Dick Dadey, Executive Director
policy@citizensunion.org • www.citizensunion.org

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Original data for this report is available at <http://www.citizensunion.org>.

I. EXECUTIVE SUMMARY

In examining this year's \$135 billion state budget, Citizens Union uncovered an alarming number of discretionary funds that lack needed specificity and disclosure, including over \$3 billion in funding authorized to be spent this year through "lump sum" pots of money that allow budgetary decisions to be made after budget bills are passed. This lack of specificity hands over to our elected leaders the discretion to decide how the money is spent in the shadows, without sufficient transparency and public oversight.

New York State's budget process as a whole has long been regarded as too opaque with few details, lacking necessary transparency and accountability. Despite reforms made in 2007 to improve the budget process, the presence of large amounts of discretionary funds – items which elected leaders have direct control over and are often used to fund local non-profits organizations and other local projects funded throughout the state – raises serious questions about whether the state's budget process is serving the broader public interest and has sufficient public oversight. While discretionary funds often provide needed services, recent corruption scandals have demonstrated the need for greater transparency and accountability of these funds, including:

- Senator Malcolm Smith's promise to deliver multi-modal funds to a developer in exchange for ensuring his place on the New York City mayoral ballot;
- Former Senator Shirley Huntley's provision of funds to a fake organization for her own personal shopping sprees, which resulted in her resignation due to a felony charge;
- Assemblymember William Boyland's use of member items to promote his candidacy for office, through falsification of records, which resulted in his recent indictment; and
- Former Assemblymember Vito Lopez's funding to the Ridgewood Bushwick Senior Citizens Council, which was found by the New York City Department of Investigation to have falsified documents, double-billed the state, and increased his girlfriend's salary to \$659,591 from \$235,135, who was the executive director of the organization at the time.

In light of these instances of public corruption, Citizens Union examined two categories of discretionary funds in the FY 2013 – 2014 state budget to determine their scope:

1. **"lump sum"** pots of funds that are not sufficiently itemized when the budget is adopted; and
2. remaining member items funded through the **Community Projects Fund**.

The vast majority of this funding is distributed through Memorandums of Understanding (MoUs) and other agreements that are determined by our elected leaders behind closed doors and in the shadows after the state budget is passed, which are not made easily accessible for the public. These totaled the following:

- **"Lump Sum" Funds** – 71 pots of funds totaling \$3.3 billion in reappropriations set aside to be spent this year without being itemized in the FY 2013-14 budget bills, out of a total of \$9 billion that has been authorized over the lifetime of these funds; and
- **Community Projects Fund (Member Items)** – \$378 million in funding authorized for FY 2013-14 through reappropriations, \$343 million of which was not itemized in the state budget bills through 45 unallocated pots.

While not a new budgetary tool, lump sum appropriations appear to have been used like member items to allow lawmakers – particularly those in leadership positions – to direct funding to local projects after budget bills are passed, and without needed disclosure.

In light of these findings, Citizens Union calls upon the Moreland Commission to follow the money as it investigates lump sum funds, member items, and other discretionary aspects of the state budget. Citizens Union has shared its findings with the Moreland Commission, and urges it to:

1. Recommend policy changes regarding the approval of budget items to ensure needed itemization and disclosure to provide necessary transparency and public accountability in deciding which entities receive state funds; and
2. Fully analyze lump sum appropriations and remaining member items in the state budget, including their recipients and sponsors, to determine whether further investigative action is needed.

Citizens Union Recommendations

In order to improve transparency and accountability of lump sum appropriations, there should be increased disclosure and accountability of lump-sum appropriations and remaining Community Projects Fund items. Specifically:

1. **Lump-sum appropriations should disclose in the state budget the detailed purposes and criteria set forth for their distribution;**
2. **Additional, more specific information about lump-sum appropriations should be made available online in user-friendly formats, including the following:**
 - a. all MoU's, plans, resolutions and other agreements specifying their distribution;
 - b. funds distributed and their recipients; and
 - c. any remaining funds;
3. **There should be a time limit for the reappropriation of lump-sums in order to decrease slush funds and the use of such funds as "one-shot" budget gap fillers.** This is consistent with Governor's Cuomo's decision to veto many of these items in this year's state budget;
4. **Legislators' names should be listed with the itemized member items and any other projects they sponsor in budget appropriation bills before they are passed, as well as in other itemized listings in MoUs, plans or other documents detailing the distribution of lump sum appropriations; and**
5. **Resolutions passed providing details related to expenditures of lump sum appropriations in the budget should be required to age three days before being voted on, and be made easily available online.**

II. ACKNOWLEDGEMENTS

This report was written by Rachael Fauss, Policy and Research Manager, with writing and research assistance from policy interns Gus Bowe and Tyler Farrar. Editors include Dick Dadey, Executive Director; Alex Camarda, Director of Public Policy; and Michael Murphy, Communications and Public Affairs Manager.

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III. INTRODUCTION

New York State’s budget process is too opaque, lacks sufficient details about discretionary spending, and leaves too many large pots of state funds to be decided in agreements well after the state budget is adopted. This lack of transparency and insufficient itemizations leaves important decisions to a handful of legislative leaders on how to spend taxpayer dollars, without the necessary public oversight in place that ensure that these funds are well appropriated (authorized to be funded) and without undue political influence.

Citizens Union has analyzed the state’s budget process, as well as the shortcomings of budget reforms enacted in 2007 by the legislature and former Governor Eliot Spitzer, through releasing a comprehensive Issue Brief and Position Statement on Budget Reform in 2008, and follow-up report cards on the state budget process in 2009 and 2012.¹ Through these reports, we noted the problematic use of lump sum appropriations – pots of funds that are not itemized in the state budget, allowing details and recipients to be spelled out later – and the lack of sufficient transparency regarding “member items,” that may be itemized in the budget, but do not list their sponsors or satisfactorily detail their intended purposes. Through the use of Memorandums of Understanding (MoUs), legal agreements that detail administrative decisions made by elected leaders, details of spending are worked out after budget bills are passed, yet unlike budget bills, these MoUs are not routinely made available to the public.

These pots of funds have often been appropriated (authorized to be funded) in one budget year, but are not fully spent. This leaves stashes of cash left over that can be carried over and re-appropriated in future years, authorizing their continued spending until they are fully cashed out. These discretionary funds are often used for “pet projects” in local districts, such as for local non-profits, local governments such as school districts and local law enforcement officers, or other local capital improvements which are funded through state agencies. While many discretionary funds provide needed services that would otherwise not be funded, greater accountability and transparency is needed in the budget process to ensure that funds are being used appropriately and serve the broader public interest.

Citizens Union, in this report, analyzes two categories of discretionary funds:

- **“Lump Sum” Funds** – pots of money which grant lawmakers discretion to direct specific funding to non-profits, localities, and a range of specific programs or capital projects after the overall state budget is adopted; and
- **Community Projects Fund** – known as “member items” which are doled out by individual lawmakers to local governments and local non-profits.

This report provides detailed information about these two types of discretionary funds – lump sum appropriations and member items – including an inventory of such items in the fiscal year (FY)

¹ CU Issue Brief and Position Statement Available at:

http://www.citizensunion.org/www/cu/site/hosting/issuebriefs/2008ib_statebudgetreform.pdf

Report Cards available at: http://www.citizensunion.org/site_res_view_template.aspx?id=44c00241-f127-49c8-b019-f2d3d8cd1c41

2013 - 2014 New York State budget. Citizens Union believes that New Yorkers need a complete picture of where the state gets resources, how it spends those funds, and how well state activities achieve their public purposes in order to have full confidence in state government.

Member items and other discretionary funding pots have in the past too often been directed to groups or projects for political purposes, and have been linked to corruption scandals. For example, Senator Malcolm Smith of the Independent Democratic Caucus, agreed to steer Multi-Modal transportation funds to a developer for a road project in a scheme to gain access to the Republican ballot line for mayor in New York City. Smith himself said about the funds: “Multi-modal money is outside the budget and it’s always around.”²

Given the potential for discretionary funds to be used inappropriately, providing opportunities for corruption, and the general lack of transparency regarding their usage, Citizens Union provides a number of recommendations to improve transparency and accountability of state discretionary funds, which are provided in detail at the end of this report.

The original data for this report is available at <http://www.citizensunion.org>.

IV. DISCRETIONARY FUNDING HISTORY AND PRESENCE IN FY 2013-2014 BUDGET

A. LUMP SUM FUNDS

In a January 2006 report, former state Comptroller Alan Hevesi noted that over \$1 billion in the FY2005-06 New York State budget, including a \$200 million pot of member items, was divvied up through Memorandums of Understanding (MoUs) between the governor and legislative leaders.³ Citizens Union has examined lump sum appropriations in the FY2013-14 New York State Budget, and has found over \$3 billion in reappropriations that are to be distributed via MoUs or other agreements such as resolutions and plans by elected leaders – the governor, assembly and senate.⁴ These appropriations raise questions regarding how much of the state budget process has been deferred to decisions outside of the regular adoption process by the legislature.

As noted previously, reappropriations authorize the use of funds for projects that were added to previous budgets in prior years, but are not yet fully spent. It should be noted, however, that appropriations and reappropriations are not always backed by the revenue necessary to fund the projects.⁵ The table on the following page shows reappropriations that reflect the potential cost to taxpayers in the current fiscal year, as well as the initial appropriation amounts of the lump sum

² Dwyer, Jim. “Jumping from Party to Party to Bribery Charge.” New York Times. April 2, 2013. Available at: http://www.nytimes.com/2013/04/03/nyregion/malcolm-smith-accused-of-bribery-for-spot-on-mayoral-ballot.html?_r=0

³ Office of the State Comptroller. Available at: <http://www.osc.state.ny.us/reports/budget/fiscalreform.pdf>

⁴ Funding obtained from Aid to Localities Legislation, S.2604-E/A.3003-E of 2013: <http://open.nysenate.gov/legislation/bill/S2603E-2013> and Capital Budget Legislation, S.2604-E/A.3004-E <http://open.nysenate.gov/legislation/bill/A3004E-2013>

⁵ Vielkind, Jimmy. “Old ‘pork’ lives on in spending proposal.” April 1, 2013. Times Union. Available at: <http://www.timesunion.com/local/article/Old-pork-lives-on-in-spending-proposal-4398781.php>

See also <http://blog.timesunion.com/capitol/archives/183742/did-your-member-item-get-re-upped-in-the-budget/>

funds that have been carried over in multiple budget years, as provided in the Aid to Localities and Capital budget bills. Not included are items from the Community Projects Fund that are unallocated pots of funds.

Lump Sum Appropriations in the New York State FY 2013 -14 Budget Aid to Localities and Capital Budgets		
	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
Aid to Localities	\$301,535,236	\$67,952,900
Capital	\$9,366,286,000	\$3,301,081,000
GRAND TOTAL	\$9,667,821,236	\$3,369,033,900

Citizens Union limited its analysis of these funds to those that are distributed by elected leaders, narrowing these pots of funds to those determined by the Governor, Senate and Assembly. In most cases, legislative leadership or the governor determine the how these pots are spent through MoUs or other agreements, though in some instances these items are passed via resolutions by the legislature, allowing rank-and-file members the opportunity to vote on these items. Resolutions are not required to age for three days, however, and are difficult to track down via the legislative search tools provided by each house.⁶ Below is a table of funds that are influenced by the various branches. Please note that in some cases, the Governor, Senate and Assembly jointly determine the distribution of funds, so the tally below contains overlapping pots funds.

Total Funds Influenced - Lump Sum Appropriations in the New York State FY 2013 -14 Aid to Localities and Capital Budgets		
Branch	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
Governor	\$9,353,779,736	\$2,979,904,000
Senate	\$3,382,983,736	\$789,732,900
Assembly	\$3,146,067,236	\$753,364,000

Capital Budget Lump Sum Pots

The state’s capital budget contains the largest lump sum appropriations, totaling over \$3.3 billion in reappropriations for FY2013-14, with initial appropriations authorized in previous years’ budgets of over \$9.3 billion that has been carried over in multiple years.⁷ These pots of funds are not new, with some having first been allocated as early as 2000 and not having fully been spent to date. As stated previously, only included in this tally are items in which elected officials – the governor, assembly and senate – are directly involved in determining allocations. As such, items that are distributed via state agencies or commissions are not included, such as funding that is designated by budget bill language to be distributed by the Regional Economic Development Councils.

⁶ For examples of Resolutions passed by the legislature, please see the following:
<http://open.nysenate.gov/legislation/bill/R2680-2013> and <http://open.nysenate.gov/legislation/bill/R2681-2013>
⁷ Funding obtained from Capital Budget Legislation, S.2604-E/A.3004-E <http://open.nysenate.gov/legislation/bill/A3004E-2013>

Capital funding is often provided for upgrades to state government facilities, which while is discretionary in terms of where the funds are spent, is less inherently problematic than funding that is provided outside of government given that there are greater controls over the spending of such funds within state agencies. Capital funds are often provided to public universities through the State University of New York (SUNY) and City University of New York (CUNY), as well as for local transportation upgrades and economic development initiatives. A summary of these capital funding lump sum appropriations by agency is provided below.

Lump Sum Appropriations by Agency FY2013-14 Enacted Budget, Capital Budget Bill		
Agency Name	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
CUNY Senior Colleges	\$100,500,000	\$0
Department of Environmental Conservation	\$60,000,000	\$50,401,000
Department of Transportation	\$1,333,625,000	\$318,113,000
Miscellaneous - All State Departments and Agencies	\$2,531,675,000	\$814,039,000
New York State Urban Development Corporation (Empire State Development Corporation)	\$254,386,000	\$120,715,000
SUNY	\$5,086,100,000	\$1,997,813,000
Grand Total	\$9,366,286,000	\$3,301,081,000

These grants may be provided under a particular capital program, but still leave discretion over the specific projects to be funded, for example for the Regional Aviation Fund: “For payment of the costs of capital projects as set forth in a memorandum of understanding among the governor, the majority leader of the senate, and the speaker of the assembly.”

It should be noted, however, that unlike Aid to Localities pots of funds, which are described in the next section, some capital funds are laudably distributed through through competitive formulas or programs. Examples of such programs include the SUNY 2020 Capital Challenge Grant, which is “a joint program between the Governor and SUNY—to incentivize bottom-up, individualized long-term economic development implementation plans on campuses and the surrounding communities...The competitive process is open to all SUNY State Operated and Community Colleges, or regional consortiums including multiple campuses.”⁸ As part of the program, funds may be made available for projects identified and approved by the governor and the SUNY Chancellor, giving the governor leverage over a portion of this program, why it is included in our tally.

Even where state agencies direct the spending of these funds, there can be problems related to the discretionary decision-making that is afforded lawmakers in choosing which projects to fund, and potentially steering projects that are intended to be completed by private contractors. For example, “Multi-Modal” transportation funds have received particular attention due to Senator Malcolm Smith’s boast that he could deliver these funds to a developer for a road project in a

⁸ SUNY Research Foundation. NY-SUNY 2020 Grant program description. Available at: https://portal.rfsuny.org/portal/page/portal/The%20Research%20Foundation%20of%20SUNY/home/rsed/ny_suny_2020

scheme to gain access to the Republican ballot line for mayor in New York City. Smith himself said the following about the funds: “Multi-modal money,” Mr. Smith said, “is outside the budget and it’s always around.”⁹ Smith alleged that he was confident \$500,000 in funds could be secured from a multi-modal transportation grant. According to the court documents, Smith had proposed the funding plan as late as March 21, at the height of the budget making process.¹⁰ Smith’s case highlights that while the flow of new money from earmarks or member items has been turned off, individual lawmakers appear to have access to other cash, including the program Smith alluded to.

According to an analysis by Reinvent Albany, Multi-Modal fund projects are identified by the governor and legislature outside of the adoption of the state’s budget bills, but there is no online list or description of the items that are ultimately funded, how much they cost, or which elected official requested the funds. Further, according to the Department of Transportation, projects are “Identified in schedules agreed upon between the Governor and the Legislature in a Memorandum of Understanding” or via individual project requests. Again, these MoUs are not provided online.¹¹

The ability for decisions regarding large sums of funds to be decided in the shadows through MoUs and other agreements that are not made easily accessible to the public provides an unfortunate incentive for lawmakers to promise these funds in exchange for political favors, as was seen with Senator Smith. This potential for corruption could be mitigated through sufficient public oversight of this decision making.

Aid to Localities Lump Sum Pots

For lump sum appropriations provided in the Aid to Localities budget, in most cases they are to be designated to local non-profits or government bodies, such as schools, libraries, or local law enforcement officials. These pots of funds are not new, with some having first been allocated as early as 2000 and not having fully been spent to date. Lump sum appropriations in the Aid to Localities bill this year authorized \$68 million in spending through reappropriations, with initial funding levels of \$301 million when considering past years’ budgets.¹²

These funds items are sprinkled throughout the budget, and are funding through contracts with five different state agencies. Budget bills provide little detail of the intended purposes of many of these pots of lump sum funds, using broad language such as the following for items listed in the Local Assistance Account: “For additional grants in aid to certain school districts, public libraries, and not-for-profit institutions,” for “various Senate Majority labor initiatives” and for “various Assembly Majority labor initiatives.” Many of these lump sums have not yet been assigned to a particular state agency and are listed as “Miscellaneous.” For a list of total funds provided through state agencies, see the table on the following page.

⁹ Dwyer, Jim. “Jumping from Party to Party to Bribery Charge.” New York Times. April 2, 2013. Available at: http://www.nytimes.com/2013/04/03/nyregion/malcolm-smith-accused-of-bribery-for-spot-on-mayoral-ballot.html?_r=0

¹⁰ Reisman, Nick. “So What is Multi-Modal Funding?” April 2, 2013. State of Politics. <http://www.nystateofpolitics.com/2013/04/so-what-is-multi-modal-transportation-funding/>

¹¹ Reinvent Albany. “Smith Scandal Flags \$288 million in Transportation ‘Member Items.’” April 3, 2013. Available at: <http://reinventalbany.org/2013/04/malcolm-smith-spotlights-288-million-in-transportation-member-items/>

¹² Funding obtained from Aid to Localities Legislation, S.2604-E/A.3003-E of 2013: <http://open.nysenate.gov/legislation/bill/S2603E-2013>

Lump Sum Appropriations by Agency (other than Community Projects Fund) FY2013-14 Enacted Budget, Aid to Localities Bill		
Agency Name	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
Department of Labor	\$4,355,500	\$2,437,000
Division of Criminal Justice Services	\$6,589,000	\$6,589,000
Education Department	\$63,211,000	\$22,209,000
Miscellaneous	\$207,379,736	\$17,659,000
Office of Parks, Recreation and Historic Preservation	\$1,000,000	\$58,900
Urban Development Corporation (Empire State Development Corporation)	\$19,000,000	\$19,000,000
Grand Total	\$301,535,236	\$67,952,900

The perhaps best known lump sum pot in this category is “bullet aid” which has been used for aid to local school districts and totaled nearly \$30 million this year.¹³ Bullet aid has been criticized as a way of funding items outside of established funding formulas, in which political dynamics are allowed to take over.¹⁴

The descriptions of the intended purposes of Aid to Localities appropriations vary, some being detailed in their scope, such as “services and expenses of local law enforcement and judges for domestic violence training,” while other items provide little detail, such as “For Senate Majority Labor Initiatives.”

B. COMMUNITY PROJECTS FUND

Member items are discretionary funds that are provided by individual lawmakers to community groups, localities, or for particular local programmatic activities. While other types of funds are often called member items, the Community Projects Fund, as per §99-d of the State Finance Law, is the fund most commonly associated with member items in New York State. As such, Citizens Union has focused its analysis for the purposes of this section on these items. Past pots of funds that have been sponsored by individual legislators include the Community Capital Assistance Program and the Strategic Investment Program.¹⁵ As mentioned previously, there have not been new member items funded in the state budget since 2009, though some items remain and have been reappropriated in this year’s budget. Unlike former Governor Paterson who vetoed all reappropriated member items in 2010¹⁶, Governor Cuomo has not vetoed these items, provided that the funding goes to the organization or locality that it was originally earmarked for. The Governor has, however, vetoed other funds that were more than seven years old, stating the

¹³ Vielkind, Jimmy. “\$30 million ‘bullet’ targets aid gap.” April 2, 2013. Albany Times Union. Available at: <http://www.timesunion.com/local/article/30M-bullet-targets-aid-gap-3454176.php>

¹⁴ Vielkind, Jimmy. “\$30 million ‘bullet’ targets aid gap.”

¹⁵ The Assembly has disclosed recipients of these funds via its website: <http://assembly.state.ny.us/comm/?sec=post&id=41>

¹⁶ Blain, Glenn. “Gov. Paterson Sends Those Vetoes to Legislature.” New York Daily News. July 7, 2010. Available at: <http://www.nydailynews.com/blogs/dailypolitics/2010/07/gov-paterson-sends-those-vetos.html>

following in his veto message: “In general, seven years is more than enough time to fund and implement services.”¹⁷

As previously noted, reappropriations authorize the use of funds for projects that were added to previous budgets in years past, but are not yet fully spent. According to the Division of the Budget, the Community Projects Fund contained only \$92.8 million as of March 2013, though the FY 2013-14 budget authorized an additional \$33 million to replenish the fund.¹⁸

For the FY2013-2014 Budget, Citizens Union examined remaining Community Projects Fund items in the Aid to Localities Bill¹⁹, and found nearly \$378 million in reappropriated Community Projects Fund items and unallocated pots. Also not included in this tally are four items for the Bronx Overall Economic Development Corp. that were identified by the press as being sponsored by Senate Co-Leader Jeff Klein and were vetoed by the Governor.²⁰ The Governor’s veto message for these items described the reason for the veto as being that each was “improperly characterized as a reappropriation.”²¹ No other community projects fund items were vetoed, however, though 120 projects categorized as member items were vetoed that were fully cashed out, and 45 other items were vetoed as no money had been paid on them since 2005.²²

A summary of the Community Projects Fund, as provided FY 2013-14 Aid to Localities budget, is provided on the following page.²³ This analysis includes all items – line items that are earmarked for specific organizations or localities as well as unallocated pots of funds that are not yet itemized for a particular group or locality – separated by house and type of item. There are 45 of these unallocated pots of funds in the Community Projects Fund in total, which use the following broad language: “For services and expenses or for contracts with certain municipalities, corporations and/or not-for-profit agencies.”

¹⁷ Governor Cuomo Budget Vetoes, FY2013-14, Division of the Budget. <http://www.budget.ny.gov/pubs/press/2013/2013-14Vetoes.pdf>

¹⁸ Vielkind, Jimmy. “Old ‘pork’ lives on in spending proposal.”

See also <http://blog.timesunion.com/capitol/archives/183742/did-your-member-item-get-re-upped-in-the-budget/>

¹⁹ Available at: <http://open.nysenate.gov/legislation/bill/S2603C-2013>

²⁰ Blain, Glenn. “Bronx state Senator Jeff Klein attempts pork earmark despite Cuomo ban,” New York Daily News. April 11, 2013.

Available at: <http://www.nydailynews.com/news/politics/cuomo-stops-pork-spending-bronx-state-senator-klein-article-1.1314443>

²¹ Division of the Budget. Governor Cuomo Veto Messages, April 2013. Available at:

<http://www.budget.ny.gov/pubs/press/2013/2013-14Vetoes.pdf>

²² Vielkind, Jimmy. “Pork items survive veto ax.” Times Union. April 10, 2013. Available at:

<http://www.timesunion.com/local/article/Pork-items-survive-veto-ax-4425465.php>

²³ Funding summarized from Aid to Localities Legislation, A.3003-E of 2013, available at:

http://assembly.state.ny.us/leg/?default_fld=&bn=A03003&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y

Community Projects Fund Items by House FY 2013-14 Enacted Budget, Aid to Localities Bill		
HOUSE	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
SENATE		
Unallocated Pots	\$133,725,000	\$132,510,000
Itemized Projects	\$17,301,695	\$16,558,025
SENATE TOTAL	\$151,026,695	\$149,068,025
ASSEMBLY		
Unallocated Pots	\$32,961,000	\$23,939,158
Itemized Projects	\$23,557,367	\$17,936,984
ASSEMBLY TOTAL	\$56,518,367	\$41,876,142
JOINT – SENATE AND ASSEMBLY		
Unallocated Pots	\$800,000,000	\$187,000,000
Total Unallocated Pots	\$966,686,000	\$343,449,158
Total Itemized Projects	\$40,859,062	\$34,495,009
Total Community Projects Fund	\$1,007,545,062	\$377,944,167

These funds items are sprinkled throughout the budget, and are spent through contracts with many different state agencies. In total, 18 agencies are responsible for the contracts of these items going forward, should they be funded. One catch-all category, “Miscellaneous – All Agencies,” contains items that are provided in unallocated pots, and as such have not been itemized for a particular organization or locality. There are five such pots totaling \$261 million – more than two-thirds of funds in the Community Projects Fund this year. These items are to be distributed by a Memorandum of Understanding entered into between the Director of the Budget and representatives of the legislature, including the secretaries of the Senate Finance Committee and Assembly Ways and Means Committee. For a list of total funds provided through state agencies, see the table on the following page.

Community Projects Fund Items by Agency FY 2013-14 Enacted Budget, Aid to Localities Bill		
Agency Name	Initial Funding Amount	FY 2013-14 Reappropriation
Department of Agriculture and Markets	\$2,686,175	(\$2,686,175)
Department of Corrections and Community Supervision	\$4,000	(\$4,000)
Department of Economic Development	\$7,771,610	(\$5,407,018)
Department of Environmental Conservation	\$2,353,600	(\$2,279,793)
Department of Family Assistance Office of Children and Family Services	\$57,042	(\$57,042)
Department of Mental Hygiene Office of Alcoholism and Substance Abuse Services	\$5,000	(\$5,000)
Department of State	\$32,560,304	(\$31,791,634)
Department of Transportation	\$7,182,300	(\$6,702,300)
Division of Criminal Justice Services	\$13,282,428	(\$6,862,779)
Division of Housing and Community Renewal	\$6,000	(\$6,000)
Division of Military and Naval Affairs	\$21,650	(\$21,650)
Division of Veterans' Affairs	\$3,697,950	(\$3,697,950)
Education Department	\$16,130	(\$16,130)
Foundation for Science, Technology and Innovation	\$15,465,000	(\$14,445,963)
New York State Urban Development Corporation (Empire State Development Corporation)	\$25,834,000	(\$20,358,860)
Office for the Aging	\$41,250	(\$41,250)
Office of Parks, Recreation and Historic Preservation	\$22,152,323	(\$22,152,323)
Department of General Services	\$33,300	(\$33,300)
Miscellaneous - All Agencies	\$874,375,000	(\$261,375,000)
Grand Total	\$1,007,545,062	(\$377,944,167)

Transparency of Member Items

Member items have not been consistently itemized in state budget bills, and even when they are, the sponsoring legislator’s name is not included. Budget reforms enacted in 2007 require that legislative additions (which includes member items) to the executive budget must be itemized, though in the event that they are not itemized, a plan with the individual items must be developed and passed via resolution by a majority of members elected in each house.²⁴ These resolutions, unlike budget bills, are not required to age for three days, and can be passed immediately. Though it appears that some resolutions are provided online via the legislative search tools of the legislature, they are not made easily accessible.

Limited disclosure of member item line items is provided outside of the budget bills. The State Assembly has provided disclosure of “Legislative Initiative Request Forms,” which are the forms used by Assembly members to designate funding to particular organizations since Fiscal Year (FY)

²⁴ State Finance Law, §24(5)

1998. There are also online databases of funding, such as the Attorney General's "NY Open Government"²⁵ website (formerly known as Project Sunlight) and the private site "See Through New York"²⁶ which is run by the Empire Center for New York State Policy, both of which have data from FY 2006-2007 to 2009-2010. The Division of the Budget website²⁷ also provided disclosure of line item member items from 2003 to 2010.

These websites have varying degrees of usefulness, but all government websites fail to provide a clear picture of how and whether funds have been spent. While the NY Open Government website provides searchable databases that allow users to export the information for their own analysis, its records do not include information about whether the items have been fully expended. The Assembly and Division of the Budget websites contain pdfs broken out by fiscal year, with the Assembly's site having multiple versions of documents for the same year, making it unclear whether there have been changes or whether the new documents are merely additional items. The Assembly's pdf documents together comprise over 22,000 pages, with one member item per page, split into over 50 separate documents. Tellingly, the Division of the Budget's website notes the following: "A recipient's name appearing on this list does not confirm either that the entity has been paid the grant amount or has even begun the process of applying for the funds through the agency that oversees the contract."

The State Comptroller's office keeps records of disbursements and contracts of the Community Projects Fund, though this information is not made publicly available on its website. The Albany Times Union provided up-to-date information regarding the Comptroller's records on its Capitol Confidential Blog in April 2013.²⁸

Questionable Allocations

Several state legislators have improperly used their member item allocations, including former Senator Shirley Huntley, and Assemblymembers William Boyland and Vito Lopez. Huntley was indicted last year for securing \$30,000 to the fake "Parent Workshop Charity," which conducted no activities. Instead, the money was siphoned off by an aide and Huntley's niece for personal shopping sprees for Huntley, both of who were previously charged with crimes.²⁹ In addition to the Parent Workshop Charity, Huntley had secured a \$70,000 member item for the Young Leadership Institute in 2009 — which is now being investigated by the attorney general, according to the state Department of Education.³⁰

²⁵ Office of the Attorney General. NY Open Government Database. Available at: <http://www.nyopengovernment.com/NYOG/>

²⁶ See Through New York, Empire Center for NYS Policy. Available at: <http://seethroughny.net/expenditures/legislative-member-items/>

²⁷ For more information, see Assembly Ways and Means Reports: <http://assembly.state.ny.us/comm/?sec=post&id=41> and the Division of the Budget: <http://www.budget.ny.gov/pubs/community/lars.html>

²⁸ For more information, see <http://blog.timesunion.com/capitol/archives/183742/did-your-member-item-get-re-upped-in-the-budget/>

²⁹ Algar, Selim. "State Sen. Huntley hauled off in 30G 'scam.'" August 28, 2012. The New York Post. Available at: <http://nypost.com/2012/08/28/state-sen-huntley-hauled-off-in-30g-scam/>

³⁰ Klein, Melissa. "Huntley prob widens." August 30, 2013. New York Post. Available at: <http://nypost.com/2012/08/30/huntley-probe-widens/>

As the Chairman to the Democratic Party of King's County, former Assemblymember Vito Lopez had tremendous influence over funding decisions for local nonprofits in his community. At the state and city levels, Lopez secured millions in member items for the Bushwick Ridgewood Senior Citizens Council to provide home healthcare assistance, job training, and other community services to residents of Bushwick and Ridgewood. In 2010, New York City Department of Investigation began an inquiry into the organization after former Executive Director's salary rose to \$659,591 from \$235,135. The investigation revealed that the organization falsified documents, forged signatures, and double-billed the state for services it did not provide the community.³¹

Assemblyman Boyland was recently arrested for funneling discretionary funds to a Brooklyn based non-profit organization which used the funds to promote Boyland's candidacy for office, falsely stating that the funds were not used for partisan political activity. Specifically, the organization directed that a portion of those public funds be used to pay for community events promoting Boyland, and items such as t-shirts imprinted with the slogan 'Team Boyland.'³²

Many of the member items still listed in the state budget also appear to be old, and perhaps no longer necessary. Some allocations were provided for specific events, such as bicentennial celebrations or sporting games, and though they have already been held, the funding is still present in the state budget. These include \$2,000 for the Hadley Bicentennial Parade Committee, first allocated in 2000, and another \$5,000 for the Empire State Games of 2002, allocated in 2002.

An additional \$12,500 was provided to the Friends of Long Island's Heritage starting in 2000, though news reports indicate that the organization went bankrupt in 2004.³³ The funding is still authorized in this year's New York State budget, however. While these outdated items are small, they call into question whether other items may also be no longer or why they should be continually reappropriated, particularly since in many cases the sponsoring legislator may no longer hold office.

V. CITIZENS UNION RECOMMENDATIONS

The lack of specific and detailed information about how lump sum appropriations are spent calls into serious question whether there is sufficient transparency and public oversight of the state budget process.

Citizens Union's research also raises further questions about the process by which remaining Community Projects Fund items are being distributed. The public deserves a full and open accounting of how these items are being spent, in a manner that is clear and links the sponsors of the items to the end results.

³¹ Katz, Celeste. "DOI: More Shadiness at Ridgewood-Bushwick." Daily Politics. Available at:

<http://www.nydailynews.com/blogs/dailypolitics/2011/11/doi-more-shadiness-at-ridgewood-bushwick-updated-again>

³² U.S. Attorney's Office Press Release. May 3, 2013. Available at: <http://www.fbi.gov/newyork/press-releases/2013/new-york-state-assemblyman-william-f.-boyland-charged-with-mail-fraud-conspiracy-for-defrauding-new-york-state>

³³ <http://query.nytimes.com/gst/fullpage.html?res=9A00EFDE123DF932A05753C1A9629C8B63>

Citizens Union calls upon the Moreland Commission to follow the money as it investigates lump sum appropriations and other discretionary aspects of the state budget. Citizens Union has shared its findings with the Moreland Commission, and urges it to:

1. Recommend policy changes regarding the approval of budget items to ensure needed itemization and disclosure to provide necessary transparency and public accountability in deciding to which entities receive state funds; and
2. Fully analyze lump sum appropriations and remaining member items in the state budget, including their recipients and sponsors, to determine whether further investigative action is needed.

Citizens Union Recommendations

In order to improve transparency and accountability of lump sum appropriations, there should be increased disclosure and accountability of lump-sum appropriations and remaining Community Projects Fund items. Specifically:

1. **Lump-sum appropriations should disclose in the state budget the detailed purposes and criteria set forth for their distribution;**
2. **Additional, more specific information about lump-sum appropriations should be made available online in user-friendly formats, including the following:**
 - a. all MoU's, plans, resolutions and other agreements specifying their distribution;
 - b. funds distributed and their recipients; and
 - c. any remaining funds;
3. **There should be a time limit for the reappropriation of lump-sums in order to decrease slush funds and the use of such funds as "one-shot" budget gap fillers.** This is consistent with Governor's Cuomo's decision to veto many of these items in this year's state budget;
4. **Legislators' names should be listed with the itemized member items and any other projects they sponsor in budget appropriation bills before they are passed, as well as in other itemized listings in MoUs, plans or other documents detailing the distribution of lump sum appropriations; and**
5. **Resolutions passed providing details related to expenditures of lump sum appropriations in the budget should be required to age three days before being voted on, and be made easily available online.**

Original data for this report is available at <http://www.citizensunion.org>.