



## Spending in the Shadows

**NONSPECIFIC FUNDING IN THE FY 2018  
NEW YORK STATE EXECUTIVE BUDGET**



MARCH 2017

WRITTEN AND PUBLISHED BY CITIZENS UNION

# ***Spending in the Shadows: Nonspecific Funding in the FY 2018 New York State Executive Budget***

March 2017

Research and Policy Analysis by Citizens Union Foundation  
Written and Published by Citizens Union

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## **Acknowledgements**

This report was written by Alan Rothstein, Chair of the State Affairs Committee of Citizens Union, with assistance from Ethan Geringer-Sameth, Public Policy and Program Manager. Additional writing and editing was provided by Rachel Bloom, Director of Public Policy and Programs and Dick Dadey, Executive Director.

## EXECUTIVE SUMMARY

Citizens Union since 2014 has issued a series of *Spending in the Shadows* reports describing the mechanism through which legislative leaders and the Governor authorize spending large sums of nonspecific but appropriated taxpayer funds at the time the state budget is adopted, leaving until later definitive spending decisions about how and on what to spend the funds.<sup>1</sup> These pots of money are referred to as “**lump sum appropriations**” are carry only a vague description or general purpose to identify the appropriation with little or no direction as to how the funds in these budget pots are to be spent. There are no criteria for how funds are to be awarded, and an absence of transparency and accountability as to how funds are actually spent.

The open-ended nature of these funds is of particular concern in New York, where the immediate past leaders of both the Senate and Assembly were convicted of offenses, at least one clearly related to the expenditure of funds over which he could exercise discretion, and the other related to contracts which could be arranged in an atmosphere where leaders exercise personal spending authority. In addition, within the last several months close aides to and allies of the Governor have been indicted for crimes related to the use of one or more of the principal economic development funds listed in the Executive Budget that lacked spending criteria.

In the FY 2018 New York State Executive Budget of \$152.3 billion, we have been able to identify nearly \$4.3 billion in funds from 60 different pots that are subject to spending decisions by one or more specific elected officials. This is approximately \$2 billion more than in last year’s Executive Budget, but is roughly equal to the amount of lump sums included in last year’s Enacted Budget. This figure is the highest in Executive Budgets since we first started reporting on the lump sum appropriations in FY 2014, when this specific category of lump sums totaled \$4 billion. It is also above the \$3.8 billion and \$2.6 billion proposed in the FY 2015 and FY 2016 Executive Budgets, respectively.

In addition to the budget allocations that specifically identify one or more elected officials as decision-makers, the Executive Budget includes \$9.5 billion in funds in 44 separate economic development and infrastructure pots that do not specify any official as having authority and again lack the criteria and accountability that would provide the public with a level of comfort as to whether the funds are being spent to maximum public benefit.

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<sup>1</sup> The most recent reports addressed the FY 2017 Enacted Budget <<https://echalk-slate-prod.s3.amazonaws.com/private/districts/466/resources/193a25eb-88ba-4bfe-8b1d-306a6d2eee0e?AWSAccessKeyId=AKIAIQPKIVDQVS7TUJA&Expires=1790880185&response-content-disposition=%3Bfilename%3D%22Spending%2520in%2520The%2520Shadows%2520Enacted%25202017%2520Final%281%29.pdf%22&response-content-type=application%2Fpdf&Signature=C96vZFguLN9WkczA4Huj%2BQJovA%3D>> and the FY 2017 Executive Budget (<https://echalk-slate-prod.s3.amazonaws.com/private/districts/466/resources/aedf0bca-fe7f-488d-9954-d110a75e0683?AWSAccessKeyId=AKIAIQPKIVDQVS7TUJA&Expires=1790880185&response-content-disposition=%3Bfilename%3D%22FINAL%2520CU%2520Spending%2520in%2520The%2520Shadows%2520Report%2520FY17%2520Executive%2520Budget%2520-%25202%252029%252016%282%29.pdf%22&response-content-type=application%2Fpdf&Signature=LF1mAAwcjDLVEE8Yy7alhuElzs%3D>>. Earlier reports are available on the Citizens Union website, [www.citizensunion.org](http://www.citizensunion.org).

Citizens Union continues to press for reforms which will tighten the way lump sum monies are allocated and spent in New York. Measures that result in greater public disclosure of how the funds are spent, which elected officials are involved in deciding how these funds are spent, and establishing conflicts of interest guidelines will help to give New Yorkers the confidence that their tax dollars are being appropriately spent. We again make 5 key recommendations for reform in this area:

## **SUMMARY of KEY RECOMMENDATIONS**

1. IDENTIFY UPFRONT ALL LUMP SUM FUNDS in BUDGET.
2. DISCLOSE THE DETAILED PURPOSES OF, AND CRITERIA FOR, distribution of lump sum funds.
3. REQUIRE CONFLICTS OF INTEREST DISCLOSURES of executive and legislative elected officials affirming that the contract or grant is for a lawful, public purpose and official has complied with financial disclosure requirements in public officers' law.
4. COMPREHENSIVE and ONLINE DISCLOSURE of all grants and contracts spent under lump sum funds.
5. CREATE PUBLIC DISCLOSURE by AGING FOR THREE DAYS AND IDENTIFYING THE LEGISLATIVE SPONSOR of lump sum funds in Senate and Assembly Resolutions.

The above presented reforms are set forth in greater detail on page 10.

## **I. Summary of FY 2018 NYS Executive Budget Lump Sum Appropriations**

The \$152.3 billion Executive Budget proposed by Governor Andrew Cuomo for FY 2018 includes nearly \$4.3 billion in funds from 60 different pots that are subject to spending decisions by one or more specific elected officials. This is approximately \$2 billion more than in last year's Executive Budget, but is roughly equal to the amount of lump sums included in last year's Enacted Budget. The difference between the two Executive Budgets is the result of a decision in last year's Enacted Budget to allocate funds for a five-year statewide housing program through a memorandum of understanding between the Governor and legislative leaders. Only two new items involving decisions by an elected official, totaling \$110 million, are included in the FY 2018 Executive Budget. The remainder consists of reappropriations from prior years.

This figure is the highest in Executive Budgets since we first started reporting on the lump sum appropriations in FY 2014, when this specific category of lump sums totaled \$4 billion. It is also above the \$3.8 billion and \$2.6 billion proposed in the FY 2015 and FY 2016 Executive Budgets, respectively.

In addition to the budget allocations that specifically identify one or more elected officials as decision-makers, the Executive Budget includes \$9.5 billion in funds in 30 separate economic development and infrastructure pots that do not specify any official as having authority and again lack the criteria and accountability that would provide the public with a level of comfort as to whether the funds are being spent to maximum public benefit. \$1.5 billion is in new funding, while \$8 billion are reappropriations from prior years. Indeed, some of these funds have been involved in convictions and indictments of high ranking officials of both the legislative and executive branches.

There are additional categories of funds, such as proceeds of settlements, federal funds related to recovery from Superstorm Sandy and future disasters, and funds held by the state's many public authorities, which similarly may be allocated without specified criteria or accountability.

## **II. Proposed Requirement to Disclose Conflicts of Interest in Funding Approved Projects**

The Governor has included a significant change in budget language for nearly all of the budget funds for which the legislative leaders or a house of the Legislature has budget authority. New language in the proposed budget requires a legislator seeking to allocate funds to a specific project to specify in writing 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.

Such language was included in the 30-day amendments to the FY 2015 Executive Budget but was not included in the FY 2015 Enacted Budget or in any subsequent budget. Indeed, both houses of the Legislature have again rejected this language in their FY 2018 budget proposals. While including this language would be a significant improvement, it does not address the awarding of lump sum funds through the executive branch or through economic development and infrastructure programs, as noted above, and would still allow individual elected officials to make spending decisions regarding enormous amounts of funds budgeted in lump sum categories.

### **III. Lump Sum Funds Explicitly Subject to Decision By Elected Officials in the FY 2018 Executive Budget**

The FY 2018 Executive Budget includes nearly \$4.3 billion in funds for which spending decisions are deferred to one or more elected officials. In a very few cases, a list of projects that apparently had been approved by the designated official is included, though with built-in flexibility to allow spending on other projects. **In most cases, there are no specific details provided as to how and where the funds should be spent.** These funds are found in 60 budget pots in the Aid to Localities and Capital Budgets. All are reappropriations save for two funds, \$55,000,000 each to be spent on SUNY and CUNY projects pursuant to a plan approved by the Governor and the respective university chancellor. A list of the appropriations and reappropriations by budget is provided in Table 1.

<i>Table 1: Lump Sum Funds in the FY 2018 Executive Budget</i>			
	<b>Aid to Localities Budget</b> (S.2003/A.3003)	<b>Capital Budget</b> (S.2004/A.3004)	<b>Total Number of Pots</b>
<b>New Appropriations</b>	\$ 0	\$ 110,000,000	2
<b>Reappropriations</b>	\$ 107,223,234	\$ 4,066,621,500	58
<b>TOTAL</b>	\$ 107,223,234	\$ 4,176,621,500	60

There are various mechanisms used in the budget to designate the elected official's authority. The most used mechanisms are:

1. A memorandum of understanding (MOU) between the Governor, the Majority Leader of the Senate<sup>2</sup> and the Speaker of the Assembly;

<sup>2</sup> Different budget reappropriations refer to the Temporary President and Majority Leader of the Senate. The same individual holds both titles, and the tabulations in this report o8i971

2. Approval of expenditure by Budget Director (a Governor's appointee) and Temporary President of the Senate, followed by resolution passed by Senate;
3. For many SUNY and CUNY budget appropriations, a plan approved by the Governor and either the SUNY or CUNY Chancellor.

There are other mechanisms not as widely used.

The amount of FY 2018 funds allocated using each mechanism in the Executive Budget is as follows:

<b>Table 2: FY 2018 Executive Budget Lump Sum Spending Mechanisms</b>		
<b>A.</b>	<b>INVOLVING LEGISLATIVE LEADERS:</b>	
	i. MOU between executive and legislative leaders	\$ 2,769,031,000
	ii. MOU (mechanism not specified but involves Legislature)	269,095,000
	iii. Approval by Budget Director and Temporary President of the Senate, plus Senate resolution	122,548,000
	iv. Senate Majority Labor Initiative	514,000
	v. Senate approval (mechanism unclear)	700,000
	vi. Consultation with Senate Majority Leader	73,678,500
	vii. MOU between Transportation Commissioner and Senate Task Force	7,218,000
	viii. Consultation with Assembly Speaker	12,736,000
	ix. Consultation with Chair, Assembly Ways & Means Committee	1,121,000
	x. Consultation with legislative leaders	10,000,000
<b>B.</b>	<b>Pursuant to plan developed by Attorney General</b>	81,500,234
<b>C.</b>	<b>Pursuant to plan developed by Governor and SUNY or CUNY Chancellor</b>	910,703,000
<b>D.</b>	<b>Funds flow to organizations chosen by mayors of certain cities, plus Bronx Borough President</b>	25,000,000
	<b>TOTAL:</b>	<b>\$4,283,844,734</b>

The total of \$4,283,844,734 is **nearly \$2 billion more than what was included in last year's Executive Budget.**

The numbers are not strictly comparable because some of last year's appropriations and reappropriations have been spent, and some different reappropriations appear from year to year.<sup>3</sup> The basic difference in the totals between the two years is explained by the \$1,973,475,000 appropriated for a comprehensive, multi-year statewide housing program. The funds were included in the FY 2017 Executive Budget without any reference to spending decisions being made by any elected officials. The FY 2017 Enacted Budget, however, provided that the funds were to be spent pursuant to an MOU between the Governor and the legislative leaders.<sup>4</sup>

As with past budgets, the Enacted Budget for FY 2018, which is due to be passed by April 1, will likely include additional budget appropriations that designate elected officials to make spending decisions. These may take the form of new appropriations, reappropriations that the Governor had not included in the Executive Budget, and either new appropriations or reappropriations that were in the budget without reference to elected officials, but to which an MOU or similar requirement has been added. Citizens Union will issue a report on the FY 2018 Enacted Budget.

## **IV. Other FY 2018 Lump Sum Funds with No Specificity**

### *A. Economic Development and Infrastructure Programs*

The \$4.3 billion in funds discussed above is only a portion of the unspecified lump sum funds in the FY 2018 Executive Budget. Many other funding pots set forth a broad topic of funding but do not specify any mechanism as to how allocation decisions are to be made. Of particular concern are the extensive programs related to economic development and infrastructure, of which there are approximately 44 listed in the Executive Budget. \$1.5 billion in new funding is provided for these programs, and \$8 billion is reappropriated from earlier years, for a total of \$9.5 billion. Included in these are several programs in which spending decisions have been subject to media scrutiny, including the Buffalo Regional Cluster Initiatives Program and the State Municipal Facilities Corporation. A list of economic development and infrastructure programs included in the FY 2018 Executive Budget is documented in Appendix A.<sup>5</sup>

The risks involved in permitting such a large amount of state money to be awarded without clear criteria or accountability were most recently brought home by the indictment of close associates of Governor Cuomo in a scheme involving "Buffalo Billions" funds. The complaint not only details how Joseph Percoco, a former aid to the Governor, and others arranged a kickback scheme involving the awarding of contracts under this and another program – it also shows how potential contractors contributed hundreds of thousands of dollars to Governor Cuomo's campaign, the timing of which could not have been coincidental.<sup>6</sup> The dual concern of personal enrichment and pay-

<sup>3</sup> The Executive Budget also deleted a reference to an MOU between the Governor and legislative leaders regarding \$50,000,000 reappropriated from 2016 to address homelessness. The \$50,000,000 remains in the budget, but without the MOU (see Capital Budget, p. 796).

<sup>4</sup> There are many budget appropriations and reappropriations which require the Budget Director to report on certain expenditures to the Chairs of the Senate Finance and Assembly Ways & Means Committee. As these reporting requirements do not give the legislative leaders any authority regarding the expenditures, they are not included in this report.

<sup>5</sup> The list does not include funds appropriated for a specific economic development or infrastructure purpose, such as the Javits Center renovation and Thruway improvements, as the list focuses on funds which appear to be provided for multiple purposes under a particular theme. The list also may not include all such funds that may be used for economic development or infrastructure.

<sup>6</sup> Sealed Complaint, U.S. v. Percoco (Sept. 20, 2016).

to-play political contributions is magnified by the billions of dollars that can be awarded to enterprises through various economic development programs. We recognize that economic development and infrastructure projects are vital for New York. Our focus is that the funds spent through these programs be spent responsibly, in accordance with specified criteria and in a manner clearly shown to the public, so that New Yorkers will have information to evaluate for themselves whether the programs are effective or being subject to abuse.

In addition to funding Buffalo redevelopment, additional economic development programs have attracted attention. For example, the State and Municipal Facilities Corporation has been allocated \$1.25 billion, although no new funds were included in the FY 2018 Executive Budget. According to news reports, spending from this fund has been driven, at least to some extent, by legislators. Indeed, Project Information Forms requesting funding are submitted by legislators (many such forms are posted on the Senate and Assembly websites).<sup>7</sup> However, there is no public accounting of how decisions are made regarding the spending of those funds, or who is making those decisions.

Another Capital Budget fund reportedly manipulated by legislators is the Transformative Investment Program (TIF). This \$400 million fund (\$100 million of which appears to remain unallocated in the FY 2017 Executive Budget) is to be devoted to “regionally significant economic development initiatives that create or retain private-sector jobs” in New York City and on Long Island. The TIF was placed in the budget in 2015 at the initiative of then-Majority Leader Skelos, and the appropriation includes **no requirement** on how it is to be spent or whether or how the spending is to be reported (some projects are set forth in the budget but the Budget Director has the authority to move the funds to other “projects with a common purpose”). Indeed, there was a news report that funding for a project originally slated from the TIF fund was drawn from another discretionary pot when the Senate complained that that the TIF was to be set aside for other projects, with Senate involvement in decision-making. The decision was made by Public Authorities Control Board, which consists of representatives of the Governor and legislative leaders and which operates in relative obscurity. Pending resolutions before the board are not made available, but results of the voting are posted.<sup>8</sup>

In their one-house budget proposals passed last week, the Senate and Assembly each sought to provide more accountability for the awarding of economic development funds given the lack of transparency around the process, the methodology, and that the executive branch manages all the programs, with no apparent mechanism involving legislators in whose district the projects are located. The budget proposals that include this increased accountability also reject the Governor’s proposals to require legislators to file conflicts of interest disclosure notices regarding their involvement in the spending of lump sum funds.

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<sup>7</sup> Vielkind, Jimmy. *Despite outcry, discretionary funds grow in state budget*. Politico New York, April 4, 2016 <<http://www.capitalnewyork.com/article/albany/2016/04/8595593/despite-outcry-discretionary-funds-grow-state-budget>>; Weaver, Teri. *NY lawmakers, Cuomo, borrow \$1B for pet projects, like a Syracuse aviation museum*. Syracuse.com, November 15 (updated November 16), 2015 <<http://www.syracuse.com/state/index.ssf/2015/11/ny-lawmakers-cuomo-borrow-1b-for-pet-projects-like-a-syracuse-aviation-museum.html>>.

<sup>8</sup> Vielkind, Jimmy. *Cuomo backs away from plans to tap Senate GOP discretionary fund*, Politico New York, January 29, 2016 <<http://www.capitalnewyork.com/article/albany/2016/01/8589565/cuomo-backs-away-plans-tap-senate-gop-discretionary-fund>>.

The Assembly would require reporting by individuals and entities receiving approval for, or which are beneficiaries of, economic development benefits, such as grants, loans, tax credits or other awards. These annual reports, to be made public, would include information on jobs created as a result of receiving those benefits, total employment of the recipient, whether health benefits are provided to employees, and other data. In addition, the Empire State Development Corporation would maintain files on all applicants and recipients of economic development benefits, including quantifiable criteria used for scoring applicants. The chairs of the Senate Finance and Assembly Ways & Means Committees would receive 30 days' notice of all economic development awards, including the methodology and criteria used, and also would receive periodic reports of all awards made.<sup>9</sup>

The Senate would establish regional development councils, appointed by the Governor with half the council members recommended by legislative leaders, to evaluate economic development projects. The Department of Economic Development would develop scoring criteria and metrics, and the councils and the applicable state agency would each score a proposed project, with scores to be publicly posted. The final list of awards developed by the Governor would be approved by the Public Authorities Control Board, which is essentially the Governor, Assembly Speaker and Senate Majority Leader. There also would be a comprehensive report prepared on all forms of economic development spending (including tax expenditures), broken down by agency and program, and a public database of economic development contracts and agreements, along with the total funding provided to each recipient.<sup>10</sup>

### *B. Settlement Proceeds*

In the last three fiscal years alone, New York has received \$9.2 billion from monetary settlements with financial institutions and Volkswagen.<sup>12</sup> According to the Division of the Budget, nearly \$7 billion remain from those settlements. The projected balance at the end of FY 2017 is \$4.4 billion, and \$1.1 billion has not been allocated.<sup>13</sup> Much of this funding has been placed in the Dedicated Infrastructure Investment Fund (DIIF). However, 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 statewide 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 York through these settlements plus the nonspecific spending criteria of the DIIF raise concerns about how decisions are made regarding these funds and how New York’s leaders can be held accountable for those decisions.

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<sup>9</sup> A.3008-B, Part QQ.

<sup>10</sup> S.2008-B, Parts LLL and MMM.

<sup>12</sup> NYS Division of the Budget, FY 2017 Financial Plan Mid-Year Update (Nov. 2016) at 28.

<sup>13</sup> Id. at 26.

## **V. Other FY 2018 Funds Susceptible to Influence by Elected Officials**

### *A. Funds Controlled by Public Authorities*

In addition to funds under direct control of the state government, there are numerous additional pots of money maintained by public authorities created by the state government, which are by law considered independent entities. As a practical matter, however, the boards of the authorities are appointed largely by the Governor and are at the least attentive, if not responsive, to the wishes of the Governor. According to the New York State Comptroller, in their last reporting periods the 324 identified state level authorities and subsidiaries generated \$44.8 billion in revenues and had \$42.9 billion in expenditures, a net of almost \$2 billion.<sup>14</sup> As a result, these authorities are capable of accumulating substantial amounts of revenue, and a good number are in a position to award substantial contracts to private entities outside of state budget oversight. An analysis of public authorities is beyond the scope of this report, but we provide two brief examples to show the huge additional pots of state controlled money that exist under the influence, if not the direction, of the Governor by virtue of his appointing authority of the boards of directors.

The New York State Energy Research and Development Authority (NYSERDA), is a public benefit corporation that offers information, programs, advice and funding to help New Yorkers increase energy efficiency and use renewable energy in a cost-effective way. As of the end of FY 2016, NYSERDA had a balance (“total net position”) of over \$1.6 billion,<sup>15</sup> and the FY 2017 NYSERDA budget anticipates a total net position of \$1.1 billion as of the end of the fiscal year.<sup>16</sup> A subsidiary of NYSERDA, Green Bank, works with the private sector to increase investments into the state’s clean energy markets. Green Bank had \$212 million as of the end of FY 2015-16, separate from the NYSERDA funds. Green Bank has invested in a number of clean energy projects and leveraged other clean energy-related private investment.<sup>17</sup> The Governor appoints all of the NYSERDA board, and the NYSERDA statute provides the Governor with veto power over all of the NYSERDA board’s actions.

Another telling example is the New York Power Authority (NYPA), which according to its website is “America’s largest state power organization, with 16 generating facilities and more than 1,400 circuit-miles of transmission lines,”<sup>18</sup> and whose trustees are again appointed by the Governor. As of December 31, 2015, NYPA’s “net position” was \$4.059 billion.<sup>19</sup> In the FY 2017 state budget, control of New York’s canals was transferred from the Thruway Authority to the Power Authority (NYPA), even though the connection between canals and the mission of the NYPA is tenuous at best (total canal expenses amounted to \$54 million in FY 2016).

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<sup>14</sup> NYS Office of the Comptroller, Public Authorities by the Numbers (January 2017), at 1, 8.

<sup>15</sup> New York State Energy Research and Development Authority, Financial Statements, March 31, 2016, at 5.

<sup>16</sup> New York State Energy Research and Development Authority, Fiscal Year 2016-17 Budget and Financial Plan, at 10.

<sup>17</sup> Press Release, *NY Green Bank Announces the Closing of 13 Transactions in 2016, Spurring Thousands of Clean Energy Projects* (see < <https://greenbank.ny.gov/News/In-The-News/2017-01-18-NY-Green-Bank-Announces-Closing-of-13-Transactions-in-2016> >).

<sup>18</sup> <https://www.nypa.gov/about/whoweare.htm>.

<sup>19</sup> NY Power Authority Annual Report, at 30.

### *B. Public Safety and Emergency Response*

In addition to all these lump sum funds, \$8 billion is reappropriated in the FY 2018 State Operations Budget for Public Security and Emergency Response, to address the impact of Superstorm Sandy and to mitigate the impact of future natural disasters. Payments from this fund, much of which came from the federal government, can be made to local governments, public authorities, businesses, not-for-profit organizations and individuals. There are no further criteria for how the funds are to be spent, though there may be criteria for some of this potential spending that are imposed by the federal government. In this instance, the Executive Budget sets forth curious reporting requirements. The Budget Director is to report to the chairs of the Senate Finance and Assembly Ways & Means Committees, on a monthly basis, the aggregate amount spent from this \$8 billion fund. With regard only to transfers of funds to a state department, agency or authority, the Budget Director or the receiving agency is to provide those chairs with a description of the program or purpose to be funded and the guidelines for accessing or distributing the funding. No other reporting is required, despite the wide breadth of the program.

## **VI. Summary of Findings and Conclusion**

An enormous amount of nonspecific state funding is only outlined in the budget in broad categories, with the actual decisions of specific allotments for various projects and programs left to the discretion of elected officials, with little accountability and even less public scrutiny.

This report has identified nearly \$14 billion in the following pots of money subject to influence and possible mischief:

1. \$4.3 billion in nonspecific funds in 60 different pots of money that are explicitly subject to funding decisions by individual elected officials including a combination of the Governor, Assembly Speaker or designated committee chair, and Senate Majority Leader or designated committee chair.

This is the highest amount in this category of lump sums funds since 2014 when they totaled \$4 billion. It represents an increase of nearly \$2 billion over last year's Executive Budget, and is on par with the FY 2017 Enacted Budget.

2. Another \$9.5 billion in economic development and infrastructure funds in 44 separate pots in which spending decisions are subject to influence by elected officials.

The above \$14 billion does not include:

1. \$4.4 billion in remaining settlement proceeds, and
2. \$8 billion in the State Operations Budget for Public Safety and Emergency Response.

All of these nonspecific lump sum funds are subject to misuse, as has been shown by the indictment and conviction of high ranking officials and legislative leaders to which we have unfortunately become accustomed. They lack necessary conflicts of interest disclosures by the elected officials who are influencing or deciding how these funds are to be spent. The governor proposes public disclosure but only of legislators. The Senate and Assembly propose accountability for economic development programs but oppose the Governor's proposed disclosure by legislators. Economic Development funds also seem to lack any clear guidelines with achievable expectations that have measureable outcomes. While these funds can potentially be put to important use in service to the residents and businesses of New York, there must be more criteria and transparency as to how state money is spent to ensure public accountability.

The actual spending of these funds lacks public transparency, review, and scrutiny as many expenditures are never publicly disclosed in a way through which New Yorkers can see how the funds are spent and by whom, and with which elected officials' influence.

## **VII. Recommendations: To Promote Accountability And Reduce The Risk Of Corruption**

The sheer volume of lump sum appropriations in the FY 2018 Executive Budget should raise alarms for a state government that is beset by corruption and an overpowering pay-to-play culture. The potential for misuse and the risk of corruption is enormous. Blatant illegal behavior is only one problem, and the fact that, since 2000, 33 legislators have left office under the cloud of corruption or misconduct (with half of them occurring in the past six years alone) shows that illegal and unethical behavior in the Legislature remains widespread.

The Executive Branch is not immune to this rise in corruption as nine of Governor Cuomo's aides and allies were indicted last year for a scheme of widespread bribery and corruption. However, perhaps an even greater problem is the possibility and, many perceive, the likelihood that those who contribute money to elected officials can be amply rewarded by receiving government funds outside of competitive bidding processes or other procedures designed to hold government accountable (as the criminal charges against Percoco and other aides and allies to Governor Cuomo document.) This undermines the core principle that public funds should be spent so as to maximize the public interest.

We recognize that government needs some amount of discretion in how it manages budgeted funds to respond not only to emergencies, but also to the many unanticipated developments that occur during any fiscal year. However, that should not absolve the Legislature and Governor from developing criteria to guide disbursements, and setting them forth in law. Further, the expenditure of government funds, particularly those from lump sum appropriations, should be reported to the public in detail and in an easily accessible manner. Anything less invites continued skepticism by New Yorkers as to whether their elected officials serve the public or their own needs. This taints the huge majority of elected officials who sought public office with the strong desire to make New York a better place. We believe enactment of a rigorous set of reforms will help lift the shadow that hangs over the way government handles the people's money.

## **WE STRONGLY RECOMMEND NEW YORK STATE GOVERNMENT LEADERS TAKE THE FOLLOWING ACTIONS:**

- 1. Identify all lump sum appropriations upfront in the state budget, both those identified with an elected official and those that are not.**
- 2. Disclose the detailed purposes of, and criteria for, the distribution of any lump sum appropriations and reappropriations in the state budget**
- 3. 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 that the contract or grant is for a lawful public purpose; that the elected official has not and will not receive any financial benefit; that there are no conflicts of interest; and that the elected official is in compliance with all financial disclosure requirements in the public officers law.****

**This language should be included in all such pots which an elected official can explicitly influence, and should be made part of the Enacted Budget.** Until such time as the Finance Law is amended, elected officials should willingly make this affirmation before awarding funds.

- 4. Require comprehensive and online disclosure of all grants and contracts spent under lump sum funds.** The disclosure should be in a user-friendly, machine-readable format permitting independent analysis and should include all MOUs, plans, resolutions and other agreements; funds distributed and the amount of funds that remain; and the identity of recipients and elected sponsors.
- 5. For lump sum funds distributed via Assembly or Senate resolution, resolutions should age for three days and identify the legislative sponsor for individual items.**

## Appendix A

### Economic Development and Infrastructure Programs with Funds Not Committed to Specific Projects FY 2017-18

<u>Program</u>	<u>Amount</u>
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*New Appropriations:*

Life Science Laboratory Public Health Initiative	\$ 150,000,000
New York Works Economic Development Fund	199,000,000
Regional Economic Development Council Initiative	150,000,000
Strategic Projects Program	207,500,000
Buffalo Regional Innovation Cluster Initiatives	400,000,000
Life Sciences Initiatives	300,000,000
Empire State Economic Development Fund	26,180,000
Economic Development Initiatives	69,500,000
<b>Total New Appropriations</b>	<b>\$1,502,180,000</b>

*Reappropriations:*

New York Works Economic Development Fund	\$264,113,000
Regional Economic Development Council Initiative	719,837,000
Buffalo Regional Innovation Cluster Initiatives	276,321,000
High Tech Manufacturing Projects – Chautauqua & Erie Counties	391,023,000
Nano Utica	778,000,000
Economic Transformation Program	55,391,000
Transformative Investment Program	100,000,000

<b><u>Program</u></b>	<b><u>Amount</u></b>
Capital Assistance Program	176,770,000
Economic Development Assistance Program	92,325,000
Restore NY Communities Initiative	89,814,000
Upstate Revitalization Initiative	1,458,000,000
Additional Upstate Revitalization and Initiative Program	170,000,000
Economic Development and Infrastructure Projects	85,000,000
NYS Special Infrastructure Account	881,292,000
Dedicated Infrastructure Investment Fund	497,500,000
Transformative Economic Development Projects	150,000,000
Infrastructure improvements to support transportation	87,881,000
State Municipal Facilities Corp	1,253,250,000
Empire State Economic Development Fund	128,685,000
Infrastructure Investment Account	100,000,000
Economic development or infrastructure funds under \$50,000,000 (14 in total)	300,109,000
<b>Total Reappropriations</b>	<b>\$8,055,920,000</b>
<b>Grand Total</b>	<b>\$9,558,100,000</b>

Table 1 - FY 2018 Budget Appropriations Listing One or More Elected Officials

Budget Bill	Budget Bill Type	Page	Agency	Approving Mechanism	Description	Amount	Original Year of Appropriation
(S.2003/A.3003) Reappropriations	Aid to Localities	78 (and subsequent)	Criminal Justice Services	Approval by Budget Director & Senate Temporary President plus Senate resolution	Law enforcement, anti-drug	2,891,000	2016
						1,689,000	2015
						581,000	2014
						61,000	2013
						11,000	2012
		79 (and subsequent)	Same	Same	Domestic violence prevention, victim assistance	1,609,000 717,000 146,000 4,000	2016 2015 2014 2013
		80 (and subsequent)	Same	Same	Finger Lakes law enforcement	470,000 147,000 44,000	2016 2015 2014
		81 (and subsequent)	Same	Same	Equipment and technology	604,000 356,000	2016 2015
		89	Same	Same	Rape crisis centers	1,465,000	2015
		94	Same	Same	School resource officers; anti-crime initiatives	1,042,000	2014
		98	Same	Same	Family Court domestic violence services	78,000	2012
		99	Same	Same	Local law enforcement; judges d.v. training	70,000	2012
		102 (and subsequent)	Same	Same	Drug violence and crime control programs	300,000 168,000 71,000 41,000 32,000	2016 2015 2014 2013 2012
		112 (and subsequent)	Same	Same	Civil or criminal d.v. legal services; veterans legal services (in 2015 and 2016)	950,000 662,000 101,000 14,000 34,000	2016 2015 2014 2013 2012
		302	Environmental conservation	Same	Invasive species and dredging policies	294,000	2015
		419	Family Assistance	Senate approval (mechanism unclear)	Community reinvestment program	700,000	2016

		750	Health	Approval by Budget Director and Senate Temporary President plus Senate resolution	Sexual assault kit testing	500,000	2016
		866 (and subsequent)	Labor	Senateate Majority Labor Initiative	Training, etc.	97,000 417,000	2006 2005
		871	Law	Plan developed by Attorney General	Settlement proceeds for foreclosure prevention, etc.	81,500,234	2014
		915	Mental Hygiene	Approval by Budget Director and Senate Temporary President plus Senate resolution	Joseph P. Dwyer peer-to-peer pilot program	77,000	2016
		1029	UDC	Same	Military base retention	3,000,000	2016
		1055	Higher Education Opportunity Program	Consultation with Assembly Ways & Means Chair	Various higher education programs	1,121,000	2011
		1077	Regional Economic Development Program	MOU - Governor, Senate Temporary President, Assembly Speaker	Regional economic development program	5,159,000	2005
(S.2004/A.3004) New Appropriations	Capital Projects						
		742	SUNY	Approval of plan by Governor & SUNY Chancellor	SUNY 2020 Challenge Grant	55,000,000	2017
		742	CUNY	Approval of plan by Governor & CUNY Chancellor	CUNY 2020 Challenge Grant	55,000,000	2017
Reappropriations							
		23	CUNY	Approval by Budget Director and Senate Temporary President plus Senate resolution	Various projects	67,000,000	2014
		37	Same	Consultation with Senate Majority Leader	Alterations and improvements	28,500	2006

	207 (and subsequent)	Environmental Conservation	MOU - Governor, Senate Temporary President, Assembly Speaker	Brownfield clean-up and hazardous waste remediation	702,000 15,000,000 6,382,000 8,371,000	2006 2005 2004 2003
	335	Housing & Community Renewal	Same	Comprehensive, statewide multi-year housing program	590,000,000	2016
	337	Same	Same	Same	1,383,475,000	2016
	462	State Police	Plan approved by legislative leaders	Development of records management system	10,000,000	2014
	485	SUNY	Approval by Budget Director and Senate Temporary President plus Senate resolution	Capital projects	37,319,000	2014
	486 (and subsequent)	Same	Projects identified and approved by Governor and SUNY Chancellor	Alterations and improvements to facilities	16,500,000 16,500,000 16,500,000 16,500,000 16,500,000	2012 2011 2010 2009 2008
	500	Same	Same	Design and construction of tech and entrepreneurial complex	88,000,000	2013
	500	Same	Same	Relocation and construction of med school and biomed sciences facility	78,439,000	2012
	506	Same	Same	Albany Emerging Tech and Entrepreneurial Complex	42,000,000	2008
	507 (and subsequent)	Same	Same	Alterations and improvements	5,000,000 6,272,000 23,042,000	2007 2005 2004
	629	Transportation	MOU between Transportation Commissioner and Senate Task Force on High Speed Rail	Rail capital and highway railroad crossings facilities	7,218,000	2006
	642	Same	MOU - Governor, Senate Majority Leader, Assembly Speaker	Multi-modal projects	33,456,000	2000
	664 (and subsequent)	Same	Same	Highway, bridge and rail freight projects	6,000,000 1,574,000	2002 1999

	669 (and subsequent)	Same	Same	Multi-modal projects	158,987,000 18,029,000	2006 2005
	681	Same	Same	Highways, parkways, bridges, thruway, etc.	3,527,000	2005
	716	Same	Same	Capital grants to municipalities	42,793,000	2014
	727	Same	MOU - Governor, Senate Temporary President, Assembly Speaker	Rail freight and rail passenger facilities	7,500,000	1996
	730	Same	MOU - Governor, Senate Majority Leader, Assembly Speaker	Transportation Bond Act of 2005 - aviation	1,497,000	2005
	740	Same	Same	Transportation Bond Act of 2005 - rail, ports, marine	4,574,000	2005
	742 (and subsequent)	UDC	Approval of plan by Governor & SUNY Chancellor	SUNY 2020 Challenge Grant	55,000,000 55,000,000 54,432,000 50,234,000 51,004,000	2016 2015 2014 2013 2012
	742 (and subsequent)	Same	Approval of plan by Governor & CUNY Chancellor	CUNY 2020 Challenge Grant	55,000,000 55,000,000 55,000,000 44,780,000	2016 2015 2014 2013
	757	Same	Mechanism unclear but legislature is involved	NYS Capital Assistance Program	176,770,000	2008
	758	Same	Same	NYS Economic Development Assistance Program	92,325,000	2008
	763	Same	Consultation with Assembly Speaker	Economic development projects, university projects, etc.	12,736,000	2006
	763	Same	Consultation with Senate Temporary President	Same	73,650,000	2006
	773	Community Enhancement	MOU - Governor, Senate Majority	Community Enhancement	44,823,000	1997

			Facilities Assistance Program	Leader, Assembly Speaker	Facilities Assistance Program		
	775		Empire Opportunity Fund	Same	Empire Opportunity Fund	72,059,000	2004
	777		Centers of Excellence	Same	Centers of Excellence	106,811,000	2002
	779		Economic Development Pgm	Same	Economic development projects outside NYC	63,543,000.00	2005
	780		Misc	Same	Capital projects outside NYC	19,674,000	2004
	782		NYS Technology & Development Program	Same	NYS Technology and Development Program	79,087,000	2005
	791		Regional Economic Development Program	Same	Regional Economic Development Program	16,153,000	2005
	795		Misc	Organizations selected by mayors of covered cities and by Bronx borough president	Empire State Poverty Reduction Initiative	25,000,000	2016
	806		Misc	MOU - Governor, Senate Majority Leader, Assembly Speaker	Strategic Investment Program	79,855,000	2000