



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the Moreland Commission to Investigate Public Corruption
on the need for Transparency of Discretionary Funds in the State Budget
September 24, 2013

Good evening, co-chairs Kathleen Rice, William Fitzpatrick and Milton Williams, and other members of the Moreland Commission to Investigate Public Corruption. My name is Dick Dadey, and I am the Executive Director Citizens Union of the City of New York, a nonpartisan good government group dedicated to making democracy work for all New Yorkers. I am joined by my colleague Rachael Fauss, our Policy and Research Manager.

We thank you for inviting us to testify to you this evening on the need for greater transparency in the state's budget process as it relates to discretionary funding. Citizens Union released earlier today a comprehensive report, "Spending in the Shadows: Discretionary Funding in the NYS Budget," that found over \$3 billion in funding authorized to be spent this year through "lump sum" pots of funds that allow budgetary decisions to be made after budget bills are passed. This lack of specificity hands over to our elected leaders too much discretion to decide in the shadows how the money is spent without sufficient transparency and greater public oversight.

Our report looked at two types of discretionary funds, "lump sum" funds and community projects funds. 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 after the state budget is passed. These totaled the following:

- **"Lump Sum" Funds** – \$3.3 billion in reappropriations set aside to be spent this year without being itemized in the FY 2013-14 budget bills, out a of 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 re-appropriations, \$343 million of which was not itemized in the state budget bills.

While not a new budgetary tool, lump sum appropriations appear to be 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 and public oversight. Our attention was directed to these pots of funds after Senator Malcolm Smith attempted 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 the following: "Multi-modal money is outside the budget and it's always around."¹

¹ 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/nregion/malcolm-smith-accused-of-bribery-for-spot-on-mayoral-ballot.html?_r=0

Smith is not alone in his attempt to inappropriately steer member items and other pots of state funds, many of which have been used as “grab bags” for members to fund discretionary projects, including pet projects in their local districts.

- Former Senator Shirley Huntley’s provided member item funds to a fake organization her own personal shopping sprees, which resulted in her resignation due to a felony charge;
- Assemblymember William Boyland used 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 of the Ridgewood Bushwick Senior Citizens Council has come under repeated criticism, including findings by the New York City Department of Investigation that the organization 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.

Given the potential for inappropriate use of these funds that gives the opportunity for corruption, we believe it is past time that there be greater transparency and public oversight of their allocation. What also gives us concern in recent days is the refusal of the legislature to provide to the Moreland Commission greater information regarding outside income of legislators. Though its position may be legally defensible, , it is difficult to ascertain whether legislators may have business interests related to the use and recipients of these discretionary funds without being able to examine the outside income of legislators. While we do not accuse the legislature of wrongdoing, we would be relieved of this concern if more data was made available to the public, and less activity was conducted behind closed doors. Before turning to our recommendations, we will provide our specific findings on the lump sum funds and Community Projects Fund member items.

Lump Sum Funds

Lump sum funds are discretionary pots of money that are not itemized in the state budget, allowing details and recipients to be spelled out later. These details are later provided through plans, resolutions, and Memorandums of Understanding (MoUs) - legal agreements that detail administrative decisions made by elected leaders, the details of which are worked out after budget bills are passed - yet unlike budget bills, these agreements are not routinely or easily made available to the public.

In most cases, legislative leaders or the governor and the executive branch determine 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.²

² 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>

These pots of funds are sprinkled through the Aid to Localities and Capital budget bills, making it difficult to get a sense of the total amount of funds that are distributed in this manner. Below is a table that summarizes our findings.

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

While some of these funds are less problematic, particularly when they are provided to public universities in the SUNY and CUNY systems, given their own internal controls, these funds are also provided to local non-profits, school districts, local governments, or for specific capital projects funded through state agencies that are often handled by private contractors. For the vast majority of these funds, the agreements that determine how they are spent are not made available online for the public to see. Further, the MoUs, resolutions and other agreements do not appear to detail which lawmakers requested specific funds.

Budget bills provide little detail of the intended purposes of many of these 71 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.” Other grants provide a purpose for the use of funds, but still leave discretion over 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 certain funds are to be provided through competitive formulas, for example the “SUNY 2020 Challenge Grant Program,” though certain discretion is provided to elected officials for a portion of the funds, why it included in Citizens Union’s tally.

Even where state agencies direct the spending of these funds, there can be problems related to the discretion that is afforded lawmakers in choosing which projects to fund. Other than Multi-Modal funds, 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.³ 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.⁴

³ 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>

⁴ Vielkind, Jimmy. “\$30 million ‘bullet’ targets aid gap.”

The ability for decisions regarding large sums of funds to be decided in 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 disclosure and public oversight of this decision making.

Community Projects Fund

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. There have not been new member items funded in the state budget since 2009 through this fund, though some items remain and have been reappropriated in this year's Aid to Localities budget legislation. Unlike former Governor Paterson who vetoed all reappropriated member items in 2010⁵, Governor Cuomo has not vetoed these items, provided that the funding goes to the organization or locality for which it was originally earmarked. Governor Cuomo has blocked efforts to use the Community Projects Fund to provide funding for new organizations, however, and has vetoed other funds that were more than seven years old, stating the following in his veto message: "In general, seven years is more than enough time to fund and implement services."⁶ While a welcomed improvement over past practice, seven years still seems like a long time to keep re-appropriating old items.

According to the Division of the Budget, the Community Projects Fund contained only \$92.8 million as of March 2013, though news reports indicate that the FY 2013-14 budget authorized an additional \$33 million to replenish the fund.⁷ Citizens Union's analysis of the state budget bills found nearly \$378 million in reappropriated Community Projects Fund items and unallocated pots, with only \$34 million itemized in the Aid to Localities bill. There are 45 of these unallocated pots of funds in the Community Projects Fund, which use the following broad language: "For services and expenses or for contracts with certain municipalities, corporations and/or not-for-profit agencies." The discrepancy between the remaining cash reported and the amount being authorized to be spent raises serious questions regarding whether member items truly have ended.

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.⁸ Even when the projects are itemized, the sponsoring legislator's name is not included in the budget bills.

⁵ 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>

⁶ Governor Cuomo Budget Vetos, FY2013-14, Division of the Budget. <http://www.budget.ny.gov/pubs/press/2013/2013-14Vetoes.pdf>

⁷ Vielkind, Jimmy. "Old 'pork' lives on in spending proposal." <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/>

⁸ State Finance Law, §24(5)

The State Assembly has provided disclosure online of “Legislative Initiative Request Forms,” which are the forms used by Assembly members to designate funding to particular organizations since Fiscal Year (FY) 1998. The Assembly’s pdf documents together comprise over 22,000 pages, with one member item per page, split into over 50 separate documents, making these documents difficult to navigate and useless for the general public.

There are also online databases of member items, such as the Attorney General’s “NY Open Government⁹” website (formerly known as Project Sunlight) and the private site “See Through New York¹⁰” which is run by the Empire Center for New York State Policy, both of which have data from FY 2006-2007 to 2009-2010 and link the legislative sponsors to the member items. The Division of the Budget website¹¹ also provided disclosure of line item member items from 2003 to 2010.

All these websites, however, fail to provide a clear picture of how and whether funds have been spent. 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.”

Citizens Union Recommendations

In light of our findings, Citizens Union calls upon the Moreland Commission to follow the money as it investigates lump sum appropriations, member items, and other discretionary aspects of the state budget. Specifically, we ask that the Commission:

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.

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;**

⁹ Office of the Attorney General. NY Open Government Database. Available at: <http://www.nyopengovernment.com/NYOG/>

¹⁰ See Through New York, Empire Center for NYS Policy. Available at: <http://seethroughny.net/expensitures/legislative-member-items/>

¹¹ 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>

- 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.**

In providing the Commission with this analysis and set of recommendations, Citizens Union wishes to make clear that we are not pointing fingers at any one individual. We have no evidence to allege further specific corruption beyond what has been discovered by prosecutors. But where there is smoke, there may be fire. Rather with this information, we are bringing out from the shadows spending decisions that need to be investigated and a flawed budget process that needs to be reformed. All of the data from our analysis is available at <http://www.citizensunion.org>.

Thank you for the opportunity to testify today. We welcome any questions you may have.