

Spending in the Shadows

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

Executive Summary

Governor Cuomo's Fiscal Year 2019 Executive Budget, like other budget bills and enacted budgets, is readily accessible to the public and in many cases outlines narrow instructions for how State funds should be spent. Yet, a significant portion of funds are set out in the budget with no real criteria for spending, no indication of who controls funding decisions, and little reporting requirements to tell whether money has been well spent – or spent at all. This nonspecific funding invites misuse and corruption and raises serious concerns about the integrity of State spending.

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

Key Findings

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

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

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

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

Implications

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

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

This lack of accountability enables corruption. Without narrow constraints and oversight mechanisms set out publicly in the budget, State money can be spent at the discretion of individual officials for personal gain, outside the public interest. This is not a speculative outcome; the two most recent

legislative leaders, Dean Skelos and Sheldon Silver, were both indicted on corruption charges related to their control over opaque State funds. The recent conviction of Joseph Percoco, a former top aide to the governor, also related to his involvement in State spending decisions.

Recommendations for Reform

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

- 1. Publicly post comprehensive information regarding the distribution of nonspecific lump sum funds**, including detailed purposes, criteria for spending decisions and who requested the spending. This would include criteria established by State agencies.¹ Such a listing should indicate specific purposes, any geographical or other eligibility criteria, and whether the funds will be allocated according to a competitive process or some other means.
- 2. Amend the State Finance Law** to require that elected officials, both executive and legislative, who seek to make awards from lump sum appropriations or reappropriations affirm:
 - a. that the contract or grant is for a lawful public purpose;
 - b. that the elected official has not and will not receive any financial benefit;
 - c. that there are no conflicts of interest; and,
 - d. that the elected official is in compliance with all financial disclosure requirements in the Public Officers Law.
- 3. Require comprehensive online disclosure of all grants and contracts awarded under nonspecific lump sum appropriations and reappropriations.** Such project-by-project disclosure should:
 - a. be traceable by budget appropriation;
 - b. be in a user-friendly format that is machine-readable, in order to permit the independent analysis of:
 - i. all MOUs, plans, resolutions and other agreements;

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

- ii. funds distributed and the amount of funds that remain; and
- iii. the identity of recipients (including information such as key staff and, where relevant, their board of directors), and the elected official who sponsored the spending.

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

4. **Create public disclosure by allowing budget bills to age for three days** (as is generally required for legislation) and identifying the legislative sponsor of nonspecific lump sum funds during the aging period.
5. **Enact legislation to limit contributions by people and entities doing business with the State** (including decision-makers of those entities and their immediate families). Some guidance in drafting this legislation can be drawn from the New York City Campaign Finance Act, which addresses contributions by persons and entities with business dealings before the City.²

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