



CITIZENS UNION OF THE CITY OF NEW YORK
STATEMENT OF POSITION
State Budget Language Allowing the Transfer of Funds
March 2012

Governor Cuomo's Executive Budget was released on January 17th, representing the funding and policy goals of the Governor. The Governor's proposed State Appropriations Bill, A.9050/S.6250, contains language that has raised questions regarding the amount of authority it would grant the Governor to transfer funds between agencies or among programs within a particular agency.¹

While Citizens Union supports efforts to create a more efficient and effective state government that better serves New Yorkers, we oppose the language as currently drafted, as we are concerned that the proposal as currently written does not provide sufficient transparency or strike an appropriate balance of power. While we are encouraged that the Assembly and Senate amended appropriations bills, A.9050-B and S.6250-B, to remove the original language proposed by A.9050/S.6250, we urge the legislature and Governor to examine alternative means of implementing the goals of creating greater efficiencies in state government.

A summary of our recommendations is presented below, followed by background information regarding the proposed budget language and a more detailed rationale and description of the recommendations.

1. **The proposed language should be removed from the budget legislation, and separate legislation be developed** to allow the governor to implement consolidations recommended by the SAGE Commission or to improve the efficiency of state government using either of these two suggested methods:
 - a. **The governor should submit a reorganization plan to the legislature**, similar to what is required for the mayor under the New York City Charter (Chapter 1, Section 11); or
 - b. **The governor should be required to seek legislative approval for interchanges, transfers or suballocations over a certain threshold.** For example, the New York City Charter (Chapter 6, Section 107) requires such budget modifications to be approved by the City Council if they are greater than \$50,000 or 5 percent of an agency's budget.
2. **Legislative approval should be required for all transfers or suballocations to public authorities**, and public authorities should comply with the reporting requirements of the Authorities Budget Office, which include an annual budget report.

¹ Available at: <http://publications.budget.ny.gov/eBudget1213/fy1213appropbills/StateOpsBudget.pdf>

I. Proposed State Budget Language Regarding Transfer of Funds

The State Appropriations Bill, A.9050/S.6250, contains language regarding the transfer of funds by the executive branch that has not been used in previous cycles², and is listed under every agency and program, repeated hundreds of times in the budget legislation:

“Notwithstanding any other provision of law to the contrary, for the purpose of planning, developing and/or implementing the consolidation of administration, business services, procurement, information technology and/or other functions shared among agencies to improve the efficiency and effectiveness of government operations, the amounts appropriated herein may be (i) interchanged without limit, (ii) transferred between any other state operations appropriations within this agency or to any other state operations appropriations of any state department, agency or public authority, and/or (iii) suballocated to any state department, agency or public authority with the approval of the director of the budget who shall file such approval with the department of audit and control and copies thereof with the chairman of the senate finance committee and the chairman of the assembly ways and means committee.”

Different language is provided for the budgets of the Department of Law and the Department of Audit and Control, which are headed by the attorney general and state comptroller, respectively. This language has been present in previous budget cycles, and allows the attorney general or comptroller to transfer funds among programs within their agencies, but would not allow the governor to “raid” funds from these independent elected officials’ budgets. The language for appropriations to the Department of Law is below as an example.

“Notwithstanding any law to the contrary, the amounts herein appropriated may be interchanged or transferred without limit to any other appropriation in any other program or fund within the department of law, with the approval of the director of the budget.”

II. SAGE Commission Recommendations

The SAGE Commission made recommendations in four broad areas: organizational streamlining, operational improvements, “building a culture of performance and accountability,” and “focus on core mission.” Each of these topics has a number of recommendations, some relating to civil service, and some related to technology. A summary of the recommendations in these categories is below.

² Eligon, John. “Budget Provision Raises Concerns Over Cuomo’s Reach.” The New York Times. January 19, 2012. Available at: <http://www.nytimes.com/2012/01/20/nyregion/budget-provision-raises-worries-about-cuomos-reach.html>

Organizational Streamlining

- EA 92** **Transportation Mergers** – Merge the Bridge Authority in the Thruway authority; combine functions and/or shared services between Department of Transportation (DOT) and new Thruway/Bridge Authority; combine DOT and Thruway/Bridge leadership teams
- EA 92** **Business Services Center** – Move toward Statewide Enterprise Shared Services; establish Human Resources Services Unity within Office of General Services (OGS) as first step toward Business Services Center;
- EA 92** **Workforce Development** – Establish system-wide and standardized performance metrics; reorganize State Workforce Investment Board to serve as workforce development coordinator statewide;

Operational Improvements

- EA 92** **Innovation Fund** – Create dedicated Innovation Fund to finance Business Process Redesign and efficiency-creating technology projects; expand Enterprise Services Project Management Office to manage Innovation Fund projects
- EA 92** **“Lean Management”** – Hire two “Lean Management” professionals to establish an Office of Lean Management for NYS.
- EA 92** **Energy Efficiency** – Develop master plan to implement efficiency upgrades in state facilities; finance projects using State supported debt, drawing on resources of the New York Power Authority, the Environmental Facilities Corporation, New York State Energy and Research Development Authority, or other State entities.

Building a Culture of Performance and Accountability

- EA 92** **Performance Management System** – Deploy a performance management system; create a dedicated performance unit with Division of the Budget or Executive Chamber to maintain system.
- EA 92** **Workforce Modernization** – Pursue civil service reforms that facilitate entry of mid-level professionals into the Civil Service; implement computerized testing solution at Division of Community Services; develop programs to encourage talented youth and minorities to join workforce.

Focus on Core Mission

- EA 92** **More Efficient Use of State Capital** – Increase amount of capital available for affordable housing by using reinsurance to free up capital.

III. City Council Authority Over Modifications

The New York City Charter provides two mechanisms that Citizens Union examined which could allow the governor to implement the SAGE Commission recommendations or create other efficiencies. It should be noted that the New York City budget process is generally seen as heavily centralized, with the mayor having significant authority, and yet these provisions provide greater transparency and a role for the City Council in approving budget transfers.

There is currently in the City Charter (Chapter 6, Section 107(b)) a minimum threshold of 5 percent of agency spending or \$50,000, whichever is greater, for the transfer to be considered a budget modification and trigger notification of the council. The Council is responsible for approving or rejecting modifications to the budget throughout the fiscal year.³ Before the council votes on a proposed budget modification, the modification must be "accompanied, on a separate form, by a fiscal impact statement prepared by the finance division of the Council."⁴ These modifications are required as "new spending needs arise, delays in implementing programs occur, and revenues exceed or fall below expectations."⁵ However, the City Charter does allow the mayor to "implement expenditure reductions" after the final adoption of the budget in an effort to maintain a balanced budget.⁶

The City Charter in Chapter 1, Section 11 also specifies that the mayor can reorganize any agency under his or her jurisdiction, including transferring functions from one agency to another; creating new agencies; eliminating existing agencies; and consolidating or merging agencies to "achieve effective and efficient functioning and management of city government," but any action in this regard is considered a "reorganization plan" that must be published in the City Record. The mayor is also required to send a copy of the reorganization plan to the City Council if it involves a change to the City Charter or an agency created by executive order, and the Council then approves or disapproves of the reorganization plan via resolution. Any changes that would require voter approval would not be allowed by the reorganization plan, and the plan cannot include changes to boards or commission created under the City Charter.

³ "Understanding New York City's Budget: A Guide" *Independent Budget Office*. Available at:

http://www.ibo.nyc.ny.us/iboreports/IBO_BG05_web.pdf. P. 4.

⁴ "Rules of the Council". Available at: http://www.council.nyc.gov/html/about/files/council_rules_2009_11.pdf

⁵ Lowenstein, Ronnie. "Follow the Money". *Gotham Gazette*. Available at:

<http://www.gothamgazette.com/commentary/73.lowenstein.shtml>

⁶ "About the City Council: Budget Process and Calendar" <http://council.nyc.gov/html/about/budget.shtml>

IV. Citizens Union Detailed Recommendations

Citizens Union in its 2008 Issue Brief and Position Statement on State Budget Reform⁷ recommended limiting the ability of the governor to enact or modify the terms and conditions regarding use of resources in appropriation bills by requiring that such bills be consistent with either existing law or changes presented in separate legislation. Consistent with this position, Citizens Union opposes the current language in the proposed state appropriations budget – which would allow the governor to transfer, interchange or suballocate funds between or within agencies and public authorities in order to consolidate government programs or agencies – as it is not consistent with an appropriate balance of power between the executive and legislative branches.

The proposed language in the state appropriations legislation should be removed, and separate legislation should be considered to provide a mechanism for the governor to consolidate administrative functions to improve the efficiency of government, while ensuring transparency and an appropriate role for the state legislature. While we are encouraged that the Assembly and Senate amended appropriations bills A.9050-B and S.6250-B remove the language proposed by A.9050/S.6250, we urge the Legislature and Governor to examine alternative means of implementing the goals of creating greater efficiencies in state government. Our recommendations in this area are below.

1. Separate legislation should be developed to allow the governor to implement consolidations recommended by the SAGE Commission or to improve the efficiency of state government, using either of the two suggested methods:
 - a. The governor should submit a reorganization plan to the legislature, similar to what is required for the mayor under the New York City Charter (Chapter 1, Section 11), which would be posted in the State Register, if changes involved state agencies created via the State Constitution, state statute or executive order. The plan would then be subject to approval by the legislature; however, it would go into effect if the legislature fails to act. This mechanism would both create greater transparency and ensure that the legislature maintains its role in the state budget process; or
 - b. The governor should be required to seek legislative approval for interchanges, transfers or suballocations over a certain threshold. For example, the New York City Charter (Chapter 6, Section 107) requires such budget modifications to be approved by the City Council if they are greater than \$50,000 or 5 percent of an agency's budget). The approval requires the mayor to submit a fiscal impact statement to the City Council detailing the specific reasons for the modification. While we are uncertain of what the specific threshold should be for legislative approval at the state level, we believe that this mechanism would allow for greater transparency and maintain the legislature's role in the budget process.

Citizens Union in its 2008 Issue Brief also supported requiring the governor's budget presentation to include a complete and clear financial picture of state operations and fiscal responsibilities,

⁷ Available at: http://www.citizensunion.org/www/cu/site/hosting/issuebriefs/2008ib_statebudgetreform.pdf

including those of public authorities. While recent reforms have required greater disclosure of public authorities' budgets, such as to the Authorities Budget Office (ABO), the accountability of public authorities remains a significant challenge. Indeed, the ABO on January 27, 2012 admonished nearly two hundred state and local public authorities, local development corporations and industrial development authorities for failure to submit required budget reports.⁸

Given the lack of disclosure of public authorities – particular those which are “off-budget,” meaning their funding and programs have not been approved by the legislature – Citizens Union is particularly concerned about the proposed state budget language and the ability to transfer funds to unaccountable public authorities. We therefore recommend the following:

2. Legislative approval should be required for all transfers or suballocations to public authorities, and public authorities should comply with the reporting requirements of the Authorities Budget Office, which include an annual budget report.

⁸ New York State Authorities Budget Office, “Public Authorities that have failed to file required reports,” January 27, 2012. <http://www.abo.ny.gov/reports/January2012DelinquentList.pdf>