

OPTIONS FOR BUDGET REFORM IN NEW YORK STATE

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INTRODUCTION

The months between September 2007 and adoption of New York State's next annual budget in March 2008 are a critical juncture in the efforts to "fix Albany." The process by which that budget is prepared and debated, as well as the substantive decisions it embodies, are central to the movement for political and fiscal reform in New York State. In order to promote fiscal reform, the Citizens Budget Commission (CBC) is convening three separate agenda-setting conferences for key stakeholders in the state budget process in the months of September, October and November 2007. Each session will focus on one aspect of fiscal reform with a goal of identifying specific next steps for action in the coming budget cycle and beyond.

The three dimensions of fiscal reform to be considered are:

1. Greater accountability and transparency in fiscal decision making.
2. More effective use of State fiscal resources.
3. More equitable and affordable local tax burdens.

This background paper focuses on the first issue. It has been prepared to inform discussion among the participants at the first CBC agenda setting conference, scheduled for September 20, 2007.

The paper is organized into three sections. The first is a definition of the problem; it defines in some detail the limited accountability and transparency that have characterized the New York State budget process in past years. The second section describes the progress made in addressing these problems during recent legislative sessions, focusing particularly on the 2007 session. The last section describes options that can be pursued in 2008 and subsequently to make even more substantial progress. The options are not all mutually exclusive, but they are relatively numerous. Conference participants are asked to review these options for discussion in the forum on September 20. The views expressed by experts attending the forum will be considered in the preparation of a final document that will summarize recommended actions for State leaders.

THE PROBLEM – DEFICIENCIES IN ACCOUNTABILITY AND TRANSPARENCY

There is no shortage of criticisms of New York’s budget process. Given the numerous complaints, the challenge for constructive dialogue is to organize and analyze the perceived shortcomings in meaningful categories. For purposes of discussion, this paper subdivides the problem into three dimensions and describes each separately – the difficulties ensuring long-run fiscal stewardship, a set of legislative structures and practices that are not conducive to accountability and transparency, and uncoordinated efforts to use and report meaningful performance measures across State government activities.

Neglect of Long-run Fiscal Stewardship

Although public sector budget decisions are typically made in annual cycles, the time-frame for judging their impact ought to be more long-run. Decisions made in a given year should not impose costs on taxpayers in future years; rather they should be building a sounder fiscal base for any harder times that might emerge and should be protecting future generations from the cost of current government activities. New York’s past fiscal decisions fall short on this standard in three ways – budgets are not always balanced, too much reliance is placed on borrowing, and not enough money is kept in reserve for a “rainy day.”

Budgets Not Balanced. At the state and local level it is desirable to have a balanced budget. Unlike the federal government, states cannot justify deficits as necessary to finance wars and other emergencies or as a macroeconomic tool for counteracting declines in the national business cycle. Instead states are expected pay for current services with current revenues. Incurring a deficit, in effect, means that services consumed by residents in one year will be paid for in part by residents in future years. While perhaps attractive in the short run for current residents, deficits will erode the state’s future ability to attract residents and businesses because they will be obliged to pay for services already consumed by others.

While there is widespread agreement on the value of balanced budgets, there is considerable controversy over the way in which “balanced” should be defined. Four aspects of the term are debated.

1. Timing - Adoption versus Results. The State budget is proposed by the Governor, adopted by the legislature, and then implemented by the executive branch during the fiscal year. The budget can be balanced as proposed by the Governor, as adopted by the legislature and/or in the financial results at the end of the year.

The State Constitution requires that the Governor submit a balanced budget. There is no constitutional requirement that the adopted budget be balanced. However, the State Comptroller must certify that the adopted budget is sufficient to make required payments for the balance of the year. While this requirement provides a measure of reassurance to the financial community from which the State borrows money, in practice meeting the standard

for certification has not been difficult. In 2007 a statutory requirement for a budget balanced at the time of adoption was enacted as part of a reform package.

There is no requirement that the State end its fiscal year with a balanced budget; however, the State Comptroller reports to the public on the year-end results. Few state or local governments are required legally to have a year-end balance, but the State did impose this requirement on the City of New York after its 1975 fiscal crisis. The statutory requirement is perceived as playing a role in keeping the City's budgets balanced, and a similar requirement is sometimes suggested for the State.

2. Accounting standards – Cash versus accrual. State and local governments generally maintain and report their accounts in two forms – on a cash basis and on an accrual basis in accord with generally accepted accounting principles (GAAP); they also report on how the two sets of figures are reconciled.

Each accounting standard has its merits. The cash basis shows sums actually spent (disbursements) during the year and sums actually received (receipts); the accrual approach shows sums earned (revenues) or obligated (expenditures) during the year even if they do not have an associated cash receipt or disbursement. Thus, for example, on a cash basis taxes are counted as receipts when they are received from taxpayers and deposited in the State's treasury, while on an accrual basis taxes are counted as revenues when they are due from the taxpayers even if the liability is not paid immediately. Similarly, on a cash basis sums are reported as disbursements when a bill is actually paid by the State, while on an accrual basis an item becomes an expenditure once the State incurs the obligation even if it delays paying the bill. The cash basis is seen as preferable on grounds that it reveals when the state is actually short of cash to pay its bills, while the accrual basis is seen as preferable because it is less subject to manipulation of annual results based on simply delaying paying bills and more revealing of the State's underlying fiscal condition.

New York State presents its budget on both a cash and accrual basis, and reports its year-end results on both bases. However, the requirement for "balanced" budgets at time of presentation and adoption are applied only to the cash basis; budgets are not required to be balanced on an accrual basis in accord with GAAP.

3. General Fund versus Additional Funds - Appropriations authorized each year are managed through a set of "governmental funds."¹ These funds are accounting entities authorized by the legislature and managed by the Comptroller. These governmental funds are divided into five types:

(a) the General Fund – includes most tax revenues and other non-designated revenues raised by the State;

¹ In addition to governmental funds there are also "enterprise funds" and "fiduciary funds." The former account for funds earned by public entities operating like a business and charging fees or otherwise earning revenue; the latter are funds for which the Comptroller serves as a custodian, but they do not directly affect the fiscal condition of the State. Generally only governmental funds are controlled through the appropriation process.

- (b) other State funds – includes State revenues earmarked for specific purposes such as gasoline taxes supporting road maintenance
- (c) federal special revenue funds – includes federal grants received for specific purposes;
- (d) capital project funds – includes bond proceeds and other sources designated for capital investments;
- (e) debt service funds – funds holding money appropriated to pay for debt service on State-funded bonds and other long-term obligations.

The term “all funds” is used to refer to the sum of all the funds net of transfers between funds. The accounts for the funds are maintained on both a cash and accrual basis. However, the previously noted requirements for a “balanced” budget at time of the Executive Budget presentation and at time of adoption apply only to the General Fund, not to additional funds or to “all funds” combined.

4. Fund Accounts versus the Statement of Activities. The convention of accounting for appropriations in a series of governmental accounts permitted appropriate management and reporting of public funds, but had two serious shortcomings as a way of informing the public of a state’s financial performance. Specifically it (a) failed to account for funds that were raised and spent outside the appropriation process, and (b) failed to account for changes in the condition of physical assets owned by the state. To address these issues the Governmental Accounting Standards Board (GASB) introduced changes in GAAP, known as GASB 34, that became effective for New York State in its 2002-03 fiscal year. These new rules require preparation of a “Statement of Activities” that supplements the fund accounts and covers a wider range of government expenditures and treats capital investments in a different manner from the fund accounts.

At the broadest level, the new GAAP format divides a state’s activities into two categories – those of “primary government” and of “component units,” with the combination of the two comprising all statewide activities. Primary government refers to the agencies under control of the State’s elected officials and legally a part of State government; component units are legally separate entities that GAAP requires to be included because the state is financially responsible for them and the state is affected by their financial well being. New York has 43 separate component units including the Metropolitan Transportation Authority, the Thruway Authority, the Power Authority and the State Insurance Fund.² Some of these component units may receive some revenue in the form of a state appropriation, but most have independent sources of revenue (such as tolls, fares and fees) and their budgets are approved by their governing boards rather than the State Legislature. While the Comptroller includes the component units in the State’s annual financial report, their overall expenses and revenues are not covered in the Governor’s Executive Budget or the adopted budget and are not included in the conventional governmental funds.

The new GAAP format further divides primary government between “governmental activities” and “business type activities.” The former includes most of the services associated with state government; the business type activities include the lottery, unemployment

² Two additional component units, the Local Government Assistance Corporation and the Tobacco Settlement Financing Corporation, provide services only to the State and are blended with the State’s governmental activities.

insurance and the operation of the State University and City University of New York.³ The business activities have major sources of revenue that are not appropriated by the Legislature but are earned from “customers” such as purchases of lottery tickets, payments of tuition and related fees, and payments of insurance premiums. Much of the financial activity related to business type activities is not included in the Executive Budget or the adopted budget and is not included in the conventional governmental funds.

The governmental funds and the Statement of Activities also differ in their treatment of capital assets and investments. The governmental funds include funds designated for capital expenditures. These funds report capital investments as disbursements or expenditures and recognize the proceeds of bonds issuances to support capital spending as a source of cash or a resource for the capital funds. The GAAP rules for preparation of a Statement of Activities treat capital spending as an investment not an expense, and treat long-term borrowing as a liability not a resource. This is more in line with private sector accounting. Similarly, the Statement of Activities requires that the depreciation of assets be counted as an expense, while depreciation is not taken into account in any of the governmental funds.⁴ Based on these differences, the funds accounts are viewed as a preferable perspective because it does not require government to raise money to fund depreciation (which does not require an immediate cash outlay), while the Statement of Activities is viewed as a preferable perspective because it recognizes the value of capital assets and the need for their maintenance.

The different timing perspectives, accounting rules and definitions of the scope of state activities lead to different conclusions about whether public officials balance the budget. The budget, defined as the cash-basis General Funds, is always balanced at the time it is adopted. But by any other definition there are sometimes deficits. As show in Table 1, in the last five years the budget has been negatively imbalanced twice based on General Fund cash accounting for results rather than adoption, once on a General Fund GAAP basis, and three times based on the Governmental Activities and Primary Government Activities statements. As will be discussed in the options section of this paper, there are reasonable arguments for using different definitions in setting standards for State fiscal behavior.

The CBC long has advocated that the budget, as reflected in the State’s financial plan, be balanced according to a GAAP standard. With the improved financial reporting and disclosure required by compliance with GASB 34, the CBC is now considering recommending that the budget be balanced for all governmental activities. By that new standard the State has incurred deficits in three of the last five years.

³ Only CUNY senior colleges are part of State government; CUNY community colleges are part of the City of New York.

⁴ The Statement of Activities, following the same logic, does not count the part of debt service that is payment of principal as an expense, but does count long-term interest as an expense.

Table 1
State of New York Financial Results Using Different Definitions
Fiscal Years 2003-2007
(dollars in millions)

Definition of State	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
General Fund - cash basis					
Disbursements	\$ 35,264	\$ 39,587	\$ 41,219	\$ 43,422	\$ 48,025
Receipts	30,068	34,505	35,137	37,333	41,087
Net Transfers	4,980	5,343	6,223	6,801	6,725
<i>Surplus (deficit)</i>	(217)	261	141	711	(212)
General Fund - GAAP basis					
Expenditures	40,910	43,386	45,104	48,321	51,936
Revenues	29,250	32,489	35,929	41,091	44,259
Net Transfers and Financing Proceeds	7,439	13,936	10,002	8,866	7,879
<i>Surplus (deficit)</i>	(4,221)	3,039	827	1,636	202
All Governmental Funds - GAAP basis					
Expenditures	91,147	96,691	98,253	104,013	111,010
Revenues & Financing Sources	86,843	99,928	100,363	107,862	110,965
<i>Surplus (deficit)</i>	(4,304)	3,237	2,110	3,849	(45)
All Governmental Activities - GAAP Basis					
Expenditures	88,572	94,602	95,343	101,132	108,246
Revenues and net Transfers	83,289	91,292	97,447	105,939	107,576
<i>Net change in Assets</i>	(5,283)	(3,310)	2,104	4,807	(670)
All Primary Government Activities - GAAP Basis					
Expenditures	104,215	110,157	110,320	116,812	124,784
Revenues and Net Transfers	98,745	106,435	112,981	122,110	124,577
<i>Net Change in Assets</i>	(5,470)	(3,722)	2,661	5,298	(207)

Note: Fiscal year 2005 amounts have been adjusted to reflect the inclusion of all HCRA funded programs and of additional Medicaid spending to comply with federal policy changes related to certain county share adjustments.

Sources: State of New York, Office of the State Comptroller, *Comptroller's Annual Report to the Legislature on State Funds Cash Basis of Accounting*, fiscal year 2004 through 2007 editions. State of New York, Office of the State Comptroller, *Comprehensive Annual Financial Report*, 2003 through 2006 editions. State of New York, Office of the State Comptroller, *Basic Financial Statements and Other Supplementary Information*, 2007 edition.

Too Much Debt. A second way in which State officials neglect their long-run fiscal stewardship is by relying too heavily on long-run debt. Borrowing can be a useful tool in financial management, helping to spread the cost of long-run capital investments over the useful life of those projects. But debt is also a political temptation that can be abused. Debt can be used for the wrong reasons, notably to pay for operating expenses rather than capital investments. And even when used for capital investments, debt can become a problem if too much is borrowed and repayment becomes a heavy burden on current taxpayers. In New York State, both types of misuse have occurred.

Since 1991 the State has authorized about \$11.2 billion in long-term borrowing to help support operating expenses. In 1992 the Local Government Assistance Corporation was created and authorized to borrow \$4.7 billion to support aid payments to local governments. In 2004 the Tobacco Settlement Finance Corporation was created and authorized to borrow \$4.2 billion to support operating expenses.⁵ In 2005 the Sales Tax Asset Receivable Corporation was created and authorized to borrow \$2.6 billion to aid the City of New York by replacing bonds previously issued by the Municipal Assistance Corporation to support City operations with proceeds from new longer-term bonds. In 2004 the Municipal Bond Bank Agency was authorized to borrow \$511 million to make school aid payments for the State. As of the end of fiscal year 2007, the debt still outstanding from these borrowings totaled \$11.2 billion.

While there is widespread agreement that such borrowings are not desirable because they saddle future taxpayers with the cost of operating expenses incurred in prior years, there is no consensus on how to decide when there is “too much” borrowing, even for more legitimate purposes such as capital investments. Three standards can be identified - limit borrowing procedurally by requiring voter approval, limit borrowing by setting a numerical cap related to the size of the state’s tax base, and limit borrowing based on the relative position of New York to the other 49 states taking into account a variety of actors. By each of these standards New York State has too much debt.

The State constitution seeks to limit borrowing by requiring that bonds issued by the State be approved by the voters in a general election. Since 1946 the State Legislature has asked voters to approve 34 separate bond issues. Of these, 22 were approved and 12 rejected.⁶ Since 1990, four of six bonds proposal have been rejected. Because voter approval has proven relatively difficult to obtain, especially for less popular types of investments such as prisons, State officials have devised ways to circumvent the constitutional limit. The major device is reliance on public authorities to borrow on behalf of the State. Most State borrowing is done in this “back door” manner. As of the end fiscal year 2007, fully \$39.4 billion or 92 percent of all State-supported debt outstanding was of the back-door type; only 8 percent had been authorized by the voters.⁷

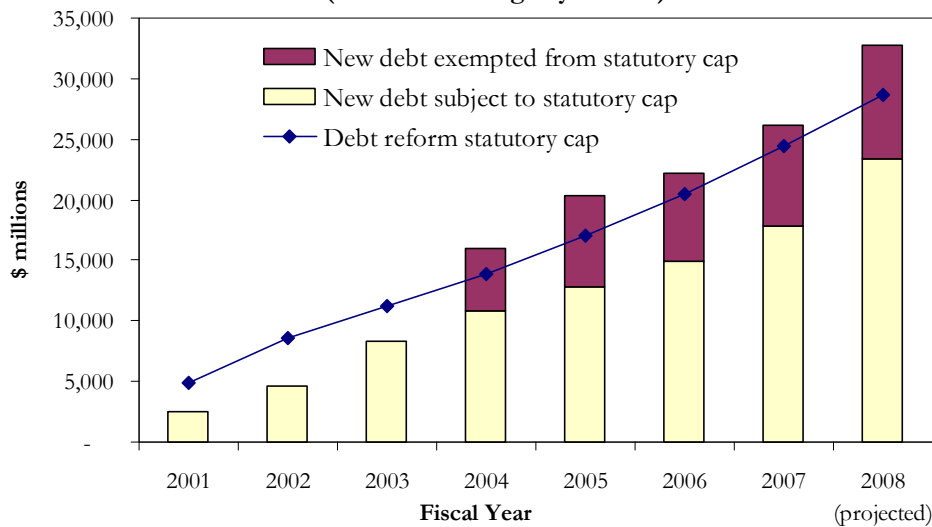
⁵ The funds from tobacco securitization were used to support expenses during the economic downturn the State experienced after September 11, 2001.

⁶ Data from State of New York, Board of Elections.

⁷ State of New York, Division of the Budget, *2007-08 Enacted Budget Capital Program and Financing Plan*, April 25, 2007.

In 2000 State officials acknowledged that borrowing, including back door borrowing, ought to be subject to a reasonable limit. The Debt Reform Act of 2000 set a limit for all state-supported debt to be issued in the future (currently outstanding debt was exempt). The limit was set as a percent of personal income in the state, and rose over 10 years to a cap of 4 percent of personal income.⁸ Figure 1 shows the statutory limit for fiscal years 2001 thru 2007. For three years State officials adhered to the limit, but the cap has been exceeded in each year starting in fiscal year 2004. The new legal device for circumventing this limit is to arrange for certain types of borrowing to be excluded from what is counted as “state supported” and, therefore, to be excluded from the cap. At the end of fiscal year 2007, outstanding debt issued since 2000 totaled \$26.1 billion compared to a statutory cap of \$24.3 billion. However, fully \$8.3 billion had been classified as exempt from the cap.⁹

Figure 1
Debt Outstanding and
Debt Cap, Fiscal Years
2001 - 2008
(debt outstanding at year-end)



Sources: Charles Brecher and Elizabeth Lynam, *New York's Endangered Future: Debt Beyond Our Means*, (Citizens Budget Commission, September 2005) page 4. State of New York, Division of the Budget, *2007-08 Enacted Budget: Capital Program and Financing Plan*, April 25, 2007. State of New York, Office of the State Comptroller, *Review of the Enacted Budget*, Office of Budget and Policy Analysis, Albany, New York, May 2007.

⁸ The cap on debt outstanding is phased in over 10 years, the cap on debt service is phased in over 14 years, New York State Finance Law, Article 5-B, Section 67-b.

⁹ New debt that is exempt from the statutory cap includes debt issued by: the Tobacco Financing Corporation, the Municipal Bond Bank Agency, the Sales Tax Asset Receivable Corporation, and Building Aid Revenue Bonds issued by the New York City Transitional Finance Authority which are also exempt from the cap.

In 2000 the CBC recommended an alternative way to set a limit for outstanding state debt.¹⁰ The method compares New York State to other states taking into account the size of the tax base (measured to include factors in addition to personal income), the role of state versus local governments in providing services within the state, and long-term obligations in addition to debt (notably unfunded pension liabilities). The limit or “danger zone” is set based on deviations from the average debt burden among all the states. In the 2000 analysis (using data from 1997) New York was found to exceed the recommended limit by \$3 billion; an update of the analysis in 2005 (using data from 2003) found New York exceed the recommended limit by nearly \$10 billion.¹¹ The situation likely has deteriorated further since then.

Inadequate Reserves. Looking out for the future in a prudent way requires setting aside reserves for difficult times. Among state governments this is typically pursued through the creation of “rainy day funds.” These are reserve funds into which money is placed during strong economic times and made available for use during economic downturns when tax revenues fall and continued provision of state services is in jeopardy.

The State Constitution authorizes the creation of a rainy day fund known as the Tax Stabilization Reserve Fund (TSRF). It is intended to hold money for use when tax revenues fall below norms. The Constitution largely leaves it to the Legislature to set the rules for placing money into the fund and for withdrawals, but any change to the statutory rules regulating the fund must wait three years to become effective.¹²

State officials have kept the TSRF exceptionally small. A statutory cap limits the maximum size at 2 percent of General Fund spending.¹³ Among the 50 states, 14 have no limit on their rainy day fund and another 19 have a limit greater than 5 percent.¹⁴ In addition, funds drawn from the TSRF must be repaid within six years in no less than three equal installments. Moreover, New York for many years did not make deposits to bring the reserve to the 2 percent cap. At the end of fiscal year 1996-97 the TSRF fund balance was \$317 million. By fiscal year 2006-07 the balance had been increased steadily to reach \$1,031 million, the legal limit. Each year from 2001 to 2005, the Governor proposed increasing the TSRF cap from 2 to 5 percent, but the proposal was not adopted by the Legislature.

In 2007 State officials acknowledged the need to increase formally designated rainy day funds. Given the constitutional requirement that rules for the TSRF must be changed three years in advance, they decided to accomplish the expansion by creating a new fund. The new

¹⁰ Citizens Budget Commission, *An Affordable Debt Policy for New York State and New York City*, (Citizens Budget Commission, October 2000).

¹¹ Charles Brecher and Elizabeth Lynam, *New York's Endangered Future: Debt Beyond Our Means*, (Citizens Budget Commission, September 2005) page 3. Citizens Budget Commission, *An Affordable Debt Policy for New York State and New York City*, (Citizens Budget Commission, October 2000), page 20.

¹² New York State Constitution, Article 7, Section 17.

¹³ The maximum contribution cannot equal more than two tenths of 1 percent of General Fund spending.

¹⁴ Seven additional states (Wisconsin, Kentucky, Tennessee, Idaho, Alabama, Louisiana, and North Dakota) have Rainy Day Funds which are limited, but are not capped as a percent of General Fund expenditures. See Elizabeth McNichol and Brian Filipowich, *Rainy Day Funds: Opportunities for Reform*, (Center on Budget Policy Priorities, revised April 17, 2007). National Conference of State Legislatures, *State Budget Stabilization Funds*, updated March 2004.

Statutory Rainy Day Reserve (SRDR) is capped at 3 percent of General Fund disbursements, raising the combined funds capacity to 5 percent –closer to the practice among most states. Money can be withdrawn from the SRDR only during an economic downturn or in the case of a disaster; withdrawals must be repaid within three years of the end of the economic downturn. The new fund is not subject to the constitutional requirement obliging the Legislature to allow 3 years lead time to change deposit rules; the rules for the SRDR could be changed in the future. The fiscal year 2007-08 budget appropriates \$175 million to the new fund. This compares to a 3 percent cap of \$1,611 million. At this pace it will be approximately 9 years before the new fund reaches its cap.

It can be argued that the State's rainy day reserves are greater than the sums in the TSRF and the SRDR. In some recent years other reserves have been created to balance future year budgets and/or to cover short-term shortfalls in receipts. As shown in Table 2, in some years the combined balances in several other funds exceed those in the rainy day funds. At the start of fiscal years 2000 thru 2002 other reserves far exceeded those in the TSRF, and in fiscal years 2005 thru 2008 other reserves also were greater than the rainy day funds' balances. These reserves have been used in crisis; after the terrorist attacks of September 11, 2001 the State used its accumulated cash reserves to help offset a sharp and immediate decline in receipts. However, because the use of these funds is not limited to rainy days, they should not be viewed as a substitute for more formally regulated and maintained reserve funds.

Problematic Budget Processes and Practices

Budgeting in New York State has a history and pattern of dysfunction. What accounts for this?

The answer is far from clear and impossible to prove empirically, but some factors at work can be identified. Six problematic features of process and practice are worth considering – (1) a constitutional balance of powers that puts the legislature in a weak position relative to the Governor, (2) a short period for legislative deliberation about the budget, (3) frequent late adoption of the budget, (4) limited roles for the rank and file membership in the budget process, (5) large spending for “member items” with limited accountability, and (6) other practices that obscure budget information that ought to be readily available to the public.

The Imbalance of Power. The United States federal constitutional arrangement of a separation of powers among branches of government with checks and balances among them serves as a model for state constitutions. However, the ways in which states have adapted the model vary widely. New York is distinctive in that its balance of powers between the executive and legislative branches with respect to the budget process puts the Legislature in a very weak position.

Table 2
General Fund Reserves at Budget Enactment
Fiscal Years 2000 to 2008
(dollars in millions)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Tax Stabilization Reserve (Rainy Day Fund)	\$473	\$547	\$627	\$710	\$710	\$794	\$872	\$944	\$1,031
New Rainy Day Reserve	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	175
Contingency Reserve	107	150	151	6	20	21	21	21	21
Community Projects	200	338	142	-	-	312	316	276	353
Debt Reduction Reserve	250	-	-	-	-	-	-	250	250
Universal Pre-K	-	-	14	-	-	-	-	-	-
Reserve for WTC/Other costs	-	-	300	-	-	-	-	-	-
Other Reserves*	1,815	675	1,479	-	-	-	601	1,783	1,203
Total	2,845	1,710	2,713	716	730	1,127	1,810	3,274	3,033
Projected General Fund disbursements	\$37,355	\$38,924	\$41,993	\$40,214	\$40,837	\$43,039	\$46,207	\$50,843	\$53,684
Rainy Day Funds as share of Projected General Fund disbursements**	1.3%	1.4%	1.5%	1.8%	1.7%	1.8%	1.9%	1.9%	2.2%
Total as share of Projected General Fund disbursements	7.6%	4.4%	6.5%	1.8%	1.8%	2.6%	3.9%	6.4%	5.6%

*Other Reserves have been called different names including the Tax Reduction Reserve, the Salary/Other Reserve, the Fiscal Responsibility Reserve, and the Spending Stabilization Reserve.

**Rainy Day Funds include both the Tax Stabilization Reserve and the Statutory Rainy Day.

N/A=Not Applicable

Sources: State of New York, Division of Budget, *Enacted Budget Report*, fiscal year 2001 through 2008 editions.

The State constitution requires the Governor to prepare an Executive Budget and accompanying appropriation bills. It also requires that the Legislature act on these bills before making any alternative or supplementary appropriation of its own. The constitution also places limits on how the Legislature may alter the governor's bills. They can only delete or lower specific appropriations, they cannot increase them or change their terms of appropriation. The Legislature may add specific items, but the governor has a line item veto over the budget – meaning he can unilaterally delete anything the legislature adds.¹⁵ The Legislature's inability to alter the language that describes and accompanies appropriations is a serious limitation; it has given the Governor the ability to specify programmatic terms and conditions in an appropriation bill and oblige the Legislature to accept or reject the item without the negotiation that might accompany the same changes were they in a authorizing statute rather than an appropriation bill.¹⁶

In order to gain more bargaining power in the budgetary process, the legislative leaders have pursued different and sometimes radical strategies. One technique that has been tried is to delay action until the governor agrees to negotiate desired changes. Over the years coping mechanisms have been developed and used to mitigate the impact of a late budget. There is no equivalent of a “shut down” of government that occurred at the federal level when Congress took a recalcitrant position in 1995. Late budgets have worked less to empower the legislature and more to have them be perceived as responsible for unnecessary delays. However, in 2007 some observers believe that Governor Eliot Spitzer's desire to have an on-time budget in his first year did lead him to negotiate significant changes in his proposed budget as the deadline approached.

A second strategy, used only once by the Legislature, is to pass a “bare bones” budget. The members use their ability to reduce and cut items to pass a budget that spends far less than the Governor desires and most citizens want. The intention is to oblige the Governor to then come back to the Legislature and negotiate supplemental appropriations. This was done in 2001 for the 2001-02 fiscal year. However, the intended second round of negotiations did not materialize, because the terrorist attacks of September 11, 2001 led to a different outcome. In October, with projected revenue losses in the billions, the Governor and the Legislature adopted a supplemental appropriation that provided only about \$286 million in additional spending and year-end spending was below that proposed in the initial Executive Budget.¹⁷

In sum, constitutional provisions place the legislature in the unfortunate position of either having little influence over the budget or having to engage in unpopular behavior (delay or drastic cuts) in order to gain some bargaining leverage. An option for avoiding this dilemma in the future is discussed in the final section of this paper.

¹⁵ Vetoes can be overridden by the Legislature with a two-thirds vote.

¹⁶ New York State Constitution, Article 7. The courts further cemented gubernatorial budget power in 2004 through two court cases which were joined in a single decision: *Pataki v New York State Assembly* (3 NY3d 171, 2004) and *Silver v Pataki* (1 NY3d 172, 2004).

¹⁷ The \$286 million was added on October 24, 2001, see State of New York, Division of the Budget, *2001-02 Mid-Year Financial Plan Update*, November 2001. General Fund and State Fund spending were less than proposed in the Executive Budget.

Limited Time for Deliberation. New York State has an unusual budget timetable. Its fiscal year begins on April 1, and the Governor is required to submit the proposed Executive Budget in the middle of the preceding January.¹⁸ This allows about 10 weeks for the legislature to consider and act on the proposed budget.

New York's deliberation period is shorter than in most other states. Among the 50 states, 34 specify when the Governor must submit a budget for consideration. In 21 of those states, the submission allows at least five months (more than twice the period in New York) for legislative deliberation. Only two large states – Florida (9 weeks) and Georgia (6 weeks) - allow less time than New York.¹⁹

Effective use of the 10 week period in New York is constrained by the practice of devoting much of the time to negotiating over revenue estimates rather than over the allocation of spending. The Senate, the Assembly and the Governor each enter negotiations with their own estimate of how much is available. Agreeing to common revenue estimates is viewed as the first step in the process, since spending should not exceed revenues. In 1996 a statutory process was established to arrive at a “consensus revenue estimate.” The law required the directors of the two legislative fiscal committees and the Governor's Director of the Budget to convene a conference in March to come to an agreement on the revenue forecast. The conference includes other participants from outside of government to aid in the forecasting. A consensus revenue report issued by all three parties was required by March 10. This left about three weeks for negotiations over spending decisions.

The process of consensus revenue forecasting did not work smoothly or effectively. The requirement applied only to General Fund tax revenues, leaving open potential debates over non-tax revenues and other available revenues from sources outside the General Fund. Because there is no penalty for failing to meet the March 10 deadline, the process also ran late in some years. And in some years, no real consensus was reached; the report reflected different estimates from each party.

In 2007 the Governor and Legislature agreed to reforms in the consensus revenue forecasting process. The conference was set for late February and the mandated report was given a March 1 deadline. In addition, the State Comptroller was given authority to recommend a revenue estimate for the three parties if they could not reach an agreement. The new rules led to a consensus forecast without the Comptroller's intervention and before the deadline, but this forecast was not adhered to for the final budget negotiations. Additional debate followed over both tax and non-tax sources with the adopted budget having estimates greater than those in the consensus forecast.

Late Budgets. For 20 years from 1985 to 2004 (fiscal years 1986 through 2005) the Legislature did not adopt a budget before the start of the new fiscal year. In some cases the

¹⁸ The Governor's budget is due on the first day of February following an election year and on or before the second Tuesday following the first day of the annual meeting of the legislature in all other years (New York State Constitution, Article 7, Section 2). The Legislative Session starts the first Wednesday after the first Monday in January (Constitution, Article 13, Section 4).

¹⁹ The average budget deliberation time in those 34 states is 14.8 weeks. National Association of State Budget Officers, *Budget Processes in the States*, January 2002.

delay was just a few days; in others it was four or five months. The pattern was reversed in 2005, and a budget was adopted just before the start of the fiscal year in 2005 and 2006. In 2007 the budget was just one day late.

Late budgets are widely perceived as a symbol of the dysfunctional budget process. As discussed above, the reason for the late budgets is largely a combination of the limited deliberation time and the use of delay as a negotiating strategy. The recent reversal in the pattern is probably a response to the public dissatisfaction with the behavior and, at least in 2007, a greater willingness of the Governor to negotiate in order to achieve an on-time budget.

Late budgets have been common because their adverse consequences can be avoided. Until the early 1990s, the State relied on an annual short-term “spring borrowing” to raise cash to make school aid and other payments in April or May. In order to go to credit markets for the borrowing, the State had to have an enacted budget. This helped to produce more timely budgets during that period. The spring borrowing was no longer necessary after the creation of the LGAC and the conversion of the short-term debt to long-term bonds. After that conversion budgets were adopted significantly later.

Other impacts of late budgets have also been ameliorated. In some years the absence of an appropriation bill meant that State employees could not be paid by the Comptroller. The Comptroller issued vouchers in lieu of paychecks, and local banks honored the vouchers. To avoid this situation and other impacts on vendors, the Legislature has passed “extender bills” to maintain State operations. These bills are time limited appropriations, typically at prior year levels, that allow State agencies to continue operations for a specific period.

Late budgets impact school districts and other local governments whose budgets are dependent on state aid. School districts have fiscal years starting on July 1, but typically put together their budgets earlier for voter approval in May. If the State budget is not adopted by then, the local budgets must be based on estimates and could lead to the setting of local property tax rates higher or lower than would be the case if the amount of State aid were more certain. However, the negative impacts are ameliorated by the fact that schools’ fiscal year extends after the end of the State’s fiscal year (June 30 versus March 31), so the school districts inevitably must estimate some future aids and have the following state fiscal year in which to seek adjustments.

One remaining consequence of late budgets is that the legislators’ salaries are withheld when budgets are late. In 1998, as part of the negotiations with Governor over the late budget, the legislators agreed to have their pay deferred from the start of the fiscal year until a budget is adopted. It has not been an effective policy. Some members have arranged for short-term bank loans, others have other sources of income.

Another unsuccessful effort to encourage on-time budgets was a proposal to impose a “contingency budget” if a budget was not adopted by the start of the fiscal year. The Legislature put this proposal in the form of a constitutional amendment that went before the

voters in 2005.²⁰ The concept is that a relatively stringent contingency budget in place of a late budget would be a stimulus to an on-time budget agreement. However, the Legislature's proposal was faulty in two respects. First, its definition of the contingency budget was ambiguous, leaving open questions about how stringent it might be in practice. Second, the proposal also included changes in the Legislature's budget powers. If the budget was late, the Legislature would be able to disregard the Governor's proposal and act on its own budget. While some reformers agree that the Legislature's budget powers should be enhanced, making this contingent on a late budget seemed a counterproductive strategy. The proposal was defeated by the voters.

Limited Formal Role for Most Members. Decision-making authority in the Legislature is concentrated in the hands of the majority party leadership in each house (Democrats in the Assembly and Republicans in the Senate). These individuals negotiate with each other and with the Governor over major fiscal decisions, often outside the process established by their own rule-making bodies. The leaders are supported by staff that provide information to members but are mainly accountable to them. This pattern often dubbed, "three men in a room" leaves little opportunity for other members of the legislature to play a meaningful role in formulating a budget.

The practices in New York, set by internal rules of the Assembly and Senate, are a sharp contrast to the process in Congress and many other states. In these legislative bodies, committees of members are assigned important formal and statutory roles in the budgetary process. These committees draft appropriation bills and negotiate with the other house and with the governor (or president) to reach final decisions. Majority party leaders are not necessarily the dominant figures, and committees and their chairs are free to hire staff independent of the majority leaders.

Other legislative bodies also enhance the role of individual members by providing them with timely information about the course of the budget process and major issues under consideration. At the federal level reforms in 1974 created the Congressional Budget Office (CBO), which provides all members with regular reports on the status of appropriation bills and analysis of important issues. California's Legislative Analyst's Office plays a similar role. In New York City, the Independent Budget Office (IBO), created in 1995, provides independent, nonpartisan information to the citizens and members of the City Council analyzing the Mayors' Executive Budget and other fiscal issues.²¹ Members of the New York State Legislature are dependent almost exclusively on the office of their respective majority leaders for information about the status of budget negotiations and the related issues.

The most notable effort to improve the situation in New York is the appointment by the majority leaders of Conference Committees to aid in the budget process. The conference committees are joint committees of each house with bipartisan membership. There is a General Conference Committee (called the "Mothership" and chaired by the majority leaders) and seven subcommittees, each responsible for a portion of the overall budget. The

²⁰ Constitutional amendments must be approved by two successive Legislatures and then be approved by the voters in a general election.

²¹ Although the IBO was not created and funded until 1995, the creation of an IBO was part of the revision to New York City's charter, which was approved by the voters in 1989.

Mothership assigns appropriation totals to each subcommittee; they are then responsible for allocating the sums among specific programmatic items within their jurisdiction.

New York's conference committee approach has serious shortcomings. First, it has not been used every year. First created in 1998 for the fiscal year 1998-1999 budget, they were not utilized in several intervening years until 2005; in each year since there have been conference committees. Their existence was required by statute as part of the budget reform legislation of 2007. Second, their role has been only advisory to the majority leaders. The conference committees make recommendations to the majority leaders, but the leaders remain responsible for final negotiations with the Governor.

Large Spending for Member Items with Limited Accountability. Member items are appropriations for specific programs or projects added to appropriation bills at the request of one or more members. The items usually involve expenditures in the requesting member's district and provide benefits to a specific constituency in that district.

Member items are not unique to New York. They are common in Congress (where they are known as "earmarks") and in state and local legislatures. They are accepted because they serve the interest of party leaders, individual legislators, and serve constituent interests.. Member items can also be used to help retain party control of a house by aiding members in closely contested elections; the challenged legislator can take credit for large projects in the district at election time.²²

It is difficult to estimate the scale of spending for member items, in part because the items are not defined as such in appropriation bills and their classification as such can be debated using different criteria. However, one widely agreed upon source of such spending is the Community Projects Fund, which provides a sum to be allocated to members for specific projects they support. This appropriation has been about \$200 million annually in recent years.²³ A second source for member items is the appropriations for capital projects, some (but not all) of which are added at the request of individual members. A 2006 study by the Center for Governmental Research covering nine years from fiscal years 1996-97 to 2004-05 identified a total of \$3.2 billion in authorizations and \$1.7 billion in disbursements (spending on capital projects generally lags their initial authorization) for capital projects that the Center considered member items.²⁴ This suggest between \$350 million and \$200 million in annual spending for member items via the capital budget. The third, and hardest to identify, source is legislative additions to agency budgets for specific projects that are included based on advocacy by specific members.

²² In Congress other factors also contribute to the growth in earmarks. See Walter J. Oleszek, *Congressional Procedures and the Policy Process*, Sixth Edition, (CQ Press, Washington, DC, 2004).

²³ The sum typically includes \$85 million for each house of the Legislature and \$30 million for the Governor. In fiscal year 2007-08 the Governor dropped his portion.

²⁴ Kent Gardner and Erika Rosenberg, *Capital Pork: How State Politicians Divvy Up Billions for Favored Capital Projects*, (Center for Governmental Research, March 2006). This report counts the following programs as capital "pork": Community Enhancement Facilities Program (CEFAP), Strategic Investment Program (SIP), Empire Opportunity Fund, Centers for Excellence, GenNYsis, Rebuilding Empire State Through Opportunities in Regional Economies, Community Capital Assistance Program, Multi-Modal, and the State share of the Javits Restoration.

Member items have not historically received much scrutiny because they have not been well disclosed. From 1999 until this year the Community Projects Fund and some other funds intended for member items were enacted as a lump sums to be allocated according to private memorandums of understanding among the three parties to the negotiation. From time to time stories of corruption were uncovered by diligent reporters and good government groups, but for the most part the details of the transaction were cloaked in secrecy.

More recently disclosure has improved. A 2006 lawsuit, for which the Citizens Budget Commission filed an amicus brief, forced the disclosure of lists of grants awarded with their sponsoring legislator. Then the 2007 budget reform package required line item (as opposed to lump sum) appropriations for many types of legislative additions. Even with these reforms there is more the public deserves to know about the validity, merit, and political connections of the programs and organizations being funded by member items.

Other Questionable Practices. The budget process suffers from two other practices that hinder transparency and accountability – use of messages of necessity that limit public disclosure and debate of the budget before it is passed and manipulation of the content and scale of General Fund spending.

1. Misuse of Messages of Necessity. The State Constitution specifies that the Legislature not take a final vote on a bill until it has been available in printed form for members and the public for at least three days during which the legislature is in session or unless it asks for and received an emergency message from the Governor. The intent is to allow time for members to consider the bills and for the public to be aware of what is being considered. The requirement applies to appropriation bills and other budget legislation.

The three day period can be waived when the legislature requests and the governor provides a “message of necessity” requesting that the requirement be waived and specifying the reasons why.

In recent years messages of necessity have been used to speed action of budget bills, despite the absence of any true emergency. Major appropriation bills were passed in this manner for the budgets in fiscal years 2001, 2003, 2005 and 2008. The practice leaves most members uninformed about the specific content of the budget and keeps the public from knowing (and possibly objecting to) the content of agreements reached in private by the Governor and legislative leaders during final negotiations before a vote is taken.

The governor shares responsibility with the Legislature for this practice. The governor must grant the message of necessity before the Legislature can take the speedy vote

2. Manipulation of the General Fund. As described earlier, the State manages its finances through multiple funds, the largest of which is the General Fund. The General Fund is also the one commonly identified with the budget; requirements for a balanced budget apply only to the General Fund. Press and public attention tend to focus on the General Fund in assessing the pace of expenditure growth and the government’s overall fiscal condition.

State leaders decide which revenues and expenditures are reported as part of the General Fund and which are placed in specially designated funds. While the designation of funds may

reflect policy decisions to dedicate certain revenues to a specific purpose, the decisions also may be guided by a desire to have large increments in spending not be reflected in the General Fund. Two examples are the School Tax Reduction (STAR) program and health care programs authorized by the Health Care Reform Act (HCRA); both were created in 1997 and have grown to multi-billion dollar expenditures. In fiscal year 2008, the STAR program totaled \$4.7 billion and HCRA programs represented \$2.1 billion. Instead of being treated like other education aid programs in the General Fund, the STAR program is funded through a special fund which receives a designated portion of the personal income tax. HCRA programs are funded by a variety of designated sources through separate funds known as the “HCRA pools;” these special funds have absorbed some spending for health care programs previously funded through the General Fund as well as new programs authorized by the act.

No Unified Approach to Performance Measurement and Reporting

The use of performance measurement and management techniques has become the norm for many governments. Some have been enhancing the sophistication of their systems for decades. They have allowed politicians and residents alike to better understand how public funds are being used to achieve priority goals. New York State’s efforts in this arena are lagging. While performance measurement is evolving in a few agencies, there has been only limited interest and attention paid to systematic statewide implementation

In fiscal year 2005-06 the Pataki Administration rolled out a three-year program, called the Government Reform Initiative (GRI) that called on agencies to begin developing strategic plans and performance metrics. The program spelled out a three-part process the culmination of which, in 2010-11, was to be the inclusion of performance metrics in the budgeting process. As a result of the GRI initiative some progress has been made. A recent survey of 33 major State agencies showed that 12 have posted strategic plans on their websites, and nine are routinely reporting performance metrics.²⁵ These individual efforts and the efforts of the agency staff where measures are still under development are laudable.

However, taking the statewide view, the scope, caliber, and format of the reporting vary widely. Some agencies are updating their reports monthly, others annually or as they can, and very few are integrating spending data to create efficiency measures. To date about six agencies have reported efficiency measures. About the same number of agencies are benchmarking their performance routinely and setting targets. There is no statewide performance document that New Yorkers can use to get a broad view of what and how their government is doing.

To date, the initiative has remained administrative in nature. Although the legislature has occasionally proposed and considered pilot programs, it does not participate in a dialogue about performance measures and desired outcomes across State government. The budget adoption process has remained isolated from efforts to consider the cost effectiveness of

²⁵ Citizens Budget Commission, staff analysis, August 2007.

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various services. Statutory changes have not been enacted. New York is not among the 32 states that have enacted broad management for results statutes.²⁶

²⁶ Ronald K. Snell and Jennifer Grooters, *Governing for Results: Legislation in the States*, (National Conference of State Legislatures, April 21, 2000).

PROGRESS IN 2007

In 2007 significant progress has been made in improving accountability and transparency in the State's fiscal decision making. The progress takes the form of measures adopted as part of the Budget Reform Act of 2007 and of implementation of measures previously adopted as part of the Public Authorities Accountability Act of 2005.

The Budget Reform Act

In January of 2007 the Governor and the Legislature adopted a reform bill that made seven notable improvements to the budget process.²⁷ Some of these measures have been described in the previous section, but they warrant being highlighted here.

1. **New Budget Balance and Reporting Requirements.** The Act established a statutory requirement that the budget for the General Fund be balanced on a cash basis. It also enhanced the multi-year financial planning by replacing a previous requirement for a three-year financial plan to accompany the Executive Budget with a requirement for a four-year plan.²⁸ In addition, certain previously "off budget" spending by public authorities was required to be identified in budget documents.²⁹ These requirements were met in 2007.

2. **Enhanced Rainy Day Reserves.** The Act created the new Statutory Rainy Day Reserve Fund. Together with the pre-existing TSRF, this permits the State to increase its rainy day reserves from 2 percent to 5 percent of General Fund disbursements. The fiscal year 2007-08 budget included a \$175 million deposit in the new fund.

3. **Enhanced Consensus Revenue Forecast Process.** The Act accelerated the timing of the consensus revenue conference and report. It also authorized the State Comptroller to set a revenue estimate, if a timely agreement was not reached by the Legislative leaders and the Governor. In 2007 an agreement was reached in accord with the new timetable and without the Comptroller's involvement, but final revenue figures deviated from the initial consensus forecast.

4. **Required Conference Committees.** The Act requires the use of conference committees to advise the majority leaders. This mandates a practice used sometimes in the past, and the committees were used in 2007.

5. **Required Budget Summary Document for Legislators.** The Act requires that appropriation bills be accompanied by a budget summary document which shows the impact of the

²⁷ The Budget Reform Bill was adopted as Chapter 1 of the Laws of 2007.

²⁸ The four-year plan is required only on a cash basis and only in the Executive Budget. In addition the Budget Reform Act requires that the Enacted Budget report and each quarterly update to have an update on receipts and disbursements for two succeeding fiscal years; this was previous practice, but not previously required by law. (New York State Finance Law, Section 22-15).

²⁹ An example is the EXCEL program for education aid. EXCEL bonds are issued by the Dormitory Authority and the bond proceeds are distributed to school districts directly without the proceeds counted in the state's financial system.

appropriations on the Governor's General Fund budget, the additional revenue sources available, and the impact on local governments and the state workforce.³⁰ This summary is to be distributed to Legislators before a vote takes place on the appropriation bills in order to permit legislators to assess the impact of the bills on which they are voting. In 2007 the Senate did not publish this summary document, and the Assembly's summary was not released to the public.

6. Prohibit Use of Certain Lump Sum Appropriations. The Act prohibited the use of lump sum appropriations for certain types of programs, including those often associated with member items. Affected programs include the Community Projects Fund, the Environmental Protection Fund, and some Medicaid and public assistance categories. Following this procedure in 2007 added to the public's ability to identify member items (and perhaps thereby increased pressure to reduce them).

7. Create a "Quick Start" Process for Future Budget Deliberations. The Act seeks to increase the amount of time for budget deliberations through a new "quick start" process. Each house of the Legislature and the Governor are required to prepare forecasts of receipts and disbursements before November 5, to hold negotiations over these estimates, and to publish a joint report on the negotiations by November 15. It remains to be seen how this new process will work for the fiscal year 2008-09 budget.

Public Authorities Reform

In 2007 additional progress was made in enhancing accountability through implementation of the Public Authorities Accountability Act of 2005. The Act created an Authority Budget Office (ABO) and charged it with training authority board members, ensuring authority compliance with the new regulations, and making information on public authorities available to the public.³¹

During 2007, the ABO made significant progress in setting up its operation. The ABO has trained 1,400 authority staff, completed one compliance review of the Environmental Facilities Corporation, issued a report on authority compliance (the Annual Review of Public Authorities), and made authority budget and annual reports available on its website.³² The ABO has also designed a data reporting framework for authorities which will present authority data on multi-year budgets, debt and financial information in a standard format and will be operational this fall.³³ The ABO Annual Review of public authorities provides detailed revenue, expenditure, and debt data for authorities in one central location.

However, the first year's activities indicate that the ABO may face serious reporting compliance issues from many public authorities. The agency received only 59 percent of the

³⁰ The Legislation states that the summary also will cover State Funds and All Funds "where practicable."

³¹ The Act also the Act increased disclosure requirements for local authorities, enhanced audit standards for financial reports, and required that certain information be made public and available on the internet.

³² Of the 1,400 authority staff trained 873 were authority board members.

³³ Public Authorities Reporting Information System (PARIS) is scheduled to begin implementation this November.

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State authority budget reports that were due and 52 percent of the local authority budget reports that were due.³⁴

³⁴ State of New York, Authority Budget Office, *Annual Report on Public Authorities in New York State*, July 1, 2007.

NEXT STEPS: RECOMMENDED OPTIONS

The notable progress made so far in 2007 provides a constructive foundation on which to build further improvements in New York State's fiscal practices. The CBC suggests nine priority measures that could be pursued in the coming months. They are not mutually exclusive; all or several could be made effective in the coming fiscal year. The first three relate to promoting fiscal stewardship, the next five seek to enhance legislative performance, and the final measure addresses the lack of performance measures.

1. Establish a more rigorous and comprehensive balanced budget requirement.

The current requirement that the General Fund budget be balanced on a cash basis at the time of adoption should be strengthened in two ways. First, the scope of the covered fiscal activity should be expanded beyond the General Fund. The requirement should be applied either to (a) a wider range of governmental funds (all funds or all funds excluding capital funds) or (and preferably) to (b) the Statement of Activities for primary government. The General Fund alone is not an adequate basis for assessing the State's financial activities.

Second, the standard for measuring balance should be GAAP, not the cash basis. If the scope of activity is defined using governmental funds, then GAAP accounting rules should be applied instead of the cash basis. If the scope relates to the Statement of Activities for primary government, then the only applicable standard is GAAP.

A third enhancement is worth noting, but is probably unenforceable. The balanced budget requirement could be applied to year-end results as well as the adopted budget. This has worked effectively for the City of New York. However, the City is subject to State sanctions as a method for enforcement. No parallel enforcement mechanism exists for the State, so such a requirement is probably best left as a goal rather than a requirement. Nonetheless, a Legislative resolution or a statement in statute could be a useful symbolic measure indicating this intention.

2. Establish a more meaningful debt limit.

The current limits established by statute in 2000 have not worked well. A more meaningful debt limit should have three characteristics. First, it should be constitutional rather than statutory. The 2000 statutory reforms have demonstrated that legislative measures leave open possibilities for exclusion or exemption that limit the effectiveness of the limit.

Second, the limit should apply to all forms of state-supported debt. No "back-door" should be left open via public authorities created by state or local governments.

Third, the limit should be clear, but not so rigid as to encourage circumvention in ways not yet conceived. In this respect, the current statutory limit defined by formula as a share of personal income is a bad model. The approach suggested in 2000 by the CBC is preferable. It sets standards, but allows an independent board to apply the multiple criteria taking into

account changing circumstances. This more flexible limit is more likely to be enforceable and will not encourage creative legal minds to design new circumventions.

3. Enhance the capacity for preparing for a rainy day.

The creation of the SRDF in 2007 was an important step forward toward this goal. However, further improvements are possible. The SRDF and the TSRF should be combined and be subject to the constitutional constraint on the TSRF. The statutory rules for the combined fund should eliminate the cap, leaving the maximum size of the fund to political leaders' discretion. The rules should also establish criteria for mandatory contributions; the conditions should relate to growth in tax revenues and/or in the state's economic base. It should be required, rather than discretionary, to contribute to the fund in times of prosperity.

4. Expand the Legislature's budgetary powers.

Recent court decisions have affirmed an interpretation of the State Constitution that gives the Governor a great deal of power in budget negotiations and leaves the Legislature with limited, and generally undesirable, options for pursuing its fiscal objectives. Rectifying this imbalance in powers requires a constitutional amendment.

In 2006, both houses of the Legislature passed a proposal for a constitutional amendment to alter the governor's ability to insert policy language into appropriations bills.³⁵ The proposed amendment would require the Governor to include policy changes in non-appropriation bills over which the Legislature has more control. The proposal also prohibits appropriations that contain multiple programs or that dictate the conditions upon which a program can be funded. The required second passage of this proposal, necessary for the proposed amendment to go before the voters in a general election, occurred in the Senate in 2007, but the Assembly has yet to pass a parallel measure.³⁶

5. Allow more time for deliberation by changing the fiscal year.

The current unusual fiscal year that begins on April 1 is usually defended as encouraging fiscal conservatism, or at least sound financial management.³⁷ The logic is that New York is heavily dependent on the personal income tax, and the receipts from that tax are not known with great accuracy until after April 15. Requiring a budget before April 1 may encourage the Legislature to make some allowance for a downside risk in these collections and, perhaps more importantly, gives the State almost a full year to adjust to any shortfall that might occur. School districts and local governments whose fiscal year begins on July 1 believe they can plan better if they know the amount of State aid they will receive before their fiscal year begins.

³⁵ S.3195/A.4630

³⁶ The 2007 bill number was S.3.

³⁷ New York is one of only 4 states that do not have a fiscal year beginning on July 1. National Conference of State Legislatures, *Legislative Budget Procedures: A Guide to Appropriations and Budget Processes in the States, Commonwealths, and Territories*, July 2006.

However, these potential benefits are offset by the disadvantages of limited deliberation time and consequent frequent late budgets. Moving the start of the fiscal year to July 1 would give more time for legislative consideration of the Governor's Executive Budget, submitted in January or February (in election years), and would allow decision makers to know the collections from the income tax before they must pass a budget.

6. Create more meaningful and formal committee roles for members of the Legislature.

The use of conference committees, required by statute in 2007, is an important measure to expand the role of legislative members other than the majority leaders in the budget process. However, these committees still play a less powerful role than the budget committees established by Congress for the federal budget and by other state legislatures for their budget negotiations.

The Legislature should establish budget committees with jurisdiction over appropriation bills. The committee leaders would participate in negotiations with the governor and the other house. The committee would be responsible for reviewing and approving any appropriation bill before it went to a vote of the full house, the typical process for legislation in Congress and other legislative bodies.

Having such budget committees would also ameliorate the problem of dealing with budget bills through messages of necessity and of complying with the current requirement for budget summaries before the members vote. The committees could decide for themselves the pace at which they considered the appropriation bills, and they would provide the members with a report on those bills.

7. Provide legislators and the public more timely fiscal information.

More meaningful participation by members of the legislature in budget decisions will require that they have better information about fiscal issues. Reliable sources of information in addition to the staff accountable to the majority leaders should be created.

Two variations on an institutional arrangement for giving legislators and the public more budgetary information are the Congressional Budget Office (CBO) serving the national Congress and the Independent Budget Office (IBO) established by the New York City Charter reforms of 1989. Both are mandated to prepare and publish information about the budget including reviews of the Executive Budget and estimates of the fiscal impacts of proposed legislation. Both are nonpartisan and professionally staffed, making their reports available to all members of the legislature and the public. The Director of the CBO is accountable to the Budget Committees of the Congress, while the Director of the IBO is accountable to an independent board. The IBO has developed working relationships with the City Council and meets requests from Council members for information on fiscal issues. The IBO or the CBO could serve as a model for meeting the information needs of the New York Legislature and its constituents.

8. Reduce and Make More Accountable Spending on Member Items.

Despite recent advancements in the disclosure of member items, these allocations remain less than transparent to the public. With the line item approach enacted this year they are enumerated in the budget documents and can be ferreted out by determined analysts. However, the usefulness of individual tallies of line items is limited and many questions remain unanswered. What the public ultimately deserves to know about these items is the same as it deserves to know about every dollar spent by the State: Is this money well spent?

Since member items are sometimes viewed as part of the democratic process and the democratic process is aided by sunlight, more sunlight is one prescription. At this point the Legislature is disclosing lists of projects along with grant amounts, the grantee, and the sponsoring legislature. Additional helpful information such as the name and addresses of the principal officers of the grantee should be posted online as a deterrent to nepotism and other corruption. In addition, each grantee should be required to state the goal and purpose of the award with the performance targets for judging a successful program clearly enumerated. At the conclusion of the grant period a final report should be posted that demonstrates whether the performance targets have been met. This would allow the public to better assess the costs and benefits of the programs they are supporting with these funds. Organizations that do not comply or that fail to meet performance targets should not be eligible for grant renewal. For an extra layer of oversight the State Comptroller could be authorized to audit grantees on a random basis. This would encourage recipients to keep to standard accounting practices and be more cognizant of their responsibility to the public.

It is reasonable to believe that enhanced accountability and transparency will lead to reduced spending on member items. If, in fact, many current items are ineffective uses of public funds, then greater information and more rigorous evaluation will make it harder to use money in wasteful ways. But sunlight alone may not be sufficient. Rules - whether set by each house, by statute, or in the State constitution - may be necessary to prevent abuse. One step in this direction would be to not allow appropriations for any specific private (profit or non-profit) entity. Funds would be appropriated only for specific programmatic purposes, and more competitive procedures established for determining who receives the grant or contract. Legislative oversight would be necessary to promote effective use of the funds by the executive branch.

9. Develop a comprehensive approach to performance measurement and reporting

The agency-by-agency approach New York has taken in the implementation of performance measurement and reporting allows for individual leadership, it cannot be relied upon to produce the information residents and leaders can effectively use. It does not answer the question: How is my government performing this year?

To raise the level of reporting and better integrate the management processes that are conducive to improving performance, a more systematic and comprehensive approach is needed. Changes in five areas would improve the current process.

First, a more centralized administrative effort is critical. If agencies were engaged in a dialogue with the Executive to develop key metrics, the caliber and emphasis on the types of metric to be collected would improve. Standards for metrics might include placing a high priority on outcome or efficiency measures, for example. Time periods and reporting intervals should be uniform. Benchmarks and targets should be required in all cases. Technical support and training could be provided for agencies that need assistance.

Second, metrics should be collected in a central report to enhance public access and improve use. State leaders should identify a key set of metrics that align to a key set of strategic priorities and report them together in one accessible document. A model for such a document is the Mayor's Management Report produced by New York City on a semi-annual basis. Although voluminous, that document does a good job of reporting agency performance across a wide range of functions. In addition, the selection of the metrics it includes is regularly reviewed in a process that engenders substantive debate among stakeholders. State leaders should consider a similar process and format.

Third, the Legislature should get involved. While legislative involvement can complicate matters, it has had the countervailing advantage of raising the quality of the dialogue in legislative deliberations in some states and local governments, and in the federal process. As New York enhances its budget committee process and develops more meaningful roles for rank and file legislators, a formal role for them in the performance measurement and management process should be designed. This could dovetail with efforts to bring performance information into the process by which funds are allocated.

Fourth, performance metrics should be integrated to the budget. In order to develop appropriately and accurately outcome-based efficiency measures, and to begin to understand the trade-offs on the cost-to-performance continuum, budget decisions must be made in context of performance. A key step for the State should be to reorganize its budget in a few key agencies to more closely align with agency goals and the programs dedicated to achieving them. Program-based budgets should be developed and reported with the performance improvement metrics associated with them.

Fifth, local governments should be considered. Much of the State budget is aid passed through to local governments for locally administered programs. Some local governments do a good job of reporting their own performance to their residents, while others do not. For local government aid programs, the State should require reporting of key metrics that are standard across the State. These should be developed, as they have in states such as North Carolina, with the participation of local government officials to ensure that they are sensible. This would allow State leaders to better understand how and if State funds are being used to best effect in different communities.

In making these changes, New York State should seek to benefit from the experience of other governments with long track records of performance measurement and reporting. Florida and Texas are in their second decade of use in their systems, and they have been extensively studied. The Florida Government Accountability Report serves as a model of a New York City style Mayor's Management Report as implemented at the state level. Florida

also uses performance information in budgeting with its Performance Based Program Budgeting system, or PB².

The U.S. government has its own track record, implementing the Government Performance Results Act of 1993, which evolved into the Program Assessment Rating Tool (PART) under the Bush Administration. The PART, developed by the U.S. Office and Management and Budget and implemented in stages beginning in 2004, is a questionnaire designed to distill the key mission of each agency and the indicators it uses to measure the performance of its programs. It includes 25 questions that are used to assess program purpose, design, planning, management, results, and accountability. The evaluation questionnaire results in an effectiveness score that communicates an agency's overall effectiveness. The PART is used to make recommendations meant to improve program results. One advantage of adapting a system like PART in New York State is that it drives agencies through a rigorous strategic planning - mission setting - outcomes alignment process. It also provides one score that can be used to compare effectiveness across agencies. Although PART has drawbacks as well, something like it might be an improvement for New York State.