

Citizens Budget Commission • Reinvent Albany

Center for Independence of the Disabled, NY (CIDNY) • Citizens Union of the City of New York

Common Cause New York • Environmental Advocates NY • Fiscal Policy Institute

League of Women Voters of New York State • New York Association on Independent Living

New York Lawyers for the Public Interest • New York Public Interest Research Group

Permanent Citizens Advisory Committee to the MTA • Regional Plan Association • Riders Alliance

StreetsPAC • Transportation Alternatives • Tri-State Transportation Campaign

March 10, 2021

Hon. Andrew M. Cuomo

Governor

State of New York

Hon. Andrea Stewart-Cousins

President Pro Tempore and Majority Leader

New York State Senate

Hon. Carl Heastie

Speaker

New York State Assembly

Re: Please Provide Transparency of Withholdings, Repayments, and Ongoing Cuts by Individual Agency and Program, and Omit Extraordinary Budget Powers from the Fiscal Year 2022 Enacted Budget

Dear Governor Cuomo, Majority Leader Stewart-Cousins, and Speaker Heastie:

We write to follow up on our December 21, 2020 letter that requested increased transparency on State spending reductions and withholdings implemented during fiscal year 2021.¹ In order to provide greater transparency to the public and stakeholders, we again ask the Division of the Budget (DOB) to publish on its website timely and complete information about funds that were withheld and repaid as part of the fiscal year 2021 State budget midyear adjustment process. This information should be provided monthly and broken out by agency or recipient, and major program.

We also ask that you omit from the Enacted Budget three extraordinary budget powers that are unnecessary and inhibit the Legislature's ability to exercise its appropriate role in the budget process: (1) midyear budget modifications authority tied to receipt of federal aid; (2) State

Operations appropriations transfer and interchange authority; and (3) the creation of a COVID-19 Extraordinary Relief Fund controlled by the Executive.

Withholding Transparency Still Needed

In response to our December 2020 letter regarding withholdings, a spokesperson for the DOB responded that a full breakdown would be released with the Governor's Executive Budget proposal in January 2021.² However, the Executive Budget and 30-day amendment financial plan update did not provide that breakdown.

Mr. Mujica said in his budget briefing on January 19, 2021 that "most" withholdings would be reduced from 20 percent to a total of 5 percent and become cuts.³ Without information about how much money has been withheld by each agency and program, however, the public is not able to understand the impacts of the withholdings, proposed repayments, and recurring reductions. For example, the public does not know whether withholdings were across-the-board or affected some programs, localities or functions proportionately more than others. According to press reports, funds have not been withheld equally, with funding restored to school districts last fall.⁴ Additionally, detail of the 5 percent cuts being made for fiscal year 2022 and beyond should be provided, including a clear summary of all dedicated fund transfers to State's general fund, so the Legislature and public can have appropriate information to evaluate and debate the Governor's proposal.

Furthermore, legally required notification to the Legislature by DOB has only included payments that were withheld beyond a statutory payment date. This subset of withholdings totaled about \$700 million in calendar year 2020, or roughly one quarter of all withholdings. This is the latest data available as of the drafting of this letter.⁵ According to a list of withholdings in the Assembly Majority's "Yellow Book" analysis of the FY 2022 Executive Budget, there are still broad categories of withheld funds that are not itemized or broken out by agency.⁶ For example, of \$628 million in total Transportation withholdings, \$584M is listed as "non-statutory, non- 18b Transit Operating Aid, Mobility Tax." In response to a press inquiry on February 19, 2021, a DOB spokesperson stated that \$426 million was withheld from and will be repaid to the Metropolitan Transportation Authority (MTA), and \$98 million would be cut from the authority in fiscal year 2021, pending receipt of federal aid.⁷ This level of detail has not been provided for each State agency, however, leaving the Legislature and public in the dark about the effect of the withholdings on individual agencies and programs.

Given that the budget adjustment process for fiscal year 2021 budget has not been used as expected, without formal cuts proposed or sufficient transparency as of the date of this letter,

we are also concerned by the continuation of this process proposed in the fiscal year 2022 Executive Budget. Additionally, the State's fiscal picture is significantly clearer today; the uncertainty and extremely dire fiscal landscape when last year's budget was enacted are not the case today. During the year, the State has received billions in federal aid, tax receipts have repeatedly exceeded projections, and significant unrestricted federal aid is likely forthcoming.

Extraordinary Executive Budget Authority Should be Removed from Enacted Budget

The current conditions do not justify the extraordinary Executive Budget powers that were enacted last year, nor the new powers proposed in this year's Executive Budget. We ask you to omit from the fiscal year 2022 Enacted Budget three proposals that grant unnecessary extraordinary budget authority to the Executive:

- *Midyear budget modifications authority tied to receipt of federal aid:* The Executive Budget includes provisions allowing the Executive extraordinary authority to revise the State's spending plan if federal aid is not received by August 1, 2021. In this increasingly unlikely event, the Governor and Legislature should convene to adjust the State's spending plan.
- *State Operations appropriations transfer and interchange authority:* The proposed budget includes broad provisions to allow DOB to transfer appropriations, including by "interchange." State Operations spending should be managed within amounts appropriated for specific, clearly identified purposes by the Governor and Legislature in the budget.
- *COVID-19 Extraordinary Relief Fund controlled by the Executive:* The 30-day amendments to the Executive Budget in Part UU of the Public Protection and General Government Article VII bill would create a special fund for all receipts from new taxes or fees, and proceeds from the elimination of tax credits or deductions. Under the proposal, the authority for disbursement or transfer of receipts in this fund belongs solely to the Executive. This proposal should be omitted for three reasons. First, these revenues should be treated like all other general revenues and should be the subject of standard budget negotiations and enactment. Second, the disbursement procedures of these funds subvert Legislative budget authority. Lastly, the proposal fails to provide adequate public transparency of how these funds would be spent.

In summary, we ask that you provide transparency of the fiscal year 2021 withholdings and repayments by agency or recipient, and provide similar detail for the final proposed 5 percent spending reductions in the current year and permanent spending reductions in the out-years, including detail about proposed dedicated fund transfers to the State's general fund.

Additionally, we ask that you omit from the Enacted Budget those extraordinary budget authorities which are unnecessary and subvert the ability of the Legislature to carry out its appropriate role in the budget process.

Sincerely,

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Cc.

Robert Mujica, Director of the NYS Division of the Budget

Liz Krueger, Chair of the Senate Finance Committee

Helene Weinstein, Chair of the Assembly Ways and Means Committee

¹ Citizens Budget Commission, Reinvent Albany, and others, letter to Robert Mujica, Director, New York State Division of the Budget (December 22, 2020), <https://reinventalbany.org/2020/12/twenty-watchdog-groups-call-for-state-budget-withholding-transparency/>.

² Denis Slattery, “Fiscal watchdogs want transparency from N.Y. over withheld funds” *New York Daily News* (December 22, 2020), www.nydailynews.com/news/politics/new-york-elections-government/ny-budget-cuomo-withheld-funds-20201222-37neam7kjzdpbbfswctdqwrgiy-story.html.

³ The Governor’s FY 2022 Budget Briefing Book says, “DOB now expects to reduce most local aid payments by a total of 5 percent from the Enacted Budget estimate, rather than the 20 percent anticipated in the Mid-Year Update and executed to date.” See New York State Division of the Budget, *FY 2022 Executive Budget Briefing Book* (January 2021), p. 16, www.budget.ny.gov/pubs/archive/fy22/ex/book/briefingbook.pdf.

⁴ Jimmy, Vielkind, “New York State to Fund School Districts in Full After Withholding Money.” *The Wall Street Journal* (September 17, 2020), www.wsj.com/articles/new-york-state-to-fund-school-districts-in-full-after-withholding-money-11600348927.

⁵ Reinvent Albany received withholding notices via FOIL for the months of June to December 2020. They are available on Reinvent Albany’s website here: <https://reinventalbany.org/wp-content/uploads/2021/01/2020-DOB-Withholdings-June-to-Dec.pdf>.

⁶ New York State Assembly, *Yellow Book: A Review and Analysis of the 2021-22 Executive Budget* (January 25, 2021), <https://nyassembly.gov/Reports/WAM/2021yellow/2021files/2021yellowbook.pdf>.

⁷ Christopher Robbins, “MTA Avoids Catastrophic Cuts, But Still Faces State Budget ‘Raid’” *Gothamist* (February 19, 2021). <https://gothamist.com/news/mta-avoids-catastrophic-cuts-but-still-faces-state-budget-raid>.