



## **Memorandum of Support**

### **A.6355-2017 (Peoples-Stokes)/**

### **S.3984-2017 (DeFrancisco)**

*Introduced at the request of the New York State Comptroller*

*The New York State Procurement Integrity Act*

#### **Title**

An act to amend the state finance law and the education law, in relation to enacting the "New York State Procurement Integrity Act."

#### **Summary**

The purpose of this legislation is to enhance the integrity, transparency and accountability of the State's procurement process by:

- Restores the State Comptroller's independent oversight of SUNY, CUNY, and OGS centralized contracts that was removed in 2011 and 2012.
- Authorizes the State Comptroller to approve contracts in excess of one million dollars awarded by the SUNY Research Foundation.
- Prohibits state contracting through state-affiliated not-for-profit (NFP) entities unless explicitly authorized in law.
- Strengthens ethical requirements for state procurement officials and vendors and imposing penalties if these ethical requirements are violated.
- Standardizes the contracting process used for all State authorities spending State money by applying uniform procurement rules.
- Increases procurement transparency for vendors and the public at each stage of the process.

Please see the bill memo for a complete summary of the bill's provisions.

#### **Statement of Support**

New York State government has been plagued by seemingly unending incidents of wrongdoing and unethical behavior. Recent indictments by the U.S. Attorney in a

\$800m bid rigging scandal have highlighted a high level of corruption risk in the state's procurement process. This bill seeks to restore needed scrutiny and add other important protections which will ensure the integrity of the procurement process and protect taxpayer dollars.

This legislation will empower the state comptroller to approve SUNY and CUNY contracts above certain dollar thresholds before they are bid, including contracts of SUNY and CUNY Construction Funds, SUNY health care facilities and the SUNY Research Foundation. SUNY/CUNY contracts in the areas of construction, construction-related services like engineering and architecture, materials, and printing will be newly subject to prior approval. Contracting by third party vehicles affiliated with public authorities will be banned altogether.

The bill seeks to standardize cost-effective and fair procurement practices, requiring public authorities, public corporations, and SUNY and CUNY, to establish guidelines that mirror those of state agencies such as competitive bidding, awarding contracts to the lowest priced responsible bidder, and marketing practices that create the most competitive marketplace. The legislation also strengthens the public notice requirements for procurement by state agencies, requiring for example that single and sole source procurements be made known in advance, both in semi-annual procurement reports issued by agencies and in the Contract Reporter 15 business days in advance of the agency seeking an exemption from competitive bidding from the comptroller. This will enable companies offering unique services to come forth and compete for government business to the benefit of the taxpayer.

Additional measures in the legislation establish greater integrity in state procurement transactions between vendors and government officials, employees and board members at state agencies and public authorities. Both vendors and government representatives must follow a code of conduct prohibiting conflicts of interest or favoritism, requiring written recusals when conflicts do exist, reporting of any undue influence or fraud, and certifying a clean contracting process. Failure to do so can result in hefty fines, termination of a corrupted contract, and penalties including up to a lifetime ban on vendors contracting with the state. Both state government representatives and vendors have due process protections against any allegation.

Taken together, these many reforms will help to restore public confidence in the contracting process following recent scandals. We strongly support A.6355/S.3984, and urge its immediate passage.



March 9, 2017

Governor Cuomo  
Executive Chamber  
Capitol Building  
Albany, NY 12224

Assemblymember Heastie  
Speaker  
Legislative Office Building  
Albany, NY 12248

Senator Flanagan  
Majority Leader  
Legislative Office Building  
Albany, NY 12247

Senator Klein  
Senate Co-Leader  
Legislative Office Building  
Albany, NY 1224

**Re: Procurement Reforms in the Executive Budget**

Dear Messrs. Cuomo, Flanagan, Heastie, and Klein:

We write to recommend additions to the portions of the *Good Government and Ethics Reform* Article VII bill in the 2018 Executive Budget pertaining to procurement reform.

Parts F-L of the bill have provisions establishing Inspector Generals for the New York State Education Department (NYSED) and the Port Authority of New York State & New Jersey (PANYNJ); extending the State Inspector General's authority over affiliated not-for-profit organizations of SUNY and CUNY; establishing a Chief Procurement Officer for state agencies and authorities; and limits campaign contributions by vendors during the restricted period of procurement. While these new offices may help prevent conflicts of interest, wasteful spending, or criminal activity, we urge you to consider as part of your budget discussions the following essential reforms:

1. **Require competitive and transparent contracting for the award of state funds by all state agencies, authorities, and affiliates.**  
Use existing agency procurement guidelines as a uniform minimum standard.

2. **Transfer responsibility for awarding all economic development awards to the Empire State Development Corporation (ESDC),** and end awards by state non-profits and SUNY.
3. **Empower the comptroller to review and approve all state contracts over \$250k.**
4. **Prohibit state authorities, state corporations, and state non-profits from doing business with their board members** (the new ethics provisions in Part H of the bill, for SUNY and CUNY-affiliated not-for-profit organizations could include this prohibition).
5. **Create a ‘Database of Deals’** that allows the public to see the total value of all forms of subsidies awarded to a business – as six states have done.

**We also urge you to reduce the potential for conflicts of interest by considering as part of your discussions on the budget, options to limit campaign contributions from anyone who has or is seeking a state contract.**

Part L of the bill bans contributions by vendors during the restricted period and up to six months after a contract. This is an important acknowledgement that pay to play is a real problem in New York and needs to be addressed. We would like to discuss this and other procurement reforms with your offices.

Sincerely,

Dick Dadey, Executive Director  
Citizens Union

Blair Horner, Executive Director  
NY Public Interest Research Group

Ron Deutsch, Executive Director  
Fiscal Policy Institute

John Kaehny, Executive Director  
Reinvent Albany

Dave Friedfel, Director of State Studies  
Citizens Budget Commission

Susan Lerner, Executive Director  
Common Cause New York

Dare Thompson, President  
League of Women Voters – NYS



## **Watchdogs: Legislature Should Not Fund Mega-Subsidy Deals Until Comptroller Has Power To Provide Real Independent Oversight.**

**In wake of \$800m economic development bid-rigging scandal,  
strengthening independent oversight is  
most important reform this session.**

(January 31, 2017: Albany) On the eve of economic development budget hearings, prominent transparency watchdog groups say New York State Senate leaders John Flanagan and Jeff Klein and Assembly Speaker Carl Heastie should not approve the mega-subsidy deals proposed in the governor's budget until the Comptroller's independent oversight over state contracting is significantly strengthened.

The groups say billions of taxpayer-funded contracts will remain ripe for abuse until, at a minimum, the Comptroller's Office – which is independent of the governor – is given the power to review and pre-approve contracts of all state entities, and is able to ensure the state contracting process is fair and transparent. The Comptroller's Office was specifically created by the state constitution to provide independent oversight over state spending.

The groups note that Governor Cuomo has bitterly resisted independent oversight over executive branch contracting, despite his administration being rocked by the largest bid-rigging scandal in state history – which involved \$800m in state economic contracting and resulted in the arrest of nine people by U.S. Attorney Preet Bharara.

### **Examples of some of the billions in state funds the governor has proposed providing to businesses:**

1. \$391m for factories and facilities for Solar City and Athenex in Western NY.\*
2. \$275m for factories and facilities in Buffalo for SolarCity, AMRI, and IBM\*
3. \$638m for building factories for computer chip makers in Utica and Oneida.
4. \$75m for ASML chip factory in Albany to Fuller Road Management

\* = Portion of funds would go to contracts alleged by U.S. attorney to have been rigged.

## Scandal Plagued State Non-Profits To Get \$100s Millions New Public Funds

The governor's budget proposes giving hundreds of millions of new taxpayer funds to Fort Schuyler Management and Fuller Road Management, the state-controlled non-profits at the center of the bid-rigging scandal – which still do not have independent oversight over their contracting from the Comptroller's Office.

### Comments from Signers:

"Despite last October's arrests, billions in state economic development funding remain ripe for corruption and abuse. A crucial first step towards protecting the public's money is to empower the Comptroller to provide independent oversight – and that's just a bare minimum of what's needed to ensure clean, fair state contracting."

—Said **John Kaehny**, Executive Director, Reinvent Albany

"Allowing the Governor to include multi-billion dollar development projects in his budget without independent oversight is the reason his associates are being investigated for corruption in the first place," said Susan Lerner, Executive Director of Common Cause New York. "There must be checks on the Governor's authority when it comes to awarding contracts for taxpayer-funded work. New York State deserves a transparent, competitive bidding process with proper review and oversight by the State Comptroller, whose job it already is to audit state government."

—Said **Susan Lerner**, Executive Director, Common Cause NY

"Key to a functioning democracy is the separation of powers and checks on executive authority. In the face of the largest bid-rigging scandal in New York State history, it is absolutely essential that the comptroller's ability to independently review state contracts be restored and strengthened, lest the resurgence of pay-to-play politics becomes the status quo."

—Said **Dick Dadey**, Executive Director, Citizens Union

"Unfortunately, the governor's budget plan does not include measures that would meaningfully reform New York's opaque system of government contracting and limited independent oversight. Adding more monitors directly accountable to the governor is simply insufficient to tackle the nightmare of corruption that has plagued Albany. New Yorkers deserve the a contracting system that relies on independent, powerful watchdogs. The final budget must strengthen the Comptroller's oversight of

contracting in New York.”

—Said **Blair Horner**, Executive Director, NYPIRG

“The public is sick and tired of seeing their tax dollars squandered without any government scrutiny. How can we expect to curb corruption when there are weak reviewing procedures in place for the spending of public dollars? A Chief Procurement Officer appointed by the Governor will not provide adequate independent oversight. The Governor should restore review and audit power to the State Comptroller and not his own appointee.”

—Said **Barbara Bartoletti**, Legislative Director for the League of Women Voters of NYS



December 22, 2016

The Honorable Andrew Cuomo  
Governor  
Executive Chamber  
Albany, NY 12224

The Honorable John Flanagan  
Senate Majority Leader  
Legislative Office Building  
Albany, NY 12247

The Honorable Jeffrey Klein  
Senate Co-Leader  
Legislative Office Building  
Albany, NY 12247

The Honorable Andrea Stewart-Cousins  
Senate Minority Leader  
Legislative Office Building  
Albany, NY 12247

The Honorable Carl Heastie  
Assembly Speaker  
Legislative Office Building  
Albany, NY 12248

The Honorable Brian Kolb  
Assembly Minority Leader  
Legislative Office Building  
Albany, NY 12248

**Re: The need for independent oversight of state contracting and ethics**

Dear Governor Cuomo and Legislative Leaders:

We write to express our extreme concern over changes to state procurement law being proposed by the Governor, changes that would effectively weaken the independent oversight authority of the state Comptroller and Attorney General. Our groups vigorously oppose the creation of a Special Procurement Prosecutor appointed by the Governor and we call again for increasing the oversight authority of offices that are outside and independent of the executive branch. Our position is anchored by our view of the importance of effective checks and balances within government.

While we have no objection to the executive taking steps to enhance its internal oversight of agencies' contracting, this internal oversight is no substitute for real independent oversight. New York State has separately-elected statewide public officials who are supposed to ensure that the state's awarding of government contracts is fair, accountable, and operates with the highest ethical standards.

We think the changes you are considering for the Special Session have it backwards. We continue to believe that the contract review and audit power of the Comptroller should



be increased --- not supplanted by new appointees of the Governor. Likewise, we support calls from the current Attorney General --- and the previous Attorney General -- - to strengthen the ability of the Department of Law to bring actions independent of a referral from state entities.

As we all know, New York State's contracting procedures are the subject of investigations by both the U.S. Attorney's office and State Attorney General, and high-ranking officials have been charged with serious crimes. While it is important and appropriate for the executive to review what apparently has gone wrong, it is the role of the legislative process to strengthen the laws to ensure independent oversight.

Of course, we are not supportive of deals hammered out in secret and then passed during the middle of the holiday season either. However, the substance of the policies matter. We urge that you discuss these important ethics measures in public, that you focus on the need for independent oversight, and that you not approve agreements that fall short of those simple goals.

As always, we look forward to working with you and your offices. If we do not communicate with you over the remainder of the month, we hope that you enjoy the holidays.

Sincerely,

Dick Dadey  
Executive Director  
Citizens Union

John Kaehny  
Executive Director  
Reinvent Albany

Blair Horner  
Executive Director  
NYPIRG

Dare Thompson  
President  
League of Women Voters - NYS

## For Immediate Release

December 13, 2016



## Watchdog Groups Praise Comptroller's Blueprint for Procurement Reforms

*Groups emphasize importance of independent oversight in wake of \$800 million bid rigging scandal*

Our groups strongly support Comptroller DiNapoli's package of procurement reforms. We believe the Comptroller's proposals are pragmatic steps for strengthening independent oversight over billions of dollars of state contracts, and will add much-needed transparency and minimum standards to the award of contracts by agencies, public authorities, and other state entities.

We particularly welcome the Comptroller's proposed reforms, given the "systemic problems" with the state's procurement process identified by federal and state prosecutors in the wake of the alleged rigging of \$800 million in Upstate economic development contracts.

The New York State constitution created the Office of the State Comptroller to provide independent oversight over agencies and authorities controlled by the governor. Our groups support strengthening the Comptroller's oversight authority and believe it will help prevent the further abuse of taxpayer funds.

In addition to the Comptroller's reforms, the groups have proposed other Clean Contracting solutions and urged state leaders to reduce the potential for conflicts of interest by exploring options to limit campaign contributions from anyone who has or is seeking a state contract. Nineteen states and NYC have such "pay to play" laws, NY State does not.

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December 5, 2016

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Speaker  
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Senator Flanagan  
Majority Leader  
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Senator Klein  
Senate Co-Leader  
Legislative Office Building  
Albany, NY 12247

**Re: Please strengthen independent oversight of economic development contracts and include Clean Contracting reforms as part of any special session**

Dear Messrs. Cuomo, Flanagan, Heastie, and Klein:

We write today to ask that any special session of the legislature include fundamental changes to how the state awards and oversees over a billion dollars a year in economic development contracts. The public has not forgotten that in September key state officials were arrested for rigging over \$780 million in economic development contracts.

Specifically, we urge you to strengthen independent oversight of state spending, which under the state constitution is the job of the Comptroller.

We suggest the following fundamental reforms to protect the public's money and restore public trust in government.

## **Five Clean Contracting Reforms Proposed by Watchdog Groups:**

1. Require competitive and transparent contracting for the award of state funds by all state agencies, authorities, and affiliates. Use existing agency procurement guidelines as a uniform minimum standard.
2. Transfer responsibility for awarding all economic development awards to the Empire State Development Corporation (ESDC), and end awards by state non-profits and SUNY.
3. Empower the comptroller to review and approve all state contracts over \$250k.
4. Prohibit state authorities, state corporations, and state non-profits from doing business with their board members.
5. Create a 'Database of Deals' that allows the public to see the total value of all forms of subsidies awarded to a business – as six states have done.

We also urge you to reduce the potential for conflicts of interest by exploring options to limit campaign contributions from anyone who has or is seeking a state contract. Nineteen states and NYC have “pay to play” laws, New York State does not.

Thank you,

Dick Dadey, Executive Director  
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62 Grand Street  
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Governor Andrew Cuomo  
New York State Capitol Building  
Albany, New York 12224

November 14, 2016

*Re: Renew public confidence in state government, include Clean Contracting reforms in special session to renew 421-a.*

Dear Governor Cuomo,

We write to ask you to include Clean Contracting reforms and controls on pay to play as part of the special session you are calling to renew 421-a real estate tax abatements.

Over the last few weeks you have talked about the need to restore the public's trust in New York's scandal-scarred state government. We agree, and the place to start is with fundamental changes to how the state awards over a billion dollars a year in economic development contracts.

The public has not forgotten that in September, high-level officials in State government were arrested for rigging economic development contracts worth more than \$780 million—nor can you.

Any credible attempt to restore the public trust in state government must include major reforms that give the public confidence that the state's economic development spending is clean and accountable. Real reform is up to you. This stunning bid-rigging scandal took place within the executive branch, and as governor you can implement many major Clean Contracting reforms on your own through instructions to your appointees, through your budget, and

more formally via executive orders. However, we urge you to use your power to propose and champion legislation, so that these changes are codified in law.

In late September, our groups wrote to you and other state leaders and urged you to make the major Clean Contracting reforms needed to restore public confidence. Today we are renewing our call for fundamental changes to ensure that billions in state economic development contracts are awarded fairly and transparently.

### **Five Clean Contracting Reforms Proposed by Watchdog Groups:**

1. Require competitive and transparent contracting for the award of state funds by all state agencies, authorities, and affiliates. Use existing agency procurement guidelines as a uniform minimum standard.
2. Transfer responsibility for awarding all economic development awards to Empire State Development Corporation (ESDC), and end awards by state non-profits and SUNY.
3. Empower the comptroller to review and approve all state contracts over \$250k.
4. Prohibit state authorities, state corporations and state non-profits from doing business with their board members.
5. Create a 'Database of Deals' that allows the public to see the total value of all forms of subsidies awarded to a business – as six states have done.

We further urge you to reduce the potential for conflicts of interest by exploring options to limit campaign contributions from anyone who has or is seeking a state contract. Nineteen states and NYC have such “pay to play” laws, NY State does not.

As governor, you have not shied away from trying to do big things. In the aftermath of the biggest bid-rigging scandal in state history, we are calling on you to champion the fundamental reforms that are needed to protect the public's money and restore public trust in government.

Thank you,

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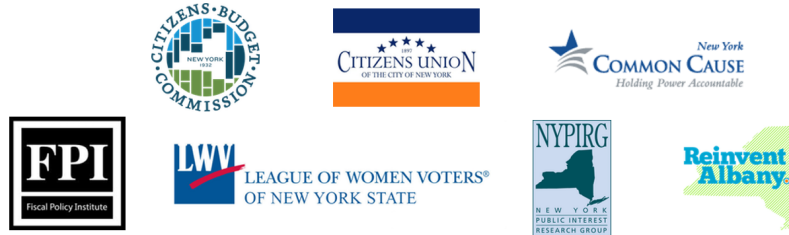
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## Leading Transparency and Budget Watchdog Groups Call on Governor to Include Clean Contracting Reforms in any Special Session to Renew 421-a Tax Abatements.

*Watchdogs say Governor Cuomo must work to restore public trust after scandal involving \$780 million in rigged economic development contracts.*

Today in Albany, leading watchdog groups released a letter to Governor Cuomo asking him to include Clean Contracting reforms in any special session to renew 421-a real estate tax abatements. The groups also discussed the lack of urgency or progress in fixing the structural problems that led to the State's historic bid rigging scandal.



Governor Andrew Cuomo  
New York State Capitol Building  
Albany, New York 12224

November 14, 2016

*Re: Renew public confidence in state government, include Clean Contracting reforms in special session to renew 421-a.*

Dear Governor Cuomo,

We write to ask you to include Clean Contracting reforms and controls on pay to play as part of the special session you are calling to renew 421-a real estate tax abatements.

Over the last few weeks you have talked about the need to restore the public's trust in New York's scandal-scarred state government. We agree, and the place to start is with fundamental changes to how the state awards over a billion dollars a year in economic development contracts.

The public has not forgotten that in September, high-level officials in State government were arrested for rigging economic development contracts worth more than \$780 million—nor can you.

Any credible attempt to restore the public trust in state government must include major reforms that give the public confidence that the state's economic development spending is clean and accountable. Real reform is up to you. This stunning bid-rigging scandal took place within the executive branch, and as governor you can implement many major Clean Contracting reforms on your own through instructions to your appointees, through your budget, and more formally via executive orders. However, we urge you to use your power to propose and champion legislation, so that these changes are codified in law.

In late September, our groups wrote to you and other state leaders and urged you to make the major Clean Contracting reforms needed to restore public confidence. Today we are renewing our call for fundamental changes to ensure that billions in state economic development contracts are awarded fairly and transparently.

### **Five Clean Contracting Reforms Proposed by Watchdog Groups:**

1. Require competitive and transparent contracting for the award of state funds by all state agencies, authorities, and affiliates. Use existing agency procurement guidelines as a uniform minimum standard.
2. Transfer responsibility for awarding all economic development awards to Empire State Development Corporation (ESDC), and end awards by state non-profits and SUNY.
3. Empower the comptroller to review and approve all state contracts over \$250k.
4. Prohibit state authorities, state corporations and state non-profits from doing business with their board members.
5. Create a 'Database of Deals' that allows the public to see the total value of all forms of subsidies awarded to a business – as six states have done.



New York  
**COMMON CAUSE**  
*Holding Power Accountable*



LEAGUE OF WOMEN VOTERS®  
OF NEW YORK STATE



Pete Grannis  
First Deputy Comptroller  
110 State Street  
Albany, New York 12236

October 21, 2016

Re: Request for meeting to discuss procurement and audit reforms needed in the aftermath of massive state bid-rigging scandal.

Dear Deputy Comptroller Grannis,

Our groups would like to meet with you at your earliest convenience to discuss needed improvements to New York State's procurement and contract audit process. Our request comes in the wake of perhaps the largest bid-rigging scandal in NYS history. This scandal has called into question at least \$750m in state contracts and raised profound questions about how the state awards and manages discretionary economic development contracts.

In particular, we would like to discuss with you the recommendations that we presented in our September 30, 2016 letter to Comptroller DiNapoli. A number of those recommendations touch directly on the authority of the Comptroller. We believe the Comptroller has a central role to play in any effort to reform the procurement system and we would like to ensure that our recommendations are pragmatic and useful.

### **Suggested Clean Contracting Reforms**

1. Require competitive and transparent contracting for the award of state funds by all state agencies, authorities, and affiliates.
2. Transfer responsibility for awarding all economic development awards to ESDC and end awards by state non-profits and SUNY.
3. Empower the comptroller to review and approve all state contracts over \$250k.
4. Prohibit state authorities, state corporations, and state non-profits from doing business with their board members.
5. Create a 'Database of Deals' that allows the public to see the total value of all forms of subsidies awarded to a business – as six states have done.

Additionally, we would like to discuss limits to campaign contributions from anyone who has or is seeking a state contract. (Something 19 other states and NYC already do.)

Thank you,

Dick Dadey, Executive Director  
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**Watchdog Groups Call on Senate and Assembly Leaders  
to Hold Emergency Oversight Hearing  
On Allegations of Historic Bid-Rigging Scandals and Clean  
Contracting Reforms**

***Groups also petition Governor Cuomo to immediately release  
Bart Schwartz's taxpayer-funded report on contracting corruption risk***

(October 13, 2016, Albany) Numerous prominent budget and transparency watchdog groups today called on New York State Senate leaders John Flanagan and Jeff Klein and Assembly Speaker Carl Heastie to hold emergency oversight hearings on the allegations by the U.S. Attorney of the largest bid-rigging scandals in state history. The groups emphasized that the public needs to know how it is possible that more than a billion dollars in state contracts were rigged and what reforms will be implemented to address this huge and systemic failure of state government. The groups also called on Governor Cuomo to immediately release the taxpayer-funded report on economic development contracting prepared by his consultant Bart Schwartz.

The reformers say that the only way to ensure that state contracts are awarded fairly and transparently is to develop real solutions through public discussion involving the governor, legislature, comptroller, attorney general, transparency experts and the public.

**Five Clean Contracting Reforms Proposed by Watchdog Groups:**

1. Require competitive and transparent contracting for the award of state funds by all state agencies, authorities and affiliates. Use existing agency procurement guidelines as a uniform minimum standard.

2. Transfer responsibility for awarding all economic development awards to Empire State Development Corporation (ESDC), and end awards by state non-profits and SUNY.
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4. Prohibit state authorities, state corporations and state non-profits from doing business with their board members.
5. Create a 'Database of Deals' that allows the public to see the total value of all forms of subsidies awarded to a business – as six states have done.

The groups further urged state leaders to reduce the potential for conflicts of interest by exploring options to limit campaign contributions from anyone who has or is seeking a state contract. Nineteen states and NYC have such “pay to play” laws, NY State does not.

“Despite the arrests by Preet Bharara, the risk of corruption remains sky high in New York State. The governor and legislature have to put in place real contracting and pay to play reforms or billions of taxpayer funded contracts will remain ripe for abuse.”

Said John Kaehny, Executive Director, Reinvent Albany, 917-388-9040

“All State spending should be held to the same standards of review and scrutiny, regardless of the stated purpose. Potential contractors need to be held to the highest standards of integrity and performance.”

Said David Friedfel, Director of State Studies, Citizens Budget Commission, 518-429-2959

“With political corruption rampant in our state capital and New Yorker’s trust falling in our elected officials to act solely in the public interest, it is necessary for the legislature and governor to adopt these common sense fiscal management solutions now. Immediate reforms are needed to re-instill New Yorkers faith that their taxpayer dollars are being well-spent.”

Said Dick Dadey, Executive Director, Citizens Union, 917-709-2896

“For years many of us have been suggesting that the system is ripe for corruption, now we see it is not only ripe, but rotten. We need to restore the public’s trust and put real accountability measures in place to ensure that we have full transparency and a solid return on investment before we continue to provide billions of taxpayer dollars to private businesses in the name of economic development.”

Said Ron Deutsch, Executive Director, Fiscal Policy Institute, 518-469-6769

“New York’s opaque system of government contracting and limited independent oversight is a one-two punch that raises the risk of corruption The governor and the legislature simply cannot pay lip service to the allegations raised by the U.S. Attorney. New Yorkers deserve a

sweeping public review of state contracting and the enactment of tough, new corruption-busting measures.”

Said Blair Horner, Executive Director, NYPIRG, 518 727-4506

“It seems every year there is a new scandal in Albany. The public is sick and tired of seeing their tax dollars squandered without any government scrutiny. How can we expect to curb corruption when there are weak reviewing procedures in place for the spending of public dollars? Now more than ever we need transparency and a strong assessment process to ensure that the public’s tax dollars are being spent appropriately. The Governor and legislature cannot sit idly by while billions of dollars are being spent with minimal oversight.”

Said Barbara Bartoletti, Legislative Director, League of Women Voters NYS,  
518-465-4162

"The current system is clearly prone to corruption and abuse. We need a competitive and transparent bidding process based on merit, not crony capitalism."

Said Susan Lerner, Executive Director, Common Cause NY, 212-691-6421



Common Cause  
Holding Power Accountable



LEAGUE OF WOMEN VOTERS®  
OF NEW YORK STATE



Andrew Cuomo  
Governor  
The Capitol  
Albany, NY 12224

Eric Schneiderman  
Attorney General  
The Capitol  
Albany, NY 12224

Carl Heastie  
Assembly Speaker  
LOB, Rm 932  
Albany, NY 12248

Thomas DiNapoli  
Comptroller  
110 State Street  
Albany, NY 12236

John Flanagan  
Senate Leader  
The Capitol, Rm 330  
Albany, NY 12247

Jeffrey Klein  
Senate Coalition Leader  
LOB, Rm 913  
Albany, NY 12247

September 30, 2016

**Re: Fundamental reforms needed in the aftermath of massive state bid rigging scandal.**

Dear Governor Cuomo, Comptroller DiNapoli, Attorney General Schneiderman, Senate Leader Flanagan, Speaker Heastie, and Senate Coalition Leader Klein,

We write in the aftermath of the recent federal and state criminal complaints against many of the major players involved in New York's Upstate economic development program to call on you to undertake major reforms.

The indictments confirmed that the state's use of non-profits and branches of SUNY to award billions in technology manufacturing subsidies has created a system that is ripe for abuse. We are calling on you collectively to work together to develop legislation and regulations that implement previous recommendations to:

1. Require competitive and transparent contracting for the award of state funds -- regardless of the contracting entity. We recommend using the agency procurement guidelines as a uniform minimum standard.
2. Transfer responsibility for awarding all business subsidy awards to ESDC, and end the use of state non-profits and SUNY in awarding these subsidies.
3. Empower the Comptroller to review and approve all state contracts.
4. Create a Database of Deals that allows the public to see the total value of all forms of subsidies awarded to a business --- six states have this.

We also urge you to seek to reduce the potential for conflicts of interest by exploring options to limit campaign contributions from anyone who has or is seeking a state contract. Nineteen states and NYC have "pay to play" laws like this and it could be a positive step for New York State.

These reasonable reforms address a scandal that affected over \$1 billion in public funds and revealed profound systemic problems with how the state awards certain large contracts. We urge you to move quickly to implement these reforms and to ensure that public funds are awarded fairly and transparently.



Thank you,

Dick Dadey, Executive Director  
Citizens Union  
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New York, NY 10007

Ron Deutsch, Executive Director  
Fiscal Policy Institute  
1 Lear Jet Lane  
Latham, NY 12110

Blair Horner, Executive Director  
NY Public Interest Research Group  
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Albany, NY 12210

John Kaehny, Executive Director  
Reinvent Albany  
148 Lafayette Street, 12<sup>th</sup> Floor  
New York, NY 10013

Carol Kellermann, President  
Citizens Budget Commission  
2 Pennsylvania Plaza  
New York, NY 10001

Susan Lerner, Executive Director  
Common Cause New York  
80 Broad Street  
New York, NY 10004

Dare Thompson, President  
League of Women Voters – NYS  
62 Grand Street  
Albany, NY 12207



**For Immediate Release:** August 3, 2016

Ron Deutsch, *Fiscal Policy Institute* (518) 469-6769

David Friedfel, *Citizens Budget Commission* (518) 429-2959

Liz Marcello, *Reinvent Albany* (646) 945-3325

## Watchdog Groups Call for Transparency for Business Subsidies

*Groups say New York needs a "Database of Deals"*

**Albany**—Prominent watchdog groups are calling on the Governor and Legislature to increase transparency of the State's more than \$4 billion in economic development spending. The groups say the first step should be a single "Database of Deals" that lists all of the State's business subsidies and economic development projects to allow the public to see if projects are a good investment of public funds.

The groups are calling for basic reporting and measurements that allow apples to apples comparisons of subsidized projects, including a uniform definition of a "job." Lastly, the groups want the Assembly and Senate to increase the frequency of economic development oversight hearings.

"Are New York taxpayers getting a good return on investment for billions in economic development spending? That's really the question that needs to be asked," said Ron Deutsch, Executive Director of the Fiscal Policy Institute. "New York is behind other states like Wisconsin, Florida, Indiana, Illinois, North Carolina, and Maryland which already have

websites that bring various subsidies together in a single, downloadable database and disclose the outcomes of the spending. There is no reason New York can't provide the same level of transparency and disclosure."

"Economic development reporting requirements should be stringent, and uniform across programs in order to ensure that State tax dollars are effectively spent," said David Friedfel, Director of State Studies for the Citizens Budget Commission.

"New Yorkers deserve a clear, complete picture of how the state is giving their tax dollars to select businesses. This is basic transparency," said Liz Marcello, Campaign Manager for Reinvent Albany.



Testimony of Reinvent Albany  
**ASSEMBLY STANDING COMMITTEE ON ECONOMIC DEVELOPMENT,  
JOB CREATION,  
COMMERCE AND INDUSTRY  
Albany, New York  
August 3, 2016**

Thank you Chairman Schimminger and members of the Standing Committee on Economic Development for holding this important oversight hearing. I am Liz Marcello, Campaign Manager for Reinvent Albany. We are a non-profit watchdog group that advocates for more open and accountable New York State government.

Reinvent Albany advocates for state government to be more transparent and understandable to the public, including strengthening the Freedom of Information Law, opening government data, and encouraging open government websites like the Comptroller's Open Book and Attorney General's New York Open Government. We also seek to reduce corruption risk and the abuse of power through stronger independent oversight and analysis via the Comptroller, Authorities Budget Office and someday, a state independent budget office like New York City's.

This is a very important hearing and we hope the first of many you hold on economic development and public subsidies to businesses. Under Governor Cuomo, subsidies to businesses are one of the fastest growing parts of the state budget, and encompass a huge and complex apparatus for distributing billions in public funds through public authorities, branches of the State University of New York, state controlled non-profit groups, and the Regional Economic Development Authorities.

Reinvent Albany deeply appreciates Governor Cuomo's desire to use public investments to create jobs and spur the Upstate economy. We agree with the governor that there are

huge opportunities to use public investments to strengthen Upstate communities, while also creating large numbers of well-paying jobs.

This said, we have profound and fundamental concerns about the cost effectiveness, transparency, and integrity of many of the state run programs that hand out billions in public funds to select businesses.

We believe that the state legislature continues to make a big mistake by giving the governor what amounts to a giant blank check that he can spend with minimal independent oversight or accountability. This is especially true because the governor's system often operates outside of long-established state procurement and conflict of interest rules, and without pre-contract review by the Comptroller.

It is incredibly difficult for the public --- and the legislature --- to keep track of the state's multitude of business subsidies, let alone evaluate them. This is especially true because there is no single, online "Database of Deals," there is sparse and often delayed reporting, and there are no standard measures for making apples to apples comparisons for job creation across different programs. (For example, different state subsidy programs have different definitions for what a "job" is.)

We agree with the watchdog groups who say that there is a lack of evidence supporting the idea that handing out taxpayer dollars to individual businesses is a good use of public funds. We also agree that given the billions in public funds being spent, the legislature and public should be getting much more timely, high quality data. In turn that data should be used for robust analysis that shows that the state's business subsidy programs are a better use of public funds than traditional investments in public infrastructure that benefit the entire public, not just one business and its employees. We all know that Upstate's water treatment plants, water supply systems, roads, bridges, schools, and other public buildings can use all the help they can get.

These are fundamental unanswered questions, but to us, the biggest elephant in the room here today is the question of whether the billions in public dollars being spent via New York State's complex subsidy system are being awarded cleanly and fairly.

Investigations by the US Attorney for the Southern District, the Attorney General, and various journalists have revealed that New York State's marquee business subsidy programs are plagued by pay to play and conflict of interest.

There are now press accounts of what appears to be bid rigging and pay to play in at least three high profile contracts involving SUNY Polytechnic and the non-profit groups it controls, Fort Schuyler Management Corporation and Fuller Road Management Corporation --- and over a billion dollars in public funds.

Additionally, there are also well-documented press accounts of conflicts of interest involving the board members of Fort Schuyler and Fuller Road. At least one of these cases, in Albany, has triggered a criminal investigation by the Attorney General. Separately, it is public record that some voting members of the Regional Economic Development Councils are employed by organizations that have received tens of millions of dollars from these same REDC's.

This is a massive scandal. This is not a few bad apples, this is a system that has allowed a small number of the governor's biggest political contributors to win about a billion and a half dollars in publicly funded contracts without going through a fair and competitive process.

We do not know what will come of the various criminal investigations, but we do know that the system for distributing state business subsidies is full of corruption risk --- even if that corruption is legal. ("Pay to play" is the word for legal and illegal bribery.)

The governor's office is steering billions of dollars in economic development funds through the Fort Schuyler Management Corporation and Fuller Road Management Corporation --- which share staff and are controlled by SUNY Poly and in turn the governor's office. Fort Schuyler and Fuller Road are funded by grants from the Empire State Development Corporation, and ESD gets appropriations for various programs through the state budget.

Legally, Fort Schuyler and Fuller Road are non-profit groups that are not subject to state contracting and conflict of interest rules. As non-profits, they do not have to competitively bid projects, and they can legally write bids that essentially favor one business over another. They can also legally award their own board members lucrative contracts, 100% funded by taxpayer dollars.

Here are three of the high-profile contracts under investigation. Together they paint a picture of why the governor's use of state controlled non-profits is ripe for abuse.

- As part of Buffalo Billions, in 2014 Fort Schuyler Management awarded a contract worth \$350 million to LP Ciminelli to build the Riverbend factory for SolarCity. Fort Schuyler's Request for Proposal required that the builder be from Buffalo and have a long list of specific in-house capabilities and experience that eliminated most potential competitors from bidding and potentially doing the job for much less. LP Ciminelli is one of Governor Cuomo's largest contributors in Western New York.
- In Syracuse, Fort Schuyler awarded COR Development a \$60 million contract to build a high tech factory for the Sora. The RFP for the contract was advertised for three days in a small notice in the back of the Syracuse newspaper. The heads of four construction companies, all potential bidders, told a reporter they never knew about the job but would have competed. COR Development is Governor Cuomo's largest contributor in Central New York.
- In Albany, a Fuller Road Management Corporation project to build new dorms for the University of Albany is under investigation for bid rigging after a member of Fuller Road's board of directors purchased possible locations for the new dorms before the RFP was issued. The board member's company, Columbia Development, is located inside a building owned by SUNY Polytechnic, which controls Fuller Road. Columbia Development is one of Governor Cuomo's largest contributors in the Albany area.

These are just some measures that need to be adopted and others probably have more. The larger point is that the existing process for handling our state economic development funds is not clean, not fair, and cannot be shown to be a better use of government funds than traditional investments.

Thank you.





December 23, 2015

Alphonso David  
Counsel to the Governor  
The Capitol  
Albany, New York 12224

Re: A "Database of Deals" to increase the transparency of business subsidies

Dear Mr. David:

In recent years, New York State has improved the transparency and coordination of business subsidy programs. Project specific information for Excelsior, Brownfields, and ReCharge NY is now published on the Open NY portal in a machine readable, downloadable, format. The State has also consolidated most funding applications with the Consolidated Funding Application. However, project information for major initiatives is not published, incomplete or not machine readable, including subsidies provided by the REDCs, SUNY Poly, SUNY RF and non-profit entities controlled by the state. Some published data are fragmentary and not useful --- like datasets of Start-Up NY and Film/TV locations without a project PIN or subsidy amount. Additionally, only a limited information from the CFAs is made publicly available.

We propose creating a single "database of deals," managed by ESD for all state subsidies to businesses, including grants, loans, tax credits, tax-exempt financing, and discounted energy. A consolidated portal will make it easier to find and use subsidy data and increase public accountability. Businesses often receive subsidies from multiple programs, but it is difficult for the public to tally the full cost to the State. A new portal will provide a clear picture of the State's economic development projects, as well as enhance the State's ability to track the return on its investments.

As a first step, the state should publish existing project information, that is already online, in a machine readable format on the Open NY portal in the "Economic Development section. Datasets should include PIN numbers for all projects, and include the tables published by the REDCs (progress reports etc,) tabular data on ESD's site, and other subsidy reporting.

### **Best Practices**

1. Single databases bringing together a range of subsidies in a single database:
  - Wisconsin: <http://commerce.inwisconsin.com/>

- Florida: [http://www.floridajobs.org/business/DEO\\_EDP\\_PROD.htm](http://www.floridajobs.org/business/DEO_EDP_PROD.htm)
- Indiana: <https://transparency.iedc.in.gov/Pages/ContractSearch.aspx>

2. States that do the best job at disclosing outcomes:

- Illinois: [www.ilcorpacct.com/corpacct/ProgressReport.aspx](http://www.ilcorpacct.com/corpacct/ProgressReport.aspx)
- North Carolina: [www.nccommerce.com/research-publications/incentive-reports](http://www.nccommerce.com/research-publications/incentive-reports)

3. States with best user friendliness (ease of use, downloadability, etc.)

- Maryland: <http://commerce.maryland.gov/fund/maryland-finance-tracker>
- Florida: [http://www.floridajobs.org/business/DEO\\_EDP\\_PROD.htm](http://www.floridajobs.org/business/DEO_EDP_PROD.htm)
- Indiana: <https://transparency.iedc.in.gov/Pages/ContractSearch.aspx>

Citizen Action • Citizens Budget Commission • Citizens Union  
Fiscal Policy Institute • Good Jobs New York • NYPIRG  
League of Women Voters of NY State • Reinvent Albany

For Immediate Release: September 23, 2015

## **Watchdog Groups Call for Greater Accountability and Transparency for Business Subsidies**

*U.S. Attorney's Inquiry into State Business Subsidies  
May Be the Wake-Up Call New York Needs*

New York State subsidies to businesses exceed \$8 billion a year and are the fastest growing part of the state budget. Yet, recent media reports about the U.S. Attorney's inquiry into state business subsidies have highlighted questions about how the state steers billions of dollars in public funds to businesses involved in "Buffalo Billion" and other big technology manufacturing and research deals in Upstate New York. We hope the U.S. Attorney's questions are a wakeup call to State Government to make this process far more transparent and accountable.

We would like to see a simpler process with clearer lines of authority and responsibility. Among our concerns is the state's use of non-profit groups like the Fort Schuyler Management Corporation to negotiate and oversee subsidy deals worth billions of tax dollars.

By using a mixture of non-profit groups—including Ft. Schuyler and the SUNY Research Foundation—and academic institutions like SUNY Polytechnic, the State is blurring responsibility and reducing the accountability for decisions worth hundreds of millions of dollars. Subsidy deals are complex, often involve a real risk to public funds, and have the potential for significant conflict of interest. We wonder, who exactly is making the crucial decisions about who wins these deals? What is the basis of these decisions and how can we be sure that the deals themselves are well conceived and fairly awarded?

One step towards increasing overall government accountability and transparency, which should be considered, is to make one state agency the sole negotiator and implementer of state subsidy deals with public review and input, and ending the use of state controlled non-profit groups and the state university system in the contract award process.

Sincerely,

Citizen Action  
Karen Scharff

Citizens Budget Commission  
Carol Kellermann

Citizens Union  
Dick Dadey

NYPIRG  
Russ Haven

Fiscal Policy Institute  
Ron Deutsch

Good Jobs New York  
Elizabeth Bird

League of Women Voters of NY State  
Laura Ladd Bierman

Reinvent Albany  
John Kaehny

**Common Cause NY • Citizen Action • Citizens Union • Good Jobs NY  
League of Women Voters of NYS • New Yorkers for Fiscal Fairness  
New York Public Interest Research Group • Reinvent Albany**

Thomas DiNapoli  
Comptroller of the State of New York  
110 State Street  
Albany, NY 12236

September 8, 2014

**Re: Increasing OSC Oversight of State Business Tax Credits**

Dear Comptroller DiNapoli,

We write today to request that the Office of the State Comptroller significantly increase its scrutiny of the state's estimated \$1.7 billion in annual subsidies provided by 50 business tax credits. These business tax credits have tripled in value since 2005, and are a largely non-transparent form of state spending, which has had little independent oversight.

We ask that your office begin by reviewing the largest credits, which amount to close to 75% of authorized business tax subsidies: Brownfields, Film and TV Production and Empire Zones. (EZ/QZE.) In particular, we ask that you assess whether those programs have robust, independent, and controls and a fair and transparent process for awarding subsidies.

In their authoritative 2013 report: *New York State Business Tax Credits Analysis and Evaluation*, former Comptroller Carl McCall and Peter J. Solomon repeatedly raised concerns about the lack of transparency.

“Tax incentives undermine transparency. Taxpayers and the general public should know that a tax incentive exists, how it is imposed, and who receives it. With few exceptions, there is limited publicly available information as to who is getting the incentives and how much each is costing the government.”

We strongly agree with the report's recommendation that “The state should strengthen its monitoring and evaluation of business tax credits.” To this end, we suggest that your office publicly recommend uniform processes and standards, including independent evaluations and review schedules that will make credits easier for your office, the legislature, the public and the executive branch to oversee and assess.

We look forward to working with your office on this important issue.

Thank you,

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Sources: New York State Tax Reform and Fairness Commission 2013  
[http://www.pjsolomon.com/news/media/2013-11-13-Tax\\_Incentive\\_Study\\_Final.pdf](http://www.pjsolomon.com/news/media/2013-11-13-Tax_Incentive_Study_Final.pdf).