

Reinvent Albany
Analysis of FY 2019-2020 State Budget Proposals Related to Clean Contracting
March 15, 2019



Component	Executive Budget	Assembly	Senate	Reinvent Albany Position/ Comment
<p>Comptroller's Pre-Audit Authority</p>	<p>Provides the Comptroller pre-audit authority in the State Operations appropriation bill that funds the Comptroller aka The Department of Audit and Control.</p> <p>Enables the Comptroller to pre-audit SUNY and CUNY (and their Construction Funds) contracts including construction, commodities, computer equipment and printing valued in excess of \$250K.</p> <p>Permits the Comptroller to pre-audit SUNY Research Foundation contracts above \$1 million and Office of General Services' contracts above \$85K.</p> <p>Comptroller must complete the pre-audit process within 30 days of submission of the contract.</p> <p>Because it is written in the operating part of the budget,</p>	<p><i>Generally tracks the Executive Budget Bill summarized in the adjacent column with major exceptions below.</i></p> <p>Provides the Comptroller pre-audit authority in Part ZZ of the Public Protection and General Government Bill (A.2005-B).</p> <p>Comptroller has 30 days to review contracts. The Comptroller can negotiate for an extension with the bidding entity. If the Comptroller does not complete his review within 30 days or an extended negotiated period, the contract goes into effect.</p> <p>Amends different sections of the Education Law pertaining to SUNY, CUNY, their construction funds, and the SUNY Research Foundation. Those sections of law are effective until June 30, 2021.</p>	<p><i>Generally tracks the Executive Budget Bill summarized in the adjacent column with major exceptions below.</i></p> <p>Provides the Comptroller pre-audit authority in Part TT of the Transportation and Economic Development (TED) Article VII bill (S.1508-B).</p> <p>Comptroller has 90 days to review contracts for SUNY, CUNY and their Construction Funds. The Comptroller can receive an extension for an additional 15 days for good cause or negotiate for an extension with the bidding entity.</p> <p>Enables the Comptroller to pre-audit SUNY and CUNY (and their Construction Funds) contracts including construction, commodities, computer equipment and printing valued in excess of \$250K. The Comptroller may also pre-audit contracts in excess of \$125K for sole or</p>	<p>Reinvent Albany strongly supports codifying the Comptroller's pre-audit authority in statute as proposed by the Senate and Assembly in their one-house budget bills.</p> <p>Reinvent Albany thinks the 30-day review is adequate with a negotiated process for additional time, provided the clock begins with the submission of the full contract. Most Comptroller pre-audit reviews are completed within two weeks.</p> <p>We support the Senate provisions allowing the Comptroller to pre-audit SUNY and CUNY (and their Construction Funds) at the lower threshold of \$125K for uncompetitive (sole or single source) contracts, or when a formal protest has been made by a vendor. Reinvent Albany's own internal analysis has revealed a majority of state bidding is noncompetitive, and change orders are often classified as competitive when the initial contract was awarded competitively despite the change order not being bid on by other companies.</p>

	<p>this language would only be in effect for one year.</p>		<p>single source or contracts where there is a formal protest of the contract award, and in excess of \$50K for SUNY (\$75K for SUNY Healthcare Facilities) and CUNY contracts where internal contracting controls are inadequate or ineffective.</p> <p>Lowers the threshold for Comptroller's pre-audit of SUNY health care facility contracts to \$250K.</p> <p>Amends different sections of the Education Law pertaining to SUNY, CUNY, their construction funds, and the SUNY Research Foundation. Those sections of law are effective until June 30, 2021, except for the SUNY Research Foundation, which does not expire.</p>	<p>We support the lower threshold for pre-auditing of \$50K (\$75K for SUNY Healthcare Facilities) if internal controls are lacking or not implemented well. The Comptroller's public reports revealed procurement deficiencies at the SUNY Downstate Medical Center in particular, so we believe this is warranted. We support applying the Comptroller's pre-audit authority to SUNY health care facility contracts generally for the same reason.</p> <p>Reinvent Albany supports making the Comptroller's pre-audit authority permanent. We are not overly concerned with the expiration of the procurement sections in Education Law because we believe they will have to be renewed as the sections cover important contracting matters beyond the Comptroller's pre-audit authority.</p>
<p>Database of Deals</p>	<p>The State Operations appropriations bill provides \$500K for the Department of Economic Development (NYS ESDC) to create an online Database of Deals of economic development projects.</p> <p>Only money is provided and there is no requirement in law the Database be created or</p>	<p>Accepts and supports the \$500K the Executive Budget Bill appropriated for a Database of Deals.</p> <p>Amends statute (Part SS of of the Transportation and Economic Development (TED) Article VII bill (A.2008-B), making the Database of Deals a requirement in law and provides specificity regarding</p>	<p>Did not comment on the \$500K appropriation earmarked in the Governor's Executive Budget.</p> <p>Like the Assembly proposal, the Senate measure amends statute (Part SS of the Transportation and Economic Development (TED) Article VII bill (S.1508-B) making the Database of Deals a requirement in law and</p>	<p>Reinvent Albany strongly supports the \$500K allocation for creating the Database of Deals in the Governor's Executive Budget and the Assembly's one-house proposal.</p> <p>Reinvent Albany strongly supports the Senate and Assembly approach of amending statute to require ESD to establish a Database of Deals, and providing specifics on the information to be included and the</p>

	<p>any specifics regarding the design or information included.</p>	<p>the design of the Database and information to be included.</p> <p>Empire State Development Corporation (ESDC) to create and maintain a searchable State subsidy and economic development benefits database on its website.</p> <p>The database would include: the name and location of the benefit recipient; the type of benefit received; the amount of economic development benefits received for the current reporting year; the time span of received economic development benefits; the total number of employees at all sites of a project; the number of jobs a participant is obligated to retain and create during the project; a statement of compliance indicating if any other State agency has reduced, cancelled or recaptured economic development benefits from a participant.</p> <p>The database would be searchable by individual fields, downloadable in whole or part, include contract and award agreements, summarize available economic development benefits and</p>	<p>provides specificity regarding the design of the Database and information to be included.</p> <p><i>The Senate generally tracks the Assembly one-house proposal described in the adjacent column with the following exceptions:</i></p> <p>1) The Senate Database is limited to state “economic development benefits” whereas the Assembly requires “Empire State development benefits” which include “economic development benefits” like state grants, loans, and tax benefits provided by ESD and additionally include benefits routed through ESD but provided by a state agency or independent entity for awarding to recipients. These benefits together are called “aggregate economic development benefits” in the Assembly proposal.</p> <p>2) The Assembly’s Database of Deals includes not only the recipient’s name and project but the location of the project, including the complete address and region of the state and zip code. The Senate version does not have this specificity.</p>	<p>design of the Database.</p> <p>Reinvent Albany supports the Assembly’s inclusion of “Empire state economic development benefits” which will capture more state subsidies than the Senate version and be disclosed and distinguished from “economic development benefits” in the Database of Deals when provided for the same project.</p> <p>We support the Assembly’s provision with more detailed information on the location of the project and reporting of minority- and women-held jobs.</p>
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		<p>provide a data dictionary for field terms.</p> <p>ESDC would be required to certify it has met the reporting requirement by providing updates on a quarterly basis to the ESDC Board.</p> <p>The Database will go live in June 2020 and be updated quarterly.</p>	<p>3) The Senate version does not require minority and women held jobs for projects receiving state benefits in the Database for each project as the Assembly does.</p>	
<p>FOIL, OML, and Ethics for Economic Development Entities</p>	<p>The Governor’s Executive Budget did not contain this proposal.</p>	<p>The Assembly included in Part UU of the Transportation and Economic Development (TED) Article VII bill (A.2008-B), a proposal to apply the Freedom of Information Law (FOIL), the Open Meetings Law (OML), and the ethics laws including financial disclosure to members of economic development entities.</p> <p>“Economic development entities” includes any entity created by the Governor or Lieutenant Governor, any state agency providing advice, recommendations or determinations to the executive with state agency including any state department, board, commission, bureau, public authority, public benefit corporation, at least one of whose members is appointed</p>	<p>The Senate’s one-house resolution and budget bills did not contain this proposal. Last year the Senate included a similar proposal but only for REDC members in Part KKKK of S.7508-B of 2018.</p>	<p>Reinvent Albany urges the adoption of the Assembly proposal, and makes the following recommendations to further strengthen it:</p> <p>1) Clarify that the definition of “constituent units” in Public Officers Law 73-a(1)(b) referenced by the definition of “economic development entity” in the Assembly proposal includes SUNY and CUNY affiliated not-for-profit organizations administering economic development. The definition of “economic development entity” should include the 7 nonprofit affiliates of SUNY Buffalo, for example.</p> <p>2) Require ethics training of members of “economic development entities” by the Authorities Budget Office or JCOPE.</p>

		<p>by the governor, and SUNY, CUNY and any of the college's constituent units.</p> <p>In addition to requiring economic development entities follow FOIL, all proposals submitted to the economic development entity through a centralized application process are subject to FOIL.</p> <p>All members of economic development entities are considered state officers and policy makers and must follow state ethics laws in section 74 and financial disclosure laws in section 73-a of the Public Authorities Law.</p> <p>The bill takes effect immediately, and members have 30 days from then to file financial disclosure forms with JCOPE.</p>		<p>3) Define a centralized application process and include proposals required to be bid out through the NYS Contract Reporter.</p>
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