



**Testimony of Reinvent Albany
for the Joint Legislative Hearing on Transportation,
2020-2021 Executive Budget
January 28, 2020**

***Re: Legislature Must Take Steps to Ensure a Transparent, as well as
Financially and Organizationally Stable MTA***

Good afternoon. I am Rachael Fauss, Senior Research Analyst for Reinvent Albany. We advocate for more transparent and accountable state government — including for state authorities like the Metropolitan Transportation Authority (MTA).

First, I would like to thank the Legislature for holding the joint oversight hearing in November 2019 on the MTA’s 2020-24 Capital Plan. We hope that you hold additional hearings this year on the Capital Plan and other topics, as your oversight helps to hold the MTA accountable.

Congestion pricing was an important victory for the MTA and the metropolitan region as a whole, as it will fund critically needed fixes to the subways, buses, and commuter rails. Yet while the MTA 2020-24 Capital Plan is fully funded by the state with \$3B additional from the FY 2020-21 Executive Budget, debt remains a large concern. The state’s \$3B contribution will likely come as state-supported payments on more MTA debt, and it is unclear how this borrowing — as well as the borrowing it must undertake to receive the state’s \$7.3B 2015-19 capital plan contribution — will count toward MTA and state debt tallies. Further, the planned \$10B of MTA borrowing for its Capital Plan may force fare increases, which could negatively affect bond ratings. Fares are becoming increasingly unaffordable to riders given income inequality, according to Moody’s, one MTA credit rater.

Given that the MTA has a number of challenges regarding its budget and operations, we ask the State Legislature to do the following to ensure a more transparent and stable MTA:

- 1. Follow up on the commitments made by the MTA during your November oversight hearing, such as the pledge by MTA staff to provide preliminary schedules/sequencing of all active capital projects within 60 days, and full implementation plan details within six months.**

2. **Ask the MTA to produce their 20-Year Needs Assessment**, federal Transit Asset Management Plan, or whatever was used to determine their state of good repair needs for the 2020-24 Capital Plan.
3. **Ask the MTA to release a detailed debt plan** to explain how its operating budget will accommodate new capital debt, and the sequencing of funding needed so the MTA's annual debt service payments don't increase.
4. **Ask the State Comptroller to independently assess the MTA's debt affordability.**
5. **Ask the MTA and Governor for a full rationale for the changes proposed in the Executive Budget to MTA procurement processes**, and ensure changes don't reduce transparency of bidding or contract awards, or limit needed competition for contracts.
6. **Publicly disclose "Set-Aside" 2020-24 Capital Plan and outerborough fund projects** as they are finalized by the Legislature and Capital Program Review Board in the coming months.
7. **Ask the Governor for the full costs and financing plan for the Penn/Empire Station Complex project to ensure the MTA is not on the hook for new capital or operating costs.** Additionally, the Legislature should ensure any PILOTs or tax abatements do not siphon away funding from NYC — which already has lost out on \$555M in tax payments from Madison Square Garden.
8. **Ensure that non-fiscal changes such as the Subway Sex Offender Ban are considered outside the budget process** via separate legislation.

The MTA also needs to do the following, which we urge the Legislature to oversee:

9. **Ensure recommendations for congestion fees and tolls are made openly available by its Traffic Mobility Review Board**, which should be promptly appointed and follow the NYS Open Meetings Law.
10. **Revise the emergency regulations that require mandatory debarment of contractors to create a fair process**, as it is driving away bidders and reducing competition for contracts.
11. **Bring back quarterly change order reports, which show millions of dollars worth of amendments to contracts.** The MTA quietly eliminated these transparency reports when it raised its threshold for Board approval of change orders to \$1M. The threshold increase was required by last year's (FY 2019-20) state budget.
12. **Create a more detailed and user-friendly capital dashboard**, which allows the public to track progress made on capital projects.

Below is Reinvent Albany's full analysis of the implementation of last year's state budget and our analysis regarding the FY 2020-21 budget ([Page 8](#)).

1. Analysis of FY 2019-2020 Budget: Congestion Pricing Win, yet Organization Dysfunction and Reduced Transparency

The passage of congestion pricing and other revenue raisers in last year's state budget finally set the MTA on the path to capital plan stability . However, the mandated "reorganization" plan, debarment and procurement changes have resulted in organizational dysfunction and reduced transparency.

Reorganization Plan Causing Dysfunction and Loss of Leadership

In his resignation letter, world-class NYC Transit Chief Andy Byford cited the reorganization plan required under last year's state budget as the reason for his departure, as the plan relegated agency presidents to operational roles. This change was made despite opposition from Reinvent Albany and other transit advocates¹ who warned that too much centralization would fragment expertise by separating agencies' operations, engineering and capital planning experts.

Mandatory Debarment is Bad Policy and Driving Away Competition

The MTA is also quietly reeling from other changes made due to last year's budget. The MTA enacted emergency debarment regulations that *mandate* debarment, instead of setting up a fair process to hold contractors accountable. These regulations have been opposed by Reinvent Albany and other leading groups such as the Citizens Budget Commission and Permanent Citizens Advisory Committee to the MTA.² Mandatory debarment is actively driving away bidders from projects – the opposite of what the MTA needs, as it is under pressure to reduce costs through increased competition.

Procurement Changes Resulted in Less Transparency of Agency Spending

It should also be noted that procurement changes that raised the threshold for MTA Board approval of change orders to \$1 million has actually resulted in far less transparency. In updating its procurement policy to reflect changes from the state budget, MTA staff eliminated quarterly change order reports to the MTA Board. These reports showed millions of dollars worth of amendments to contracts that the Board and

¹ Watchdog Testimony to MTA: Vote No on Disorganization Plan. July 2019.

<https://reinventalbany.org/2019/07/watchdog-testimony-to-mta-vote-no-on-disorganization-plan/>

² Letter: Watchdogs Oppose MTA Mandatory Debarment of Contractors as Bad Policy. December 11, 2019.

<https://reinventalbany.org/2019/12/watchdog-letter-opposing-mta-mandatory-debarment-as-bad-policy/>

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public can no longer see.³ Excessive change orders have been at the heart of management problems that plagued megaprojects like Second Avenue Subway and East Side Access.

Traffic Mobility Review Board Must Be Appointed and Not Operate in Secret

Last year's state budget created a Traffic Mobility Review Board which will make recommendations on tolls and fees to implement congestion pricing. These recommendations are to be made to the MTA Board no earlier than November 15, 2020. The TMRB has yet to be appointed despite requests from Reinvent Albany and 20 other groups,⁴ who also asked that it follow the Open Meetings Law. The MTA has indicated that they believe the TMRB does not need to follow OML, but we are optimistic that MTA will ensure it does as the NYS Committee on Open Government has issued an advisory opinion⁵ stating that the TMRB must indeed hold public meetings for their deliberations and votes. The State Legislature should ensure that the Traffic Mobility Review Board follows the basic transparency requirements of the Open Meetings Law.

"Set-Aside" Pot of 2020-2024 Legislative Funds Needs to be Disclosed

The state budget legislation from last year created a "set-aside" pot of MTA 2020-24 capital projects, which is to be determined by the Legislature through its Senate Finance and Ways and Means Secretaries via an MOU with the Division of the Budget. This is to be signed within 90 days of capital plan approval, which is by the end of March 2020. The public still does not know the total size of this pot.

Together with the outer-borough fund, created in the FY 2018-19 state budget, there are millions of dollars of MTA "member-item" projects that have not been fully disclosed to the public. As we asked in August 2018 with 18 groups, these funds should be fully disclosed to the public, as you have done for other legislative pots like the State and Municipal (SAM) Facilities Program funds.⁶

³ Letter: MTA Must Bring Back Quarterly Change Order Reports to Ensure Transparency. January 23, 2020. <https://reinventalbany.org/2020/01/letter-mta-must-bring-back-quarterly-change-order-reports-to-ensure-transparency-of-spending/>

⁴ 20 Groups Urge MTA to Appoint Traffic Mobility Review Board, Have Open Meetings. November 15, 2019. <https://reinventalbany.org/2019/11/20-groups-urge-mta-to-appoint-traffic-mobility-review-board-have-open-meetings/>

⁵ Opinion from NYS Committee on Open Government Says MTA's Traffic Board Must Follow Open Meetings Law. January 17, 2020. <https://reinventalbany.org/2020/01/opinion-from-nys-committee-on-open-government-says-mtas-traffic-board-must-follow-open-meetings-law/>

⁶ Letter from 18 Groups Asking for Transparency of MTA Funded "Member Items". August 2019. <https://reinventalbany.org/2019/08/letter-from-18-groups-asking-for-transparency-of-legislative-mta-funds/>
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2. Analysis and Recommendations on FY 2020-2021 Executive Budget

Given the concerns about transparency and organizational dysfunction from the past year, the State Legislature must ensure that additional hasty MTA “reforms” do not make their way into this year’s state budget, where they have actually served to destabilize the agency and reduce transparency.

Regarding the FY 2020-21 budget, we have concerns about the funding framework of the MTA’s 2020-24 Capital Plan, as implemented by the Executive Budget, as well as the potential for the proposed procurement policy changes to result in reduced transparency, as we saw in last year’s state budget.

2020-2024 Capital Plan is Funded, but Debt Is Increased

The Executive Budget provides the state funds as requested in the MTA’s 2020-2024 Capital Plan through the Capital Projects Bill. It does so through a \$3B contribution from the state to the Capital Plan, and raises the debt cap to \$90B. However, we continue to find the Capital Plan’s funding framework concerning.

The \$3B contribution from the state to the Capital Plan is fortunately not conditioned upon “exhaustion” of the MTA’s own borrowing and spending capacity. However, the State Legislature should recognize that this \$3B contribution will likely be made by having MTA borrowing toward these funds, with the state paying the MTA back through debt service payments, aka state-supported debt. This is how the MTA is receiving the \$7.3B state contribution for the 2015-19 Capital Plan, as uncovered during your oversight hearing last November. Payments have not yet been to the MTA from the \$7.3B, even though the 2015-19 plan has exceeded its initial 5-year window.

We have the following concerns about this \$3B in state-supported debt:

- It pushes the state payments possible over 15 or more years, well beyond the likely tenure of the current Governor. Governor Cuomo declined to make payments on Pataki-era debt in the past.⁷
- How does this affect the MTA’s bond ratings? Given past history, it is unclear whether this borrowing is seen as risky by bond raters.
- It is unclear how this debt is recorded. Does it count towards the MTA’s debt cap? Does it count toward the state’s total debt? It surely should be accounted for somewhere.

⁷ Gotham Gazette. Albany Transparency and the MTA Funding Deal: Show Us Our Money.

<https://www.gothamgazette.com/authors/130-opinion/5932-albany-transparency-and-the-mta-funding-deal-show-us-our-money>

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The MTA's 2020-2024 Capital Plan already accounts for \$10B more in borrowing directly by the MTA, likely supported by fare revenue. This puts pressure on the MTA to continue its fare increases every two years, which is becoming increasingly unaffordable for riders due to income inequality, according to Moody's.⁸

Recommendations on MTA Debt

Given these concerns, we ask that the Legislature require the following:

- The MTA must publicly release a detailed debt plan. This should show how it intends to support this new debt through its operating budget, including what fare and toll increases might be expected. This should show a longer time period than currently provided by its current 2020-2023 financial plan.
- Independent verification of the MTA's debt affordability should be undertaken by a neutral party such as the State Comptroller.

Procurement Changes

The Executive Budget proposes a number of procurement policy changes for the MTA in the Article VII TED legislation, under Part J. The State Legislature should get a clear rationale from the MTA and Governor about the necessity of these changes, which do the following:

- Eliminate the lowest bidder requirement for design-build contracts (required for projects \$25M or more under last year's budget).
- Allows the MTA to award contracts \$5M or less for "development, testing and adoption of new and innovative technology" for qualified emerging technology companies. The procedures for these awards are to be determined by the MTA, which may consult with the Partnership for NYC, a current MTA partner through its Transit Tech Lab.⁹
- Moves notification for bids from newspapers to the MTA's website, eliminating publishing in newspapers and the state procurement opportunities newsletter,
- Shortens the timeframe for solicitation after notice is provided from 15 to 5 days.
- Appears to allow the MTA to declare competitive bidding impractical if the item is available with any other state or the federal government, expanding it from availability within NYS or its localities.

⁸ New York City's growing income disparity set to challenge MTA fare raising while supporting subsidy potential. Moody's. August 8, 2019.

https://www.moody.com/research/Moodys-New-York-Citys-growing-income-disparity-set-to-challenge--PBM_1189706

⁹ Transit Innovation Partnership. <https://transitinnovation.org/>

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For all of these new provisions, the Legislature should ensure that the procedures and implementation of these procurement changes do not result in less transparency or decreased competition, as was seen last year in the state budget, which resulted in the elimination of quarterly change order reports, and draconian debarment regulations. Specifically, we have the following concerns:

- Shortening the window before solicitations begin could result in fewer bids being placed and considered.
- The MTA needs to ensure that its website notification system is fully transparent and allows the public and contractors to easily monitor bidding opportunities.
- Why should competitive bidding be declared impractical if items are available through existing contracts with *other* states or the federal government? Other states' bidding practices may not ensure sufficient competition. Further, other states' practices may change, and it would be difficult for MTA staff to ensure that all states' procurement standards are sufficiently rigorous.
- How will the MTA determine the process for \$5M or less contracts on emerging technology? These should be disclosed to the MTA Board and public.

Penn Station/Empire Station Complex and Value Capture

The Governor's briefing book on the budget¹⁰ notes that he is proposing to create a new "Empire Station District" to expand Penn Station southward. His State of the State address said it would be funded by Payments in Lieu of Taxes (PILOTS) and value capture, yet the total cost could be upwards of \$8B for the Penn South proposal alone.¹¹ The Article VII TED legislation continues the authorization for the MTA and NYC Transit to use value capture through December 31, 2024, the last stated year of the MTA 2020-2024 capital plan.

However, there are no further details about how the Penn Station expansion will be managed or funded in the budget. It has been said that it will be managed through Empire State Development, not the MTA. The Legislature should ensure that this project does not result in unaffordable costs to the MTA and its riders, both for its capital and operating budgets. Additionally, the use of PILOTS could siphon away city tax revenue from the City of New York, and may be used as a way to continue Madison Square Garden's tax abatements, which have allowed it to avoid \$555 million in taxes over the last 37 years.¹²

¹⁰ FY 2021 Executive Budget Briefing Book. <https://www.budget.ny.gov/pubs/archive/fy21/exec/book/briefingbook.pdf>

¹¹ Demaise, Neil. Madison Square Garden Hasn't Paid NY Property Taxes In 37 Years. Will Cuomo Make It Permanent? Gothamist. January 22, 2020. <https://gothamist.com/news/madison-square-garden-property-tax-cuomo-straight-shot>

¹² Ibid.

Inclusion of Non-Fiscal MTA Issues in Exec Budget

There are a few non-fiscal items which are included in the Governor's Executive Budget and could merit separate consideration as stand-alone bills by the Legislature. This includes parts N, M and O of the Article VII legislation, which concern worker assaults and a ban on subway sex offenders, both criminal issues. While policy changes without fiscal impacts being included in the budget has become standard practice, there is value in having separate debate on major policy changes. Members are forced to vote on non-fiscal issues while also ensuring critical funding, and may be forced to vote "yes" on items they would have liked to consider separately, in order to make amendments or ensure that there are not unintended consequences. Therefore, we ask that these issues related to crime policy be taken up separately by the Legislature.