

**OFFICE OF THE STATE COMPTROLLER**

**INTER-OFFICE MEMORANDUM**

**To:** Robert F. Mujica  
Sandra Beattie

**Date:** February 10, 2021

**From:** Pete Grannis

**Subject:** 2021-22 Executive Budget  
Issues of Concern to OSC

---

This memo sets forth areas of concern in the 2021-22 proposed Executive Budget appropriation and Article VII bills related to the Office of the State Comptroller (OSC) which we believe could result in a negative impact on OSC's policies and responsibilities. Of particular importance are several Executive proposals which would eliminate important taxpayer protections. One of these also calls for the clarification of the legislative language.

We respectfully request that these issues be considered in your decisions regarding 30-day amendments, and/or as part of the ensuing negotiations and discussions to form the final budget.

**1. Procurement and the Comptroller's Contract Review Authority**

Several Executive Budget proposals in the State Operations and Aid to Localities budget appropriation bills and in the ELFA and PPGG Article VII bills expand on past actions that alter existing statutory provisions that are intended to ensure procurement integrity. Specifically, provisions that exempt procurements from Sections 112 of the State Finance Law, including extending the removal of OSC review of certain SUNY and CUNY contracts, the exemption of the requirements of Section 163 of the State Finance Law and the suspension of interest and notification requirements under Articles 11-A and 11-B of the State Finance Law should be excluded from the Executive's proposal. In addition, the consolidation of specific unspent authority amounts in various reappropriations would impact OSC's reporting and reconciliation to Legislative appropriations. The State Financial System (SFS) as the official financial system of record, will not be able to identify, track and report on either the original appropriation or reappropriation. This will be problematic for the administration of the SFS system and for OSC's ability to report on these reappropriations.

Eliminating OSC oversight and review of contracts, in addition to eliminating competition, is not in the best interest of the people of the State. We know from experience that a transparent competitive process is the optimal way to achieve best value. Where circumstances require alternative methods for procurement, it is important that OSC continue to provide oversight in the contracting process to limit the potential for fraud, waste or abuse.

**APPROPRIATIONS**  
**STATE OPERATIONS: (S2500/A3000)**

**Bill:** State Operations-Miscellaneous – All State Department & Agencies  
**Program:** Special Emergency Appropriation  
**Page:** 663  
**Line:** 5-14

This creates a \$2B special emergency appropriation and eliminates both OSC review of contracts pursuant to State Finance Law (SFL) § 112 and the competitive bidding requirements of SFL §163. It is not clear what would constitute an emergency for use of these funds. To preemptively remove OSC oversight and the requirements of §163 reduces transparency and removes critical checks on agency procurements. The Governor has the authority to suspend OSC oversight and competitive bidding requirements under his Executive Order authority when an emergency exists as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review beyond the declared emergency. OSC currently reviews “no-bid” contracts to ensure best value for the State (e.g., price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language be deleted.**

**Proposed Language Changes: Special Emergency Appropriation**

5 The sum of \$2,000,000,000 is hereby appropriated solely  
6 for transfer by the governor to the general, special  
7 revenue, capital projects, proprietary or fiduciary  
8 funds to meet unanticipated emergencies, including  
9 public health emergencies, pursuant to section 53 of the  
10 state finance law. Such funds shall be available for  
11 payment of financial assistance heretofore accrued or  
12 hereafter to accrue. ~~Use of such funds shall not be~~  
~~13 subject to the requirements of Sections 112 and~~  
~~14 163 of the state finance law.~~ (80554) ..... 2,000,000,000

**Bill:** State Operations State Operations-Miscellaneous – All State Department & Agencies  
**Program:** Special Public Health Emergency Appropriation  
**Page:** 666  
**Line:** 5-24

This creates a \$6B appropriation to address COVID-19 and would exempt both OSC review of contracts under State Finance Law § 112 and the requirements of SFL §163. Executive Order 202 already suspends State Finance Law §112 and §163 for the duration of the declared emergency. Appropriation language would allow use of the funds for both direct and indirect economic, financial or social efforts. To preemptively remove OSC oversight and the provisions of SFL §163 reduces transparency and removes critical checks on agency procurements. The Governor has the authority to suspend OSC oversight and the provisions of SFL §163 under Executive Orders when an emergency exists as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review beyond the emergency. OSC currently reviews “no bid” contracts to ensure best value for the State (e.g. price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language be deleted.**

**Proposed Language Changes: Special Public Health Emergency Appropriation**

5 The sum of \$6,000,000,000 is hereby appropriated for  
6 transfer by the governor to the general, special reven  
7 ue, capital projects, proprietary or fiduciary funds of  
8 any agency, department, or authority for services and  
9 expenses related to the outbreak of coronavirus disease  
10 2019 (COVID-19). Such funds shall be used for purposes  
11 including, but not limited to, additional personnel,  
12 equipment and supplies, travel costs, trainings, and  
13 and/or responding to the direct and indirect economic,  
14 financial, or social effects of COVID-19. Such funds  
15 shall be available for payment of financial assistance  
16 heretofore accrued or hereafter to accrue, and a portion  
17 of these funds may be made available as state aid to  
18 municipalities, school districts, public authorities,  
19 and eligible nonprofit organizations for any of the  
20 purposes stated above. ~~Use of such funds shall not be  
21 subject to the requirements of Sections 112 and 163 of  
22 the state finance law.~~ Any disbursements from this  
23 appropriation shall be reported by the director of the  
24 budget on a quarterly basis (85072) ..... 6,000,000,000

**APPROPRIATIONS**

**AID TO LOCALITIES (S2503/A3003)**

**Bill:** Aid to Localities – Preamble

**Program:** Article 11A and 11B – Prompt Payment and Contracting – Suspension of Interest

**Page:** 2

**Line:** 17-20

The Aid to Localities budget bill contains a provision which would make the interest and notification requirements of Articles 11A and 11B related to prompt payment and prompt contracting not applicable in the event that DOB withholds all, or some of the amounts appropriated when the budget has been deemed unbalanced. Not-for-profits have been critical in helping to battle COVID-19. Many have suffered from delayed or no payments. If, and when, funding from these withheld payments is ultimately restored, entities impacted by these provisions, including not-for-profit organizations, should be paid interest related to Articles 11A and 11B. **We request that the suspension of the interest and notification requirements of Articles 11A and 11B be deleted.**

**Proposed Language Changes: Suspension of Articles 11A or 11B of the State Finance Law**

~~17 and provided further  
18 that none of the interest or notification requirements established in  
19 Articles 11 A or 11 B of the State finance law shall be applicable in  
20 the event of such reduction.~~

**Bill:** Aid to Localities – State Education Department  
**Program:** SED – Emergency Assistance to Nonpublic Schools Program  
**Page:** 159-160  
**Line:** 2 (Page 160)

This language notwithstanding §112 and §163. The Aid to Localities budget bill contains various appropriations which exempt contracts both from OSC oversight under SFL §112 and from the requirements of SFL §163. The Governor has the authority to suspend OSC oversight and the provisions of SFL §163 under Executive Orders for the duration of a declared emergency as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review. OSC currently reviews “no-bid” contracts to ensure best value for the State (e.g., price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language be deleted.**

**Proposed Language Changes: SED-Emergency assistance to nonpublic schools program, funded through the coronavirus**

55 Notwithstanding any inconsistent provision  
56 of law, rule, or regulation, the state  
57 education department shall be authorized  
58 to reimburse each participating eligible  
59 nonpublic school for approved expenses of  
60 any eligible services or assistance  
61 requested by the school, and to provide  
62 eligible services or assistance to a  
1 nonpublic school either directly or  
2 through one or more ~~non-competitive~~  
3 agreements, subject to the approval of the  
4 director of the budget, ~~provided that any~~  
5 ~~services and assistance purchased by the~~  
6 ~~state education department on behalf of a~~  
7 ~~nonpublic school through this program~~  
8 ~~shall be exempt from the requirements of~~  
9 ~~sections 112 and 163 of the state finance~~  
10 ~~law.~~

**Bill:** Aid to Localities – Department of Health  
**Program:** DOH – Health Care Reform Act Program (Emergency Assistance Distributions)  
**Page:** 509  
**Line:** 40-41

This language notwithstanding §112 and §163 and was included in previous enacted budgets. The Aid to Localities budget bill contains various appropriations which exempt contracts from OSC oversight under the SFL §112, in addition to exemptions from the requirements of §163. The Governor has the authority to suspend OSC oversight and the provisions of SFL §163 under Executive Orders when an emergency exists as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review. OSC currently reviews “no-bid” contracts to ensure best value for the State (e.g., price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language be deleted.**

**Proposed Language Changes: DOH - HEALTH CARE REFORM ACT PROGRAM  
(emergency assistance distributions)**

37 For services and expenses, including grants,  
38 related to emergency assistance distrib  
39 utions as designated by the commissioner  
40 of health. Notwithstanding ~~section 112 or~~  
~~41-163 of the state finance law or~~ any other  
42 contrary provision of law, such distrib  
43 utions shall be limited to providers or  
44 programs where, as determined by the  
45 commissioner of health, emergency assist  
46 ance is vital to protect the life or safe  
47 ty of patients, to ensure the retention of  
48 facility caregivers or other staff, or in  
49 instances where health facility operations  
50 are jeopardized, or where the public  
51 health is jeopardized or other emergency  
52 situations exist (29874)

**Bill:** Aid to Localities – Office of Alcohol & Substance Abuse Services

**Program:** OASAS – Jail-based substance use disorder treatment and transition services

**Page:** 691

**Line:** 34-45

The language notwithstanding § 112 and §163 and allows funds to be allocated and distributed without a competitive bid or request for proposals process. The Aid to Localities budget bill contains various appropriations which exempt contracts from OSC oversight under SFL §112, in addition to exemptions from the requirements of SFL §163. The Governor has the authority to suspend OSC oversight and the provisions of SFL §163 under Executive Orders when an emergency exists as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review. OSC currently reviews “no-bid” contracts to ensure best value for the State (e.g., price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language as well as the authorization to allocate and distribute funds without a competitive bid or request for proposals process be deleted.**

**Proposed Language Changes: OASAS - Jail-based substance use disorder treatment and transition services (page 691)**

~~34 Notwithstanding sections 112 and 163 of the~~  
~~35 state finance law and section 142 of the~~  
~~36 economic development law, or any other~~  
~~37 inconsistent provision of law, funds~~  
~~38 available for expenditure pursuant to this~~  
~~39 appropriation for the establishment of~~  
~~40 this program, may be allocated and~~  
~~41 distributed by the commissioner of the~~  
~~42 office of addiction services and supports,~~  
~~43 subject to the approval of the director of~~  
~~44 the budget, without a competitive bid or~~

~~45 request for proposal process.~~ Funding  
46 shall be made available to local govern  
47 mental units pursuant to criteria estab  
48 lished by the office of addiction services  
49 and supports, in consultation with local  
50 governmental units, which shall take into  
51 consideration the local needs and  
52 resources as identified by local govern  
53 mental units, the average daily jail popu  
54 lation, the average number of persons  
55 incarcerated in the jail that require  
56 substance use disorder services and such  
57 other factors as may be deemed necessary  
58 (12096)

**Bill:** Aid to Localities – Office of Alcohol & Substance Abuse Services

**Program:** OASAS – prevention, treatment, recovery, and other opioid-related programming and activities

**Page:** 693

**Line:** 27-41

This language notwithstanding § 112 and § 163 and does not include the requirement to competitively bid or use a request for proposals process. The Aid to Localities budget bill contains various appropriations which exempt contracts from OSC oversight under SFL § 112, in addition to exemptions from the requirements of SFL § 163. The Governor has the authority to suspend OSC oversight and the provisions of SFL § 163 under Executive Orders when an emergency exists as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review. OSC currently reviews “no-bid” contracts to ensure best value for the State (e.g., price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language as well as the authorization to allocate and distribute funds without a competitive bid or request for proposals process be deleted.**

**Proposed Language Changes: OASAS -prevention, treatment, recovery and other opioid-related programming and activities**

~~27 Notwithstanding sections 112 and 163 of the  
28 state finance law and section 142 of the  
29 economic development law, or any other  
30 inconsistent provision of law, funds  
31 available for expenditure pursuant to this  
32 appropriation for the development, expan  
33 sion, and/or operation of treatment,  
34 recovery, and/or prevention services for  
35 persons with heroin and opiate use and  
36 addiction disorders, may be allocated and  
37 distributed by the commissioner of the  
38 office of addiction services and supports,  
39 subject to the approval of the director of  
40 the budget, without a competitive bid or  
41 request for proposal process (11809)~~

**Bill:** Aid to Localities - Office of Alcohol & Substance Abuse Services

**Program:** OASAS – Treatment, recovery, and prevention of heroin and opiate use and addiction

**Page:** 699

**Line:** 43-52

This language notwithstanding §112 and §163 and does not include the requirement to competitively bid or use a request for proposals process. The Aid to Localities budget bill contains various appropriations which exempt contracts from OSC oversight under SFL §112, in addition to exemptions from in addition to exemptions from the requirements of SFL §163. The Governor has the authority to suspend OSC oversight and the provisions of SFL §163 under Executive Orders when an emergency exists as has been done under Executive Order 202. While exemptions from advertising and bidding may be necessary for certain time sensitive items, there is no need to exempt OSC review. OSC currently reviews “no-bid” contracts to ensure best value for the State (e.g., price is reasonable; vendor is responsible). In 2020, the average OSC review time for all contracts was 6 calendar days for critical contracts such as these. **We request that the State Finance Law §112 and §163 exemption language as well as the authorization to allocate and distribute funds without a competitive bid or request for proposals process be deleted.**

**Proposed Language Changes: OASAS - Treatment, recovery, and prevention of heroin and opiate use and addiction**

33 For services and expenses to support efforts to develop, expand,  
34 and/or operate substance abuse supports and services for treatment,  
35 recovery, and prevention of heroin and opiate use and addiction  
36 disorders including but not limited to the provision of housing  
37 services for affected populations. Notwithstanding any other  
38 provision of law to the contrary, the expenditures from this appro  
39 priation, and any portion of the money hereby appropriated may be  
40 transferred from this appropriation to the local assistance, state  
41 operations, and/or capital projects appropriations of the office of  
42 addiction services and supports and/or any other appropriation of  
43 the office of addiction services and supports. ~~Notwithstanding~~  
44 ~~sections 112 and 163 of the state finance law and section 142 of the~~  
45 ~~economic development law, or any other inconsistent provision of~~  
46 ~~law, funds available for expenditure pursuant to this appropriation~~  
47 ~~for the development, expansion, and/or operation of treatment,~~  
48 ~~recovery, prevention and/or housing services for persons with heroin~~  
49 ~~and opiate use and addiction disorders, may be allocated and~~  
50 ~~distributed by the commissioner of the office of addiction services~~  
51 ~~and supports, subject to the approval of the director of the budget,~~  
52 ~~without a competitive bid or request for proposal process.~~ Prior to  
53 an award being granted to an applicant pursuant to this process, the  
54 commissioner shall formally notify in writing the chair of the  
55 senate finance committee and the chair of the assembly ways and  
56 means committee of the intent to grant such an award. Such notice  
57 shall include information regarding how the prospective recipient  
58 meets objective criteria established by the commissioner (11803) ...



**ARTICLE VII**  
**EDUCATION, LABOR, AND FAMILY ASSISTANCE (ELFA) – (S2506/A3006)**

**Bill: Article VII – Education, Labor and Family Assistance (ELFA) – (S2506/A3006)**

**Part: D**

**Program: SUNY/CUNY Contract Oversight**

**Page: 48 (Lines 49-51) & 49 (Lines 1-11)**

**Line: 1-11**

In 2019, a memorandum of understanding among the Governor, the Comptroller, SUNY, CUNY, and the SUNY and CUNY Construction Funds, restored the State Comptroller’s contract oversight of certain SUNY and CUNY contracts previously exempted from review. Since the MOU became effective on February 7, 2020 through February 7, 2021, OSC has processed 257 contracts in an average of seven days.

While the memorandum of understanding represents a step toward ensuring important taxpayer protections, in the long term, contract oversight provisions such as these should be embodied in law.

The Budget would extend legislation for an additional five years -- until 2026 -- that allows SUNY and CUNY colleges, SUNY hospitals and SUNY and CUNY Construction Funds to enter into certain contracts without the prior approval of the State Comptroller. Removal of the State Comptroller’s review of these contracts reduces important oversight, and transparency and accountability of these procuring state agencies that is designed to prevent fraud, waste and abuse before it occurs. **We request that this proposal be deleted.**

**Proposed Language Changes:**

49 Section 1. Section 4 of subpart A of part D of chapter 58 of the laws  
50 of 2011 amending the education law relating to capital facilities in  
51 support of the state university and community colleges, as amended by  
1 section 1 of part Q of chapter 54 of the laws of 2016, is amended to  
2 read as follows:

3 § 4. This act shall take effect immediately and shall expire and be  
4 deemed repealed June 30, [2021] 2026; provided, however, that Section 2  
of this act shall expire and be deemed repealed June 30, 2021.

~~5 § 2. Section 4 of subpart B of part D of chapter 58 of the laws of  
6 2011 amending the education law relating to procurement in support of  
7 the state and city universities, as amended by section 2 of part Q of  
8 chapter 54 of the laws of 2016, is amended to read as follows:  
9 § 4. This act shall take effect immediately and shall expire and be  
10 deemed repealed June 30, [2021] 2026.~~

5 § 2. Section 3 of subpart C of part D of chapter 58 of the laws of  
6 2011 amending the education law relating to state university health care  
7 facilities, as amended by section 3 of part Q of chapter 54 of the laws  
8 of 2016, is amended to read as follows:

9 § 3. This act shall take effect immediately, and shall expire and be  
10 deemed repealed June 30, [2021] 2026; provided, however, that

11 Section 2 of this act shall expire and be deemed repealed June 30, 2021.



**Bill:** Education, Labor and Family Assistance (ELFA)  
**Part:** D  
**Program:** SUNY Consortium Service Purchases  
**Page:** 49  
**Line:** 17-23

This language allows SUNY to purchase services and technology by consortium which is currently not allowed under statute. Consortium agreements can provide low pricing based on the purchase of volumes of like items, such as certain commodities. However, when purchasing services and technology, the State Finance Law requires a best value approach which considers both technical and cost factors; therefore purchases from a consortium may not be optimally structured for an agency's unique requirements. In addition, authorizing the use of a consortium for service and technology purchases, could limit competition and potentially take opportunities away from Minority- and Women-Owned Business Enterprises (MWBEs), Service-Disabled Veteran-Owned Businesses (SDVOBs) and small businesses in New York. **We request that this proposal be deleted.**

**Proposed Language Changes: SUNY Consortium Purchases**

~~—17 § 4. Subdivision 5 of section 355 of the education law is amended by~~  
~~—18 adding a new paragraph f to read as follows:~~  
~~—19 **f. notwithstanding any provision of law to the contrary, authorize**~~  
~~—20 **contracts for the purchase of services or technology from a**~~  
~~**consortium**~~  
~~—21 **as defined in section one hundred sixty-three of the state finance law,**~~  
~~—22 **except that such definition as applied to the board shall include the**~~  
~~—23 **purchase of services and technology.**~~  
24 § 54. This act shall take effect immediately; ~~provided, however, that~~  
~~—25 the amendments to subdivision 5 of section 355 of the education law made~~  
~~—26 by section four of this act shall not affect the expiration of such~~  
~~—27 subdivision and shall expire therewith.~~

**ARTICLE VII**

**PUBLIC PROTECTION AND GENERAL GOVERNMENT (S2505/A3005)**

**Bill:** Public Protection and General Government  
**Part:** FF  
**Program:** Comprehensive Technology Service Contracts  
**Page:** 70; Line 13-53, Page 71; Line 1-19  
**Line:** (See above)

This language authorizes the Office of Information Technology Services (ITS) to procure both “design and build” of comprehensive IT systems without having to follow certain requirements of State Finance Law §163. For example, SFL §163 requires award to responsive and responsible vendors, demonstrated price reasonableness, facilitates clarification of vendor proposals, and requires debriefing of unsuccessful vendors—all of which are lost with this proposed language. In addition, the proposed language would allow negotiation among the two top bidders if costs are within 5% of each other but does not address the issue of more than 2 bidders within this limit, calling into question the fairness of a

procurement. Considering the significant cost of IT system procurements, a well-documented process could help avert challenges and ensure best value for the State. **We request that the State Finance Law §163 exemption be deleted and provisions clarified.**

### Proposed Language Changes: Design Build for Technology Procurements

13

PART FF

~~14 Section 1. Section 103 of the state technology law is amended by~~  
~~15 adding a new subdivision 22 to read as follows:~~  
~~16 **22. To issue procurements for technology, as defined in section one**~~  
~~17 **hundred one of this article, in the manner as prescribed in this subdi-**~~  
~~18 **vision. (a) Notwithstanding section one hundred sixty-three of the**~~  
~~19 **state finance law, or any other provision of law to the contrary, the**~~  
~~20 **office may issue solicitations for comprehensive technology service**~~  
~~21 **contracts pursuant to this section and may award comprehensive technolo-**~~  
~~22 **gy service contracts for technology as prescribed in this subdivision. A**~~  
~~23 **comprehensive technology service contract shall mean any contract for**~~  
~~24 **both the design and build of any technology, which may allow for the**~~  
~~25 **approval of work at the discretion of the office which is not pre-deter-**~~  
~~26 **mined in the contract, subject to conditions deemed appropriate by the**~~  
~~27 **director, by a single entity or multiple entities acting as one, which**~~  
~~28 **may include any and all technology as defined in this article and shall**~~  
~~29 **only be used for those contracts which result in a complete and operable**~~  
~~30 **system delivered to the state.**~~  
~~31 **(b) For all procurements conducted pursuant to this section, the**~~  
~~32 **office shall advertise in the New York state contract reporter and on**~~  
~~33 **the website of the office for no less than fifteen business days, a**~~  
~~34 **request for proposals which shall include a detailed description of the**~~  
~~35 **work to be performed, any minimum and mandatory qualifications, a brief**~~  
~~36 **description of how the proposals will be scored, and any other criteria**~~  
~~37 **that the office deems necessary and appropriate. Scoring criteria shall**~~  
~~38 **be drafted and sealed by the office prior to the opening of any bids.**~~  
~~39 **Such scoring criteria shall be objective to the extent practicable and**~~  
~~40 **shall include cost as determined by the office. If the winning proposal**~~  
~~41 **scores less than five percent higher than the second highest scoring**~~  
~~42 **proposal, the office shall be empowered to request such two bidders to**~~  
~~43 **re-submit their proposals in a manner prescribed by the office, consist-**~~  
~~44 **ent with this article, which the office shall then evaluate based on the**~~  
~~45 **original sealed scoring criteria for final award.**~~  
~~46 **(c) All terms used in this section shall have the same meaning other-**~~  
~~47 **wise prescribed in this chapter or in articles nine and eleven of the**~~  
~~48 **state finance law, except for those terms specifically defined in this**~~  
~~49 **section.**~~  
~~50 **(d) The office shall keep a procurement record as defined in section**~~  
~~51 **one hundred sixty-three of the state finance law, which shall be**~~  
~~52 **furnished to the office of the state comptroller upon request pursuant**~~  
~~53 **to section one hundred twelve of the state finance law.**~~

71

~~1 § 2. Subdivisions 3 and 4 of section 163-a of the state finance law,  
2 subdivision 3 as added by chapter 430 of the laws of 1997 and subdivi-  
3 sion 4 as amended by section 10 of part O of chapter 55 of the laws of  
4 2012, are amended and a new subdivision 5 is added to read as follows:  
5 3. A vendor has furnished at government request specifications or  
6 information regarding a product or service they provide, but such vendor  
7 has not been directly requested to write specifications for such product  
8 or service or an agency technology procurement proposal; [or]  
9 4. The [state agency together with] director of the office of informa-  
10 tion technology services, upon request by a state agency, determines  
11 that the restriction is not in the best interest of the state. Such  
12 office shall notify each member of the advisory council established in  
13 article one of the state technology law of any such waiver of these  
14 restrictions.]; or  
15 5. For the office of information technology services, the restrictions  
16 contained within this section shall not apply to procurements issued  
17 pursuant to subdivision twenty-two of section one hundred three of the  
18 state technology law.  
19 § 3. This act shall take effect immediately.~~

## 2. Other Issues of Concern

### APPROPRIATIONS CAPITAL PROJECTS (S2504/A3004)

**Bill:** Capital Projects

**Program:** Economic Development Purpose

**Page:** Page 846

**Line:** 1-56

This appears to be a consolidation of specific unspent authority amounts in various reappropriations (with various programs and budget references) into a single new reappropriation totaling \$299 million.

#### **Issue/Comments:**

- The 2021-2022 Executive budget takes approximately \$700 million in previous years' appropriations, eliminates the reappropriations, and adds a new reappropriation in the amount of \$299 million.
- Staff have not been able to obtain any details, which raises many questions about how this will work and what the impact is to the original appropriations, etc.
- When a New Year appropriation is established, a budget reference is assigned signifying the year the appropriation was originally passed (e.g., a legislative identifier). This proposal would eliminate that legislative identifier. Appropriation authority can be sub-allocated, interchanged or transferred between programs (in accordance with law) but the budget reference always stays the same. We are unsure whether this is legally permissible,

but in practice it is not implemented this way. As a result, SFS as the official system of record will not be able to identify, track and report on either the original appropriations or reappropriations. This will be problematic for the administration of the SFS system and for OSC's ability to report on these reappropriations.

- The Comptroller reports on Appropriations in Force annually. Any movement of authority between budget references would impact this reporting and reconciliation to Legislative appropriations by FY.

**We suggest a new appropriation be established with budget reference 2021-22 and the reappropriation amounts be reduced by the amount the Executive does not want spent in that appropriation.**