COMMON CAUSE/NY
LEAGUE OF WOMEN VOTERS/N.Y.S.
NEW YORK PUBLIC INTEREST RESEARCH GROUP

VOTE *YES* ON BUDGET REFORM

THE NOVEMBER 2005 BUDGET REFORM AMENDMENT

By
Blair Horner
Megan Quattlebaum
Nancy Wittman

September 2005

Common Cause/NY is a non-partisan, non-profit citizen's lobby and a leading force in the battle for honest and accountable government with a proven track record of hard-fought legislative campaigns and lasting victories at the state and local levels. In the past three decades, by fighting together, we have enacted real change. Today, hundreds of thousands of citizens across the nation and tens of thousands of New Yorkers are joined in Common Cause, working to restore ethics in government, curb the influence of special interest money in politics, and make government more open and accountable. To find out more and to get a copy of the report, go to www.commoncause.org/ny.

If members of the public want copies of the report: they could send an email to cocauseny@aol.com, or request a copy through the mail at Common Cause/NY, 155 Avenue of the Americas, 4th Floor New York, NY 10013, or call at 1-800-300-8707.

The **League of Women Voters** is a nonpartisan organization working to promote political responsibility through informed and active participation of citizens in government. The League does not support or oppose any political party or candidate. It does support or oppose legislation after serious study and substantial agreement among its members. To find out more and to get a copy of the report, go to www.lwvny.org.

The **New York Public Interest Research Group (NYPIRG)** is New York State's largest student-directed consumer, environmental and government reform organization. We are a nonpartisan, not-for-profit group established to effect policy reforms while training students and other New Yorkers to be advocates. To find out more and to get a copy of the report, go to www.nypirg.org.

The authors thank Barbara Bartoletti, Russ Haven and Liam Arbetman for their help in editing, researching and commenting on the report.

VOTE *YES* ON BUDGET REFORM:
THE NOVEMBER 2005 BUDGET REFORM AMENDMENT
Executive Summary

This November, New Yorkers will be asked to vote on a change to the state Constitution. The change is part of a series of reforms that are designed to enhance the state budget's:

- transparency;
- accountability; and
- certainty.

This report examines the issues surrounding the budget reform question and helps educate voters on the issue.

The current budget process is rife with dysfunction. Among the changes to the budget process that have been proposed, the most hotly debated is whether the state should create a "contingency" budget that would automatically be put in place in the event that lawmakers fail to come to an agreement on a new budget by the beginning of the fiscal year. Critics argue that the amendment would dramatically tilt the budgetary powers in favor of the legislative branch and thus create fiscal instability. This report examines how states across the nation handle the institutional budget relationship between states' executive and legislative branches, and concludes that the proposed budget reforms would place New York's balance of powers in budgeting in line with the majority of states in the nation. This report finds that the reform package merits support.

Summary of Findings:

- New York's executive is one of the most powerful in the nation. A review of research published by some of the nation's experts on state policies and a survey conducted by the authors conclude that the budgeting balance of power between New York's Governor and its Legislature is one of the most inequitable of any state in the nation.
- The proposed budget reform would alter the power relationship between the executive and legislative branches to make it more like that found in the rest of the nation than is the case now.

Recommendation:

New Yorkers should support the proposed constitutional amendment to change the state's budget process. If enacted, the amendment would trigger other changes already approved in Albany that would make the state's budget process more transparent and more accountable. It would put in place a contingency budget if lawmakers failed to agree on a budget by the beginning of the fiscal year. While there are more budget reforms that are needed, this package of reforms represents an important advancement and is worthy of support.

THE PROBLEM: NEW YORK STATE'S BUDGETING PROCESS

New York State's budget process has been criticized for years.[1] The most notable example of this failure has been the string of late budgets. Until this year, for 20 years New York State's budget was enacted after April 1st, the beginning of the fiscal year. This has been true despite a 1998 "reform," which withheld legislators' pay if a budget was not in place by the start of the fiscal year. In 2005, New York lawmakers were able to break that string, but this change occurred despite, not because of, the current state budget process.

There are real structural problems in New York State's budget process. A bi-partisan proposal for reform was hammered out between the state Senate and Assembly and approved over the objections of the Governor at the end of the 2005 session. This proposal is by no means comprehensive, but does address key problems in how budgets are developed and approved in New York.

New York State's constitution empowers the Governor to be the dominant player in developing a budget. The Governor proposes his budget and the legislature is extremely limited in its ability to add or alter spending in his plan. In addition, the Governor has the power to change state policies within the budget and the legislature lacks the power to amend these changes. All the legislature may do is strike out or reduce budget items. This dominance by the executive branch has been in place for decades.

New York State's executive develops a budget proposal largely outside of public view. Often, important budgetary provisions are hammered out in secret negotiations, leaving virtually no chance for public debate. Moreover, both the executive and legislative leaders advance budget initiatives that are "spun," thereby denying the public information about the true impact of such plans.

Once a budget battle advances past the beginning of the fiscal year, the debate over passage of temporary "extenders" distracts lawmakers from the task at hand – passage of a new annual budget. The political "brinkmanship" over these extenders often distracts public employees from their tasks as they ponder whether a temporary budget agreement will be approved or fail and how each "extender" will impact the programs they administer. In order for the public to understand the need for reform, it is important that there be a detailed examination of the biggest problems with the state budget. Those observations are below.

---

[1] One example of this criticism is from the Institute for Competitive State Government, which stated "Yet the late state budget is only the most visible symptom of the flawed budget policies and practices that yield the second highest combined state-local tax burden" in the nation." See ICSG's "Did You Know?" March 2004.

PROBLEM: SECRECY

New York State government is notorious for the practice of conducting its real policy discussions in secret. The debate over the state budget is no exception. The debate over the state's fiscal situation is rarely publicly aired.

In 2002, the former State Comptroller warned that New York's revenues were falling behind and that a deficit was looming for that fiscal year (2002). But the state's then-Budget Director countered that the state's financial plan "remains in balance, with no significant or budgetary risks having emerged."[2] Later that year, the Senate Majority Leader warned that the state was facing a budget deficit that could be as much as $10 billion. In rejecting the Senator's claim, the Governor's Division of the Budget estimated that the projected gap would be a more manageable $2.8 billion.[3]

However winning reelection in November—Governor Pataki admitted that the state was facing a huge budget deficit, one that was estimated to be as high as $12 billion, with a deficit of $2 to $2.5 billion for the 2002 fiscal year and another $10 billion for the 2003 fiscal year.[4]

Unless the public has access to unbiased, timely and accurate budget information, it will be forever at the mercy of dueling budget forecasts and will have no way of determining which interpretation is correct or be able to influence budget action in a meaningful way.

[2] *The Buffalo News*, Dueling Budget Forecasts, 7/22/2002.
[3] Stashenko, J., Predicted Revenue Shortfall Raises Eyebrows, *The Associated Press,* 9/26/2002.
[4] Odato, J., State's Budget Gap Worse Than Expected, *Times Union*, 1/12/2003.

PROBLEM: UNACCOUNTABILITY

One of the hallmarks of a well-functioning budget process is the existence of mechanisms for the public to hold elected leaders to account for creating a budget that meets the needs of all New Yorkers. Unfortunately, New York's budget process lacks basic accountability.

A case-in-point is the Health Care Reform Act (HCRA). Created in 1996, HCRA was originally intended to deregulate the health care system in New York State while also setting aside money through taxes on insurance policies and hospital bills to cover the hospital stays of the poor and uninsured. HCRA's budget has ballooned since then, growing from about $1.8 billion in 1997 to $4.4 billion in 2005. Many of HCRA's pools of money are not included in the state's general fund. They exist, according to *The New York Times*, "apart from the normal state budget, like a parallel universe."[5]

When it was passed, HCRA was thought to be a way to insulate critical health care programs from the whims and fights of the yearly budget process. But over the years as the act was renewed, more and more healthcare programs that used to be paid for by the state's general fund were moved into HCRA (and more new revenue streams were added as well).

As a result of its special design, HCRA funds lack the sort of oversight and accountability that go along with normal budget items. About 3/4 of HCRA expenses are currently included in the state budget, but this leaves over $1 billion in expenses that are not.[6] HCRA's revenue streams are almost entirely off budget. The Governor largely controls this pool and the Legislature only gets a single accounting at the end of the year. The Comptroller's ability to track the money that is raised or spent through HCRA is limited, and the budget is not made public in any formal way.[7]

In a 2003 report on the program, State Comptroller Alan Hevesi noted that, "the reality is that off-budget actions mask the true level of state-authorized and imposed receipts and spending, which not only results in a loss of accountability to policymakers and taxpayers, but also removes important financial checks and balances performed by the Office of the State Comptroller."[8]

The Comptroller's concerns about oversight and accountability have been borne out by experience. In late 2001 and early 2002, Governor Pataki and the two

---

[5] McKinley, J. Pataki's Budget Proposal Taps Health Care Fund, *The New York Times*, 02/26/03.
[6] Chang, A. Health Care Reform Act on the Chopping Board Again, *The Associated Press*, 01/09/05.
[7] McKinley, J. Pataki's Budget Proposal Taps Health Care Fund, *The New York Times*, 02/26/03.
[8] New York State Office of the State Comptroller. The Health Care Reform Act (HCRA): The Need to Restore Accountability to State Taxpayers, April, 2003.

legislative leaders negotiated a secret deal as a part of HCRA with the Service Employees Union Local/1199. This deal allowed $1 billion in state revenue set aside from the stock sale when Empire Blue Cross/Blue Shield (a not-for-profit insurer) won approval to become a for-profit corporation to be used almost entirely as raises for the healthcare workers, despite the major budget shortfall that year. The measure was approved behind closed doors with no meaningful public debate.[9] While it was a fair policy choice to publicly fund raises for low-income healthcare workers, the secretive nature of the negotiation ensured that other worthy spending proposals – such as boosting education spending – were not considered.

With even the Comptroller and the Legislature lacking access to basic information about this off-budget revenue pool, HCRA is a classic example of the lack of accountability in New York State budgeting. "Off-the-books" budgeting is not unique to HCRA. However, HCRA is the largest fiscal item that remains outside of the budget structure. In 2005, Governor Pataki voluntarily proposed that all HCRA spending be included in his annual budget plan. This was a positive first step, and the proposed budget reform would bring HCRA "on-budget" permanently.

---

[9] Mulder, J. Costly Raises Deal to Increase Health-Care Workers' Salaries Under Scrutiny, *The Syracuse Post-Standard*, 10/30/02. Robbins, T. Labor's Cheap Date with Pataki, *The Village Voice*, 09/10/02. Rau, J. and Cuza, B. Pataki Gets Major Endorsement; Union that Got Help on Raises Backs Reelection, *Newsday*, 03/20/02.

PROBLEM: UNCERTAINTY

New York's long history of late budgets creates tremendous financial uncertainty for those who rely on government funding. The impact was summed up by the State Comptroller:

> "This year's late budget [2004] once again forced school districts and local governments across the State to prepare their budgets absent a clear indication of the level of State support. The failure of State leaders to address school financing and other significant fiscal issues is reflected in the difficulties experienced by local governments in balancing budgets."[10]

School districts, local governments, and entities with state contracts all feel the financial crunch from late budgets.

The worst-case scenario – that state lawmakers are unable to agree even on temporary budget extenders – has thankfully not happened in New York. But such a "doomsday" scenario has occurred in other states. Just this year, the state of Minnesota saw its government shutdown over a budget dispute. Observers there claim that the collapse in budget discussions was the result of partisan differences and an increasingly bitter political environment.[11]

Clearly, the decades-long fiscal uncertainty from late budgets was at least temporarily resolved by this year's enactment of an on-time budget. But the root causes of late budgets – partisan and regional differences, a huge and growing lobbying corps and state budgetary weaknesses – remain in place. Without reforms, there is no guarantee that the threat of uncertainty from late budgets will end. Furthermore, there is currently no failsafe in place in the event that the two branches cannot agree on a new budget in a timely manner.

---

[10] New York State Office of the State Comptroller, 2004-05 Budget Analysis: Review of the Enacted Budget, September 2004, p. 5.
[11] *The Economist*, Divided We Fall, 7/7/05.

THE SOLUTION: BUDGET REFORM

The Republican-controlled State Senate and the Democratic-controlled State Assembly agreed to a package of budget reforms and approved them over the objections and veto of the Governor. The package addresses the problems of secrecy, unaccountability and uncertainty by:

- opening up the budget process;
- creating an independent budget office; and
- guaranteeing that a budget will be in place if there is no agreement on a new budget by the beginning of the fiscal year.

While modest in the scope of its reforms, if approved by voters the proposal would improve budgeting in New York State. The budget reforms advanced are contained in two initiatives:

(1) A Constitutional Amendment. The constitutional amendment allows the legislature more time to review the executive's proposed budget; creates a "contingency budget" that automatically kicks in (essentially the previous year's budget with some exceptions) when there is no agreement on a budget at the beginning of the state's fiscal year; and creates a fiscal stabilization fund to boost the amount of funds held in reserve to help pay for school aid. This is the question that will be put before the voters this November.

(2) Budget Reform Legislation. In addition, the reform package includes a law that goes into effect if voters approve the constitutional amendment. The reform legislation would:

- Create an *Independent Budget Offic*e, whose leadership is chosen jointly by the legislative leaders. The IBO would provide independent fiscal analyses and play a key role during a contingency budget period. During this period, the IBO's role is to certify that a contingency budget is balanced. If it is not, automatic across-the-board reductions are put in place (with some exceptions).
- Allow the legislature to amend the contingency budget through passage of a *multi-appropriation bill* that would be subject to the Governor's line item veto. Once this action is taken, the legislature would be free to pass single appropriation bills and a supplemental appropriation bill.
- Allow for a *two-year appropriation for education*. The bill requires the executive to submit a two-year appropriation for the general support of public schools. The second year appropriation would go into effect regardless of the operation of the contingency budget.
- Require greater budgetary *reporting* by the executive.
- Place the *Health Care Reform Act (HCRA) Fund* within the budget.
- Change the date of the beginning of the state's fiscal year from April 1st to May 1st.

THE DEBATE: THE CONTINGENCY BUDGET

The most frequently heard criticism of the reform proposal has focused on the creation of a contingency budget if discussions fail to produce a new state budget by the beginning of the fiscal year. Opponents have mislabeled the proposal as a "power grab" by the legislative branch to unfairly readjust the relationship between the legislative and executive branches. Here is how some have described the proposal:

- In his veto message, Governor Pataki stated that his central concern was that the reform proposal undermined the state's budget system by "discarding the carefully crafted system of budgetary checks and balances required by our state Constitution."[12]

- Other commentators have been harsh in their criticisms; calling the proposal "Runaway Spending Amendment,"[13] and contending that the legislative branch would be empowered to spend more under the proposal. Another said, "[It] would in fact turn our current budget process completely on its head and make the Legislature the ultimate controller of the state budget in New York State for the first time since the 1920s."[14] The shift in constitutional power, it is argued, will grant the Legislative branch unreasonable powers to spend tax dollars.

- Lastly, State Assemblyman Patrick Manning has formed *Stand Tall New York,* a group that he is using as a vehicle to raise money to defeat the reform proposal. In a speech to the Greater Syracuse Chamber of Commerce, Manning stated the proposal should be called the "runaway spending amendment" and likened it to "turning the kids loose in a candy store with no adult supervision."[15]

  Yet in that same speech, Manning delivered a blistering critique of New York State budgeting practices that have resulted in a "bad business climate." He argued that the state "spends and taxes too much" and that "what we don't tax we borrow with no regard for the burden we're leaving to the next generation."[16] Manning makes two claims, that New York's fiscal house is in disorder, and that the reforms will make it worse.

---

[12] Pataki, G. Veto Message, Number 5, issued 5/3/2005.
[13] Ward, R. Albany's Greed, *New York Post*, 7/13/05.
[14] Berner, K. Pataki's Record on Enacting Plans Laid Out in State of the State A Mixed Bag, *New York 1*, 7/6/05. Comments by Edmund J. McMahon of the Manhattan Institute.
[15] Manning, P., "Stand Tall New York," see www.standtallnewyork.org/blog/2005/07/remarks-delivered-by-assemblyman.html.
[16] Ibid.

It's hard to know if these assertions are correct, but the central argument that the reform proposal unreasonably changes the power relationship between the executive and legislative branches is at the heart of the critique. As seen earlier, the proposal does change that relationship, but does it do so unfairly or unwisely?

In order to answer that question, it is important to examine the current power of New York State's executive as compared to his counterparts in other states. How does the power of New York's executive stack up nationally? Furthermore, would the proposed reform shift the institutional relationship in a manner that is significantly different from the relationship found in other states?

FINDING – NEW YORK'S GOVERNOR IS ONE OF THE MOST POWERFUL EXECUTIVES IN THE NATION

In reviewing research in this area, Robert Ward, the author of recent book examining New York State government, states, "In terms of its formal power within a state government, New York's chief executive today is consistently ranked among the most powerful in the nation."[17] Later Ward concludes, "Taken together, these factors mean that the governor of New York may be the second most powerful chief elected executive in the nation, behind only the president."[18] National experts on state governments agree. Alan Rosenthal observed in the Congressional Quarterly Press, "New York is a state in which the modern governor has been quite strong."[19]

Professor Thad Beyle has spent his career tracking the institutional powers of states' executives and legislatures both as an academic and as a researcher for the National Conference of State Legislatures. His most recent analysis quantifies institutional power. As seen below, Beyle's research shows that New York's executive has powers that far exceed virtually all other Governors. According to his ranking, New York is tied with Alaska, New Jersey and West Virginia as having the most powerful executives in the nation, in terms of overall powers vested in this branch.

Specifically with respect to budgetary powers, Beyle finds that New York State is one of four states that grant their executives unusual budget powers. According to Beyle, Maryland and West Virginia's Governors have the most budgetary power, followed by Nebraska and New York's. South Carolina and Texas have weak executives, and the remaining 44 states (by far the largest group) fall in the middle, granting their legislatures a more prominent role in budget making than New York while still maintaining many powers of the executive.

All but four state legislatures, therefore, have "unlimited authority to change the executive's budgets."[20] Under the proposed budget reform in New York, the legislature would also have such power (although it can amend the contingency budget, not the executive's proposal), but *only* after lawmakers failed to enact a budget by the beginning of the fiscal year. In other words, the reform proposal would mean that New York State would still grant its executive a powerful voice in budget-making – just not as severely one-sided and pre-emptive as is the case now.

---

[17] Ward, R. New York State Government: What It Does, How It Works, The Rockefeller Institute Press, 2002, p. 42.

[18] Ibid, p. 45.

[19] Rosenthal, A. Heavy Lifting: The Job of the American Legislature, CQ Press, 2004, p.242.

[20] Beyle, T., "Governors' Institutional Powers, 2005," Table 7-5, see www.unc.edu/~beyle/gubnewpwr.htm. According to Beyle, his ranking of states' budget powers is categorized by: (5) Governor has full responsibility to develop a budget and legislature may not increase executive budget; (4) Governor has full responsibility, legislature can increase by special majority vote or subject to item veto; (3) Governor has full responsibility, legislature has unlimited power to change executive budget; (2) Governor share responsibility, legislature has unlimited power to change executive budget; (1) Governor share responsibility with other elected official, legislature has unlimited authority to change executive budget.

A COMPARISON OF STATES' EXECUTIVE POWER, 2005[21]

State	Budget Power[22]	Overall Power[23]
Alabama	3	2.8
Alaska	3	4.1
Arizona	3	3.4
Arkansas	3	3.1
California	3	3.2
Colorado	3	3.6
Connecticut	3	3.6
Delaware	3	3.5
Florida	3	3.6
Georgia	3	3.2
Hawaii	3	3.4
Idaho	3	3.5
Illinois	3	3.8
Indiana	3	3.1
Iowa	3	3.7
Kansas	3	3.3
Kentucky	3	3.5
Louisiana	3	3.4
Maine	3	3.6
Maryland	5	3.8
Massachusetts	3	3.6
Michigan	3	3.6
Minnesota	3	3.8
Mississippi	3	2.9
Missouri	3	3.6
Montana	3	3.6
Nebraska	4	3.8
Nevada	3	3.0
New Hampshire	3	2.8
New Jersey	3	4.1
New Mexico	3	3.7
New York	4	4.1
North Carolina	3	2.9
North Dakota	3	3.9
Ohio	3	3.9
Oklahoma	3	2.8
Oregon	3	3.3
Pennsylvania	3	3.7
Rhode Island	3	2.6
South Carolina	2	3.0
South Dakota	3	3.8
Tennessee	3	3.8
Texas	2	3.2
Utah	3	4.0
Vermont	3	2.5
Virginia	3	3.2
Washington	3	3.6
West Virginia	5	4.1
Wisconsin	3	3.3
Wyoming	3	3.1
National average	3.1	3.5

[21] Ibid.
[22] Ibid. See explanation in footnote above.
[23] Ibid. Beyle combines various powers – including budget, whether the state has other statewide election officials, any limits on the tenure of the Governor, appointment powers, veto power and gubernatorial party control.

As seen above, New York's executive wields tremendous institutional budgetary power.

In order to attempt to verify Beyle's findings, the authors of this report developed a national survey of states' budget practices.[24] Our survey results are consistent with Beyle's findings. Our questions did identify one issue that was outside the scope of Beyle's analysis. Of the 46 states that allow their legislatures to add spending to the proposed budget, some of them are restrained by requirements that prescribe the enactment of balanced budgets or limit the ability of lawmakers to raise taxes to create budget balance. However, these limits apply equally to the executive and the legislature and therefore do not fundamentally affect the *balance of powers* between the branches.

While most states allow legislatures to approve revenue increases with a majority vote, there are differences. Twelve states require approval of revenue increases through a supermajority vote: Arizona, Arkansas, California, Delaware, Delaware, Florida, Kentucky, Louisiana, Mississippi, Nevada, Oklahoma, Oregon; three require voter approval: Colorado, Michigan and Missouri.[25]

Based on the findings of this report, it is clear New York State's executive is one of a small handful of Governors with extraordinary powers to dominate the state budget debate. This power exists not only in terms of his ability to propose the budget, but also in that the legislature is extremely limited in how it may respond to the executive proposal.

This review of state's budgetary practices underscores that the proposed reform would make New York *more* like the rest of the states – in terms of how they develop their budgets – than it is now.

---

[24] Survey was conducted in August 2005. Researchers evaluated states' practices and through e-mail and telephone confirmed or corrected researchers' evaluations. As of September 13 2005, we had received responses from 43 of the 50 states.

[25] National Association of State Budget Officers, Budget Processes in the States, January 2002, see Table M. The Missouri legislature can approve tax and fee increases during a legislative session of no more than one percent of total state revenue. Missouri voters must approve amounts above this level.

THE PROPOSED CONTINGENCY BUDGET WILL CREATE AN INSTITUTIONAL POWER RELATIONSHIP CONSISTENT WITH MOST STATES

Why does the balance of powers relationship matter? First of all, it's important to answer the question – What is the role of the legislature? James Madison best stated the importance of the legislative branch in *Federalist* No. 10 when commenting on its role in acting as a mechanism for refining the view of the public "by passing them through the medium of a chosen body of citizens."

Modern legislatures have a greater role than merely acting as a body to distill the wishes of the public. Experts argue that the modern legislative role "consists of three principle functions: *representing*, *lawmaking*, and *balancing the power of the executive*."[26] Most view that under the broad scope of the separation of powers principle, the legislative branch is assigned the power to make laws and appropriate funds, while the executive branch is charged with the responsibility of executing laws and expending funds.

One expert observed that, as a rule, the executive and legislative branches participate in different phases of the budgetary process. Typically, the legislature's principle budgetary role is reviewing and modifying, as necessary, a proposed budget developed by the executive branch. *Legislatures can add, subtract, or eliminate funds, programs, and projects as a consequence of their review.*[27][Emphasis added]

Our findings show that New York State currently has one of the most powerful executive branches in the nation. And it appears that the proposed constitutional change would result in New York having an institutional relationship between its executive and legislature that is more in line with the rest of the nation, while maintaining strong executive control over the budget that is ultimately adopted.

The arguments that the reforms under consideration will somehow place New York in a form of constitutional dysfunction are at odds with the facts. Whether our legislators are appreciably less fiscally capable or disciplined than their counterparts in other states remains to be seen. However, the reform measure before New Yorkers this November, if approved, would result in New York *still* having a powerful executive but adding a more balanced system of institutional checks and balances.

---

[26] Rosenthal, p. 9.
[27] Rosenthal, A. Governors and Legislatures: Contending Powers, CQ Press, 1990, p. 140.

OTHER QUESTIONS RAISED ABOUT THE CONTINGENCY BUDGET

Other concerns have been raised about the structure of the contingency budget. Two main criticisms have been raised and our responses follow.

CRITICISM:
The contingency budget will encourage late budgets since the legislature merely has to wait until May 1 to fashion its own budget and thus ignore the Governor's proposal.

RESPONSE:
This criticism seems to be primarily speculative. The contingency budget does effectively allow the legislature to begin negotiating its own budget once the new fiscal year begins if legislators and the Governor have not been able to agree on a budget beforehand. As mentioned earlier, this new authority is consistent with the powers of other state legislatures.

The unfortunate truth is that no budget process can guarantee an on-time budget. Passage of a budget is fundamentally dependent on the willingness of the executive and legislative branches to negotiate together and agree on a compromise proposal. While critics imagine that under the new budget process, legislators have an incentive to stall because they gain new powers once a contingency period begins, it is equally reasonable to argue that one explanation for the 20 years of late budgets in our state is that legislators currently have no recourse to make minor amendments to the Governor's proposal and so are forced to blow-up the entire budget deal to bring the executive to the negotiating table. In fact, one might imagine that, under the new process, the Governor will have a greater incentive to negotiate a deal with the legislature early in the process so that his executive proposal does not get more substantially altered later.

The difficult reality is it is impossible to know which of these scenarios is more likely. What we do know is that the proposed change to the balance of powers is consistent with the status quo in 46 other states.

Furthermore, the alternative to the proposed reform is maintenance of the current system, which has been plagued by late budgets. For the past two decades, state budget agreements have regularly been late. So New York's powerful executive system has had a bad track record with regard to late budgets. One could argue that budgets have been late – and getting later – because the executive currently has no incentive to negotiate with the legislature since it is he who drafts the temporary budget extenders that are approved to keep government running when a budget deadline is missed.

It is true that if the legislature is not supportive of the Governor's proposed budget, it can wait until May 1 to begin two-way negotiations on its own budget proposal. But the Governor would not be cut out of the picture. The Governor still has his line item veto authority.

In short, while there is nothing in the reform package to guarantee on-time budgets, the current system has proven beyond a shadow of a doubt that it cannot offer this guarantee either. The reforms do provide greater openness, accountability and certainty, and provide a failsafe in case a budget is not delivered on time.

<u>CRITICISM</u>:
The structure of the contingency budget is problematic. Issues include: the fact that the contingency budget would be based on the previous year's expenditures, not the appropriations approved in the previous year's budget; lack of specificity in how the contingency budget would be developed, what form it would take, and if it would be made public.

<u>RESPONSE</u>:
The concern that the contingency budget would not be as open and accountable as the current budget process seems to be based largely on a fear of the unknown. Nothing in the proposed reforms negates New York's laws requiring public access to documents.

Moreover, the New York State Board of Elections' abstract on the ballot question states that "except as otherwise provided by statute, the contingency budget provides the same appropriations as for the immediately-preceding fiscal year, and during the contingency period, spending and revenue provisions remain the same as during the immediately-preceding fiscal year." This is the form and substance of the contingency budget. New York State government will be disburse funds exactly as it did the previous year with some exceptions that are clearly outlined in statute.

It is true that the contingency budget is based on the previous year's expenditures. That is why the legislature and the executive are supposed to work on the multi-appropriation bill, which refines and revises the contingency budget. This amendment process gives legislators the opportunity to revise spending set out in the contingency budget, subject to the Governor's line item veto. Therefore, if lawmakers think that what actually was spent the previous year (as distinct from what was decided on at the negotiating table) was too high or too low, they can alter those spending levels subject to the Governor's veto. The proposed reform does include exceptions to the rule that the contingency budget is based on last year's expenditures. Payments related to public assistance and federal funds which would be jeopardized if state disbursements were limited are exempt from this rule, and two-year schools appropriations protect schools from this limit.

OTHER CHANGES ARE NECESSARY

However, passage of the constitutional amendment and implementation of the accompanying statutory reforms is simply not enough. Additional reforms are needed, including changes that would:

Strengthen the newly created Independent Budget Office.
The Independent Budget Office (IBO) plays a critical role in the new budget system. Its responsibilities include offering unbiased fiscal analysis on the executive's proposed budget and other state financial matters. In addition, the IBO determines if the contingency budget is balanced. If it is not, the IBO's declaration forces across-the-board cuts in state programs and spending.

For the public to view the IBO as a credibly independent entity, the staff and analysts involved in doing the work must be considered professional and nonpartisan. While it appears to be the intent of lawmakers to create an IBO that meets that standard, additional measures should be taken. The executive director of the IBO is to be appointed jointly by the legislative leaders. However, to further ensure that the director is professional and politically independent, nominees should first be vetted by a screening panel of experts – in a manner similar to that by which judges for the state's Court of Appeals are selected.

Strengthen the use of Legislative Conference Committees to hammer out budgetary agreements.
While the reforms help ensure greater transparency in the development of the executive's proposed budget, the measures do not contain greater transparency requirements for the legislative branch. Additional reforms should require that legislative conference committees be empowered to hash out budget differences.

Pass additional authority reforms that make them more fiscally accountable.
A huge portion of the state's accumulated debt comes from public authorities. While public authorities have the power to levy user fees and charges, they do not have the power to raise taxes. Most public authorities have the ability to borrow funds by issuing debt. Total public authority debt reached more than $120.4 billion in 2004, and continues to grow. Although taxpayers pay debt service on this borrowing, the voters approve none of this debt. Only 11 public authorities in New York have their borrowing reviewed by the Public Authorities Control Board.[28] The State Comptroller has advanced a sweeping overhaul of authorities' oversight, but little has been done. New Yorkers should urge passage of his plan.

[28] New York State Office of the State Comptroller, "New York's Public Authorities," see http://www.osc.state.ny.us/pubauth/index.htm.

Prohibition on messages of necessity for final passage of budget bills.
A budget process that ultimately ends with lawmakers' first examination of actual budget bill language during the floor debate undermines any notion of an open, democratic process. Voting on budget bills still warm from the copier is a practice that should be ended. We urge that legislators have the minimum three days called for in the constitution to ensure that tens of billions of dollars in the state budget is spent wisely. Furthermore, it is impossible for the public to respond to budget agreements without adequate examination of the final budget bill language.

Requirement that all lawmakers – from the Governor to legislators – work full workweeks in Albany until a late budget is approved.
Approving a state budget must be a top priority for all state lawmakers. Missing the deadline for final approval of the state budget must lead to significant consequences, such as requiring the Governor and state legislators to work Monday through Friday each and every week until there is a budget consensus.

RECOMMENDATION: NEW YORKERS SHOULD VOTE *YES* ON THE BUDGET REFORM AMENDMENT

Our organizations urge a YES vote on Proposal 1, the state budget reform constitutional amendment. For decades, New Yorkers have had to pay the price for a budget process that is secret, unaccountable and unpredictable. The damage from late budgets, fiscal gimmicks and mounting fiscal instability is rooted in Albany's flawed budget process.

The public needs to know more about the development of the Governor's budget proposal; the state needs to have an independent, nonpartisan fiscal watchdog to monitor the state's finances; and the public needs to know that there will always be a budget in place.

The budget reform proposal accomplishes these modest goals. The reform, among other things, opens up the Governor's budget to more public scrutiny, establishes an Independent Budget Office and creates a "contingency budget" if there is no budget agreement by the beginning of the fiscal year.

Essentially the "contingency budget" is last year's budget and it would automatically go into effect on May 1, the beginning of the new fiscal year. This reform allows lawmakers to continue to negotiate changes, but there would be no threat of a government shutdown. And as seen earlier, the change results in an institutional relationship between the executive and the legislature that is more like the relationship found in the vast majority of other states.

While more work still needs to be done; this budget reform proposal deserves support this November.

THE TEXT OF THE BUDGET REFORM REFERENDUM QUESTION[29]

The text of the question to be put before voters this November is:

> The proposed amendment to Articles IV and VII of the Constitution would change the process for enactment of the state budget by (a) providing for a contingency budget if the Legislature does not act on the Governor's appropriation bills before the start of the fiscal year; (b) placing limits on the amount of spending during such contingency period; (c) once such contingency period begins, eliminating the requirement that the Legislature act on the Governor's proposed appropriation bills, and instead authorizing the Legislature to end the contingency period by adopting a multiple appropriation bill making changes to the contingency budget, subject to line item veto by the Governor; and (d) authorizing the Legislature, subject to veto by the Governor, to modify the spending limits for future contingency budgets, except that such changes cannot take effect until three years after enactment. The proposed amendment also sets forth certain requirements for the operation of a fiscal stabilization reserve fund, from which money could be disbursed in a subsequent year. It would require estimates and information provided by state departments to the Governor for use in preparing the budget to be available to the public. It would provide a date certain by which the Governor must submit a budget and appropriations bills to the Legislature. It would reduce the time the Governor has to make changes to the budget and appropriations bills submitted to the Legislature without the Legislature's consent from thirty days to twenty-one days. Shall the proposed amendment be approved?

[29] New York State Board of Elections, "Certification" August 8, 2005.

AN OVERVIEW OF NEW YORK STATE'S CURRENT BUDGET PROCESS[30]

New York's budget process places the primary responsibility for the preparation and execution of the budget in the hands of the Governor. The Governor receives budget requests from state agencies, develops his executive budget and then submits this plan to the Legislature along with the appropriation bills and other legislation required to implement his budgetary recommendations. Under New York State law, the Governor is also required to manage the budget, through administrative actions, during the fiscal year. The state's fiscal year begins April 1 and ends on March 31. A more specific budget timetable of how the budget process is *supposed* to work follows.

Budget Activities from June–September/October

Although agencies begin to analyze their budget needs as early as May or June, the formal budget cycle begins when the Budget Director issues a policy memorandum — the "call letter" — to agency heads. The call letter outlines, in general terms, the Governor's priorities for the coming year, alerts the agency heads to expected fiscal constraints and informs agencies of the schedule for submitting requests to the Division of the Budget (DOB). The call letter signals the official start of the budget process.

Budget Activities from September/October–December

State agencies typically submit their budget requests to the DOB in early-mid fall, with copies provided to the legislative fiscal committees. The DOB then analyzes the requests of the agencies and may hold informal hearings or meetings with agency management. By the end of October, the DOB has usually determined funding requirements to continue agency programs.

In November, the Budget Director conducts a series of constitutionally authorized "formal" budget hearings, giving agency heads an opportunity to discuss their budget requests. Representatives of the Legislature also participate in the hearings.

By November 15 staff from the legislative and executive branches discuss the economic outlook, revenue forecasts, projected spending, the impact of state and federal statutes, and any other relevant issues. Through late November, the DOB develops a preliminary budget.

By early December, the DOB will normally have completed its preliminary recommendations on both revenues and expenditures, and presented them to the Governor and his staff.

---

[30] This section relies on information provided by the New York State Division of the Budget, see www.budget.state.ny.us/citizen/process/process.html.

Budget Activities from November - January
Based on the DOB recommendations and other considerations the final Executive Budget recommendations are drafted.

Budget Activities from January – March
Typically by mid-January or earlier — or, following a gubernatorial election year, by February 1 — the Governor submits the Executive Budget to the Legislature, along with the related appropriation, revenue and other budget bills.

The Legislature, primarily through its fiscal committees — Senate Finance and Assembly Ways and Means — analyzes the Executive spending proposals and revenue estimates, holds public hearings on major program areas and seeks further information from the staffs of the DOB and other state agencies. Following that review, the Legislature acts on the appropriation bills submitted with the Executive Budget to reflect its decisions.

At times the Legislature has opted to use a Conference Committee process to agreement on a Budget between the two houses. In addition, the state law requires that the Executive and Legislature convene a consensus economic and revenue forecasting conference and issue a consensus report on available revenues by March 10.

Regardless of the specific process, the two houses reach agreement on spending and revenue recommendations that are reflected in amended versions of the Governor's proposed appropriation bills and related legislation, and approved by both houses.

The appropriation bills, except for those items that were added by the Legislature and the appropriations for the Legislature and Judiciary, become law without further action by the Governor. The Governor must approve or disapprove all or parts of the appropriation bills covering the Legislature and Judiciary, and may use the line item veto to disapprove items added by the Legislature while approving the remainder of the bill. The Legislature may override the Governor's veto by a vote of two-thirds of the members of each house.