

STATE OF NEW YORK

3064

2017-2018 Regular Sessions

IN SENATE

January 19, 2017

Introduced by Sens. SERRANO, BONACIC, BRESLIN, DeFRANCISCO, GRIFFO, KRUEGER, LITTLE, PERALTA, RIVERA, SANDERS, SAVINO, SERINO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the legislative law, in relation to clarifying the appropriation and qualification of member items, discretionary funds and unitemized lump sum appropriations and authorizes the legislative ethics commission to review violations of the qualification of member items, discretionary funds and unitemized lump sum appropriations; and to amend the state finance law, in relation to requiring that all member items, discretionary funds and unitemized lump sum appropriations be fully itemized

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislative law is amended by adding a new section 54-b
2 to read as follows:

3 § 54-b. Member items, discretionary funds and unitemized lump sum
4 appropriations. 1. As used in this section, the term "member item,
5 discretionary fund or unitemized lump sum appropriation" shall mean a
6 budgetary allocation as funded by the legislative community projects
7 fund as defined in section ninety-nine-m of the state finance law, and
8 the executive community projects fund as defined in section
9 ninety-nine-g of the state finance law at the discretion and request of
10 the governor or a member of the legislature for a certified tax-exempt
11 non-profit organization under section 501(c)(3) of the Internal Revenue
12 Code in New York state, a state agency, a municipality or their affil-
13 iated department, university, college, or school district.

14 2. Member items, discretionary funds or unitemized lump sum appropri-
15 ations shall not be appropriated when a conflict of interest exists
16 between the legislator or governor designating the member item, discre-
17 tionary fund and unitemized lump sum appropriation and the potential

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 recipient. A member item, discretionary fund or unitemized lump sum
2 appropriation cannot fund organizations that employ or otherwise compen-
3 sate the legislator or governor, a member of the legislator's or gover-
4 nor's family, any person sharing the home of the legislator or governor
5 or a member of the legislator's or governor's staff for services or
6 labor rendered. Furthermore, legislators and the governor shall not
7 designate member items, discretionary funds and unitemized lump sum
8 appropriations if the legislator or governor, a member of the legisla-
9 tor's or governor's family, any person sharing the home of the legisla-
10 tor or governor or a member of the legislator's or governor's staff is
11 involved with the operations of the organization in a decision-making
12 capacity including but not limited to working on an unpaid, volunteer
13 basis or a member of the directing board of an organization.

14 3. Prior to the appropriation of member items discretionary funds and
15 unitemized lump sum appropriations, the legislature shall:

16 (a) provide that each member of the senate and each member of the
17 assembly receive an equal share of the dollar amount of member items
18 discretionary funds or unitemized lump sum appropriation allocated to
19 the respective legislative body;

20 (b) require the legislator or governor requesting such member item,
21 discretionary fund or unitemized lump sum appropriation to submit a
22 signed conflict of interest form along with the member item discretion-
23 ary fund or unitemized lump sum appropriation request form to ensure
24 that no conflict of interest exists. The legislator or governor shall
25 disclose on the conflict of interest form all political donations he or
26 she is receiving or has received in the past from the intended recipient
27 of the member item, discretionary fund or unitemized lump sum appropri-
28 ation funding. Such a conflict of interest form shall be signed by the
29 legislator or governor under penalty of perjury, stating that the member
30 item, discretionary fund or unitemized lump sum appropriation is not
31 being directed in a manner described in subdivision two of this section;

32 (c) provide that any state agency that provides funding for member
33 items, discretionary funds and unitemized lump sum appropriations evalu-
34 ate the spending of such member item funds, discretionary funds and
35 unitemized lump sum appropriations by the local project, organization or
36 other entity receiving such funds. The state agency shall track the
37 funds to ensure that they are being spent in a manner consistent with
38 the member item application;

39 (d) ensure that the following criteria are satisfied:

40 (1) grants are to be designated for public purposes. The program
41 funded must be open and available to all individuals on a nonsectarian
42 basis;

43 (2) grants are provided in support of services and activities that
44 have statewide benefit or benefit local communities;

45 (3) grants are only designated for not-for-profit organizations, muni-
46 icipalities or their affiliated departments/agencies, universities,
47 colleges, or school districts;

48 (4) grants are available solely for activities and programs conducted
49 within the state of New York;

50 (5) grants are not to be redistributed unless the grant recipient is
51 identified and the grant to the end recipient complies with the crite-
52 ria;

53 (6) grants are to be used only for the purpose stated in the funding
54 request;

55 (7) grants are not to be used to fund loan programs;

1 (8) grants are not to be used for the following purposes: (A) to fund
2 an entity in bankruptcy, receivership, or foreclosure or to fund legal
3 or administrative expenses related to bankruptcy, receivership or fore-
4 closure proceedings; (B) to pay for any arrears in workers' compen-
5 sation, unemployment insurance or other employee benefits; or (C) to pay
6 for any arrears or current obligations for federal, state, or municipal
7 taxes; for lobbying activities as defined under section one-c of this
8 chapter and comparable sections of federal or municipal law;

9 (9) grants are not to be the only significant source of funding for
10 the organization;

11 (10) grant applications shall include a brief description of the
12 project to be funded; and

13 (11) grants shall not be used by recipients to pay wages or other
14 employee benefits.

15 (e) The legislature shall produce and make public a compiled quarterly
16 report with respect to each member item, discretionary fund or unitem-
17 ized lump sum appropriation, the name of the member of the senate, the
18 member of the assembly, the governor, or any state elected official that
19 is sponsoring the member item discretionary fund or unitemized lump sum
20 appropriation, the dollar amount of the member item discretionary fund
21 or unitemized lump sum appropriation to be appropriated, the name of the
22 local project, organization, or other entity receiving such member item
23 discretionary fund or unitemized lump sum appropriation. Such compiled
24 quarterly reports detailing and disclosing the use of such funds shall
25 start with the date of the enacting state budget with updated reports
26 being delivered on each first day of every fourth month thereafter. Such
27 publication shall, at a minimum, be published on the website of each
28 house of the legislature in a manner that is easily accessible.

29 4. All member item, discretionary fund and unitemized lump sum appro-
30 priation allocation recipients shall provide certification of proper use
31 of funds received. For allocations totaling less than fifty thousand
32 dollars, a duly authorized representative of the member item, discre-
33 tionary fund or unitemized lump sum appropriation recipient organization
34 shall attest under penalty of perjury that the recipient organization
35 actually spent the member item grant money, discretionary fund or
36 unitemized lump sum appropriation in the manner and for the purposes
37 designated in its application for a member item, discretionary fund and
38 itemized lump sum appropriation allocation. For allocations totaling
39 more than fifty thousand dollars, a duly authorized representative of
40 the member item, discretionary fund or unitemized lump sum appropriation
41 recipient organization shall attest under penalty of perjury that the
42 recipient organization actually spent the member item grant money,
43 discretionary fund or unitemized lump sum appropriation in the manner
44 and for the purposes designated in its application for a member item,
45 discretionary fund and itemized lump sum appropriation allocation and
46 shall file a final report, under penalty of perjury, detailing the
47 expenditures. Such report shall be submitted by May thirty-first of the
48 calendar year following the calendar year in which the member item,
49 discretionary fund or unitemized lump sum appropriation was allocated
50 and shall follow the requirements established by the attorney general.
51 No future member item grants, discretionary funds or unitemized lump sum
52 appropriations shall be approved for an organization which has previous-
53 ly received a member item, discretionary fund and itemized lump sum
54 appropriation allocation until such documents have been signed and
55 received by the office of the New York state attorney general.

1 5. Prior to submitting an application for a member item, discretionary
2 fund and itemized lump sum appropriation allocation, each organization
3 seeking a member item, discretionary fund and itemized lump sum appro-
4 priation allocation must meet pre-certification standards as established
5 by the office of the New York state attorney general. At a minimum,
6 those standards shall require that the organization seeking pre-certifi-
7 cation is a certified tax-exempt non-profit organization under section
8 501(c)(3) of the Internal Revenue Code in New York state, a state agen-
9 cy, a municipality or their affiliated department, university, college,
10 or school district capable of accepting potential funding and that such
11 entity is not in bankruptcy or arrears on any obligations. If an organ-
12 ization has received member item funding, discretionary funds or unitem-
13 ized lump sum appropriations in the past, the organization shall also
14 comply with the requirements of subdivision four of this section. No
15 application from any organization shall be considered by a legislator
16 until the office of the New York state attorney general has certified
17 such organization based upon the criteria set forth in this subdivision
18 and upon any additional regulatory standards established by the attorney
19 general.

20 6. Any state agency that provides funding for member items, discre-
21 tionary funds or unitemized lump sum appropriations shall review member
22 item spending, discretionary funds and unitemized lump sum appropri-
23 ations on an annual basis and periodically review grant recipients' use
24 of grant money.

25 7. Any member item, discretionary fund or unitemized lump sum appro-
26 priation appropriated by the legislature shall be set forth separately
27 and apart from every other member item, discretionary fund or unitemized
28 lump sum appropriation in the state budget in order to clearly identify
29 each legislator's or governor's request.

30 8. Any violation of the provisions of this section shall be referred
31 to the legislative ethics commission or its successor entity.
32 Complaints regarding the failure of an allocation or use of a member
33 item, discretionary fund or unitemized lump sum appropriation to comply
34 with the provisions of this chapter shall be submitted to (a) the legis-
35 lative ethics commission with regard to a member item, discretionary
36 fund or unitemized lump sum appropriation allocation made at the
37 discretion of a legislator, or (b) the commission on public integrity
38 with regard to a member item, discretionary fund or unitemized lump sum
39 appropriation allocation made at the discretion of the governor. Each
40 complaint shall be investigated in accordance with the rules and proce-
41 dures of the commission receiving the complaint.

42 § 2. Subdivisions 4 and 5 of section 24 of the state finance law, as
43 added by chapter 1 of the laws of 2007, are amended to read as follows:

44 4. Any appropriation added to such budget bills, pursuant to section
45 four of article seven of the constitution, shall only contain itemized
46 appropriations which shall not be in the form of lump sum appropri-
47 ations[7] and shall designate for each appropriation a grantee of such
48 appropriation, and [~~provided further that~~] for all non-federal state
49 operations appropriations, such bill or bills shall only contain item-
50 ized appropriations and shall be made, where practicable, by agency, and
51 within each agency by program and within each program at the following
52 level of detail and in the following order:

53 (a) by fund type, which at a minimum shall include general fund,
54 special revenue-other funds, capital projects funds and debt service
55 funds;

1 (b) for personal service appropriations, separate appropriations shall
2 be made for regular personal service, temporary personal service, and
3 holiday and overtime pay;

4 (c) for nonpersonal service appropriations, separate appropriations
5 shall be made for supplies and materials, travel, contractual services,
6 equipment and fringe benefits, as appropriate.

7 ~~5. [Any appropriation added pursuant to section four of article seven~~
8 ~~of the constitution without designating a grantee shall be allocated~~
9 ~~only pursuant to a plan setting forth an itemized list of grantees with~~
10 ~~the amount to be received by each, or the methodology for allocating~~
11 ~~such appropriation. Such plan shall be subject to the approval of the~~
12 ~~chair of the senate finance committee, the chair of the assembly ways~~
13 ~~and means committee, and the director of the budget, and thereafter~~
14 ~~shall be included in a concurrent resolution calling for the expenditure~~
15 ~~of such monies, which resolution must be approved by a majority vote of~~
16 ~~all members elected to each house upon a roll call vote.]~~ The provisions
17 of this section shall not preclude members of the legislature from
18 collaborating with each other in the selection of member items and pack-
19 aging their individual member item, discretionary fund or unitemized
20 lump sum appropriation allocations together with other member's allo-
21 cations for specified regional or joint projects.

22 § 3. Section 99-d of the state finance law, as added by chapter 474 of
23 the laws of 1996, is renumbered section 99-m and the section heading and
24 subdivision 1, subdivision 1 as amended by section 2 of part BB of chap-
25 ter 686 of the laws of 2003, are amended to read as follows:

26 [~~Community~~] Legislative community projects fund. 1. There is hereby
27 established in the joint custody of the comptroller and the commissioner
28 of taxation and finance a special fund to be known as the legislative
29 community projects fund. This fund may have separate accounts designated
30 pursuant to a specific appropriation to such account or pursuant to a
31 written suballocation plan approved in a memorandum of understanding
32 executed by the director of the budget, the secretary of the senate
33 finance committee and the secretary of the assembly ways and means
34 committee. Such suballocation shall be submitted to the comptroller.

35 § 4. The state finance law is amended by adding a new section 99-g to
36 read as follows:

37 § 99-g. Executive community projects fund. 1. There is hereby estab-
38 lished in the joint custody of the comptroller and the commissioner of
39 taxation and finance a special fund to be known as the executive commu-
40 nity projects fund. This fund may have separate accounts designated
41 pursuant to a specific appropriation to such account or pursuant to a
42 written suballocation plan approved in a memorandum of understanding
43 executed by the director of the budget, the secretary of the senate
44 finance committee and the secretary of the assembly ways and means
45 committee. Such suballocation shall be submitted to the comptroller.

46 2. Such fund shall consist of monies transferred to such fund from the
47 general fund/state purposes account, or any other monies required to be
48 transferred or deposited. Monies may not be transferred or loaned
49 between the accounts of this fund, unless specifically otherwise
50 provided by letter signed by the director of the budget, but only upon
51 the joint request of the secretary of the senate finance committee and
52 the secretary of the assembly ways and means committee.

53 3. (a) As required to make timely payments from such accounts upon
54 presentment of proper vouchers therefor, the state comptroller shall
55 make transfers to any account in this fund up to the amounts annually
56 specified for transfer to such account and in compliance with subdivi-

1 sion two of this section, but only from such fund or funds authorized to
2 provide such transfers.

3 (b) By the close of each fiscal year, all remaining amounts not yet
4 transferred shall be transferred to the designated accounts for which
5 such transfers were authorized, up to the total amounts specified for
6 transfer to each account in each fiscal year and in compliance with
7 subdivision two of this section.

8 4. Notwithstanding section forty of this chapter or any other
9 provision of law, appropriations of this fund shall be available for
10 liabilities incurred during and after the close of the fiscal year for
11 which such appropriations are enacted, provided however that such appro-
12 priations shall lapse on the fifteenth day of September following the
13 close of the fiscal year, and no monies shall thereafter be paid out of
14 the state treasury or any of its funds or the funds under its management
15 pursuant to such appropriations.

16 5. The director of the budget shall issue a certificate of approval
17 for any appropriation in any account of this fund no later than the
18 later of sixty days after the enactment of such appropriation or five
19 days after the execution of a written suballocation plan pursuant to the
20 provisions of subdivision one of this section. Such approval shall
21 satisfy any other requirement for a certificate of approval.

22 6. (a) The state shall not be liable for payments pursuant to any
23 contract, grant or agreement made pursuant to an appropriation in any
24 account of this fund if insufficient monies are available for transfer
25 to such account of this fund, after required transfers pursuant to
26 subdivision three of this section. Except with respect to grants, or
27 agreements executed by any state officer, employee, department, institu-
28 tion, commission, board, or other agency of the state prior to the
29 effective date of this section, any contract, grant or agreement made
30 pursuant to an appropriation in this fund shall incorporate this
31 provision as a term of such contract, grant or agreement.

32 (b) The exhaustion of funds available for such transfers shall not
33 preclude the approval of contracts hereunder pursuant to section one
34 hundred twelve of this chapter. Notwithstanding any other provision of
35 law, interest shall not be due to any recipient for any late payments
36 made from this fund which result from insufficient monies being avail-
37 able in an account of this fund.

38 7. Monies shall be paid out of such accounts on the audit and warrant
39 of the state comptroller on vouchers certified or approved by the head
40 of the appropriate agency.

41 § 5. This act does not preclude either house of the legislature or the
42 governor from adopting more stringent standards through its own guide-
43 lines or through the application process.

44 § 6. Member item grants, discretionary funds and unitemized lump sum
45 appropriations shall continue to be subject to review by the respective
46 assembly and senate fiscal and counsel staffs, division of the budget,
47 the administering state agency, the office of the state comptroller, and
48 the office of the attorney general. Nothing in this act shall limit the
49 authority of the state comptroller and the attorney general to review
50 member item grant, discretionary fund or unitemized lump sum appropri-
51 ation recipients or member item grants, discretionary funds and unitem-
52 ized lump sum appropriations.

53 § 7. This act shall take effect immediately.