

## Testimony of Edmund J. McMahon

Senior Fellow, Manhattan Institute Director, Empire Center for New York State Policy

Before the Senate Committee on Budget and Tax Reform December 17, 2009

Thank you, Senator Krueger, for this opportunity to testify today on how to improve New York State's budget process.

New York's 80-year-old Executive Budget law, rooted in Article VII of the state Constitution, has stood the test of time in many respects. But some glaring holes in the law have become more and more evident over the past couple of decades. As a result, the severity of New York State's latest fiscal crisis has been compounded by a lack of budgetary discipline, transparency and accountability.

Specifically, I would point to the following problems:

- There are no binding limits on state spending or debt.
- The Legislature is not presented with and does not generate an authoritative, updated state financial plan at the time it votes on appropriations, revenue bills and supporting legislation. The failure to require such disclosure <a href="before">before</a> legislative action was a significant shortcoming of the disappointing 2007 budget reform law.
- The governor lacks permanent constitutional authority to take the steps he deems necessary to maintain a balanced budget during the fiscal year, even in the face of what he deems a cash-flow crisis.
- The current fiscal calendar is poorly aligned to revenue collection and spending patterns.

Here are three statutory steps for addressing the most glaring shortcomings of the system:

- 1. Impose a binding "72-hour rule" requiring that key information about the budget be publicly available three days in advance of a final vote. This information would include:
  - a. an updated multi-year financial plan prepared by the Division of the Budget in consultation with the Legislature, and
  - b. a joint report in a uniform format for both houses detailing the fiscal impact of changes to the governor's proposed appropriations and revenue bills.
- 2. Mandate budgetary balance according to Generally Accepted Accounting Principles (GAAP), which would disallow much of the timing-related gimmickry that can occur under New York's current (and atypical) cash-basis budgetary accounting.

3. Shift the start date of the fiscal year from April 1 to July 1, matching the norm for other states. Budget-makers would then have additional vital information on the April personal income tax settlement.

Other essential reforms would require constitutional amendments. These would include the following:

- Impose a binding and airtight cap on state spending growth.
- Require voter approval of <u>all</u> state debt, with important exceptions for (a) a small amount of state facility upgrade debt, and (b) borrowing supported by specific project revenue such as tolls, rents and transit fares. In contrast to current law, voters could be asked to approve more than one bond proposition in a single election.
- Shift to a two-year budgeting cycle (biennium) with the main budget adoption occurring in non-election years. The draft resolution prepared by the Senate would do the job, except that it fails to specify that the cycle should begin in an odd-numbered year.
- Mandate that the state budget be GAAP balanced at the time of its presentation and adoption, and that it be kept in balance on a quarterly basis throughout the biennium.
- Empower the governor under limited circumstances to make uniform across-theboard reductions in appropriations, with exceptions for services essential to health and safety, in the event the Legislature first refuses to act on a plan for completely closing deficits projected by the Budget Division during a fiscal year.

Constitutional amendments need voter approval and can only be placed on the ballot after approval by two separately elected Legislatures. Thus, the earliest these reforms could go before voters, assuming legislative approval in 2010 and 2011, would be November 2011.

Some of these changes need not wait for an amendment, however. For example, the next elected Governor could—and should—effectively inaugurate a two-year budget in 2011 by presenting a complete set of two-year appropriations bills along with a financial plan reflecting their amounts on an annual basis.

As you know, Governor Paterson has asserted statutory authority to defer local aid payments based on the so-called "certification provision" that has been inserted in appropriations bills for the past 14 years. In my opinion, he has a compelling argument. No matter how the courts decide, however, in the absence of a <u>constitutional</u> provision giving the governor the power to enforce deficit reductions by the Legislature, needed discipline could be instilled into the process by amending our standard state bond covenants to the effect that failure to correct a projected budget imbalance within a 30-day period would constitute a default event. Presumably this kind of doomsday scenario would be enough compel both the governor and the Legislature to take swift corrective action in a situation like the one the state now faces.

A final comment, relating to the flaw in the 2007 budget reform bill that I mentioned earlier. That bill focused primarily on increasing the amount of budget and financial plan information disclosed to the public and the Legislature by the Executive Branch. But much of the information in question was already available—and, in any case, the Executive portion of the budget process has for at least 14 years been the most transparent and predictable element of the budget process.

Having even more data from DOB is certainly not a bad thing. But a greater problem, I believe, is a long-standing lack of discipline and openness on the part of both houses of the Legislature. Even when legislative conference committees were working at their supposed best in recent years, the process was secretive and unpredictable at key junctures. The Senate and Assembly are not only unaccustomed to sharing information on key budget issues with the public, they are not accustomed to sharing information with their own members. This needs to change.

Changing the fiscal year, which will allow more time for budget consideration and negotiations, should remove one excuse for this lack of transparency. An added reform would be improve the Legislature's staff analysis of the budget. This can be accomplished by replacing the current system of separate, partisan fiscal committee staffs in each house with a professional and nonpartisan Legislative Budget Office modeled on the Congressional Budget Office in Washington, to serve as an authoritative economic forecaster and budgetary scorekeeper.

I would differentiate between this proposal and those calling for an "Independent" Budget Office. I think a new professional budget office will not be effective—indeed, would be a waste of money--unless the Assembly and Senate embrace it, institutionally, as their own.

I will gladly discuss these ideas and their implications for improving the budget process. Thank you