



**Testimony to the Joint Budget Legislative Committee
on Economic Development**

February 12, 2019

Good afternoon Chairs Krueger and Weinstein, and members of the Senate Finance and Assembly Ways & Means Committees. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization which advocates for open and accountable government. I am here today to ask you to do four things:

- 1. Hold a comprehensive series of hearings on the state’s economic development hearings. One day is not nearly enough for \$4B in questionable programs.
- 2. Pass into permanent law the Comptroller’s authority to review certain state contracts as agreed with the governor and included in the operations appropriations for the comptroller’s office.
- 3. Pass the Database of Deals, including uniform definitions of jobs (full-time, part-time, contractual, etc.) for all state programs.
- 4. Clarify in permanent law that Freedom of Information Law applies to all state economic development entities per last years Senate and Assembly budget resolutions.

Overview

Reinvent Albany has been very critical of the state’s \$4 billion a year in economic development spending over the last few years, which too often consists of largely unaccountable, opaque taxpayer handout to businesses that have not proven to be worthwhile and are at a high risk for corruption.

Reinvent Albany believes the state’s economic development programs are severely flawed and need to be substantially reduced and accompanied by major reforms to

increase their accountability and transparency. A mounting body of research from reputable, independent scholars, reveals that corporate subsidies are overall a bad investment of taxpayer funds. We especially point you to the work of Tim Bartik at the UpJohn Institute and Nathan Jensen at University of Texas, who have written extensively on how corporate welfare is used for political gain.

The worst of the worst subsidies are discretionary funds to aid specific companies, like the \$750M spent on the Tesla Riverbend factory in Buffalo which has produced jobs costing a million dollars each in NY taxpayer funds. We urge the legislature to stop appropriating funds for new discretionary economic development programs. They are too often a waste of taxpayer money and vulnerable to corruption.

Before the legislature appropriates a dollar for economic development, it needs to answer three questions: First, does the legislature and public know how economic development funds are being spent? Second, do we know whether they are being awarded fairly and cleanly? Third, is the public getting a good return on their economic development investments? Unfortunately, at the moment, the answers to these questions is “no, no and no.”

This is not free money. Bringing New York State’s public clean water systems, roads, bridges, transit, schools and parks to a state of good repair would cost hundreds of billions of dollars and produce clear value to the public.

This is why economic development spending - which is overwhelmingly subsidies to businesses - needs to be based on facts and clear public value, not pay to play and appeasing favored constituencies. Our groups supports robust public investment and we even support some economic development program like NYSTARS, because it can be independently shown to be cost effective.

Recent Developments

Because of the massive Upstate bid rigging scandal and the controversial \$3B in subsidies proposed for Amazon’s planned new development in Long Island City, Queens, the state’s economic development subsidies are under the microscope like never before.

The Governor’s former top advisor, the former President of SUNY Polytechnic, and corporate executives and campaign contributors were convicted in two major federal corruption trials centered around the bid rigging of billions in state business subsidies. The announcement of \$3 billion in tax abatements and grants to be awarded for

Amazon's future second headquarters in Long Island City, Queens circumvented local land use review and outraged municipal officials, certain unions and a large portion of the community. While the subsidies given to Amazon are not even close to to being the highest cost per job for megaprojects announced by the Governor during his tenure¹, it has opened the public's eyes to the state's secretive subsidy deal making process. Meanwhile, the Tesla gigafactory in Buffalo continues to drastically underperform expectations. Having received \$750 million in state subsidies to build the factory, Tesla has produced a mere 750 jobs by its own count, and far fewer according to its own employees², while delaying production of the solar roof made at the plant amidst company-wide layoffs.³

Greater awareness and the lack of transparency surrounding of corporate giveaways has resulted in some steps by the state. This past month, Governor Cuomo announced during his budget presentation that he and Comptroller Tom DiNapoli had agreed to restore the comptroller's authority to review some state contracts before they are awarded. This announcement came on the heels of the Governor's pledge to the Daily News Editorial Board⁴ and Citizens Union that he would establish a Database of Deals.⁵ The Governor also pledged to ban campaign contributions by vendors doing business with the State, as pointed out by the Times Union Editorial Board.⁶ These promises followed near unanimous bipartisan passage in May in the State Senate of the Comptroller's Procurement Integrity Act and Database of Deals.

Reinvent Albany Requests for the Budget & Beyond

We call on the Governor and legislature to codify the emerging consensus on clean contracting oversight and transparency in statute (the Article VII bills) as part of the Fiscal Year 2019-2020 budget that is already included in the Appropriations bills. More specifically, all of the following reforms should be codified in the budget:

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<https://reinventalbany.org/2018/05/analysis-of-governors-press-releases-shows-costs-to-public-for-business-subsidy-deals-varies-wildly/>

²

<https://www.wivb.com/news/investigates/former-tesla-workers-paint-grim-picture-of-buffalo-plant/1754568826>

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<https://www.wivb.com/news/investigates/former-tesla-workers-paint-grim-picture-of-buffalo-plant/1754568826>

⁴ <https://www.nydailynews.com/news/politics/ny-pol-cuomo-deblasio-feud-20180830-story.html>

⁵ <http://rebranding.citizensunion.org/portfolio-item/governor-2018-general/>

⁶

<https://blog.timesunion.com/capitol/archives/283936/cuomo-forgets-pledge-to-bar-donations-from-businesses-with-open-rfps/>

1. The agreement between the Governor and Comptroller Tom DiNapoli restoring the Comptroller's pre-audit authority and other elements of the Comptroller's Procurement Integrity Act
2. The Database of Deals tracking subsidies received by companies and the targets for and actual jobs retained and created.

We also believe the budget should clarify the Freedom of Information Law (FOIL) applies to economic development entities, as was put in both houses' budget resolutions last year.

Lastly, we support the intent of Senator Gianaris's recent proposal (S.3401) to ensure capital gains taxes are assessed on profits of real estate developers who invest in businesses or develop property in so-called opportunity zones, which can also include wealthy neighborhoods undeserving of a capital gains tax break.⁷

Governor-Comptroller Agreement and the Comptroller's Procurement Integrity Act
The section of the State Operations appropriation bill that funds the Comptroller includes a provision allowing the Comptroller to pre-audit SUNY and CUNY contracts including construction, commodities, computer equipment and printing valued in excess of \$250,000. It also permits the Comptroller to pre-audit SUNY Research Foundation contracts above \$1 million and Office of General Services' contracts above \$85K. The Comptroller must complete the pre-audit process within 30 days of submission of the contract.

Because it is written in the operating part of the budget, this language would only be in effect for one year. It should be made permanent.

S.3984-A/A.6355-A of 2018 (the Comptroller's Procurement Integrity Act) provides a model for amending state law to integrate the changes agreed to by the Governor and Comptroller. There are also several sections of this bill which are also worth considering and not part of the announced agreement or in the appropriations bills. We urge you to consider codifying:

- requiring authorities to follow procurement rules of state agencies
- restricting authorities from contracting with nonprofits for procurement purposes

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<https://www.bloomberg.com/news/articles/2019-02-06/trump-s-opportunity-zones-tax-break-is-under-assault-in-n-y>

- requiring non-competitive contract opportunities be published in the NYS Contract Reporter before they are awarded

The Governor also spoke of a proposal during his budget presentation to require contractors, vendors and grantees with state agencies to certify no collusion or conflicts of interest occurred in state bidding, and disclose family, financial, employment relationships with state employees. This proposal does not appear to be in any of the budget bills.⁸ We call on the legislature to include it in its budget resolutions.

Database of Deals

The State Operations appropriations bill enables the Department of Economic Development to create an online Database of Deals for economic development projects.

A.2334 (Schimminger)/S.2815 (Comrie) of 2019 provides a model for statutory change to create a Database of Deals. The very similar bills were also in the budget resolutions last year of the Assembly and Senate. The language in the appropriations bill in this year's Executive Budget does not contain any requirements for the design and functionality of the Database of Deals, nor does it specify tracking or publication of different types of jobs created or retained or the variety of business subsidies received. In particular, we ask that you put into law uniform definitions of different types of jobs that allows for apples to apples comparisons between the cost per job of various business subsidy programs. We view the uniform definitions of different types of jobs as one of the most important aspects of the legislature's Database of Deals bills.

Applying FOIL to Economic Development Entities

The Assembly and Senate included in their budget resolutions last year proposals to improve transparency, accountability and ethics of entities making or influencing economic development decisions (Part JJ in A. 9508-B and Part KKKK in S.7508-B of 2018). These measures include making certain governmental entities administering economic development subject to the Freedom of Information Law, Open Meetings Law, and the entities' members subject to financial disclosure and ethics rules in the Public Officers Law. We prefer the Assembly's proposal which applies to more economic development entities including Regional Economic Development Councils (REDCs) while the Senate measures are focused exclusively on REDCs. However, we would like the Assembly to clarify whether the definition of "constituent units" in Public Officers Law 73-a(1)(b) referenced by the definition of "economic development entity" in the Assembly proposal would include SUNY and CUNY affiliated not-for-profit

⁸ Governor Andrew Cuomo State of the State Book, Available at: <https://www.scribd.com/document/397531730/2019StateoftheStateBook-2>, pgs 249-250

organizations administering economic development. We believe the Assembly definition of “economic development entity” should be made clearer to include SUNY and CUNY not-for-profits. Both the Senate and Assembly bills also establish a code of ethics for members of economic development entities (exclusively REDCs for the Senate’s proposal). The Assembly version is best because it requires adherence to Public Officers Law section 74. The Senate bill only requires a code of ethics be modeled on Public Officers Law section 74. However, the Senate version requires training of members by the Authorities Budget Office, which is absent from the Assembly version. We support the training being included.

Reducing federal capital gains tax break on real estate development in opportunity zones.

President Trump’s 2017 tax law provided yet another tax break for real estate developers who can already access many state tax benefits. Trump’s tax break enables real estate developers who invest in businesses or develop property in so-called opportunity zones to eliminate or defer capital gains taxes on profits elsewhere. Opportunity zones are areas designated by states where 20 percent of households live below the property line yet development and investments in neighborhoods near the impoverished zones can also qualify for tax breaks.

We believe the state should not be providing more tax breaks to developers who can already take advantage of many tax breaks in law that are overdue for close examination and revision. We support the intent of Senator Gianaris’s bill eliminating the state portion of the capital gains benefit for the ill-advised Trump tax break, and call on the legislature to include this in the budget. The state should not increase tax expenditures to wealthy developers at a time when state income tax receipts are over \$2 billion short of their target.

Thank you and I welcome any questions you may have.