

STATE BUDGET PROCESS

Spurred by a continuing budget crisis in New York State, delegates to the 1991 state League convention adopted a study of the New York State budget process. The inability to determine the true state fiscal status compromised the effectiveness of the League in lobbying for League positions such as financing education, affordable housing, child care and Medicaid funding for abortion. Delegates felt that the League should be able to comment on such fiscal and budget practices as "member items," or the use of questionable revenue enhancers like the selling of highways and prisons in order to make the state's accumulating deficit seem smaller. During the two-year study, League members examined the process, by which the state adopted its budget, including budget timetable, format, public involvement, accountability, revenue forecasting, bond ratings, budget caps, and the like. In January 1993, the state League approved a position, which emphasized timely passage, responsiveness, and open process.

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Statement of Position

As announced by the State Board, January 1993

The formulation and passage of the state budget is one of the most important functions of state government. The League of Women Voters of New York State believes that the state budget process requires reform so that it will be both timely in passage and responsive to the state's various constituencies. In order to affect these goals, changes in the budget process should cover reforms in how the state allocates spending and plans for revenues.

STATE BUDGET PROCESS**Statement of Position****As announced by the State Board, January 1993 (continued)**

The League supports measures to provide:

- A clear concise budget document;
- A balanced budget according to Generally Accepted Accounting Principle (GAAP);
- More accountability for member items;
- Public disclosure of off-budget items;
- Consensus revenue forecasting;
- Joint conferencing;
- Adequate funding and sunset provisions;
- Periodic adjustments to the budget;
- A three-year financial plan;
- Use of the prior year's budget on an interim basis if the new budget is not passed by the start of the fiscal year; and
- For Agency budgeting process to be open to the public.

The League opposes measures, which would:

- Place a cap on budget growth;
- Require a super-majority for tax increase;
- Replace an annual budget with a biennial budget; and
- Adopt the governor's budget in lieu of timely passage.

The League supports a budget process that requires consensus revenue forecasting and compromise through joint conferencing by a committee from both houses. Such changes would reduce some of the political maneuvering and expedite the budget process. We support adequate funding and sunset provisions, in addition to the required fiscal impact statement, for all fiscal bills in order to guarantee the funding source and provide regular review. An established review process would determine a bill's effectiveness and need for continuation and would prevent yearly "spending creep." We oppose placing a cap on budget growth, requiring a super-majority vote to increase taxes, or changing from an annual to biennial budget. The above reforms, coupled with a requirement for a three-year financial plan would help reduce state spending in reaction to yearly political pressures and provide a mechanism for analyzing the long-term impact of spending. To reduce emergency situations at mid-year or year's end, periodic scheduled adjustments to the budget should take place during the fiscal year. In order to gain a truer picture of the state's financial condition and to limit budget "gimmicks," the constitution should be amended to require a balanced budget according to GAAP, as submitted by the governor and passed by the legislature.

STATE BUDGET PROCESS**Statement of Position****As announced by the State Board, January 1993 (continued)**

“Member Items,” or legislative initiatives, are recognized as a part of the state budget; however, the process of awarding them must be reformed. All member items must include:

- 1. Presentations of need and costs in order to obtain legislative approval;**
- 2. Public disclosure and accountability; and**
- 3. Formal review before re-awarding.**

In the event that appropriations bills are not passed before the beginning of a new fiscal year, the governor’s budget should not be automatically adopted as the final year’s budget, nor should the legislature be prohibited from conducting business. Instead, an interim budget should be required, based on the figures from the prior year adjusted for inflation and certified by the comptroller.

The budget process should strive for openness and citizen involvement, requiring:

- 1. Agency budget requests and agency budget hearings held by the Division of Budget to be open to the public;**
- 2. A budget document which is more lucid, concise, understandable, and which clearly identifies non-recurring revenues; and**
- 3. The same degree of public disclosure and scrutiny for “off budget” items (i.e., public authorities and special revenue accounts) as for the Executive budget.**

Note: This budget process position covers only the executive budget. (See Legislative Procedures under Government section.)

Testimony on reform of the NYS budget process was given before the NYS Minority Task Force on Legislative Reform in March 1993.

In 1994 and 1995, the League supported Assemblywoman Sandra Galef’s proposal for a constitutional amendment to implement the previous year’s budget in the event a budget is not enacted by April 1. Other Galef reform proposals supported by the League in 1995 were limitation on the number of bills introduced, and legislation to open conferences.

The League sent a letter with NYPIRG and Common Cause (March 29, 1995) urging the leadership of both houses to use the public and open process of a joint conference committee to debate and develop a state budget. Such a joint conference was used to negotiate the 65 m.p.h. speed limit, but after one budget joint conference, the process was dropped and budget negotiations returned to the leadership-closed circle. (See Legislative Procedures under Government section, Joint Conferencing.)

In July 1995, Senate Majority Leader Bruno announced his intention to introduce a package of budget process reform legislation in the next session.

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During the 1996 legislative session, the legislature passed and the governor signed legislation, which would call for joint revenue forecasting to be in place by March 10, 1997.

Also, during 1996 the leadership, under pressure from the League and other good government organizations and the media, held an open leadership budget meeting, which was universally considered staged and unproductive and was never repeated. No open leadership meeting or joint conferencing was done during budget negotiations in 1997. Beginning with the 1996 budget negotiating session, the practice of tying the budget to a political issue became apparent. The issue in 1996 was reform of the workers' compensation laws. Once that issue was resolved, budget negotiations began in earnest and a budget was enacted 104 days late.

In 1997, the League again supported Assembly member Galef's proposal for a constitutional amendment to implement the previous year's budget if a budget is not adopted by April 1. This legislation was sponsored in the Senate by John DeFrancisco and had wide bipartisan support. With League support, it passed in the Senate but was not addressed in the Assembly. The League subsequently did much press work around this issue. The League continues to call for joint conference committees; more input from rank and file legislators, and a three-year financial plan to reduce state spending in reaction to yearly political pressures. Without reform measures in place, the 1997 state budget was a record-breaking 126 days late. The practice of holding the budget hostage to one political issue continued during the 1997 session, the issue being rent control legislation for New York City and suburbs. Because of the continued overwhelming lateness of the budget, pressure from the media, and the League, all three leaders have vowed, publicly to reform the budget process in the next legislative session.

During the fall of 1997, the Assembly Speaker held hearings statewide on the budget process. The League was invited by the Speaker to attend and testify at all the hearings.

Because of local League participation at every site across the state, the League received much media attention and became the lead organization on reform of the budget process.

During the League's campaign to defeat the ballot question, "Shall there be a constitutional convention?" it was evident that citizens' main impetus behind wanting a convention was the frustration over the chronic late state budgets. This plus the League's constant drumbeat on budget process reform and the forthcoming 1998 elections prompted the Legislature to begin the 1998 session in a budget process reform mode. Although the March 10 statutory deadline for revenue forecasting was not met, the legislative leaders made good on their public vow to hold open joint conference committees.

Beginning in early April 1998 and lasting for 10 days, general conference committees made up of the two leaders, their finance chairs, both minority leaders and the most senior members of the leadership met in open public session with legislators, lobbyists and the press present. It was pure political theater and the seats to this event were prized. It was held in a hearing room of the Legislative Office Building (LOB), too small to accommodate every one who wished to watch it. The League, because of the very public position on reform was given a front row seat.

For 10 days, nine subcommittees met all over the capitol and LOB. These were made up of rank-and-file legislators who were anxious to have input into the budget making process. Subcommittees were formed according to subject area; i.e., Health Committee, Education Committee. Minority legislators finally had a voice and they quickly became good at articulating their fiscal priorities. When recommendations and appropriations to implement those recommendations being given to the General Conference Committee, there was standing room only in the hearing room. Lobbyists were jammed into every corner and on every step. Some people waited in line outside the hearing room for an hour or so to get a seat.

✓ The budget passed just nine days late and there was a general euphoria among members, lobbyists, and the press that had taken a first step toward something good. The leaders vowed they would never go back to "three men in a room" budget making. One week later, the euphoria turned to anger and depression. The governor felt that he had been left out of the process and so he used his veto pen to strike out all Democratic (Assembly) additions that also were not Senate additions; Pre-kindergarten, monies to ensure small classroom sizes additional monies for family planning and other Democratic additions. Much to the chagrin of the Assembly, Governor Pataki also vetoed Democratic member items but left Republican member items intact. The Assembly was not able to override the governor's veto and a very distrustful and angry atmosphere would carry over to the 1999 budget session.

* During a mid December 1998 session to address expiring legislation, the Assembly and Senate agreed to a trade with the governor to obtain a 38 percent pay raise for legislators and judges. The governor's salary was also increased. In exchange for these raises and as a cover for expected citizen outrage they agreed to withhold their salaries if the state budget was not passed by the April 1, 1999 deadline. In a middle of the night session, also in exchange for the 38% pay raise, the Governor extracted legislation creating Charter Schools. The League lobbied extensively during that all-night session to achieve some accountability for Charter Schools. (See the section entitled: Tuition Tax Credits, Vouchers, and Charter Schools in the State Finance Section, page 136)

The 1999 budget process began with the anger and distrust of the end of 1998 still very evident. The governor's budget of approximately \$72 billion did not address the universal Pre-K monies, health care monies or education monies desired by the Assembly and to a degree by the Senate.

✓ The March 10 statutory deadline for forecasting of available revenues was not met and the political posturing, nastiness and distrust continued. On April 14, legislators received their last paycheck, although the governor continued to be paid. The League, along with NYPIRG and Common Cause sent recommendations to the majority and minority leadership to further reform the budget process. Over a period of seven months, we sent three letters and heard only from the minority in both houses. Following much media work and extensive grassroots lobbying, the "budget process" began in early August ending 126 days late tying the record for late budgets. The "process" of holding three-day conference committees was little more than a sham done just to say they had not done the budget with "three-men-in-a-room." In reality, that is exactly what happened. The leadership and the Governor's staff made all major decisions. What had begun in 1998 with such promise had deteriorated back to a process no different than previous years. The fear of a governor's veto resulted in a deal being made to keep the process behind closed doors between just the three leaders. Following the August 4 budget passage, no line item vetoes were done but an open, accountable process had become the victim.

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The budget in 2000, because it was an election year, contained lots for everyone; there was an increase in school aid, family planning services were expanded up to 200% of federal poverty level. This increase made the program secure, particular to League interests. There was also an increase of \$1.5 million to the 2000 budget in family planning services. Debt reform was the outstanding issue and it was finally resolved, but in a less than satisfactory way according to most independent budget analysts. The main issue had been over whether the first passage of a constitutional amendment limiting such things as "backdoor-borrowing" should be done this year.

Second passage would be in the 2001 newly elected legislature and it would go to the public in statewide ballot. The leaders could not agree to a longer commitment to debt reform and Speaker Silver had only agreed to first year passage. Bond raters told the leadership that something immediate must be done to keep NY's bond rating from falling like it had been doing. Subsequently, there is now a two-year statute with a ten-year phase-in of caps. However, a future legislature could repeal and/or modify the statute at will.

After an eight-month long budget battle that encompassed nastiness among the parties not seen in two decades, no budget activity, no joint conference committee work, nothing was accomplished. On August 2, 2001 just before midnight, the New York State Legislature sailed headlong into uncharted waters! Into the first hours of August 3rd, legislators passed an austere "bare-bones" baseline budget. They also refused to pass an 800-page amendment by the Governor, setting up a power struggle between the Legislative and Executive branches of government.

The Legislature said their "bare-bones" base-line budget was a budget and would have provided stability to the state while legislators and the Governor negotiated a supplemental budget. They also said it would allow state government to function responsibly (without coming back every week to pass budget extenders). The Comptroller said that although it was not a good budget, it was "sufficient for the ongoing operations and support of state government" (legislators can now get paid). The Governor said that it was not a budget, was illegal, and could cripple the operation of state government; he threatened to sue the Legislature.

This new budget also changed some of the traditional political alliances in Albany, pitting Republican Majority Leader Joe Bruno against his Republican Governor and with his usual nemesis, Democratic Assembly Leader Sheldon Silver. The Legislature intended this base-line budget to shift the political dynamic in Albany and give the Legislature more leverage with the Governor to bring him to the table to negotiate a supplemental budget. Under a 1993 state Court of Appeals ruling the Legislature can only increase or decrease the Governor's spending plan, but can't change the wording of his proposals. Once a budget is in place, however, the Legislature has the authority to initiate it's own spending bills. The strategy of the Legislature was to gut his budget proposals of all the economic and other initiatives he wanted and thus force him to the table to negotiate with the Legislature. A supplemental budget would then be negotiated on more equal footing. Under this bare-bones budget, but after August 31st, the state won't be able to incur new obligations for capitol projects, thus halting approximately \$3 billion in new monies for roads, bridges, and infrastructure repair. After September 15th, all "reappropriations" would have been eliminated. These were monies that needed to be reauthorized for programs begun in previous years such as the Adolescent Pregnancy and Prevention Services Program; many other not-for-profit social services programs including domestic violence programs, homeless shelters, and food pantries, and by October 31st, the Child Health Plus Program will run out of money.

On September 11, 2001, terrorists attacked the World Trade Center and life, as we knew it in New York State was changed. Both houses of the legislature united with the Governor and issues intransigent before September 11th no longer had the same political significance.

Therefore, in an emergency session called by the Governor on September 19, reappropriations were approved, Child Health Plus was extended, and a resolution condemning the terrorist attacks was passed without any significant debate. The events of September 11th and the massive destruction to lower Manhattan created a nine billion dollar deficit. Any prospect for a supplemental budget crumbled with the World Trade Center.

Budget process reform has continued to be an issue of longstanding League concern. The state budget has been late for a remarkable 19 straight years. As was expected in the post September 11th atmosphere a two-year budget shortfall of 6.8 billion occurred because of the WTC disaster and the recession. There were lost revenues resulting from the impact on financial services, banking, insurance, and the tourism industries. The Governor proposed to meet the shortfall by using some of the reserves built up over the last seven years. The budget shortfall was projected to be 1.1 billion in the current year and 5.7 billion in 2002/2003. Reduction of the state work force through attrition and early retirements, maximizing federal revenue supports were proposed to close the gap.

The 2002 budget session was characterized by an off budget health care package negotiated between the Governor and Local 1199 of SEIU. This included legislation, which would increase Medicaid payments over the next three years to hospitals and nursing homes throughout the state. It was widely speculated the Governor in anticipation of a re-election bid had negotiated this legislation in exchange for the endorsement by this large union. No budget reform measures were enacted in this session and most importantly, no joint conference committees were held. The public statements by both legislative leaders and the Governor that they would never go back to "three men in a room" appear to be lost. The budget was again negotiated by "three-men-in-a-room".

Court Ruling on Governor's Suit Against the Legislature on the Budget

In an important decision, which might alter the way future budgets are negotiated, a State Supreme Court Justice ruled that the Governor, not the Legislature, has the authority to alter the language on budget bills. The Governor had argued in his suit (August, 2001) that the NYS Constitution allows him to insert policy changes to state law into appropriations bills and that the Legislature is barred from making changes to that language. Legislative leaders appealed the decision to the Court of Appeals. The lower court decision was upheld and the Governor's powers were strengthened. Meanwhile, the judge stayed his decision until a higher court can review it. This issue arose during the 2001 budget process over Medicaid, education, and the Environmental Protection Fund.

The 2003 budget session was the most interesting in many years. It was characterized by Governor's vetoes and Legislative overrides that increased money for school districts, health care, and many not-for-profits. Notable, however, is that there were again no budget reforms enacted. The budget continues to be negotiated by "three men in a room" or more accurately this session by "two men in a room". As a result, of the budget overrides, the animosity between the legislative leaders and the Governor was palpable and continued throughout the session.

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✓ The overriding issue for the 2004 legislative session, as with the previous twenty sessions, was the perennial late state budget. For several years, the League had been extremely vocal about reform of the state budget process. We supported specific reforms including:

- An independent budget office (IBO);
- A clear concise budget document;
- Public disclosure of off budget items;
- Consensus revenue forecasting;
- Joint budget conferencing;
- A three-year financial plan;
- Agency budgeting process open to the public;
- Use of a contingency budget if a new budget is not passed by the start of the fiscal year.

A League budget reform measure, the enactment of a contingency budget, would require a constitutional amendment. If a budget were not adopted by May 1, this reform would require the automatic imposition of a contingency budget that would continue the previous year's budget for the ensuing fiscal year pursuant to statute. If a revenue shortfall is forecast, and the Legislature does not act, appropriations in the contingency budget may be modified to ensure a balanced budget, pursuant to Legislative authority. This reform would require first passage this session and second passage in the new legislature next session. It would then go on the ballot in November 2005. The Governor does not get to act on a Constitutional Amendment. It is widely believed that this specific reform is the legislature's attempt to reestablish itself as more of a co-equal with the Governor in budget negotiations. Legislation should be out by the end of April.

As referred to above, both houses did reach agreement and passed (first passage) a constitutional amendment on a contingency budget. However, the Governor does get to act on implementing legislation of a Constitutional Amendment. In late November 2004, the Governor did veto the implementing legislation, which then set up legislative override possibilities. The Senate, because it passed the legislation first, by law would have to override the Governor's veto first. Majority Leader, Joseph Bruno, publicly stated that his house would override the Governor's veto during a special session in December. That did not occur and the speculation was rampant that the Governor had threatened and cajoled several Republican members of the Senate. When the Senate returned four days before Christmas, Mr. Bruno again publicly stated that the Senate would be overriding the Governor's veto. After a very lengthy party conference on December 21st the Senate announced that instead of overriding the Governor's veto they would pass compromise budget reform legislation. This legislation was passed along a straight party line vote in the Senate and because it was one-house legislation, it died on December 31, 2004. The session ended with the status quo "no budget reform."

✓ During the regular session of 2004, the Senate and Assembly had passed similar to, but not identical budget reform bills and following League urging convened joint conference committee to attempt to resolve their issues. These joint conference committees were fascinating to watch and reassuring in the fact that rank-and-file legislators can think through and negotiate very complex issues. These open negotiating sessions were so instructive that the League suggested to the leadership that they be televised statewide.

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Four hours before the start of the new fiscal year on April 1, 2004, the joint conference committee announced its reform recommendations. Most of the recommendations were right on point with the League position on budget reform. A great League victory! The outline for reform is as follows:

- All agency requests will be made public prior to submission of the executive budget;
- Three-year financial plan;
- Enhanced fast start (similar to the Leagues recommendation of revenue forecasting);
- Creation of a joint independent budget office;
- "Off-budget" items such as HCRA included as part of the state budget (an issue the League strongly advocated for);
- Fiscal year will move from April 1 to May 1.

However, an on time budget was not to be. Budget negotiations dragged on for the entire 2004 legislative session with no agreement. Because the scenario in Albany that "nothing is done until everything is done," other issues became entangled with CFE case and the budget, subsequently nothing was accomplished. The legislature left Albany with a six-week budget extender ending August 1st.

Finally, in mid-August, the budget, which was the latest in the state's history, was passed by the state Legislature. However, a week after the legislature left Albany, Governor Pataki vetoed 195 appropriations given to him by the legislature.

There are several reasons why the 2005 state budget was on time. First and foremost, the voters in New York State get the greatest credit for an on-time budget. Their frustration level after 20 straight years of late budgets was taken out at the ballot box last November when three incumbents lost their seats primarily on the reform issue. Many candidates who ran for open seats also ran on reform platforms and won. Legislative leaders knew that this was the year they had to bring a budget in on time and so began to work together toward that end.

✓ Of course, the Court of Appeals decision last December which gave the Governor total control over constructing a budget helped focus them. The Court of Appeals ruling was the result of lawsuits going back to 1998 and 2000 in which the Assembly Speaker and then the Legislature sued the Governor for creating policy within the budget. The Court said that the Governor was the "constructor" of the budget and the Legislature could add, delete, delay or negotiate but could not "substitute" for the Governor's language in the budget. Another reason for the on-time budget was the Governor's own poll ratings. His job approval was lower than it had been at any time in his tenure; he also needed to look like a reformer and he could not let his legacy be one of never having an on-time budget during his Governorship.

| The actual 2005 budget process was fascinating to watch. The Governor gets credit for pushing open the leaders meetings that were held in the red room on the second floor of the Capitol and were actually open (we had to push our way into the first one). They included the two minority leaders so there were actually five men in a room and perhaps five is their lucky number because the minority leaders did seem to have a calming effect on the usually caustic atmosphere around the Speaker and Governor. Having all the press and reform advocates in the room avoided stalemates or stonewalling. They could not just cross their arms and refuse to negotiate. A time frame was set up and followed.

✓ The joint budget conference committees were done in a very short time and were in many respects nothing more than a reporting mechanism to report what the staff had negotiated in private.

Rank-and-file legislators did get to articulate broad policy guidelines during these conferences. The budget was passed on March 31, 2005 in both houses. Following the April 1 deadline, when the spotlight receded, the hard negotiations for the "big" issues that had been taken off the table during the open process actually began. Funding for \$1.1 billion was still out there for the TANF (temporary assistance to needy families), Environmental Protection Funds, and HAVA money to fund voting machines and the statewide voter database along with Medicaid issues. Those issues did finally get resolved 11 days later and the budget was finally done. That scene was much more typical of the Legislature; it was done at night with the bills warm from the copying machine. CFE funding was not included in the budget. The Governor has appealed the decision of State Supreme Court that had taken the recommendations of the Special Masters. That appeal will now go to the Appeals Court and then to the Court of Appeals. The Legislature did agree to \$880 million more in education funding in this budget, but they did not change the funding formula.

✓ The League has long lobbied for a timely and responsive budget. In the 2004 session we were able to secure first passage of a constitutional amendment requiring a contingency budget of the previous year's funding level go into effect if no budget passed by the beginning of the fiscal year. In 2005 the Assembly and Senate, gave second passage to this amendment paving the way for voter approval in November. Also included in this amendment is a change of the fiscal year from April 1 to May 1, an independent budget office (IBO) that would project available revenue eliminating the perennial Albany problem of the three principles never agreeing on available state revenues. The legislature last session was unable to override the Governor's veto. The legislation was again passed this session by both the Senate and the Assembly and again vetoed by the Governor. Early in May, the Senate did override the Governor's veto. Eight Senate minority votes were needed for the 2/3 override. The League worked hard to get these eight votes necessary for the override. In a press conference, Mr. Bruno publicly thanked the good government groups, especially the League, for their help with this legislation. The Assembly had also committed to overriding the Governor's veto.

The voters in the November 2005 election by a 2-to-1 margin defeated the contingency budget legislation, known as Proposition One. All of the major editorial boards in the state, the Governor, and the Comptroller opposed this ballot proposition. Governor Pataki mounted a television campaign, which the League and its good government partners did not have the resources to respond to. Therefore, the 2006 session began with no budget reform enacted.

The 2006 budget session was characterized by election politics. Because neither the legislature, nor the Governor wanted to be seen as "dysfunctional," the budget was enacted on time. CFE continued to dominate the budget negotiations. No budget process reforms were enacted.

✓ Following the election of a new governor in November 2006, budget reform once again became a priority issue. Chapter One of the laws of 2007 became a three-way, agreed to, budget reform law. Unfortunately, this agreed to legislation was negotiated behind closed doors, but it did contain most of what the League had been advocating for over the past two decades, with one notable exception, an IBO. The League and its coalition partners had long advocated for an independent budget office

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(IBO). Rather than an IBO the agreed to legislation specified that the Comptroller would be the final arbiter for available state revenues. The legislation as passed into law contains the following:

- "Quick start" budget discussions will be required each November and quarterly meetings will be held thereafter between executive and legislature;
- The consensus revenue process will be expedited;
- The State Comptroller will be authorized to resolve disputes over revenue;
- Plain language impact statements will be prepared on a range of program areas, including funds for TANF, Medicaid and Environmental Protection Fund;
- ✓ • Requires joint budget conference committees within 10 days of submission of the Executive Budget;
- The legislature will be statutorily required to enact a balanced budget;
- The legislature will be required to explain fiscal impacts of changes it makes to the governor's budget bills;
- Lump sum appropriations, including "member items," will be itemized.

There will be a new "rainy day" fund, setting aside three percent of the General Fund in reserve, which will be added on top of the current two percent "rainy day" fund for a total of five percent. The new fund can be used in the event of economic downturn or disaster.

✓ The legislature was able to pass a budget by the April 1, 2007 fiscal deadline. However, we were extraordinary disappointed in the budget process as it was done behind closed doors by the usual three-men-in-a-room. We severely criticized the Governor and leadership and were assured by the Governor that he had gotten our message and this would be the last year of a budget done primarily in secret by leadership only.