

Fiscal 2006 Preliminary Budget Response



Part IV Capital Budget Response

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CAPITAL BUDGET RESPONSE

This volume of the Council's budget response presents the Council's response to the Administration's Fiscal 2006 Preliminary Capital Budget. Just as in the Council's response to the Administration's Fiscal 2006 Preliminary Expense Budget, education is the Council's first priority in the Capital Budget. On March 23, 2005 the Council amended the capital budget to replace delinquent State funds with City funds in order to fully fund the first year of the current Five-Year Education Capital Plan ("Five-Year Capital Plan" or "Plan") and save \$1.3 billion in proposed projects from elimination and \$781 million in repair projects from delays. However, the Council must safeguard its commitment to the City's schoolchildren to provide them with adequate facilities in which to learn, and must commit to provide students going on to higher education at City Universities with the best higher education we can give them. Finally, the Council also proposes to increase funding for affordable housing programs.

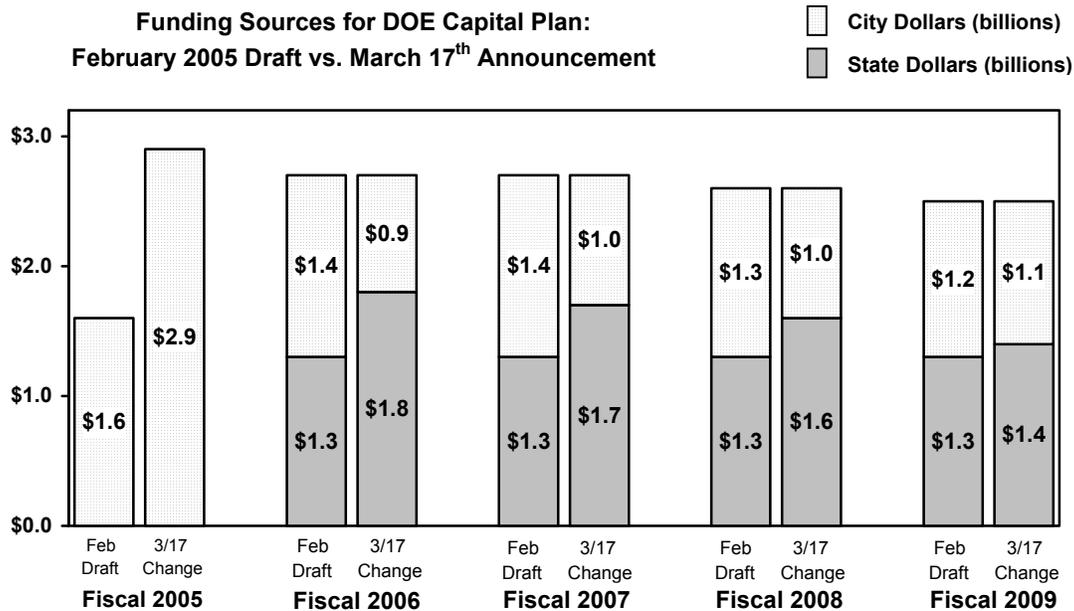
This volume presents proposals for (1) safeguarding our commitment embodied in the Five-Year Capital Plan from further cuts by the State and/or Administration; (2) improving the system through which school capital projects are carried out by streamlining requirements and injecting competition into the process; (3) undertaking a similar five-year commitment to our City University System which will allow it to leverage up to hundreds of millions of dollars in available but unused State funding; and (4) increasing funding for affordable housing by \$25 million a year over four years. In addition, Part one of this volume reviews the capital budget process and points out instances in which the Administration's failure to adhere to certain requirements and to provide certain information undermines the Council's capital budget adoption and oversight roles.

EDUCATION CAPITAL – IMPLEMENTING THE PLAN

With the announcement on March 17, 2005 by the Mayor to restore the proposed \$1.3 billion reduction in the Education Capital budget for Fiscal 2005, along with the Council's immediate action of adding \$1.3 billion in appropriations on March 23, 2005, thousands of school repair projects that would have been removed or delayed by the Administration's proposed Five-Year Capital Plan amendment are now moving ahead. While this is a victory to celebrate, it is only the first year of a five-year plan filled with funding uncertainty. The restoration of these funds also comes near the end of the fiscal year, which raises serious questions about whether these projects can be committed as scheduled before the end of June 2005. Although the School Construction Authority (SCA) has maintained it can fully implement the additional \$1.3 billion in projects added in this fiscal year, it is unclear if these projects have been properly scoped and designed to assure they are done efficiently with limited cost overruns.

The Council will conduct oversight to determine the status of all the projects that are to be committed in Fiscal 2005. At this time, Council members are waiting to review a new draft amendment to the Plan, which will be released later this month.

In response to the Council’s request that the City replace the delinquent State funds so that the current year of the Five-Year Capital Plan can remain funded, the Administration has “fronted” the State’s share of the Plan using City funds from later years. As such, the manner in which the Mayor has agreed to restore the funding for Fiscal 2005 creates a larger reliance on State funding for each of the four remaining years of the plan (see chart).



The Adopted State Budget does not include any capital funding for education. The State’s failure to appropriate funds will create a \$1.8 billion shortfall in Fiscal 2006, the second year of the Five-Year Capital Plan. If unchanged, this scenario will create a new and larger crisis for the Five-Year Education Capital Plan and budget in Fiscal 2006.

KEEPING THE PLAN ON TRACK

It is imperative that the Five-Year Capital Plan remains on target. The previous five-year education capital plan, adopted under the old school governance regime without Council approval, was universally recognized as a failure. That plan was initially cut by about one-third from what was initially proposed by then-Chancellor Crew. Then, half-way through the Fiscal 1999 to 2004 plan period, over \$2 billion in projects had to be eliminated due to cost overruns and mismanagement. That left the City in a situation last year where it was beginning a new plan period, without having done much of what the previous plan set out to accomplish. Because of this, the projects identified in the current adopted Five-Year Capital Plan could not cover all the facilities improvements necessary for the City’s school system. Therefore, we cannot let this Plan slip and must be as diligent and creative as necessary to insure that the current Plan remains whole.

Creative Financing

The SCA builds schools using the City's capital borrowing power, which can become limited due to borrowing ceilings. Alternative and innovative ways to finance school construction need to be developed. Other methods that have the benefit of placing the responsibility for construction on private or non-profit organizations can create greater competition in addition to increasing borrowing capabilities.

The Council recommends that the City explore the following alternative financing models:

- Have non-profits construct buildings using State authorities' bonding power to issue bonds covering the costs of construction, and have the City lease the buildings from the non-profit. Construction costs would be lower because such private entities are not bound by the bidding and procurement rules that drive up costs for the SCA. At the end of the lease, the City would take title to the building at a lower overall cost than if the SCA had constructed it alone.
- Create a task force of members of the real estate industry to determine what factors currently deter developers from assisting the City in constructing schools and what incentives would encourage them to do so.

MAKING EVERY PENNY COUNT: IMPROVING COST-EFFICIENCIES AT THE SCHOOL CONSTRUCTION AUTHORITY

The SCA has improved since it was given many of the responsibilities previously held by the former Board of Education's Division of School Facilities. However, the SCA still lacks the capacity to complete all work in the Five-Year Capital Plan (especially in light of the added appropriations made by the Council on March 23rd, to fully fund the current Plan year). Moreover, the SCA has a track record of failing to complete school buildings on time and on budget. With few outside pressures or incentives to improve its efficiency, and hamstrung by unnecessary red tape, the SCA is likely to be unable to accomplish its mandate under the current Five-Year Capital Plan. The Council, therefore, makes the following recommendations, some of which may need State law changes, to streamline and increase efficiency for school construction and repairs.

Competition

In order to increase the volume of work that can be accomplished and provide competitive incentives to improve the quality of the SCA's work, the Council recommends that:

- Twenty percent of new construction, renovation, and leased space build-outs be completed by organizations other than the SCA, such as nonprofits, private developers or other government agencies.

The largest component of this building competition should be in the construction of High Performance Schools described in greater detail below.

- The City must come up with a way to attract more contractors to bid on school construction repair projects. Incentives or direct appeals for the larger construction firms to offer resources and expertise for a plan to complete repair projects efficiently must be developed. The practices of buying with unit pricing and offering packaging bids should be increased. It is imperative that the SCA streamline the contracting and payment processes. Again, as in our recommendation for new construction, the use of non-profits and others entities to assist in repair projects should be considered.

Reform Procurement Practices

Many of the SCA's procurement practices hinder its ability to be efficient or attract enough bidders to do the work. Many of these practices were put in place in order to prevent corruption and nepotism. However, there are less restrictive practices that will safeguard against these concerns while allowing for the flexibility and management autonomy to negotiate lower costs.

The Council recommends the following procurement reforms:

- Move to a system of negotiated, open bidding for major construction and repairs, which would allow the SCA to negotiate with bidders, find flaws in plans, obtain feedback from experts, and foster a cooperative atmosphere between the SCA and its contractors.
- Provide time-based performance incentive bonuses and delay penalties in all contracts.
- Move to a "round robin" system of awarding minor contracts to pre-qualified contractors, so that as funds become available, the SCA can negotiate price and performance with a single contractor, while still giving all contractors a fair share of SCA contracts.
- Allow the SCA the ability to pick a bidder other than the lowest bidder where it can document that a lowest bidder would be inefficient because of quality issues or problems in the bidder's past performance.

Mixed-Use Buildings

Siting new buildings is a significant problem, especially in built-up neighborhoods. Cost of land and construction can be high, as well. The City can solve these problems by encouraging private developers to build mixed-use facilities that include schools. The SCA can pay developers outright for raw space, semi-finished space, or even a complete, turnkey school building.

The Council recommends that the City create and encourage mixed-use space that includes a school facility in the following ways:

- Offer developers tax incentives.
- Offer developers zoning bonuses (similar to inclusionary zoning to create affordable housing).
- Negotiate whatever other set of incentives would make building a mixed-use school building economically viable for developers.
- Eliminate the Wicks law requirement imposed on the Education Construction Fund (ECF) and review other ways to increase the use of ECF.

A study should also be undertaken to determine the feasibility of applying some of these incentives to the building of schools outside of the mixed-use context. For example, one question that should be studied is whether an incentive program could be crafted in a manner so that a developer with a project in Manhattan could be offered certain incentives on that project, in return for the construction of a school in Queens.

Modernize Design Standards

The SCA currently builds schools to meet a complicated maze of design standards. These design standards mandate both square footage per student requirements, mechanical specifications, and materials requirements. The City's Department of Buildings has its own set of design standards for schools (called Use Group G) that are significantly more streamlined and less costly to comply with.

In order to develop more cost-effective design standards, the Council recommends that the SCA's design standards be reviewed, with Use Group G as a model, and revamped as needed.

High Performance Schools

The desire to create competition in building new schools is a tremendous opportunity to build high performance schools in a public/private or non-profit partnership arrangement. By incorporating green technologies in building schools we can ensure (1) safe places for children to learn (2) cost-efficiency for the taxpayers and (3) the addition of new resources to meet our capital needs.

High performance schools improve child health, safety, and academic achievement, while saving energy, resources and money. There are six primary benefits of high performance schools¹:

- Higher test scores
- Increased average daily attendance
- Reduced operating costs
- Increased teacher satisfaction

¹ California Energy Commission, "Recommended Best Design Practices For All New Public Schools." Commission Report. September 2003. Page 5.

- Reduced liability exposure
- Reduced environmental impacts

Several states have promulgated and mandated high-performance standards for school facilities. High performance facilities are rapidly emerging as a cost effective means of addressing these problems, regardless of location, local development patterns, density, or climate.

A Public/Non-Profit Partnerships model similar to the “Take the Field” Initiative should be implemented to construct such high performance or “Green Schools” especially in areas with high asthma rates. Asthma is the leading cause of school absenteeism and has been connected to poor academic performance.

The Take the Field initiative is a public/non-profit partnership that has raised over \$35 million of private sector funds to renovate 40 playing fields throughout the City. Take the Field is a not-for-profit that has a contract with DOE giving it the responsibility of raising a portion of the funding to build the highest quality fields and, more importantly, the authority to oversee all field construction. The contract allows for pre-qualified bidding with union contractors, and more flexibility in picking bidders, thus improving the quality of field construction.

“Green buildings” have tremendous environmental, health, educational, and financial benefits. Because they make use of natural lighting, heating and cooling, they cost significantly less to operate each year without costing significantly more to build. Advocates estimate that over a span of 20 years, the economic value of building green is \$50-60 per square foot, which is two or three times the five percent cost premium associated with building green. Green buildings, using non-toxic materials and supplies, also reduce children’s health problems such as asthma, and have other benefits.

HIGHER EDUCATION

The City University of New York (CUNY or the University) is the largest municipal university system and the third largest public university system in the nation. The University is a conglomeration of ten senior colleges, six community colleges, a graduate center, a technical college, a law school, an affiliated medical school, and the CUNY-sponsored Hunter Campus schools. While the State assumes 100 percent responsibility for capital funding and operation of the senior colleges and schools for advanced studies, the City and State split the financial responsibility equally (50 percent each) for capital funding of the University’s six community colleges and Medgar Evers College. State capital funding for the community colleges cannot be spent unless the City allocates an equal amount of funding.

The community colleges- Borough of Manhattan Community College (BMCC), Bronx Community College, Hostos Community College, Kingsborough Community College, LaGuardia Community College, and Queensborough Community College (“Community

Colleges”) and Medgar Evers College currently serve over 78,000 students who are enrolled in degree programs and 121,000 individuals who participate in continuing education programs. The facilities inventory for these colleges totals approximately 6.7 million gross square feet in 94 buildings, most of which were built prior to 1970.

The capital budget request adopted by the CUNY Board of Trustees for the Community Colleges and Medgar Evers College totals \$602 million, made up of \$301 million in City funding to be matched by \$301 million in State funding. The University is requesting a five-year capital plan totaling \$301 million from the City (\$201 million in new City commitments, \$100 million has already been appropriated) to meet the community colleges’ capital needs. A five-year capital program commitment from the City is critical given the aging facilities inventory, student enrollment increases, expanded partnerships with public high schools, and the need for modern educational facilities.

History

In 1998 the Governor and the State Legislature created and supported an unprecedented five-year \$1 billion capital plan for CUNY’s senior and Community Colleges covering 1998-2002. The plan identified approximately \$900 million for senior college facilities and \$109.7 million in capital funds for Community Colleges. The \$109.7 million for community colleges, if matched equally by the City as required by the State education law, would have provided almost \$220 million for capital projects at community college facilities. However, the City matched only \$45.3 million (\$8.75 million from the City Council) of State capital funds, allowing the State to keep its share of \$64.4 million. Subsequently, the State Fiscal 2003 - 2004 Budget proposed new bonded funds in the amount of \$50 million for the Community Colleges and Medgar Evers College. Once again, the City did not match this \$50 million and thus was ineligible for \$114.4 million in State funds.

State Funding

The State Fiscal 2005 - 2006 Adopted Budget provides for new bonded funds in the amount of \$240.2 million for capital projects at Community Colleges and Medgar Evers College. This consists of a reappropriation of \$114.4 million from previous State budgets, an additional \$20 million appropriation for Fiterman Hall at the BMCC, and a new appropriation of \$105.8 million that was successfully added to the budget by the State Legislature. The State Legislature attempted to add additional funds last year but the Governor subsequently vetoed them. CUNY is confident that the State will make additional appropriations of \$60.8 million available to bring the State’s funding to \$301 million as requested by the Board of Trustees, but only if the City is finally willing to match the State’s commitments. The primary reason the State has not appropriated additional funds is because the City has consistently not appropriated funding to match the State funds.

City Funding

The City’s Fiscal 2005 Commitment Plan includes \$104.5 million for capital projects at the Community Colleges and Medgar Evers College. CUNY has received both Mayoral funds (\$31.6 million) and funds from the Council and Borough Presidents (\$72.9

million). The majority of these funds are already allocated to active projects being implemented by the University. Most of these funds are earmarked for equipment to upgrade classrooms and laboratories and cannot be re-designated for health and safety code compliance projects, the very projects most urgently in need of additional funding. Approximately \$27 million of the Council and Borough Presidents funds are allocated to senior college projects, and are therefore not eligible for state matching funds.

To fund infrastructure projects and to provide for academic programs and enrollment growth at the Community Colleges, the University requests an additional \$201 million from the City. CUNY already has commitments of almost \$100 million from the City toward the Board of Trustees' request of \$301 million. This \$100 million includes \$21.1 million of Council appropriations for multiple projects (see chart), \$58.9 million for Academic Building I at Medgar Evers College (in the out-years of the Commitment Plan) and a new \$20 million appropriation in Fiscal 2006 for Fiterman Hall at BMCC.

Council's Proposal

The Council continues to be a fervent advocate for the Community Colleges and Medgar Evers College. We have continually expressed disappointment when the Mayor's Executive Budget is submitted and it does not include appropriations for capital projects at the Community Colleges. The Council has appropriated over \$50 million in capital funds for critical projects at CUNY. We urge the Administration to appropriate the \$201 million in capital funds over five years as requested by the Board of Trustees to address the needs of CUNY. With the City's commitment, CUNY will be able to undertake a \$602 million capital program.

The Community Colleges play an indispensable role in addressing the educational needs of the City. In addition to providing academic and career instruction, and being a gateway to baccalaureate and professional opportunities, they promote workforce and economic development, provide literacy and English language instruction, and facilitate the movement of thousands to meaningful career paths and gainful employment. The Community Colleges also provide an array of cultural and intellectual opportunities that enrich the quality of life in their communities.

CUNY's Proposed \$602 Million Five-Year Capital Program			
<i>State Portion</i>	<i>Reappropriations</i>	<i>Adopted State Budget New Appropriations</i>	<i>CUNY's Request</i>
\$301 Million	\$114.4 Million	\$125.8 Million	\$60.8 Million
<i>City Portion</i>	<i>Appropriations</i>	<i>City Council's Proposal (CUNY's Request)</i>	
\$301 Million	\$100 Million	\$201 Million	

CITY'S \$301 MILLION PORTION (cost in thousands)		
City Commitments		City Council Proposal (CUNY Ask)
Medgar Evers – Academic Building I	\$58,855	\$2,500
BMCC – Fiterman Hall Replacement	20,000	---
BMCC – Chambers Street Renovation Phase I & Phase II	5,500 (City Council)	11,397
LaGuardia – Center 3 Renovation Phase I & Phase II	6,250 (City Council)	24,327
Bronx – North Instructional Building	6,776 (City Council)	30,481
Hostos-500 Grand Concourse, Phase II	580 (City Council)	3,420
Queensborough – Instructional Building	500 (City Council)	38,513
Queensborough – Holocaust Center	1,500 (City Council)	---
Health & Safety Projects	---	17,921
Facilities Preservation	---	10,647
BMCC – North Campus Building	---	5,980
Kingsborough – Roof Replacement	---	6,774
Other Critical Projects	---	49,040
Totals	\$99,961	\$201,000

HOUSING

The Council calls for increasing the Department of Housing Preservation and Development's (HPD) capital commitment plan by \$25 million a year in the next four fiscal years. This \$100 million would represent an approximately nine percent increase to the \$1.14 billion in City funds for HPD in the January 2005 Capital Commitment plan for Fiscal 2006 to Fiscal 2009. These additional funds would go to a variety of affordable housing programs. Potential uses of the funds include the expansion of the Council supported initiative to increase the production of mixed income housing targeting a wider range of incomes than generally found in existing development programs and the preservation of federally assisted housing such as project-based Section 8 buildings. In total, the \$100 million could assist between 1,500 to 2,000 units.

CHARTER CONFORMITY

The City Charter confers certain responsibilities on the Administration to provide information and reports pertaining to the City's capital budget, projects and debt limitations. However, some of these requirements have not been adhered to, including the following:

- The preparation of general standards and cost limits for categories of capital projects;
- The preparation of standards for the preparation of scope to be submitted to the City Council for approval or modification;
- Notification to the respective City Council Committee of each project's scope, proposed design, and final design, along with their approval, disapproval or modification; and in the case of a project delay, an explanation and a revised schedule;
- Provision of separate projects with descriptions and the total estimated cost of each project in the capital budget;
- Submission to the Council of a certificate setting forth the maximum amount of appropriations, given the maximum amount of debt and reserves, the City may soundly make during each fiscal year;
- Provision by agencies of details on the progress of capital projects, especially explanations of any delays, as required in the periodic commitment plans issued three times a year.

The last three points are serious issues of concern. Failure to comply with these Charter-mandated requirements results in the adoption of a capital budget based on insufficient and outdated information. The capital budget that is voted on does not present a clear accounting of which projects are included and what, if any, limit on appropriations exist. The adopted budget includes appropriations by budget lines that in many cases contain more than one project. These projects making up the budget line are specified in the commitment plan, which is not voted on by the Council. In contrast to the adopted budget, the commitment plan is a constantly changing management plan. Thus, the Council appropriates total amounts for a budget line that may or may not include the projects that are identified in the commitment plan at the time of adoption, despite the Charter requirements that projects be separately enumerated.

Additionally, the appropriation language used in the executive budget incorporates all prior appropriations, resulting in total appropriations at adoption of the capital budget being over three times the amount needed for the commitment plan. Coincidentally, the Mayor's debt certificate sets forth only the amount of new appropriations that may be made rather than setting forth the maximum amount of appropriations for capital projects the City may soundly make during each fiscal year as required by the Charter.

These issues of non-conformity to the Charter have made it extremely difficult for the Council to maintain its oversight functions and its budgetary responsibilities. Taken together, the lack of specificity, failure to provide required information and continued reappropriation of unused balances gives the administration the ability to make changes in capital spending beyond that which the Charter intended. The Council believes that a complete review of the Charter, as it relates to the both the capital and expense budgetary processes, is necessary.