Report on the State Fiscal Year 2023-24 Executive Budget

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

March 2023

Comptroller’s Message

New Yorkers have consistently demonstrated their resilience during the pandemic. The State’s economic recovery is reflected in growing employment and wages, as well as the $8.7 billion current-year surplus estimated by the Division of the Budget (DOB). Nevertheless, there are significant headwinds that will present challenges to ongoing growth. Among them is inflation remaining well above historical levels. Continued Federal Reserve Board actions to raise interest rates in response may dampen national and local economic prospects, which, if not carefully managed, risks causing a recession. In addition, federal relief aid that has been instrumental to balancing the budget in the past two years will be depleted by the end of State Fiscal Year (SFY) 2024-25.

The Executive Budget for SFY 2023-24 totals $227 billion, and DOB projects shortfalls in revenues and increases in spending, particularly in Medicaid and school aid, over the financial plan period. As a result, projected outyear gaps have grown to $5.7 billion in SFY 2024-25, $9.0 billion in SFY 2025-26, and $7.5 billion in SFY 2026-27.

The Executive Budget includes proposals that would help prepare for possible rainy days ahead. As I have previously advocated, the Budget accelerates planned deposits to reserves. At the end of SFY 2022-23, principal reserves are projected to total $19.5 billion, including $6.5 billion in the statutory rainy day reserves and $13 billion in unrestricted funds. In addition, the Budget includes legislation to increase the maximum allowable balance of the rainy day reserve to 20 percent of State Operating Funds spending, and the maximum annual deposit to 10 percent of State Operating Funds spending. These measures should be supported, and will allow for continuing to build statutory reserves, rather than relying primarily on informal reserves.

New York needs to fund essential programs and services that support quality of life in our state, while also ensuring high standards of transparency, effective government operations, and the long-term sustainability of State finances. In these regards, the Budget includes several concerning proposals. For example, the Budget includes provisions that exempt approximately $12.8 billion from competitive bidding and/or oversight requirements that are essential for maintaining the integrity of the procurement process. In addition, the Budget includes an appropriation that would unduly and inappropriately impair the Office of the State Comptroller’s duty to conduct independent audits of the New York State Health Insurance Program. The Budget also advances unfavorable debt proposals that reinforce concerns about the affordability of debt levels and the transparency and accountability of current debt practices. I urge policy makers to reject these proposals.

Thomas P. DiNapoli

March 2023

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I. Financial Plan Overview

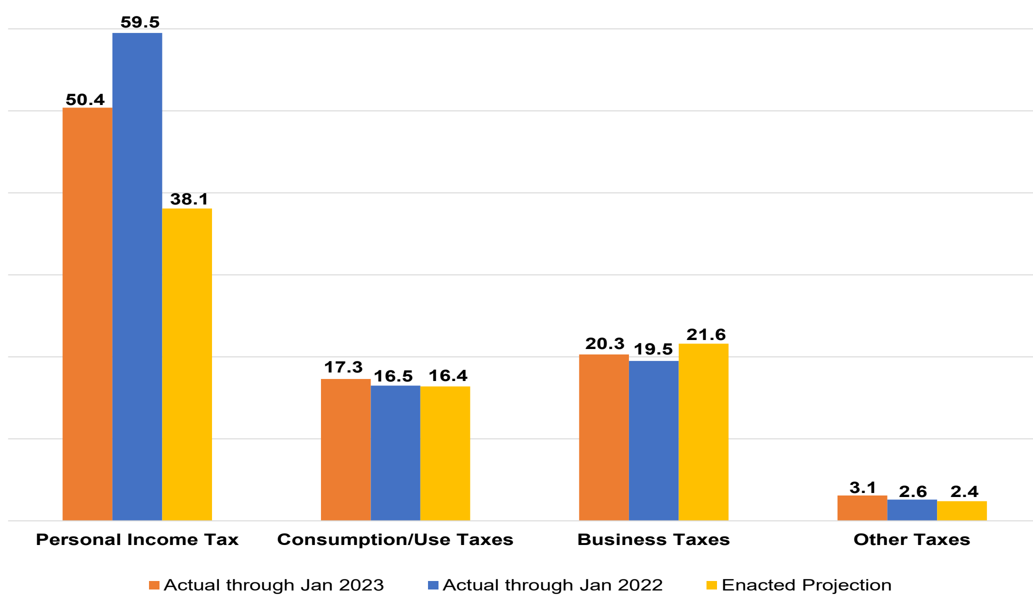
This report details provisions of the New York State Fiscal Year 2023-24 Executive Budget proposal submitted on February 1, 2023. The report does not reflect 30-Day Amendments released on March 3, 2023 or the Executive Budget Financial Plan Updated for Governor's Amendments and Forecast Revisions released on March 8, 2023.

State Fiscal Year 2022-23

Tax collections in All Governmental Funds (All Funds) totaled $91.1 billion through the first ten months of State Fiscal Year (SFY) 2022-23, a decrease of nearly $6.9 billion or 7.0 percent from the same period of the previous year. This reflects a decrease of just over $9.0 billion in Personal Income Tax (PIT) collections due, in part, to the volatility in the financial markets and their impact on estimated payments over the course of the year. Offsetting a portion of this decline were increased collections in all other tax categories.

Other than business taxes, collections are well ahead of initial projections made in the Enacted Budget Financial Plan. Through January 31, total tax collections were nearly $12.6 billion over these projections.

Figure 1
SFY 2022-23 All Funds Tax Collections Through January 31,
as Compared to Prior Year Actual Results and Enacted Budget Projections
(in billions of dollars)



Source: Division of the Budget; Office of the State Comptroller

Much of the variance from the Enacted Budget Financial Plan projections is related to the claiming of the offsetting Pass-Through Entity Tax (PTET) credits under the PIT for the 2021 tax year. Initial projections included a large amount of refunds being paid as a result of these credits in SFY 2022-23. Although refunds were $4.2 billion higher than the previous year, they were significantly lower than those projections. Revisions made in the SFY 2023-24 Executive Budget Financial Plan adjusted for these lower refunds. (See Appendix C for more details.)

Actual tax collections have exceeded projections throughout the year. In the Executive Budget, the Division of Budget (DOB) increased projected current year-end General Fund receipts by $6.5 billion relative to estimates in the Mid-Year Update. In total, estimates for current year General Fund tax collections have been increased $7.8 billion from the Enacted Budget Financial Plan released in April 2022 (not including PTET).

Spending has trailed Enacted Budget projections throughout the year. Through January, All Funds spending totaled $164.9 billion, 5.5 percent or $9.6 billion below DOB's initial projections, with $5.3 billion of the variance from lower spending for local assistance payments and $3.3 billion from lower spending for capital projects. Spending from the General Fund (including transfers to other funds) totaling $66.7 billion was $7.4 billion, or 10 percent, below initial projections, again primarily related to lower-than-expected expenditures for local assistance and capital projects.

The Executive Budget Financial Plan forecasts a current-year surplus of $8.7 billion, resulting from $5.9 billion in upward revisions of current year tax receipts and $2.8 billion in a combination of other factors including: additional federal aid in the form of higher Medicaid reimbursement made available as the federal government continued to extend the public health emergency; reduced disbursement estimates; and other changes.

DOB proposes using the forecast surplus for a variety of purposes, primarily to increase State "principal reserve" funds by $5.3 billion before the end of the current State fiscal year, which is two years ahead of the previous schedule.[1] In addition, $600 million would be used to make a current-year deposit to the Retiree Health Benefits Trust Fund in place of deposits that were previously scheduled for later years and $1 billion would be set aside for debt management purposes. Remaining surplus funds would be used to prepay expenses.

General Fund

General Fund spending is projected by DOB to total $94.5 billion in SFY 2022-23, representing an increase of $5.6 billion or 6.3 percent from the previous year, with increases in local assistance (10.4 percent) and state operations (5.5 percent) offset by lower transfers to other funds (16.8 percent).

General Fund receipts (including transfers from other funds, as well as the PTET) are currently estimated to total $98.5 billion, representing a decrease of $14.3 billion or 12.7 percent from

[1] DOB defines "principal reserves" as both statutory rainy day reserves (Tax Stabilization Reserve Fund and Rainy Day Reserve Fund) and the informal "economic uncertainties" designation of unrestricted fund balance.

SFY 2021-22. This decrease largely reflects the net impact of the PTET on collections, as well as lower federal receipts as pandemic related assistance wanes.[2]

State Operating Funds

DOB currently projects State Operating Funds (SOF) spending in the current year will reach $122.7 billion, which would be an increase of $5.3 billion or 4.5 percent from the previous year. DOB estimates SFY 2022-23 SOF receipts will total $128.4 billion, a decrease of $18.7 billion or 12.7 percent from SFY 2021-22, over $10.6 billion higher than initially projected.

All Funds

Updated projections show All Funds spending, including spending from federal funds, will total $221.6 billion this year, an increase of $12.2 billion or 5.8 percent from SFY 2021-22.

The Executive Budget Financial Plan projects All Funds receipts for SFY 2022-23 to total $225.1 billion, a decrease of $19.3 billion or 7.9 percent from SFY 2021-22 results. Federal receipts are anticipated to decrease $5.8 billion (6.0 percent) to $89.5 billion, primarily reflecting the absence of certain one-time federal pandemic-related relief. Miscellaneous receipts are expected to decline by $939 million (3.4 percent), primarily reflecting lower fee and reimbursement revenues deposited to the State's various special revenue funds. Tax collections (inclusive of the PTET) are projected to total $108.6 billion, a decrease of nearly $12.6 billion or 10.4 percent.

State Fiscal Year 2023-24

All Funds spending is expected to total $227 billion, an increase of $5.4 billion or 2.5 percent, primarily reflecting growth in local assistance spending. SOF spending is expected to grow by $2.5 billion, or 2 percent. General Fund spending is expected to grow by $12.4 billion, or 13.2 percent. General Fund spending growth is driven primarily by increased local assistance payments ($8.8 billion, or 13.6 percent year-over-year growth) and state operations spending ($1.5 billion, or 6.7 percent year-over-year growth).

The Executive Budget Financial Plan projects All Funds receipts will total $224.7 billion in SFY 2023-24, a decline of $447 million or 0.2 percent. This is primarily due to a decline in federal receipts. DOB projects All Funds tax receipts to total $109.1 billion, an increase of $521 million or 0.5 percent from SFY 2022-23, largely reflecting the impact of the projected slower economic growth on collections.

Miscellaneous receipts are expected to total $27.1 billion, an increase of $79 million or 0.3 percent, reflecting growth in bond proceeds almost fully offset by a decline in all other receipts. Federal receipts, comprising nearly 40 percent of revenues in the Financial Plan, are projected to total $88.5 billion, a decline of $1.05 billion or 1.2 percent as pandemic assistance continues to decline.

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[2] The State collected $16.4 billion in PTET payments through business tax receipts for the first time in SFY 2021-22. In SFY 2022-23, PTET collections continued while participants also started claiming PIT credits for the first time.

Figure 2
Projected Changes in Receipts and Disbursements by Fund,
SFY 2022-23 – SFY 2026-27
(in millions of dollars)

	SFY 2022-23 Estimate	SFY 2023-24 Projected	SFY 2024-25 Projected	SFY 2025-26 Projected	SFY 2026-27 Projected	$ Change SFY 2022-23 to SFY 2026-27	% Change SFY 2022-23 to SFY 2026-27
General Fund Receipts	98,512	104,515	105,894	103,167	107,049	8,537	8.7%
General Fund Disbursements	94,491	106,933	112,407	114,564	119,133	24,642	26.1%
SOF Receipts	128,425	125,816	127,843	127,651	132,215	3,790	3.0%
SOF Disbursements	122,703	125,184	131,497	138,751	144,460	21,757	17.7%
All Funds Receipts	225,097	224,650	215,726	218,280	224,811	(286)	-0.1%
All Funds Disbursements	221,564	226,991	225,405	230,150	236,730	15,166	6.8%

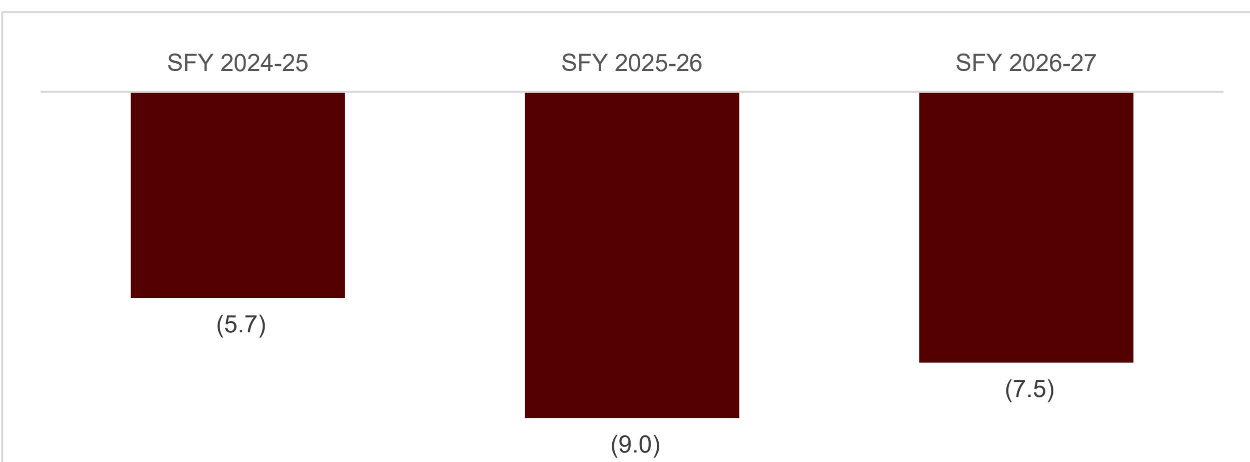
Source: Division of the Budget

Budget Gaps

As shown in Figure 2, DOB projects growth in disbursements to rapidly outpace that of receipts through the financial plan period. General Fund receipts are projected to grow 8.7 percent compared to disbursements that are projected to grow three times as fast (26.1 percent).

For a short period during SFY 2022-23, DOB projected surpluses for each year of the Financial Plan. For example, the SFY 2023-24 Executive Budget released in January 2022 forecast a $17.3 billion cumulative surplus over the ensuing three years. However, the forecast has reverted to the more typical pattern, with cumulative gaps of $22.2 billion now forecast by DOB over the upcoming three-year period, as shown in Figure 3. The major contributing factors (anticipated economic performance and the end of temporary resources over the financial plan period) are discussed in detail later in this report.

Figure 3
Projected Budget Gaps, SFY 2024-25 – SFY 2026-27
(in billions of dollars)



Source: Division of the Budget

Reserves

The State currently holds $3.3 billion in statutorily restricted rainy day reserve funds: $1.4 billion in the Tax Stabilization Reserve Fund (TSRF) and $1.9 billion in the Rainy Day Reserve Fund (RDRF). The Executive Budget proposes to make additional deposits of $3.1 billion to statutory reserves before the end of the current fiscal year. If implemented, statutory reserves would total $6.5 billion at the end of SFY 2022-23.

DOB often also sets aside dollars in the General Fund and states that they are "reserved" for a specific purpose. There is no statutory basis for such designated funds and no accompanying restrictions on deposits, balance levels, how or when the funding can be used or replenishment requirements. Such funds can be used at the Executive's discretion at any time for any appropriated purpose. The largest such unrestricted reserve proposed in the Executive Budget is for "economic uncertainties."

DOB has designated $5.7 billion for economic uncertainties and intends to designate an additional $7.4 billion in the current fiscal year. If implemented, $13.1 billion in unrestricted reserves would be designated for economic uncertainties by the end of SFY 2022-23, which can be used at the Executive's discretion. DOB describes the combined $19.5 billion of statutorily restricted reserves and unrestricted economic uncertainties funds as "principal reserves."

The Executive Budget proposal would bring principal reserves to an estimated 16 percent of SOF spending levels by the end of SFY 2022-23 – two years faster than anticipated in the most recent prior financial plan forecast. Over the financial plan period, total principal reserves are projected to remain at $19.5 billion, as shown in Figure 4. Beginning in SFY 2025-2026 statutory reserves would increase to become 64.5 percent of principal reserves in 2026-27. Combined reserves would remain equal to or above the 15 percent of SOF spending level through SFY 2024-25. The estimated cumulative gaps over the financial plan period of $22.2 billion would exceed the planned level of principal reserves by $2.7 billion.

The Executive Budget also includes legislation to amend statutory provisions of the RDRF to allow the fund balance to equal up to 20 percent of SOF spending, and to increase maximum annual deposits from 3 percent to 10 percent of SOF spending.

The Office of the State Comptroller has advanced a proposal to strengthen New York State's statutory rainy day reserves.[3] The plan, which provides a disciplined, consistent approach to building these reserves, would help to ensure that more robust reserves are built over time to be available during the next economic downturn or catastrophic event.

[3] Office of the State Comptroller, *The Case for Building New York State's Rainy Day Reserves*, Dec. 2019, available at https://www.osc.state.ny.us/reports/budget/2019/rainy-day-reserves-2019.pdf.

Other Unrestricted Set Asides in the General Fund

The Executive Budget Financial Plan sets aside funding for additional designated purposes within the General Fund and would increase a number of these set-asides, including:

- The reserve for "Labor Settlements/Agency Operations" would increase from $275 million at the end of SFY 2021-22 to $1.8 billion by the end of SFY 2023-24. With the exception of the agreement with the Civil Service Employees Association, all other contracts are expired or will be expired by the end of SFY 2022-23.
- The reserve for "Debt Management" would increase from $500 million at the end of SFY 2021-22 to $2.4 billion by the end of SFY 2023-24; and,
- In SFY 2023-24, $8.0 billion is reserved for payment of Personal Income Tax (PIT) credits related to the Pass Through Entity Tax (PTET), reflecting uncertainty in the impact and timing of the PTET upon PIT collections.

Figure 4
Statutory Reserves and Unrestricted General Fund Reserves, Estimated and Projected Year End, SFY 2022-23 – SFY 2026-27
(in millions of dollars)

	2022-23 Estimate	2023-24 Proposed	2024-25 Projected	2025-26 Projected	2026-27 Projected
Statutory Reserves	**6,468**	**6,468**	**6,468**	**9,982**	**12,609**
Tax Stabilization Reserve *	1,632	1,632	1,632	1,802	1,882
Rainy Day Reserve *	4,836	4,836	4,836	8,180	10,727
Unrestricted Reserves	**24,889**	**25,274**	**25,929**	**20,725**	**13,044**
Debt Management	2,355	2,436	1,860	1,000	
Labor Agreements / State Workforce	765	1,765	3,215	4,665	6,115
PTET Timing	8,699	8,003	7,784	5,504	-
Economic Uncertainties *	13,070	13,070	13,070	9,556	6,929
Total	**31,357**	**31,742**	**32,397**	**30,707**	**25,653**
Projected State Operating Funds Spending	122,703	125,184	131,497	138,751	144,460
Principal Reserves as a % of State Operating Funds Spending	16%	16%	15%	14%	14%

* Considered Principal Reserves by DOB

Sources: Division of the Budget; Office of the State Comptroller

As in recent years, the Financial Plan includes a line called “Reserve for Transaction Risks” in its accounting of transfers from other funds.[4] This is not a formal reserve but a means to provide the Executive with flexibility in managing the General Fund. If spending is higher or receipts are lower than anticipated, this figure can be adjusted to increase projected General Fund receipts. The amounts indicated in the Financial Plan for this purpose are $3.1 billion in the current year and $2 billion annually through SFY 2026-27.

[4] FY 2024 Executive Budget Financial Plan, page T-192.

II. Economy and Revenue

Economic Outlook

While the national economy contracted in the first half of 2022, strong growth in the final two quarters of the year resulted in an annual increase in the real Gross Domestic Product (GDP) by 2.1 percent, according to the U.S. Bureau of Economic Analysis (BEA). However, DOB projects the economy will go into recession in the first half of 2023 with a recovery starting in the third quarter. As a result, DOB projects economic growth nationwide to be just 0.5 percent in 2023 with a somewhat stronger increase of 1.7 percent in 2024.

By June 2022, all the jobs lost nationwide due to the pandemic had been recovered. In January 2023, employment was just over 2.7 million jobs higher than pre-pandemic levels. DOB estimates national employment growth to decelerate in 2023, increasing by 0.9 percent, slowing further to just 0.1 percent in 2024.

While the rate of employment growth in New York was faster than that nationwide in 2022, 5 percent vs. 4.1 percent, the State had yet to recover all jobs lost during March and April 2020. At the end of 2022, 86.5 percent of jobs lost were regained. Similar to the national employment projection, DOB estimates job growth in New York to slow to 0.7 percent in 2023 and to 0.2 percent in 2024 with full job recovery in the State not expected until 2027.

In a similar vein, the labor force nationally recovered all the workers who dropped out due to the pandemic by August 2022 and exceeded its pre-pandemic high by 262,000 workers at the end of the year. In contrast, while 151,800 workers in New York had returned to the labor force by December 2022, this was only 28.1 percent of those who left during the pandemic.[5]

As a result of the increased employment as well as labor force, total wages nationwide grew in 2022, 8.4 percent as estimated by DOB. With slowing employment and higher unemployment rate, wage growth is also projected to decelerate into 2023, increasing by 4.1 percent.

In New York, wages in the current fiscal year are estimated to increase at a much slower rate than those nationally, 2.4 percent. This is primarily due to DOB's estimated 25.2 percent decrease in finance and insurance industry bonuses for the 2022 calendar year that are mostly paid in the first quarter of 2023. For SFY 2023-24, wage growth is projected to continue to lag the nation, increasing by 2.3 percent, reflecting the slower employment gains as well as a second year of declines in finance and insurance industry bonuses.

Despite the robust estimated increase in wages, DOB projects personal income growth in 2022 nationally to be much more muted, increasing by 2.0 percent. These changes reflect the absence of the federal fiscal stimulus provided in 2021, primarily the economic impact payments ("stimulus checks") and the federal pandemic unemployment programs. While personal income is projected to grow at a faster rate in 2023, 4.4 percent, this growth primarily

[5] New York State Department of Labor, Local Area Unemployment Statistics, available at https://dol.ny.gov/local-area-unemployment-statistics.

reflects the increase in wages as non-wage income gains, such as those from dividends, are constrained with a forecasted decline in the financial markets.

With the waning federal stimulus as well as declining bonuses, personal income in New York grew slowly in SFY 2022-23, an increase of 0.8 percent. While accelerating in SFY 2023-24; personal income growth is still projected to lag that of the nation, increasing by 3.5 percent.

DOB's economic forecast for the nation is slightly more pessimistic than the Blue Chip Consensus, as well as many of the individual economic forecasters that comprise the Consensus. (See Figure 5.) However, while DOB projects steeper declines in the first half of the year with an accelerating growth in the second half, Blue Chip forecasts weakness throughout the year, with slight declines through three quarters with only small growth in the fourth. For New York, DOB's projections are somewhat mixed when compared to S&P Global Market Intelligence.[6][7]

Figure 5
Comparison of Select Economic Indicators, U.S. and New York, Calendar Years 2022 - 2024

U.S. ECONOMIC INDICATORS									
	REAL GDP			CONSUMER PRICE INDEX			UNEMPLOYMENT RATE		
	2022	2023	2024	2022	2023	2024	2022	2023	2024
DOB	2.1	0.5	1.7	8.0	3.9	2.8	3.6	4.3	5.0
Blue Chip	2.1	0.7	1.2	8.0	3.6	2.4	3.6	4.0	4.6
S&P Global	2.1	0.7	1.6	8.0	4.0	2.3	3.6	3.9	4.6

NEW YORK ECONOMIC INDICATORS									
	PERSONAL INCOME			WAGES			EMPLOYMENT		
	2022	2023	2024	2022	2023	2024	2022	2023	2024
DOB	(0.3)	2.9	4.1	6.2	1.3	3.1	5.0	0.7	0.2
S&P Global	0.4	3.6	4.2	7.9	4.3	4.3	4.5	0.5	(0.3)

Note: Amounts are annual percent changes for the calendar year. 2022 figures are preliminary actuals; 2023 and 2024 are projections. Discussion in text for the New York indicators describes changes on a fiscal year basis.

Source: Division of the Budget, February 2023 Blue Chip Economic Indicators, S&P Global Market Intelligence February 2023 National and January 2023 Regional Forecasts

[6] Blue Chip Consensus does not provide projections at the state level.

[7] S&P Global and DOB use different data sets in their New York forecasts resulting in some of the variation in the projections. S&P Global uses BEA's definitions of personal income and the U.S. Bureau of Labor Statistics, Current Employment Statistics for employment. DOB uses the Quarterly Census of Employment and Wages to construct its employment and wage projections.

Revenue

DOB's revisions to the economic forecast led to a $10.3 billion downward revision in projected All Fund tax receipts over the financial plan period.[8] Figure 6 details the Executive Budget forecast over the Financial Plan period by source.

Figure 6
Estimated All Funds Revenues by Source,
SFY 2022-23 – SFY 2026-27
(in millions of dollars)

Source	SFY 2022-23		SFY 2023-24		SFY 2024-25		SFY 2025-26		SFY 2026-27	
	Amount	**Percentage Change**	**Amount**	**Percentage Change**	**Amount**	**Percentage Change**	**Amount**	**Percentage Change**	**Amount**	**Percentage Change**
Personal Income Tax	58,371	-17.5%	61,312	5.0%	62,177	1.4%	65,633	5.6%	78,513	19.6%
Consumption/Use Taxes	20,535	4.7%	21,750	5.9%	22,047	1.4%	22,656	2.8%	23,192	2.4%
Business Taxes	26,112	-5.8%	23,369	-10.5%	22,863	-2.2%	20,760	-9.2%	11,301	-45.6%
Other Taxes	3,544	16.1%	2,652	-25.2%	2,764	4.2%	2,908	5.2%	3,045	4.7%
Miscellaneous Receipts	26,993	-3.4%	27,075	0.3%	25,563	-5.6%	27,418	7.3%	28,040	2.3%
All Funds Revenues	135,555	-9.1%	136,158	0.4%	135,414	-0.5%	139,375	2.9%	144,091	3.4%

Source: Division of the Budget

DOB estimates All Funds revenues in the current fiscal year (exclusive of federal receipts) to total $135.5 billion, a decrease of 9.1 percent or $13.5 billion from SFY 2021-22. This decline is attributable, in part, to the volatility in the financial markets over the past year as well as the impact from the various revenue actions included in the SFY 2022-23 Enacted Budget, such as: the suspension of State sales and certain excise taxes on motor fuel, the acceleration of lower personal income tax rates on middle-class taxpayers, and the impact of the offsetting PIT credit for Pass-Through Entity Taxes (PTET) paid in tax year 2021.

For SFY 2023-24, All Funds revenues (exclusive of federal receipts) are projected by DOB to total $136.2 billion, an increase of 0.4 percent or $603 million. This reflects the slow projected economic growth as well as the resumption of sales and excise taxes on motor fuel and a more typical schedule for how the offsetting PIT credit for PTET taxes paid are claimed. Partially offsetting the increases is the full-year impact of the lower PIT rates.

The Executive Budget includes proposed revenue actions that are projected to produce a net decrease in All Funds revenues of $116 million in SFY 2023-24, but a net increase of $561 million in SFY 2024-25, as shown in Figure 7. The most significant are the proposed extension of the higher corporate tax rates and the proposed expansion of the film tax credit.[9]

[8] On a General Fund basis, DOB reports downward revisions of almost $21 billion relative to the Enacted Budget Financial Plan and $11.6 billion relative to the Mid-Year Update during the financial plan period. See Executive Budget Financial Plan for State Fiscal Year 2024, pgs. 11 and 13.

[9] The Executive Budget also proposes changes to the Payroll Mobility Tax. These changes are discussed in the section on the Metropolitan Transportation Authority.

Figure 7
Projected Revenue Impacts from Proposed Revenue Actions, SFY 2023-24 – SFY 2026-27
(in millions of dollars)

	SFY 2023-24	SFY 2024-25	SFY 2025-26	SFY 2026-27
Consumption/Use Taxes	**(129)**	**(247)**	**(238)**	**(227)**
Increase the Excise Tax on Cigarettes from $4.35 to $5.35 per pack	(13)	(25)	(24)	(22)
Prohibit the Sale of All Flavored Tobacco Products	(116)	(222)	(214)	(205)
Business Taxes	**-**	**778**	**973**	**615**
Extend the Higher Corporate Franchise Tax Rates for Three Years	-	810	1,170	880
Extend and Enhance the Empire State Film Production Tax Credit	-	-	(115)	(208)
Extend NYC Musical and Theatrical Production Tax Credit	-	-	(50)	(50)
Allow a Tax Credit for Child Care Creation and Expansion	-	(25)	(25)	-
Make Investment Tax Credit for Farmers Refundable	-	(7)	(7)	(7)
Miscellaneous Receipts	**11**	**22**	**22**	**22**
Eliminate Certain Quick Draw Restrictions	11	22	22	22
All Other Revenue Actions	**2**	**8**	**(4)**	**(98)**
TOTAL ALL FUNDS IMPACT OF REVENUE ACTIONS	**(116)**	**561**	**753**	**312**

Note: According to DOB, projected decrease in cigarette tax revenues is due to an anticipated decline in consumption.
Source: Division of the Budget

Corporate Franchise Tax Rates: The Budget proposes to extend the temporary tax rates by three years, until December 31, 2026. As part of the SFY 2021-22 Enacted Budget, the net income tax rate on businesses with incomes over $5 million was increased from 6.5 percent to 7.25 percent and the capital base tax rate was increased from .025 percent to 0.1875 percent of a corporation's total business capital in New York.[10] These increased rates are currently due to expire on December 31, 2023. According to DOB, this proposal would not have an impact on SFY 2023-24 revenues, but would increase collections in SFY 2024-25 by $810 million.

[10] The increased capital base tax rate does not apply to small businesses defined under the Tax Law as those with 100 or fewer employees and net incomes of $390,000 or less.

Film Tax Credit: The Budget would increase the cap on the credit for television and film productions from $420 million to $700 million as well as extend the credit for five years. The credit is currently due to expire on December 31, 2029. In addition to the extension and increased cap, this proposal would also provide several enhancements to the credit, including:

- Increasing the credit from 25 percent to 30 percent of eligible production costs;
- Allowing "above the line" costs, such as salaries of actors, producers, and directors, in the calculation of eligible production costs;
- Allowing television series that relocate to New York to be eligible for the credit at a rate of 35 percent of the production costs (the number of years the production is out of New York to qualify for the credit is reduced from five years to two years); and,
- Increasing the cap on the Empire State film post production credit from $25 million to $45 million as well as extending it for five years.[11]

DOB projects this proposal would not have an impact in SFY 2023-24 and that its first impact would be in SFY 2025-26, at $115 million.

[11] The postproduction credit is included under the aggregate cap for the film production credit.

III. Major Spending & Policy Areas

While DOB projects a balanced budget in SFY 2023-24, significant gaps – totaling $22.2 billion – are forecast for the remainder of the financial plan period. These gaps are a product of multiple factors, including $24.6 billion of General Fund spending growth forecast to occur through SFY 2026-27 and the loss of federal pandemic aid after SFY 2024-25. As shown in Figure 8, Education Aid and Medicaid are the two largest General Fund spending categories, comprising 47.5 percent of General Fund spending in the current fiscal year, and forecast to grow to 52.1 percent by the end of the Financial Plan.

Figure 8
General Fund School Aid, Medicaid, and All Other Spending, SFY 2022-23 – SFY 2026-27
(in millions of dollars)

Category	SFY 2022-23	% of TOTAL	SFY 2023-24	% of TOTAL	SFY 2024-25	% of TOTAL	SFY 2025-26	% of TOTAL	SFY 2026-27	% of TOTAL
School Aid	25,743	27.2%	28,984	27.1%	31,030	27.6%	32,370	28.3%	33,771	28.3%
Medicaid	19,204	20.3%	21,496	20.1%	24,231	21.6%	26,624	23.2%	28,377	23.8%
All Other	49,544	52.4%	56,453	52.8%	57,146	50.8%	55,570	48.5%	56,985	47.8%
Total	**94,491**		**106,933**		**112,407**		**114,564**		**119,133**	

Source: Division of the Budget; OSC Analysis

Education

The Executive Budget proposes $34.5 billion in total State-funded School Aid for school year (SY) 2023-24, an increase of $3.1 billion from $31.4 billion in SY 2022-23 (10.0 percent). The proposal would:

- Increase Foundation Aid by $2.7 billion from $21.3 billion in SY 2022-23 to $24.1 billion in SY 2023-24 (12.8 percent) to complete the three-year phase-in of full funding of the Foundation Aid formula. Of this increase, $250 million would fund "high-impact tutoring" programs;
- Increase funding for Universal Pre-Kindergarten (UPK) programs to $1.2 billion, including $125 million in new funding ($100 million in formula-based allocation and a $25 million grant to be competitively awarded). This includes UPK expansion grants supported by the federal American Rescue Plan Act (ARPA); and,
- Increase other formula-driven aid programs by $232 million.

The Budget also provides an additional $20 million in grant funding to support the establishment of new Smart Scholars Early College High School or Pathways in Technology Early College High School programs.

Proposals related to Charter Schools include eliminating the regional cap on the number of charters that may be issued in New York City and permanently authorizing the reissuance of charters originally issued to charter schools that closed after July 1, 2015.

The Executive Budget includes the following related to non-public school aid:

- $193 million to reimburse costs for State-mandated activities;
- $70 million STEM Instruction funding, an increase from $58 million; and,
- $45 million of capital funding for Nonpublic School Health and Safety.

The Budget would also provide $20.1 million of new capital funding for three State-funded Native American Reservation Schools, bringing the two-year total for such purposes to $55.9 million.

In addition to State aid, New York schools have received a significant level of federal funding to assist with academic and operational challenges caused by the COVID-19 pandemic. State and federal aid for schools will total a record $38.2 billion in SFY 2023-24. However, as shown in Figure 9, federal resources will decline over the financial plan period as the State spends down federal pandemic aid. Aid must be obligated by September 2024 and will no longer be available beginning in SFY 2025-26. The investments made by school districts with the time limited federal funding must be carefully balanced to ensure effectiveness and sustainability.

Figure 9
State and Federal School Aid, SFY 2022-23 – SFY 2026-27
(in millions of dollars)

	SFY 2022-23	SFY 2023-24	SFY 2024-25	SFY 2025-26	SFY 2026-27
State Aid	$30,388	$33,363	$35,226	$36,623	$38,094
Federal Aid	$3,941	$3,940	$3,857	$3,857	$3,857
Federal Pandemic Aid	$5,327	$4,844	$2,454	$0	$0
Total	**$39,656**	**$42,147**	**$41,537**	**$40,480**	**$41,951**

Notes: State Aid on a State Operating Funds basis. Federal Aid includes education resources from the American Rescue Plan Act, the CARES Act, and the Supplemental Appropriations Act.

Source: Division of the Budget; OSC Analysis

Medicaid

The Executive Budget proposes $96.5 billion in All Funds spending for Medicaid, an increase of $4.2 billion (4.6 percent) over the current year projection. The State-funded portion of Medicaid increases by $2.9 billion (9.1 percent) to $34.7 billion and reflects spending growth under the Medicaid Global Cap, increased minimum wage costs, funding the local share of program growth, higher than previously forecasted enrollment, and the phase-out in December 2023 of enhanced Federal Medical Assistance Matching Percentage funding (eFMAP) the State has used to offset the costs of enrollment growth during the pandemic.

The federal government has notified states that the eFMAP rate (an additional 6.2 percentage points since March 2020, retroactive to January 2020) will be reduced each quarter starting April 1, 2023 and will end on December 31, 2023. Since the start of the pandemic through December 2023, the Executive expects eFMAP funding to provide a Financial Plan benefit of more than $11.5 billion in State-share savings, as shown in Figure 10.

Figure 10
Financial Plan Benefit of COVID eFMAP Funding, SFY 2020-21 – SFY 2023-24
(in billions of dollars)

Actuals		Projected		
SFY 2020-21	**SFY 2021-22**	**SFY 2022-23**	**SFY 2023-24**	**Total**
3,420	2,984	3,652	1,500	**11,556**

Source: Division of the Budget

Provision of eFMAP was initially tied to the federal public health emergency (PHE) which required continuous enrollment of Medicaid enrollees. Under the Consolidated Appropriations Act of 2022, the two were unlinked, and the requirement for continuous coverage ends on March 31, 2023. The Executive expects enrollment to peak at 7.9 million in June 2023 and decline over the next 12 months as continuous enrollment requirements end and the State redetermines eligibility for the program. However, the Executive also acknowledges "a great deal of uncertainty with regard to Medicaid enrollment levels and the timing of levels returning to pre-pandemic trends" and recognizes the risk of this uncertainty on future Medicaid spending.[12]

Executive Budget enrollment projections are significantly higher than previous estimates and add about $1.6 billion in new State Medicaid costs. Compared to DOB projections in the Mid-Year Financial Plan, SFY 2023-24 enrollment of 6.9 million recipients is higher by 424,535 recipients (6.6 percent), while out-year enrollments increase by 230,000 (3.6 percent) per year to about 6.6 million recipients through SFY 2026-27.

The Executive proposes to increase Medicaid rates by 5 percent for hospitals, nursing homes and assisted living providers ($379 million in State funds), $181 million in Medicaid-related investments announced during the State of the State address (including $59 million in mental hygiene initiatives, $54 million for preventive care coverage, $46 million for primary care access, $14 million for transportation services and $8 million for reproductive health care), $125 million in supplemental payments for federally qualified health centers and clinics, $72 million in additional support for SUNY hospitals, and $30 million for Ryan White Clinics.

The Executive also includes proposals to delay implementation of Medicaid coverage for undocumented older New Yorkers ($172 million in State savings); transition the pharmacy benefit from Medicaid managed care to Medicaid fee-for-service ($410 million in State savings), a proposal with significant implications for community based health providers related to the "340B" drug discount program; and retain Affordable Care Act (ACA) enhanced federal

[12] Executive Budget Financial Plan for State Fiscal Year 2024, pg. 120.

Medicaid payments that have been accruing to the counties and the City of New York ($624 million in State Savings in SFY 2023-24 and $709 million in SFY 2024-25).

In addition, the Executive proposes $1 billion in health care capital funding – in addition to $1.6 billion in previously authorized funding – as well as $30 million in capital to create a new program to incentivize Electronic Health Record connectivity.

Mental Hygiene

All Funds spending for the State's five Mental Hygiene agencies – the Office for People with Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), the Office of Addiction Services and Supports (OASAS), the Justice Center for the Protection of People with Special Needs (Justice Center), and the Developmental Disabilities Planning Council (DDPC) – is projected to increase by $1.7 billion, or 18.0 percent, to $11.0 billion in SFY 2023-24.

The $11.0 billion in All Funds disbursements would support the five State agencies:

- OPWDD spending would increase by $991.7 million, or 23.0 percent, to $5.3 billion;
- OMH spending would increase by $680.2 million, or 17.1 percent, to $4.7 billion;
- OASAS spending would increase by $11.2 million, or 1.1 percent, to $1.0 billion;
- Spending for the Justice Center would decrease by $0.08 million, or 0.2 percent, to $48.8 million; and,
- DDPC spending would be held flat at $4.2 million.

To reduce the number of New Yorkers with unmet mental health needs, the Executive proposes a $1 billion, multi-year plan to increase the capacity of the mental health system in the State. This plan includes:

- $890 million in capital funding to build 2,150 new residential beds for people with mental illness, including 900 step-down beds designed to serve formerly unhoused individuals who are transitioning from inpatient care, 750 permanent supportive housing beds, and 500 new community residence beds;
- $60 million in capital to expand comprehensive psychiatric emergency programs;
- $39 million in enhanced support for existing residential programs;
- $34.5 million for additional children's services; and,
- $33 million ($18 million in capital and $15 million in operational support) to create 150 new inpatient beds (100 downstate, 50 upstate) in State-operated psychiatric centers.

The Budget also provides $138.7 million in new State funding for a 2.5 percent cost-of-living adjustment (COLA) for not-for-profit providers working with OPWDD ($74.8 million), OMH ($50.6 million) and OASAS ($13.3 million) to help raise wages for their direct care staff, direct support professionals, and non-executive clinical staff or respond to critical non-personnel costs before increasing salaries or compensation for executive level employees. In addition, the Budget proposes $39.3 million in new State funding to support minimum wage increases for staff at not-for-profit agencies licensed, certified or authorized by OPWDD ($30.1 million), OMH ($6.5 million) and OASAS ($2.7 million).

Child Care

The Executive Budget proposes $7.6 billion in child care subsidies over the next four years, including over $1 billion in State child care block grant funding in SFY 2023-24, an increase of $137.5 million (15.4 percent) over the current year spending projection. The Budget also utilizes $800 million in unspent rollover funds from prior years and nearly $500 million in federal pandemic funding to increase access for child care services and support child care providers in the State.

The Executive Budget would increase income eligibility for child care subsidies – effective October 1, 2023 – from 300 percent of the federal poverty level ($83,250 for a family of four) to 85 percent of the State median income ($93,200 for a family of four), the maximum allowable income threshold under federal rules. According to the Executive, this change would make an additional 113,000 children eligible for subsidies.

In addition, the Budget proposes to:

- Establish statewide eligibility standards for child care subsidies. Under current law, local districts may set their own eligibility criteria, creating inconsistent access to subsidies across the State, according to the Executive;
- Reduce the cap on co-pays for families receiving subsidies from 10 percent to 1 percent of family income above the federal poverty level;
- Improve access to subsidies by streamlining the application process for families enrolled in Supplemental Nutrition Assistance Program (SNAP), the Home Energy Assistance Program (HEAP), Medicaid, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- Create a statewide electronic application to allow for families to pre-screen for eligibility and apply for child care assistance;
- Use $389 million in underutilized federal pandemic funding to provide a third round of stabilization grants for child care providers for workforce retention initiatives;
- Provide $4.8 million to establish child care pilot programs in three separate regions of the State, allowing participating employers, the State, and employees to split the cost of child care. Eligible families must be between 85 percent and 100 percent of the state median income;
- Provide tax credits to businesses creating new child care slots or expanding the number of existing child care slots. The credits would be capped at $25 million per year for two years; and,

- Provide $1 million to create a statewide navigator program for businesses interested in supporting the child care needs of their employees. The program would operate in each of the 10 Regional Economic Development Council regions, with $100,000 allocated to each region.

State Workforce

On an All Funds basis, the Financial Plan projects the State workforce (excluding the Legislature and the Judiciary) to be 185,060 full-time equivalent (FTEs) employees at the end of SFY 2023-24. The 1,811 increase from March 31, 2023 represents a projected 1 percent increase. The State workforce subject to Executive control at the end of SFY 2023-24 is anticipated to rise by 1,665 FTEs or 1.4 percent. No net decreases in the minor and major agency workforces are projected for SFY 2023-24. Major changes include:

- Division of State Police, a net increase of 407 FTEs largely from the acceleration in training (two additional academy classes), expansion of Community Stabilization Units and participation on Federal task forces;
- Office of Parks, Recreation and Historic Preservation, a net increase of 237 FTEs to implement the Bond Act, park operations and park police, the Empire State Trail and administration;
- Department of Environmental Conservation, a net increase of 231 FTEs to implement the Bond Act, the Climate Change and Community Protection Act, and the proposed Cap-and-Invest Program and Waste Reduction and Recycling Infrastructure Act among other items;
- Department of Motor Vehicles, a net increase of 200 FTEs, to provide customer services and manage Federal grants;
- Office of the New York State Comptroller, a net increase of 117 FTEs to support the State's retirement system, State and local government auditing activities and the Justice Court Fund Modernization Project;
- Department of Civil Service, a net increase of 108 FTEs for development of a new job evaluation system and the implementation of recruiting initiatives;
- Department of Corrections and Community Supervision (DOCCS), a net increase of 70 FTEs for initiatives that address gun violence and violent crime;
- State Board of Elections, a net increase of 62 FTEs for the Public Campaign Finance program and elections regulation; and
- Division of Housing and Community Renewal, a net increase of 46 primarily to implement the proposed New York Housing Compact.

The Financial Plan takes into account new staff and collective bargaining increases in the Judiciary, member salary increases in the Legislature and a recent collective bargaining agreement with the Civil Service Employees Association (CSEA). A range of contractual salary increases for other State employees in SFY 2023-24 are yet to be determined. All Funds spending for personal services in SFY 2023-24 would increase by 1.6 percent to $16.56 billion.

The Office of the State Comptroller has noted that total headcount is down significantly since 2008. Over the ten years between 2012 and 2021, total agency workforce decreased by 9.1 percent and 11.6 percent if SUNY and CUNY are included.[13]

Executive Budget materials note the State workforce "is facing a shortage of more than 12,500 workers, with more than 26 percent of the state workforce eligible to retire within the next five years."[14] The Department of Civil Service's 2022 State Workforce Management Report indicates the State workforce count on January 1, 2022 was 139,243, a 5.4 percent decrease from the prior year and 9.7 percent fall from January 1, 2020, before the pandemic. While attrition rose minimally in the first year of the pandemic, it increased over 25 percent in 2021 to 16,858.[15]

Specific proposals in the Executive Budget to recruit and retain State workers include:

- Applying continuous recruitment to any positions filled through open competitive examination and eliminating the requirement for an inadequate number of well qualified candidates, and offering such exams in extended formats ($7.8 million);
- Undertaking a marketing campaign for hard-to-recruit and high-need positions ($2.3 million);
- Developing a new job evaluation system for all civil service job titles taking into account pay equity and private sector levels of compensation ($2.2 million);
- Establishing Centers for Careers in Government with on-site specialists that perform outreach with job seekers, State agencies, educational institutions and other entities to promote employment opportunities ($2 million);
- Allowing the transfer of certain non-competitive employees into competitive class positions;
- Updating agency buildings to support hybrid work schedules and increased productivity; and,
- Lowering the minimum hiring age of corrections officers from 21 to 19.

The Executive Budget also proposes to make available 12 weeks of paid parental leave and extend indexing of the State's minimum wage to inflation to the employees of New York State.

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[13] Office of the New York State Comptroller, *New York State Agency Use of Overtime and State Workforce Trends, 2012 – 2021*, July 2022 at https://www.osc.state.ny.us/files/reports/pdf/cy2021-overtime-report.pdf.

[14] Fiscal Year 2024 New York State Executive Budget Briefing Book, pg. 126.

[15] New York State Department of Civil Service, *State Workforce Management Report* (2020 – 2022) at https://www.cs.ny.gov/pio/archived-reports.cfm. Covers employees in classified service and certain workers in the unclassified service and includes seasonal and part-time employees.

Energy

The Executive Budget contains significant policy proposals and appropriations intended to achieve the goals of the Climate Leadership and Community Protection Act (CLCPA) as well as mitigating economic impacts of meeting these goals on New Yorkers.

The Executive Budget substantially increases spending of State appropriated funds at the New York State Energy Research and Development Authority (NYSERDA) to $229 million in SFY 2023-24, an increase of 836 percent over the current fiscal year's projected spending. This spending is in addition to almost $1.5 billion in projected NYSERDA spending of funds sourced from assessments on utilities, revenues from the Regional Greenhouse Gas Initiative and other sources that are not appropriated through the State budget process.

While the Executive Budget proposes a spending decrease of $47.2 million to $293.1 million, a decline of 13.9 percent, at the Department of Public Service (DPS) in SFY 2023-24, this decrease is due to the spending of a one-time appropriation of $250 million in utility arrears assistance in SFY 2022-23. In the last two years of the Financial Plan, DPS spending is projected to nearly quadruple to over $1 billion annually representing the disposition of expected revenues from the Cap and Invest program directed to benefit consumers and small businesses in the Executive Budget.

Cap and Invest

Following the recommendation of the Climate Action Committee established by the CLCPA, the Executive Budget has proposed to create a program in law to require the Department of Environmental Conservation (DEC) to establish a program in regulation that caps emissions at the CLCPA's emission reduction goals and establishes a system whereby this cap would steadily decline at a rate sufficient to produce the reductions called for in the CLCPA. The cap in turn would be broken down into allowances representing a uniform mass of emissions (the amount is not specified in the proposal). These allowances would be distributed through two processes. In one process, NYSERDA would conduct periodic auctions, so that emission sources required in regulation to possess allowances sufficient to cover their annual emissions could purchase the allowances they need to operate. In the second process, DEC would identify certain industries as energy intensive and/or trade exposed. These industries would be provided with allowances outside of the auction process for free.

Revenues generated by the auction of allowances would be deposited in a Climate Action Fund. Of these revenues, at least 30 percent would be transferred to a Consumer Climate Action Account and up to 3 percent would be transferred to an Industrial Small Business Climate Action Account. Funding in these accounts would be distributed to either State residents, or to eligible State businesses in order to offset any increased cost of goods and services that may result from the cap and invest program. Remaining funds may be used by NYSERDA to implement the cap and invest program and for General Fund relief.

The proposal leaves most of the details of the cap and invest program—such as those industries qualifying for free allowances—to be determined by regulation. Distributing allowances for free may also impact the effectiveness of the program. Cap and invest programs that require payments for allowances, in addition to providing regulatory certainty that emission reductions will be accomplished, also create a financial incentive to use, or develop technologies that do not emit greenhouse gases. To the extent that allowances are distributed for free, this incentive may be reduced or eliminated.

New York Power Authority Renewable Energy Development

The Executive Budget proposes to authorize the Power Authority of the State of New York (NYPA) to purchase or develop renewable energy, electric storage, or transmission facilities either on its own, or in partnership with other private, or public entities. NYPA would be authorized to issue bonds or notes or to use other funds for this purpose. As the federal Inflation Reduction Act of 2022 makes clean energy investment and production tax credits eligible for direct pay, NYPA would be eligible to receive funding through these programs for projects it develops. In addition, these programs provide substantial increases in the amount of assistance available for projects in disadvantaged communities which could reduce the costs to the State of achieving CLCPA requirements that at least 35 percent of the programs benefits accrue to disadvantaged communities.

Facilities so developed would be empowered to sell the electricity generated for a variety of purposes and could bid into the New York Independent System Operator's competitive markets. In addition, NYPA could sell the renewable energy attributes generated by the facilities into NYSERDA's procurement process. Based on the electricity generated by the facilities it develops, NYPA would also generate bill credits for distribution to electric customers in disadvantaged communities through a Renewable Energy Access and Community Help program to be established by the Public Service Commission.

The proposal also directs NYPA to make up to $25 million available annually for renewable energy job training programs and to develop a plan to phase out their seven gas-fired peaking plants in New York City and on Long Island, if it determines that these plants are no longer needed.

Prohibition of Fossil Fuel Equipment in New and Existing Buildings

Buildings are responsible for about 32 percent of New York State's greenhouse gas emissions according to the December 2022 Scoping Plan released by the New York State Climate Action Council.[16] The Executive Budget proposes to direct the State Fire Prevention and Building Code Council to amend the State Energy Efficiency Construction Code or the State Uniform Fire Prevention and Building Code to remove any conflicts with regulations developed to implement the CLCPA.

The Executive Budget also proposes to prohibit the installation of fossil fuel equipment and building systems in newly constructed single and multi-family residential buildings that are no more than three stories in height beginning on December 31, 2025, and for larger residential

[16] Climate Action Council, *Scoping Plan: Full Report*, December 2022, available at https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf.

buildings and commercial buildings beginning on December 31, 2028. The replacement of fossil fuel space and water heating systems would be prohibited in residential buildings of three stories or less beginning in 2030 and all other buildings in 2035. Exemptions are allowed for generation of emergency back-up power, use of fossil fueled equipment in manufactured homes and in buildings used for manufacturing, commercial food establishments, laboratories, laundromats, medical facilities, wastewater treatment plants and crematoriums.

In addition, the proposal creates a requirement that, starting in 2025, all State buildings over 10,000 square feet and other buildings that exceed 25,000 gross square feet, or two or more buildings on the same tax lot that together exceed 50,000 gross square feet, prepare an annual energy and water use bench marking reports using the U.S. Environmental Protection Agency's Energy Star portfolio manager and submit these reports to NYSERDA. NYSERDA is then required to issue a public report that provides information for all buildings that meet the reporting thresholds and to require all reporting buildings to publicly display energy grades assessed by the authority. The proposal establishes penalties for building owners that fail to report by required deadlines.

Empower Plus

The Executive Budget appropriates $200 million in the NYSERDA Capital Projects Budget for the Empower Plus program for low-income electric utility customers, or those who heat with oil, propane, or kerosene. The program provides for efficiency retrofits, including insulation services and heating and cooling equipment upgrades, free of charge for these customers. In addition, through the program, NYSERDA works with the customer's utility to connect them to a community solar project that can provide bill credits to lower the customers overall electricity bill.

Department of Public Service Energy Affordability Program

The Executive Budget appropriates $200 million in the DPS' Local Assistance Budget for an energy affordability program. The program would provide discounted electric costs for low-income residential customers that do not qualify for other affordability programs. In addition, the appropriation language directs DPS to establish a program to provide an energy affordability guarantee to residential customers that fully electrify their homes through the NYSERDA Empower Plus Program.

Housing

The SFY 2023-24 Executive Budget builds on the $25 billion housing plan enacted in the SFY 2022-23 Enacted Budget and includes various proposals as part of a plan to add 800,000 new housing units over 10 years. Achieving this target would double the growth of new housing units over the next decade: according to data from the US Census Bureau, the State added 387,808 housing units from 2011 to 2021, an average annual growth rate of 0.5 percent.[17]

[17] U.S. Census Bureau, Population Division, Annual Estimates of Housing Units for Counties in New York: April 1, 2010 to July 1, 2019 (CO-EST2019-ANNHU-36), released May 2020, and Annual Estimates of Housing Units for Counties in New York: April 1, 2020 to July 1, 2021 (CO-EST2021-HU-36), released May 2022.

New appropriations include $250 million for the Infrastructure Support Fund to facilitate the creation of new housing by supporting infrastructure development in localities that make zoning changes to increase housing production and $20 million for the Planning Assistance Fund to provide technical support to local governments. In addition, there are new appropriations for $50 million to stabilize housing and promote homeownership in areas with high levels of low-income homeowners of color and in areas with high levels of homeowner distress, $20 million to assist landlords in meeting lead remediation requirements, and $15 million to create a database of housing permit and zoning data.

Significant proposals introduced as part of the Executive Budget include:

1. *Setting three-year local growth targets and establishing fast-track approvals.*

   Beginning on January 1, 2024, localities within the Metropolitan Transportation Commuter District (MTCD) will have to meet a three-year, 3 percent increase in the number of units permitted for construction over the number of housing units reported in the 2020 census.[18] For localities outside of the MTCD, the target is 1 percent. For the purposes of calculating progress, income-restricted housing permitted will count double, and units that were deemed as vacant and abandoned that are made suitable for occupancy will count one and a half times.

   Current county-level trajectories of growth vary greatly: From 2010 to 2020, 39 counties lost population,[19] and 19 counties outside the MTCD experienced a decline in the number of housing units between 2011 and 2021.[20] Within the MTCD, production would need to increase across all counties, as average annual growth rates over the ten-year period were below 1 percent, as shown in Figure 11.

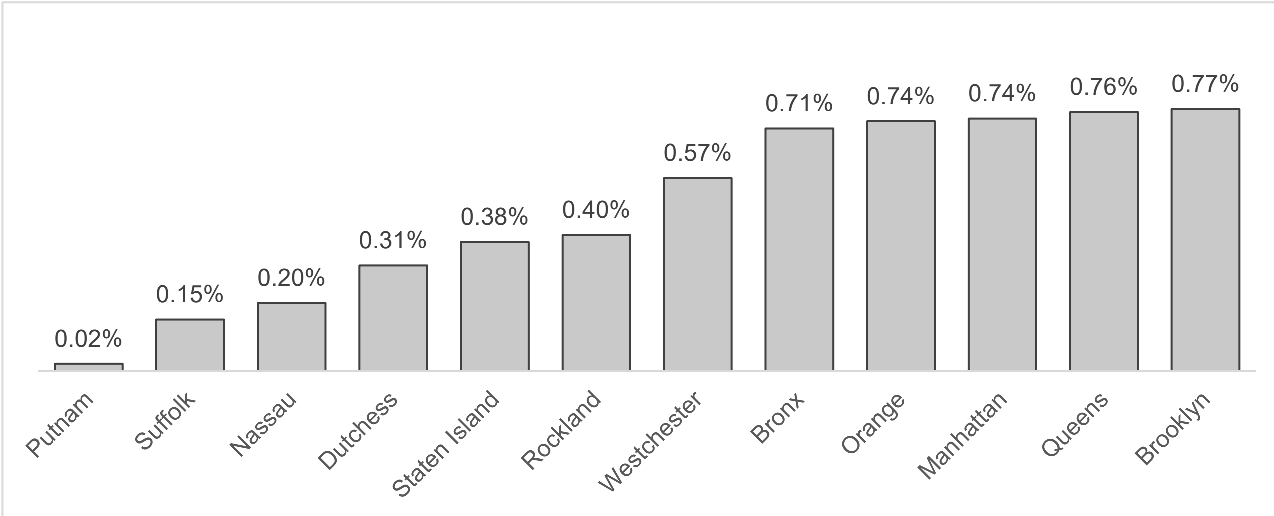
   On January 1, 2027, after the first three-year cycle has concluded, the Division of Housing and Community Renewal (DHCR) would make a determination on each locality's "safe harbor" status. To be eligible for safe harbor, a locality must either meet its three-year growth target, or in the first cycle must enact two out of the five "preferred actions," specified as:
   - Pass a local law allowing accessory dwelling units;
   - Pass a local law allowing lot splits to the specifications outlined in the bill;
   - Remove exclusionary measures from land use laws including minimum lot size requirements for residential and mixed-use projects, height limits, lot coverage restrictions and parking space requirements that exceed one space per unit;
   - Smart-growth rezoning; and,
   - Adaptive reuse zoning.

[18] The Metropolitan Transportation Commuter District (MTCD) made up of New York City and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess and Westchester. The targets will also apply to each of New York City's 59 community districts.

[19] 2020 US Census PL 94-171 data for redistricting.

[20] U.S. Census Bureau, Population Division, Annual Estimates of Housing Units for Counties in New York: April 1, 2010 to July 1, 2019 (CO-EST2019-ANNHU-36), released May 2020, and Annual Estimates of Housing Units for Counties in New York: April 1, 2020 to July 1, 2021 (CO-EST2021-HU-36), released May 2022.

Figure 11
Average Annual Growth Rates in Housing Units, Counties in the MTCD, 2011 – 2021



Source: U.S. Census Bureau, Population Division, Annual Estimates of Housing Units for Counties in New York

Localities would be exempted from having to conduct State and City Environmental Quality Reviews when amending their local land use laws to enact a preferred action.

In localities that do not achieve safe harbor status, applications that do not conform to local land use requirements cannot be denied unless the project is (1) to be developed on undisturbed land, (2) there is shown to be insufficient capacity for drinking and wastewater, or utility capacity, or (3) it is counter to objective and published aesthetic criteria. Applicants will be able to appeal denials to the Housing Review Board (HRB), a proposed five-member board with three members appointed by the Governor and one member each appointed by the Speaker of the Assembly and the Temporary President of the Senate.

Denials by the HRB could be appealed to the State Supreme Court and heard by a designated land use judge. In appeals to the HRB or the courts, the burden of proof would be placed on the locality that denied the application, and the application would be reviewed based only on the three specified criteria.

2. *Establishing transit-oriented development zones.*

The proposed Transit-Oriented Development Act of 2023 establishes transit-oriented development zones, and requires cities, towns and villages with train stations operated by the Port Authority of New York and New Jersey, the NJ Transit Corporation, or the MTA and its transit subsidiaries to amend their zoning codes to increase density in the areas around stations based on four tiers summarized in Figure 12.

Figure 12
Proposed Transit-Oriented Development Zones

Zones	Distance from NYC	Density
Tier 1	In NYC and within 15 miles	At least 50 units per acre
Tier 2	> 15 miles < 30 Miles	At least 30 units per acre
Tier 3	> 30 Miles < 50 Miles	At least 20 units per acre
Tier 4	> 50 Miles	At least 15 units per acre
Note: All zones are within 1/2 mile of stations meeting the above criteria.		

Source: Division of the Budget

In addition to requiring zoning changes, the Act establishes that within each zone applications for qualifying residential or mixed-use projects may only be denied based on water and wastewater capacity, utility infrastructure capacity, or aesthetic criteria based on objective and published standards. Municipalities would be exempted from the environmental review process when amending their zoning codes, and applications for qualifying residential and mixed-use projects are also exempted from the environmental review process. Failure to amend the zoning code and appropriate land use tools to meet these criteria would prevent the municipality from denying applications for qualifying projects, and the Attorney General would be able to commence action to compel cities to amend their land use tools.

3. *Establishing a tax incentive for affordable multi-family housing outside of New York City.*

   The Executive Budget proposal creates an optional local tax incentive program outside of New York City that may be provided by any city, town or village by local law for new construction of rental properties of at least 20 units. At least 20 units of the project must be affordable to households with income at less than 80 percent of Area Median Income (AMI), adjusted for family size, at the time of first occupancy, and less than 100 percent AMI following a vacancy. The project would be wholly exempt up to three years during construction, and for 25 years, starting at 96 percent exempt, and decreasing by 4 percent annually.

4. *Providing a property tax exemption for accessory dwelling units.*

   The Executive Budget provides a five-year tax exemption of 100 percent for the property value added by the creation of an accessory dwelling unit. After the initial five years, there is another five years of stepdown exemptions. The tax exemption would be limited to $200,000 of added property value and would have to be applied for.

5. *Requiring localities to annually report housing, permitting, funding, and zoning information to DHCR.*

In addition, the housing plan includes several proposals specific to New York City:

- Making it legal to develop residential housing in commercially zoned buildings, and authorizing tax incentive benefits for converting commercial property to affordable housing. Affordable housing projects will be tax exempt during the construction period. After construction is complete, properties in the Manhattan Prime Development Area (PDA) receive a 50 percent exemption for 15 years. Properties outside of the PDA receive a 35 percent exemption for this period. For the next four years, properties within the PDA receive a tax exemption that is 10 percent less than the prior year, and properties outside the PDA receive an exemption 7 percent less than the prior year. It also requires that during the tax benefit period the affordable housing units rent be stabilized.

- Legalizing the conversion of existing basement apartments into legal dwellings. The bill also protects tenants from enforcement actions prior to conversion once a permit is applied for except for vacate orders for hazardous or unsafe conditions. Existing tenants under this law will have the right of first refusal once basement apartments are compliant. The bill also establishes a legal mechanism for grants and loans to be made to convert basement apartments.

- Authorizing New York City and the New York State Urban Development Corporation (UDC) to override the requirement to maintain a ratio of 12.0 for the floor space of a building and the area of the lot the building is built on.

- Updating tax abatement incentives for affordable multiple dwellings to create a maximum of eight and one-third percent of the certified reasonable cost of construction property tax abatement to owners of affordable rentals and owner-occupied housing who complete capital improvements.

According to the Governor's State of the State book, achieving the 800,000 unit goal also assumes the adoption of a successor to the 421-a tax incentive program in New York City, but the Executive Budget does not include bill language with respect to such a program.

Metropolitan Transportation Authority

In December 2022, the MTA adopted a budget and financial plan which forecast a $600 million budget gap in 2023. The gap was expected to be closed with new governmental funding or additional MTA actions in 2023. Cumulative projected budget gaps through 2026 total $11.4 billion.

The Executive Budget would provide $8.3 billion in State operating aid in SFY 2023-24 to the MTA, including resources collected by the State and sent directly to the MTA without appropriation. On-budget MTA assistance would increase 7 percent, from $3.8 billion to $4.1 billion. The MTA would also receive $300 million in one-time assistance to address extraordinary revenue impacts caused by the pandemic, which will help close its budget gap in 2023.

The proposal would provide the MTA with more than $1.2 billion in recurring additional assistance to help balance its budgets in future years. The largest source of funding increases is from increasing the Payroll Mobility Tax (PMT). The PMT is imposed on most businesses and self-employed individuals in the 12 counties of MCTD. For businesses, the tax is imposed on total payroll expenses with the rate varying by size of payroll. The taxes are deposited to the MTA Finance Fund and remitted directly to the MTA.

The rate increase would begin July 1, 2023 and would apply to all employers who currently pay the tax in the 12-county MCTD that have payrolls higher than $437,500 in any calendar quarter. The rate would grow from 0.34 to 0.5 percent. Those who are self-employed who have net earnings that exceed $50,000 annually will have their PMT rate increased in two phases: from 0.34 percent to 0.42 percent in tax year 2023 and to 0.5 percent starting on January 1, 2024.

The rate increase is expected to bring the MTA $800 million more annually for its operating budget. The Executive suggests $150 million of this additional funding can be used for additional MTA safety personnel, but this funding is not earmarked.

Figure 13
Current Payroll Mobility Tax Rates

Quarterly Payroll Expense	Tax Rate
Less than $375,000	0.11 percent
$375,000 - $437,500	0.23 percent
Greater than $437,500	0.34 percent

The Executive Budget would also require New York City (City) to provide the MTA's operating budget a total of $438 million more in city fiscal year (CFY) 2024. These costs would be recurring and include:

- Funding for all of the net operating expense, up from the 50 percent rate set in 2020, for the MTA's paratransit system ($234 million in CFY 2024). The City's contribution would be capped at $602 million in calendar year 2024 and the capped amount would increase by 10 percent annually. Beginning in calendar year 2029, the cap would also reset the first year of every five-year period, when the capped amount would be 110 percent of the City's actual paratransit cost in the preceding year.
- The City would pay the MTA's net fare losses from providing reduced fare MetroCards to its students after existing State reimbursements are factored in ($90 million in CFY 2024). The City also would pay all of the MTA's administrative costs of this program. Currently, the City pays the MTA $45 million annually for the cost of student MetroCards.
- The City would match 47 percent of the State's payment to the MTA ($115 million starting in CFY 2024) to offset the cost of exempting certain employers from paying the PMT.

The Executive Budget also includes a provision that would direct 100 percent of the taxes and fees from any commercial casinos located in the City, including the 20 percent local share that the City would receive under current law, to the MTA's operating budget. In addition, 80 percent of the revenues from the downstate casinos that are located outside the City would also be directed to the MTA. With license fees set at $500 million per casino, the fees would provide $1.5 billion to the MTA. Since it is unclear when casino licenses will be issued and when the casinos will be fully operational, there is no expectation for any revenues for the MTA in the upcoming fiscal year. According to the Spectrum Gaming Market Study, the taxes could provide between $462 million and $826 million annually but are not anticipated until at least 2026. The proposed law would be repealed in 2033.

Other Executive Budget proposals that affect the MTA are:

- Make permanent the authorization to the City and the MTA to employ camera technology to enforce traffic violations that obstruct dedicated bus lanes and authorize a demonstration program to use camera technology to enforce certain New York City traffic laws prohibiting drivers from blocking no stopping and no standing zones, bus stops, and bicycle lanes.

- Authorize MTA Bridges and Tunnels to establish a demonstration program to enforce speed limits in and around its bridges and tunnels with camera technology enabled speed violation monitoring systems.

- Make permanent municipalities' ability to create "mass transportation capital districts" to facilitate tax increment financing of MTA capital projects. This authority would allow municipalities within the MTA district to work with the MTA to establish alternative funding arrangements for capital projects that benefit their communities.

- Allow the MTA to expand its owner-controlled insurance program to projects involving buses, bridges and tunnels.

- Improve toll collection efforts by MTA Bridges and Tunnels and other tolling authorities by outlawing certain common toll evasion practices and strengthening enforcement actions and penalties to respond to such practices.

- Extend the sunset provision of the use of compulsory arbitration to resolve impasses in collective bargaining negotiations between the MTA and its labor representatives by two years, from July 1, 2023 to July 1, 2025.

- Provide that attacks causing physical injury against traffic checkers, motor vehicle license examiners, motor vehicle representatives, highway workers, motor carrier investigators, and motor vehicle inspectors, constitute assault in the second degree.

- Expand the authority of judges to ban individuals who are convicted of assaults on other riders from the MTA system as an element of sentencing.

New York Racing Association

The Executive Budget appropriates $455 million in capital funds to UDC for the New York Racing Association (NYRA) to redevelop Belmont Racetrack ("New Belmont" plan). According to the "New Belmont" plan, nearly 85 percent of the funds would be used over the next four years to build a new, larger and modernized clubhouse with the remainder for track renovations. Upon completion of the project, Aqueduct racetrack would be closed, and all racing would be moved to Belmont.

NYRA would receive a loan financed with funds from the State's Short Term Investment Pool (STIP), which serves as an investment vehicle for various State liquid assets.[21] According to DOB, the loan is anticipated to have a term of 20 or more years at an interest rate of 1.8 percent; NYRA payments are estimated to be $25.8 million annually. Loan payments will be made from NYRA's share of video lottery terminal (VLT) revenues that are currently used for capital expenditures at Belmont. As a potential back-up, the proposal includes authorization for State PIT or Sales Tax Revenue Bonds, with a term of up to thirty years, to be issued to repay the STIP loan, for which NYRA would be required to repay the State for the debt service costs.

The Office of the State Comptroller has previously expressed concerns with use of State debt for economic development projects, and this particular proposal deserves further scrutiny. NYRA has had a troubled financial past,[22] and its franchise agreement expires in 10 years (2033).

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[21] STIP is allows for pooling cash assets within the State's General Checking Account for short-term investment purposes, permitting investment decisions based on the assets and liquidity needs of the checking account as a whole, rather than the needs of its component parts. Although State funds are pooled in the STIP, separate accounting records are maintained to provide complete and accurate accountability for individual fund assets. For more information, see Office of the State Comptroller, "XIV.3.B Short Term Investment Pool (STIP)," accessed February 23, 2023, available at https://www.osc.state.ny.us/state-agencies/gfo/chapter-xiv/xiv3b-short-term-investment-pool-stip#:~:text=The%20Short%20Term%20Investment%20Pool,purposes%20of%20short%2Dterm%20investments.

[22] See Office of the State Comptroller, New York Racing Association, Inc: Financial Condition and Selected Governance Activities, 2009, available at https://web.osc.state.ny.us/audits/allaudits/093010/09s89.pdf.

IV. Capital Plan and Debt

The Executive Budget proposes a $94.6 billion five-year Capital Plan, an increase of $1.8 billion or 2 percent from the previous Enacted Plan. Transportation and transit spending make up the largest component at 44.7 percent of total capital plan spending. Over the five-year period, more than $31.4 billion would be dedicated to economic development, parks and environment, and higher education.

A total of $21.4 billion in capital spending is proposed in SFY 2023-24, which includes $7 billion from the Department of Transportation's (DOT's) five-year Capital Plan enacted last year; $2 billion proposed for parks and environmental projects; and $1.3 billion in new economic development capital funding in part to continue annual incentive competitions such as the Regional Economic Development Council grants and the Downtown Revitalization Initiative and to fund the redevelopment of the Belmont Park Racetrack. The $455 million dedicated to the project is expected to be repaid by the New York Racing Association (NYRA) in the future.

Figure 14
Comparison of SFY 2023-24 Executive Budget Capital Plan to SFY 2022-23 Enacted Budget Capital Plan
(in millions of dollars)

Functional Area	SFY 2023-24 Through SFY 2027-28	SFY 2022-23 Through SFY 2026-27	Dollar Change	Percentage Change
	Proposed	**Enacted**		
Transportation & Transit	42,323	41,750	573	1.4%
Education	1,914	2,156	(242)	-11.2%
Higher Education	10,016	9,300	716	7.7%
Economic Development	10,890	11,155	(265)	-2.4%
Mental Hygiene	4,530	3,409	1,121	32.9%
Parks & Environment	10,533	9,450	1,083	11.5%
Health	7,027	4,825	2,202	45.6%
Social Welfare	7,583	7,225	358	5.0%
Public Protection	2,974	2,617	357	13.6%
General Government	2,701	2,520	181	7.2%
Other	(5,846)	(1,598)	(4,248)	265.8%
Total	**94,645**	**92,809**	**1,836**	**2.0%**

Note: Negative figures in "Other" reflect anticipated underspending during the course of the plan.

Source: Division of the Budget

The largest projected increase, 45.6 percent, is in health spending, reflecting increased support for infrastructure improvements, new investments from the Statewide Health Care Facility Transformation program and an additional $627 million from the Department of Health's assumption from Empire State Development of the construction of a new Wadsworth Center for Laboratories and Research.

Financing Sources

Over the life of the proposed five-year Capital Plan, DOB expects to use State Pay-As-You-Go (PAYGO) to finance approximately 26.6 percent of the Plan. Federal PAYGO is expected to increase by $1.7 billion, or nearly 10 percent, to comprise fully 20 percent of the proposed Plan. Most of the increase is related to transportation, resulting from the five-year capital plan enacted in SFY 2022-23. Also, the Executive Budget notes that the Department of Environmental Conservation's average annual spending on capital projects is expected to increase by $300 million to, among other things, ensure compliance with federal environmental mandates and fund flood control and shore protection projects.

Figure 15
Comparison of SFY 2023-24 Executive Budget Capital Plan Financing Sources to SFY 2022-23 Enacted Budget Capital Plan
(in millions of dollars)

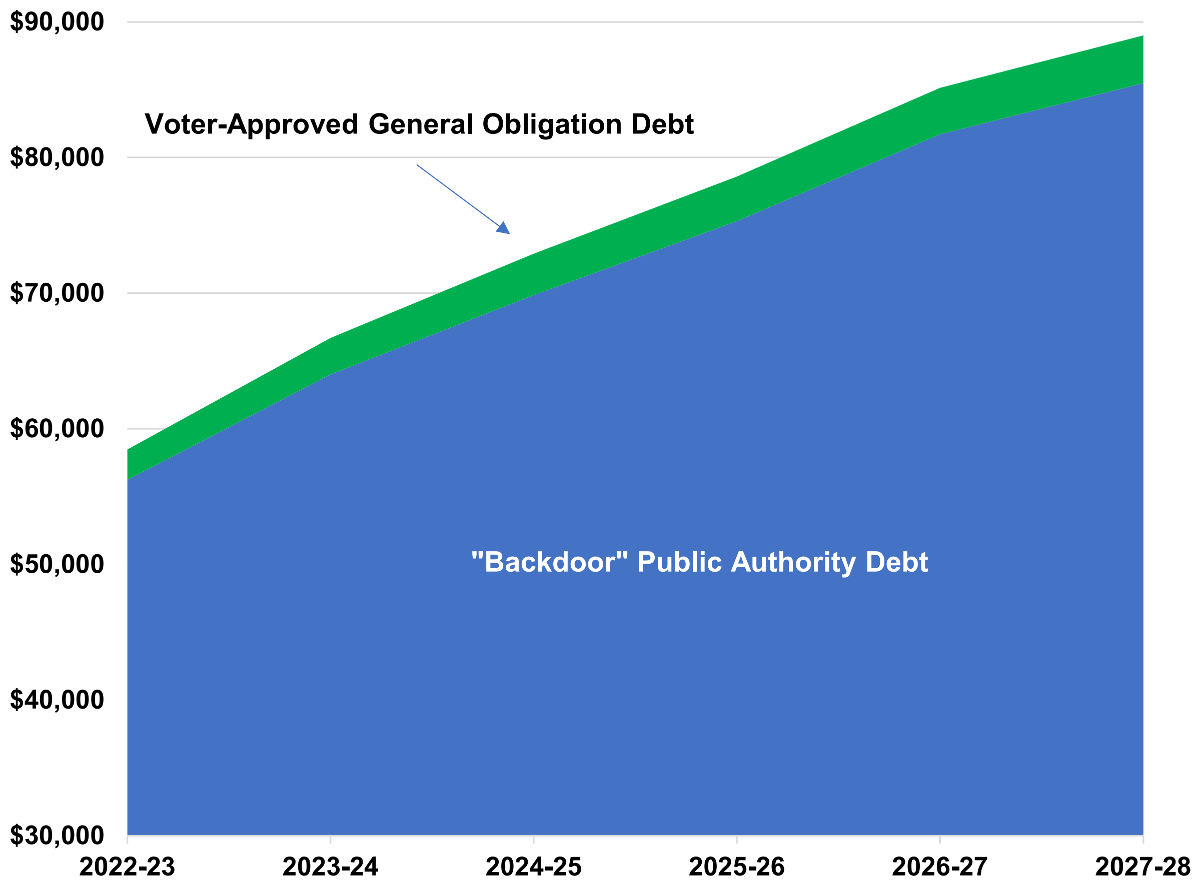
Financing Source	SFY 2023-24 Through SFY 2027-28	SFY 2022-23 Through SFY 2026-27	Dollar Change	Percentage Change
Authority Bonds	47,523	47,549	(26)	-0.1%
Federal Pay-As-You-Go (PAYGO)	19,443	17,703	1,740	9.8%
State PAYGO	25,203	25,076	127	0.5%
General Obligation Bonds	2,476	2,480	(4)	-0.2%
Total Capital Funding	**94,645**	**92,808**	**1,837**	**2.0%**
Less Federal Funding	19,443	17,703	1,740	9.8%
State Capital Funding	**75,202**	**75,105**	**97**	**0.1%**

Source: Division of the Budget

Debt Outstanding

Over the five years of the Executive Budget Capital Plan, total State-supported debt grows from $58.5 billion in SFY 2022-23 to $89 billion in SFY 2027-28, an increase of $30.5 billion or over 52 percent. The vast majority of State-supported debt outstanding has been - and is projected to continue to be - "backdoor borrowing" issued by public authorities, which circumvents the constitutional requirement for voter-approval of State debt. As of SFY 2022-23, over 96 percent of State-supported debt outstanding will have been issued by public authorities, primarily PIT and Sales Tax Revenue Bonds.

Figure 16
State-Supported Debt Outstanding, SFY 2022-23 – SFY 2027-28
(in millions of dollars)



Source: Division of the Budget; Office of the State Comptroller

Debt Service

State-supported debt service costs reflect prepayments made in prior fiscal years and proposed for the end of SFY 2022-23 that will lower payments annually through SFY 2026-27. These prepayment actions distort the annual spending values for debt service costs, considerably so for the overall growth trends and percentages during the Capital Plan years. When adjusted for these prepayment actions, debt service costs are projected to rise from $6.7 billion in SFY 2022-23 to $8.5 billion in SFY 2027-28, an increase of nearly $1.8 billion or nearly 27 percent.

Figure 17
Debt Service Spending Adjusted for Prepayments,
SFY 2022-23 – SFY 2027-28
(in millions of dollars)

	SFY						Growth	
	2022-23	**2023-24**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**Dollars**	**Percent**
Executive Budget Debt Service	**$8,491**	**$3,498**	**$4,270**	**$5,438**	**$5,413**	**$8,450**	**($41)**	**-0.5%**
Prior Prepayments	(1,075)	(2,255)	(2,395)	(1,630)	(2,360)	-		
FY 2023 Enacted Prepayment	2,000	-	(750)	(750)	(500)	-		
FY 2024 Executive Prepayment	900	(900)	-	-	-	-		
Total Prepayments	**$1,825**	**($3,155)**	**($3,145)**	**($2,380)**	**($2,860)**	**-**		
Debt Service Adjusted for Prepayments	**$6,666**	**$6,653**	**$7,415**	**$7,818**	**$8,273**	**$8,450**	**$1,784**	**26.8%**

Source: Division of the Budget

State Debt Limits

Under Executive Budget projections, remaining capacity available under the State's debt limit is projected to decline from $21.5 billion in SFY 2022-23 to $171 million by SFY 2027-28. However, this does not reflect the fact that the guardrails embodied in the State's Debt Reform Act cap were significantly eroded by actions in the SFY 2020-21 and 2021-22 Enacted Budgets, which excluded any debt issued during those two years (about $18 billion) from the limit. Combined with debt that had been initially excluded from the Act, nearly one-third of State-supported debt has been excluded from the State's debt limits as of SFY 2022-23 – a total of $19.2 billion in debt. Without these debt exclusions, the State's debt limit would be breached in every one of the Capital Plan's five years. Furthermore, State-supported debt would be roughly $3 billion greater if the federal loan for the Gateway Project were appropriately counted.

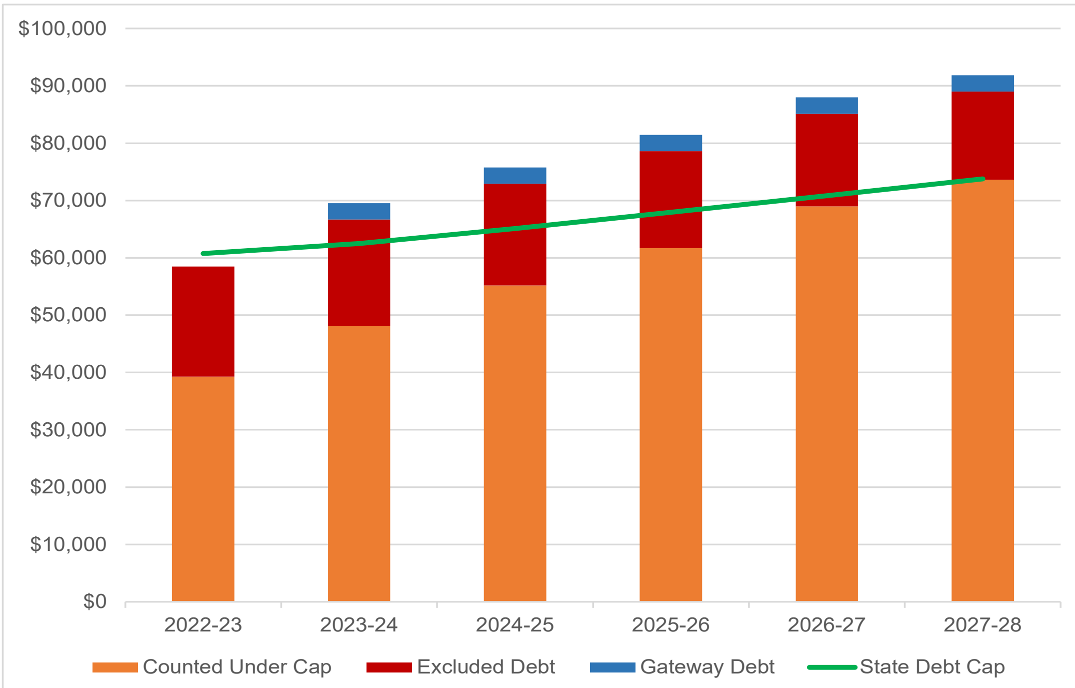
The Executive Budget proposes to increase the authorization for the Gateway Project for the Hudson passenger rail tunnel by $500 million, to $2.85 billion, and continues the practice of circumventing the State's statutory debt caps for this purpose. This utilizes a loophole in the Debt Reform Act – which only counts "bonds or notes" – by structuring the Gateway debt with a federal loan repaid by the State through a service contract. The proposal further reduces transparency and accountability by inappropriately classifying the Gateway loan in a newly-modified definition of "State-related debt" that would be inconsistent with past practice.[23]

Even though this debt is imminent enough to now require an appropriation in the proposed debt service bill for repaying the loan, and such spending is assumed in the Financial Plan, the Budget does not count this debt in projections of any debt outstanding measure at all.

[23] Traditionally, State-related debt previously reflected debt repaid from non-State sources in the first instance, where State appropriations are contingently available – but typically not expected to be needed – to make payments. This did not reflect debt where the State is contractually obligated to repay in the first instance, which is classified as State-supported debt.

The Executive Budget also proposes to re-authorize the ability to issue up to 50-year maturities for State-supported bonds issued for MTA purposes, in contravention to the Debt Reform Act's otherwise 30-year maturity limit for all State-supported debt.

Figure 18
State Debt Outstanding and Debt Cap, SFY 2022-23 – SFY 2027-28
(in millions of dollars)



Source: Division of the Budget; Office of the State Comptroller

Additional Debt Proposals

The Executive Budget again proposes authorizations for up to $5 billion in short-term cash flow borrowings during SFY 2023-24, through $3 billion in PIT Notes and $2 billion in lines of credit. These authorizations are redundant to the existing ability to issue constitutionally-authorized full faith and credit Tax and Revenue Anticipation Notes (TRANs) and have been proposed despite high General Fund cash balances.

V. Assessment and Risks

As with any projections, the Financial Plan is subject to various risks and uncertainties, which are extensive. Many of these risks are defined in the Executive Budget Financial Plan. The Office of the State Comptroller identifies the following notable risks associated with the Executive Budget and current economic environment and also highlights additional areas of concern with the Executive Budget and Financial Plan.

Economic and Revenue Risks

Economic Risks. DOB's economic forecast for the nation is slightly more pessimistic compared to the Blue Chip Consensus, as well as many of the individual forecasters involved with the Consensus. Nevertheless, the predominant risks for this forecast are continued inflation, the impact of the interest rate hikes, and shocks related to the Russia-Ukraine war. Prolonged high inflation would reduce spending power and deplete consumer savings despite increased wages, resulting in lower consumption. Since March 2022, the Federal Reserve Board has increased the Fed Funds interest rates by 450 basis points, resulting in increased borrowing costs for consumers and businesses. While the rate of inflation has slowed in the past few months, the housing market and business investment in facilities have been a drag on economic growth. With inflation expected to remain elevated and additional rate hikes expected in 2023, consumption as well as investment growth could be further constrained.

New York's revenues, particularly the personal income tax, are highly sensitive to changing economic conditions. With the Executive Budget forecasting a recession, albeit short and shallow, DOB reduced its projections of tax revenues for the upcoming fiscal year by $2.1 billion and a total of $10.3 billion over the life of the Financial Plan. Should a recession be more severe and/or be longer in duration, revenues could decline more than currently forecast.

The changes in the labor market are also a risk to the New York economy and, in turn, its revenues. New York's job recovery from the pandemic has been relatively slow, there are fewer workers in the labor force, and the labor force participation rate is among the lowest in the nation. DOB does not expect a return to pre-pandemic employment levels until 2027 while S&P Global's forecast is more pessimistic, projecting that a full recovery will not occur within its forecast horizon.

Forecast Uncertainty from the PIT and PTET. Although DOB expects the PTET to be revenue neutral on a multi-year basis, the timing of PTET payments in the first year and taxpayer behavior in relation to the claiming of the PIT credits for the PTET paid obscures the ability to confidently forecast the amount of revenues the State will receive in any single fiscal year, particularly with respect to the State's PIT, the most significant tax source and one subject to volatility based on economic conditions. When enacted, DOB anticipated most of the credits from the 2021 tax year to either be paid as refunds or a reduction in payments made with requests for filing extensions. In the 2022 tax year, taxpayers were expected to adjust their quarterly estimated payments for a large portion of the credits. However, that did not seem to come to fruition. With actual results from the 2021 tax year not available until later in the year and mixed economic conditions clouding collections in 2022, forecasting how these credits impact the State's revenues in subsequent fiscal years becomes difficult. For a more detailed discussion, see Appendix C.

Structural Balance

Reliance on Temporary Resources. For decades, the State Budget often included provisions that caused recurring spending to rise at a faster pace than recurring revenue, creating structural imbalances and budget gaps. Such gaps are often closed with short-term solutions, frequently addressing only a single year, a practice which exacerbates the problem of structural imbalance in subsequent years.

The Executive Budget includes $14.9 billion in SFY 2023-24 resources that the Office of the State Comptroller identifies as either temporary (more than one year but not permanent) or non-recurring (one year), as shown in Figure 19. While this list may not reflect the entirety of the Budget's reliance on temporary resources, it presents the most significant items. About 98 percent results from temporary federal assistance related to the pandemic (69 percent) and tax increases enacted in SFY 2021-22 (28 percent).

Figure 19
Temporary and Non-Recurring Resources in SFY 2023-24
(in millions of dollars)

New Actions	
Various Fund Sweeps	130
Dormitory Authority Transfer	22
New York Power Authority Transfer	20
NYS Energy Research and Development Authority Transfer to General Fund	5
NYS Energy Research and Development Authority Transfer to EPF	5
Subtotal	**181**
Prior Continuing Actions	
Personal Income Tax Top Rate Surcharge	3,439
Corporate Franchise Rate Increase	796
Mortgage Insurance Fund	91
CUNY Asset Sales	60
Subtotal	**4,386**
Federal Assistance	
Education Funding	4,844
American Rescue Plan State Fiscal Relief	2,250
Medicaid Reimbursement	1,826
HCBS FMAP	1,462
Subtotal	**10,382**
Total Temporary and Non-recurring Resources	**14,949**

Sources: Division of the Budget; Office of the State Comptroller

Use of Federal Relief Funds. Notably, the American Rescue Plan Act provided the State with $12.7 billion of funding from the State and Local Fiscal Recovery program that could be used for a broad range of purposes, including replacement of lost tax revenue due to the pandemic. The Financial Plan has and continues to assume that these funds will be used over the four fiscal years of SFY 2021-22 through 2024-25, including $2.25 billion in the next fiscal year and $3.645 billion in SFY 2024-25. This funding has been critical to meeting pandemic recovery needs and providing stability to the Financial Plan. However, little information is available to determine whether the funding has been used equitably, efficiently, and with the proper balancing of short-term need with long-term sustainability. DOB has reported uses for the initial year of funding ($4.5 billion) at a high level, including $2.8 billion for "Government Services." No additional details have been provided about uses of funding in SFY 2022-23 or SFY 2023-24. Increased transparency about the planned use of the remaining funds is needed.

Similarly, school districts are faced are with the challenge of deploying federal pandemic resources swiftly to help students that are most in need to make up for learning loss. As of January 2023, about 40 percent of more than $14 billion in total aid had been spent. Approximately $12.6 billion in spending is planned between SFY 2022-23 and SFY 2024-25, with funding declining in each year. This could be problematic if a significant portion of these funds is left unspent or is dedicated to programs with recurring expenses, or if significant progress in academic recovery has not occurred.

Public Health Insurance Programs. Enrollment in public health insurance programs including Medicaid (7.8 million), the Essential Plan (1.1 million) and Child Health Plus (405,265) is expected to exceed 9.2 million people in the current fiscal year, largely due to the pandemic economy and the loss of employer-provided health insurance. In June 2023, the State will begin redetermining eligibility for enrollees in all three programs that will reduce coverage by 10.3 percent to 8.3 million individuals by April 2024, according to Financial Plan projections. In the Medicaid program, the Financial Plan projects a decline of almost 888,000 individuals in a single year, dropping from 7.8 million in the current year to 6.9 million in SFY 2023-24. If enrollment exceeds current projections, significant additional unbudgeted costs will occur.

The Office of the State Comptroller first highlighted this risk in the 2021 report, "Medicaid: Enrollment Growth, COVID-19 and the Future." Based on Executive Budget projections, slower-than-anticipated enrollment declines would produce fiscal pressures on spending beginning in SFY 2023-24. For example, if only half of the assumed decline (about 444,000 enrollees) is realized, there could be an additional $6.2 billion in total costs, reflecting federal, State and local shares, including $2.2 billion in State costs in that year.

As detailed in Figure 20, unanticipated, total two-year costs under alternative scenarios range from $10 billion (assuming enrollment declines by two-thirds) to $30 billion (assuming Medicaid enrollment does not decline at all by March 2025).

Figure 20
Risk Analysis of Medicaid Enrollment and Spending Projections, SFY 2022-23 – SFY 2024-25

	SFY 2022-23	SFY 2023-24	SFY 2024-25
DOB Enrollment Projections (in millions)	7.79	6.90	6.57
Spending Projections			
Total (in millions of dollars)	$92,300	$96,500	$94,400
Per Enrollee Spending	11,850	13,983	14,379
Scenario 1: No Decline			
Enrollment Projections (in millions of people)	7.79	7.79	7.79
Spending Projections (in millions of dollars)			
Total (in millions of dollars)	$92,300	$108,915	$111,999
Gross Cost Increase		12,415	17,599
Estimated State Share Cost Increase		4,469	6,864
Scenario 2: One-Third Decline			
Enrollment Projections (in millions of people)	7.79	7.49	7.38
Spending Projections			
Total (in millions of dollars)	92,300	104,777	106,133
Gross Cost Increase		$8,277	$11,733
Estimated State Share Cost Increase		2,980	4,576
Scenario 3: Half-Decline			
Enrollment Projections (in millions of people)	7.79	7.35	7.18
Spending Projections			
Total (in millions of dollars)	92,300	102,708	103,199
Gross Cost Increase		$6,208	$8,799
Estimated State Share Cost Increase		2,235	3,432
Scenario 4: Two-Thirds Decline			
Enrollment Projections (in millions of people)	7.79	7.20	6.97
Spending Projections			
Total (in millions of dollars)	92,300	$100,638	$100,266
Gross Cost Increase		4,138	5,866
Estimated State Share Cost Increase		1,490	2,288

Sources: Division of the Budget; OSC Analysis

Reserve Funds

For decades, the State underfunded its statutory rainy day reserves. As described in a 2019 report by the Office of the State Comptroller, the State made little progress in adding to reserves in the 2000's and by the end of SFY 2018-2019 had only $2 billion set aside in the Tax Stabilization Reserve Fund and the Rainy Day Reserve (RDF). New York was well under national medians with respect to the rainy day balance as a percentage of General Fund spending metrics.[24]

[24] Office of the State Comptroller, *The Case for Building New York State's Rainy Day Reserves*, Dec. 2019, available at https://www.osc.state.ny.us/reports/budget/2019/rainy-day-reserves-2019.pdf.

Since SFY 2018-2019, the State has made deposits to increase its statutory rainy day funds to $3.3 billion at the end of SFY 2021-22 and has passed legislation to increase the maximum allowable annual deposit and balance of the RDF. The Executive Budget proposes to increase the balance of statutory rainy day reserves to $6.5 billion at the end of the current fiscal year and includes legislation to further increase the maximum annual deposits to 10 percent of SOF spending and the maximum fund balance to up to 20 percent of SOF spending. These measures will provide tools to manage economic and other challenges and ensure fiscal stability.

In addition, the Budget would increase the fund balance designated for "economic uncertainties" to more than $13 billion at the end of the current fiscal year. DOB considers these unrestricted funds and the statutory reserves "principal reserves" and together they would total $19.5 billion, or an estimated 16 percent of SOF spending levels at the end of SFY 2022-23. Principal reserves would reach these levels two years faster than anticipated in the most recent prior financial plan forecast; this acceleration is prudent, particularly given the economic uncertainty faced by the State and nation.

The Financial Plan indicates total principal reserves are projected to remain at $19.5 billion for the financial plan period, with no additional deposits to the statutory rainy day reserves in SFY 2023-24 or SFY 2024-25. Greater priority should be placed on building statutory rainy day reserves rather than relying on informal reserves.

Debt Practices

The Executive Budget proposes to continue recent practices to circumvent the State's debt cap by utilizing a loophole in the Debt Reform Act – which only counts "bonds or notes" – by structuring the Gateway debt (increased by $500 million, to $2.85 billion) with a federal loan repaid by the State through a service contract. The Budget would further reduce transparency and accountability by inappropriately classifying the Gateway loan as State-related debt, in a modified classification inconsistent with past practice. The Gateway loan otherwise meets all of the criteria of being State-supported debt by a) incurring debt (albeit in the form of a loan, rather than "bonds or notes"), b) contractually obligating the State to repay such debt through a service contract mechanism, subject to legislative appropriation, and c) being issued for a State capital purpose, New York's $2.85 billion share of the total project costs. Despite the fact that this debt is imminent-enough to now require an appropriation in the proposed debt service bill and spending is assumed in the Financial Plan, the Budget fails the most basic standards of transparency by continuing to not count this debt in projections of any debt outstanding measure at all. Collectively, these actions serve only to make misleading statements about the size of the State's debt burden.

The Executive Budget also proposes to re-authorize the ability to issue up to 50-year maturities for State-supported bonds issued for MTA purposes, in contravention to the Debt Reform Act's otherwise 30-year maturity limit for all State-supported debt.

In addition, the Executive Budget again proposes authorizations for up to $5 billion in short-term cash flow borrowings during SFY 2023-24. These authorizations are redundant to the existing ability to issue more cost-effective Tax and Revenue Anticipation Notes (TRANs) and the need for them is unclear given the State's current strong cash balances. Furthermore, the more costly "backdoor" public authority borrowings would otherwise only serve to circumvent the reforms embodied in the Local Government Assistance Corporation (LGAC) Act, which requires the Governor and Legislative leaders to certify the emergency or extraordinary factors needed before issuing lower-cost TRANs. It is therefore unclear why this more costly form of borrowing is proposed.

Collectively, these and other actions have rendered the State's current debt limits functionally meaningless. Comptroller DiNapoli has issued a new report highlighting how caps and other debt restrictions set in statute have not worked to rein in State debt or stop inappropriate borrowing practices, and offering a roadmap for comprehensive and binding constitutional State debt reform that restores accountability.

Procurement, Transparency and Independent Oversight

On December 30, 2022, the Executive signed into law (Chapter 839, Laws of 2022) legislation (S.6809-A (Reichlin-Melnick)/A.7925-A (Zebrowski)) to restore the Office of the State Comptroller's (OSC) independent oversight authority to review certain SUNY, CUNY and OGS contracts. This authority, which had been eliminated in the SFY 2011-12 and SFY 2012-13 Enacted Budgets, resulted, over time, in tens of billions of dollars in contracts being awarded without the benefit to taxpayers of this oversight, which validates that a contract's costs are reasonable and its terms are favorable to the State and helps to ensure a level playing field for vendors.

Enactment of this legislation was an important step to restore this essential oversight and increase accountability and transparency for State government spending. Despite the recognition of the value of this oversight, the SFY 2023-24 Executive Budget continues the problematic pattern that has occurred in previous budgets with proposals that would again eliminate the Comptroller's contract pre-review oversight authority pursuant to Section 112 of the State Finance Law (SFL) and Section 2879-a of the Public Authorities Law (PAL) and would waive existing competitive bidding requirements for State contracts pursuant to Section 163 of the SFL.

The 2023-24 Executive Budget includes 14 provisions that notwithstand both Sections 112 (exempt OSC oversight) and 163 (exempt competitive bidding) of SFL worth a minimum of $12.8 billion, not including any amount that is not specifically appropriated in the Article VII bills. An additional 17 provisions notwithstand only Section 163 which total $2.6 billion in funding excluded from the requirement to competitively bid procurements.

OSC's independent review serves as an important deterrent to waste, fraud and abuse, and ensures both a fair procurement process and that the State is contracting with responsible vendors. Removing OSC oversight and competitive bidding requirements reduces transparency and removes critical checks on State procurements. Examples where the Comptroller's contract oversight and competitive bidding requirements would be eliminated include some high dollar spending proposals, such as:

- A $6 billion appropriation for transfer by the Executive to cover services and expenses related to the COVID-19 outbreak including but not limited to additional personnel, equipment and supplies, travel costs and training, as well as responding to the direct and indirect economic, financial, or social effects of COVID-19;

- A $4.2 billion Office for People with Developmental Disabilities appropriation related to the provision of home and community-based services; and

- A $2 billion appropriation for transfer by the Executive to fund "unanticipated emergencies" of the State pursuant to purposes set forth in Section 53 of the State Finance Law.

The Budget also eliminates the Comptroller's contract pre-review oversight and State Finance Law's competitive bidding requirements in the proposal related to selection of certain Managed Long Term Care plans. The Department of Health would be authorized to use a new process for these plans. Removing these requirements weakens assurances of procurement integrity and confidence that all bidders are competing on a fair and level playing field. Further, there is already a proven and well-established competitive process in section 163 of the State Finance Law and creating a new process in the Budget could lead to inconsistencies in State procurement practices, as well as sow confusion among State agencies and vendors.

Certain other provisions included in Article VII bills, such as the one related to Managed Long Term Care plans, notwithstand Sections 112 and 163 of the State Finance Law and could significantly increase these numbers.

Accounting Standards

Many appropriations throughout the Budget also include language which authorizes spending "net of refunds" and other credits to the State, as well as language expressly directing the Comptroller to credit such refunds to the original appropriation and "reduce expenditures in the year which such credit is received regardless of the timing of the initial expenditure." These provisions, which do not include any dollar limitation, have the potential to artificially reduce the appearance of true liabilities and reported receipts and disbursements of the State in a given fiscal year.

In addition, the proposed Budget includes language, first enacted in SFY 2020-21, expressly directing OSC to credit the original appropriation and "reduce expenditures in the year in which such credit is received regardless of the timing of the initial expenditure." These provisions, which do not include any dollar limitation, could result in actual spending beyond amounts set forth in the appropriation in a given fiscal year and may further cloud the picture of true spending growth.

New York State Health Insurance Program Audits

The Executive Budget includes an appropriation for services and expenses for audits of the NYS Health Insurance Program (NYSHIP). This appropriation makes funding contingent upon DOB approval of OSC's audit plan for such audits, which violates OSC's constitutional independence and also implicates various statutory concerns (Matter of Handler, P.C. v. DiNapoli, 23 NY3d 239). Moreover, this proposal directly contravenes generally accepted auditing standards for government auditors (GAGAS), does not provide a basis for DOB's approval or disapproval of an audit plan, and would allow the Executive to constrain independent review of public expenditures. This approval would encompass not only what audit work should be done (scope, objectives, and range of activities for each audit), but also the transactions to be reviewed (period of records for each audit). Any such outside influence and interference would unduly and inappropriately impair OSC's duty to conduct independent audits.

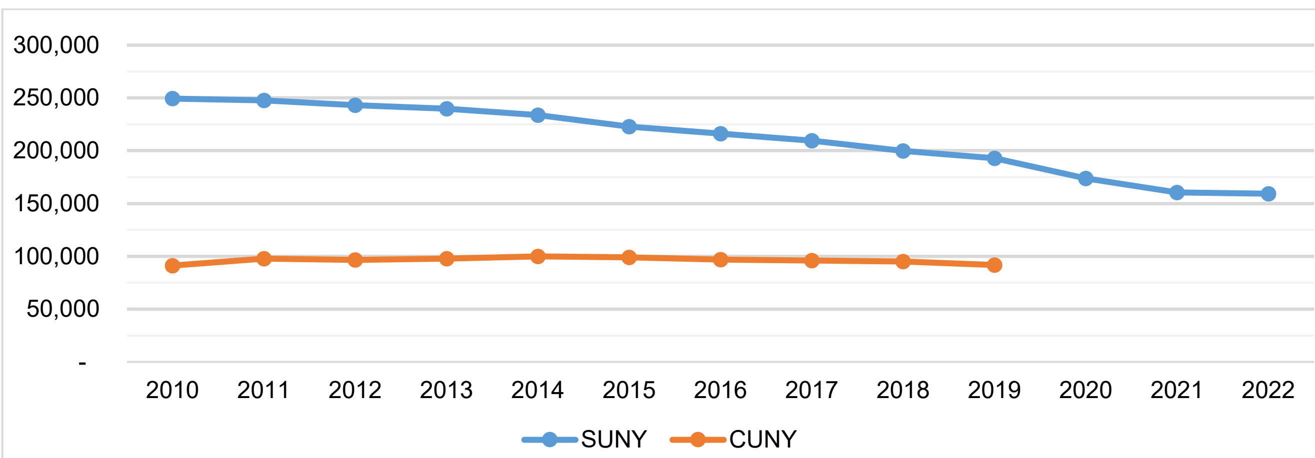
VI. Appendix A: Additional Program Area Highlights

Higher Education

The Executive Budget projects All Funds spending of $9.9 billion for the State University of New York (SUNY), $2.5 billion for the City University of New York (CUNY), $0.8 billion for the Higher Education Services Corporation (HESC), and $27 million for other higher education purposes, an overall increase of 7.9 percent from estimated spending in SFY 2022-23.

Base aid operating support for community colleges is projected to increase by $.25 million or 0.1 percent for SUNY and increase by $21.6 million or 10.0 percent for CUNY. These amounts reflect a proposal to maintain prior year funding in order to avoid overall reductions of $79 million for SUNY and $59 million for CUNY due to enrollment declines. Community college enrollments at SUNY in Fall 2022 had fallen by almost one-quarter since Fall 2017 and at CUNY had decreased by 4.4 percent in Fall 2019 compared to 2017, as shown in Figure 21.

Figure 21
Community College Enrollment by System, SUNY and CUNY, 2010 – 2022



Sources: SUNY and CUNY
Note: These data are not available for CUNY from Fall 2020 forward.

Executive Budget support for SUNY reflects continuation of the Governor's initiative undertaken in the current year Budget to transform the SUNY system. This includes up to $500 million to create a State-matching fund for endowment contributions to SUNY's four university centers ($1 for every $2 of private contributions). It also includes a non-recurring $75 million appropriation for system-wide campus initiatives that increase enrollment, provide student support, support innovation, and meet workforce needs (this amount is for the upcoming academic year; $56 million is available in SFY 2023-24).

The Executive Budget includes a second year of $53 million in appropriations for each system for full-time faculty. It also provides recurring support of $176 million for SUNY State-operated campuses and $94 million for CUNY senior colleges composed of:

- New operating assistance ($60 million to SUNY and $40 million to CUNY)
- Increased support for employee fringe benefits ($84.1 million to SUNY and $35.9 million to CUNY); and
- Reimbursement for expenses related to certain Tuition Assistance Program (TAP) and Excelsior Scholarship students' tuition costs ($32 million to SUNY and $18 million to CUNY)[25].

Finally, Executive Budget support for SUNY hospitals increases by $328.5 million to $4.1 billion.

The Executive Budget also authorizes annual tuition increases for in-state students at SUNY state-operated campuses and CUNY senior colleges indexed to the lesser of the Higher Education Price Index (HEPI) or 3%, and up to an additional 6% each year at university centers, based on the current rate at state-operated campuses, for the next five years. Along with comparable increases for out-of-state and graduate students, this action will raise $97 million at SUNY and $31 million at CUNY in academic year 2024.[26]

The Executive Budget Capital Program and Financing Plan anticipates $2.0 billion in disbursements for higher education capital projects in SFY 2023-24, including $1.4 billion for SUNY, $585 million for CUNY and $27 million through the Higher Education Capital Matching Grants program. Total capital projects appropriations at SUNY and CUNY decrease by a net $330 million and include new SUNY appropriations:

- $200 million for system-wide digital and information technology infrastructure; and
- $200 million for new and renovated research buildings and infrastructure at Stony Brook and University at Buffalo.

The proposed $1.145 billion in total HESC appropriations that support TAP, Excelsior Scholarship, Enhanced Tuition and various scholarships and awards in SFY 2023-24 increase by $6.7 million, or 0.6 percent, compared to the current year. The Executive Budget would eliminate the $2 million legislative addition for nursing faculty scholarships and loan forgiveness programs in the current year Budget and provides almost $8.4 million additional federal funds for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP).

The Executive Budget also proposes to extend the purpose of reappropriations for additional child care centers on SUNY and CUNY campuses to include expansion of existing facilities.

[25] This results both from acceleration of the reimbursement to SUNY and CUNY of tuition credits provided to certain TAP recipients in SFY 2023-24 (enacted in the current year Budget) and to certain TAP and Excelsior scholarship recipients from SFY 2023-24 Executive Budget proposed tuition increases.

[26] These amounts include a portion of the reimbursements noted above for costs from eligible in-state students' increased tuition.

State Education Department appropriations of $115.7 million for educational opportunity and training include the Executive-proposed $10 million increase provided by the 2022-23 Enacted Budget but do not include the $3.5 million legislative additions for this purpose in the current year.

The Executive Budget includes the following funding at the current year level:

- $35.1 million for unrestricted aid to independent colleges and universities (Bundy aid);
- $5 million for apprenticeship programs: $3 million for SUNY and $2 million for CUNY; and,
- $2.5 million for the Accelerated Study in Associates Program at CUNY.

Figure 22
All Government Funds Spending for Higher Education, SFY 2022-23 and SFY 2023-24
(in millions of dollars)

	SFY 2022-23	SFY 2023-24	Change	Percentage Change
SUNY Subtotal	**9,374**	**9,934**	**560**	**6.0%**
Local Assistance Grants	*498*	*452*	*(46)*	*-9.3%*
State Operations	*7,801*	*8,106*	*305*	*3.9%*
Capital Projects	*1,075*	*1,377*	*301*	*28.0%*
CUNY Subtotal	**2,217**	**2,508**	**291**	**13.1%**
Local Assistance Grants	*1,842*	*1,921*	*79*	*4.3%*
State Operations	*2*	*2*	*0*	*0.0%*
Capital Projects	*373*	*585*	*213*	*57.1%*
HESC Subtotal	**651**	**762**	**111**	**17.0%**
Local Assistance Grants	*607*	*718*	*111*	*18.3%*
State Operations	*44*	*44*	*(0)*	*-0.4%*
Other Purposes	**19**	**27**	**8**	**41.8%**
Higher Education Total	**12,261**	**13,231**	**970**	**7.9%**

Source: Division of the Budget

Note: State Operations includes General State Charges. Other Purposes is the Higher Education Facilities Capital Matching Grants Program.

New York City

According to the Executive Budget, the City would receive a net total of $250 million more in City fiscal year (CFY) 2023 and $467 million more in CFY 2024. Increases in State aid would be made available for education aid and to manage the influx of asylum seekers. The proposal would partially offset this additional aid by increasing City funding obligations for the MTA and smaller items and applies the State retention of enhanced FMAP savings to the City.

The City would receive $594 million more in education aid in CFY 2024 including $569 million more in Foundation Aid and $25 million more in expense-based and categorical School Aid.

The City would also receive $377 million in CFY 2023 and $696 million in CFY 2024 as partial reimbursement for expenditures incurred for migrant shelter and Humanitarian Emergency Response and Relief Centers (HERRCS) costs. The City currently estimates the cost of services for migrants will be $1.4 billion in CFY 2023 and $2.8 billion in CFY 2024, but the City currently has only budgeted $1 billion in CFY 2023 and has not budgeted any funds beyond that year.

As detailed in the MTA section, the City would provide the MTA's operating budget $438 million more in CFY 2024, with these costs increasing and recurring thereafter. The Executive Budget would also retain the City's share of Affordable Care Act enhanced FMAP payments costing the City $125 million in CFY 2023 and $343 million in CFY 2024.

In FY 2024, the City would see a $29 million net increase in Medicaid costs related to the indigent care pool as the State redirects some of the city's federal funding. Other actions including the impact of proposed tax credits would have a net cost of $2 million in CFY 2023 and $13 million in CFY 2024.

The proposed budget also contains other actions that may impact the City's finances. The Executive Budget proposes to eliminate the regional cap on the number of charters for charter schools that may be issued in the City. The Budget also proposes to permanently authorize the reissuance of any charter originally issued to a charter school that subsequently closed after July 1, 2015. These changes would permit the issuance of additional charters in the City. The City estimates that together, these actions could increase costs by as much as $1.3 billion by the time the schools are fully phased in.

In response to a court decision, the State would more than double the hourly rate paid to assigned counsel program attorneys for legal representation provided to children and indigent adults to $158. The State would also cap the cost per case at $10,000. Since the Executive Budget does not include any additional local assistance funding for this purpose, all increased program costs (estimated by the City to total $84 million annually) would be borne by the City.

Local Government

The Executive Budget would hold State funding for the Aid and Incentives for Municipalities (AIM) program flat at $715.1 million, which is the largest source of unrestricted aid to local governments since it was implemented as part of the SFY 2005-06 Enacted Budget. AIM payments are made to all cities (outside of New York City), towns and villages.[27]

The Executive Budget also maintains:

- Aid to Municipalities with Video Lottery Gaming Facilities (VLT Aid) for the City of Yonkers at $19.6 million, and $9.3 million for other municipalities that host VLT facilities;
- $15 million in unrestricted aid to the City of Albany;
- $3.8 million in gaming facility aid to Madison County, which hosts a gaming facility; and

[27] For more information, see Office of the State Comptroller, "Aid and Incentives for Municipalities (AIM) and AIM-Related Payments," available at www.osc.state.ny.us/local-government/data/aid-and-incentives-municipalities-aim-and-aim-related-payments.

- A total of $217,300 for aid to Essex, Franklin and Hamilton counties.

Various competitive grant programs would be continued, including:

- Reappropriation of $75.8 million to fund municipal grants and loans for the Financial Restructuring Board for Local Governments (FRB);
- $35 million to fund the Citizens' Re-Organization Empowerment Grants and Citizen Empowerment Tax Credits, and $4 million for the Local Government Efficiency Grant Programs; and
- An appropriation of $100 million for another round of funding for the Downtown Revitalization Initiative (DRI), and a new appropriation of $100 million to continue the NY Forward program to support smaller, rural communities.

In addition, the Executive Budget proposes a $250 million appropriation, and reappropriations totaling $697 million, for costs relating to raising the age of juvenile jurisdiction. Also, a reappropriation of $189.2 million to fund the State's match of net savings realized from approved county-wide shared service initiative (CWSSI) plans. The Executive Budget proposes that North Shore Water Authority would not be eligible to receive CWSSI funding of $1 million per year.[28]

The Executive Budget maintains funding for local government transportation purposes:

- Funding for the Consolidated Highway Improvement Program (CHIPS) and the Marchiselli Program would be held flat, at $538.1 million and $39.7 million, respectively;
- $100 million would be provided to compensate local governments for extreme winter recovery;
- $100 million to continue the State Touring Routes Aid program to reimburse eligible capital costs of local highway and bridge projects for cities, towns and villages;
- Executive Budget documents state that $150 million is available to continue the PAVE NY program and $200 million for BRIDGE NY, which helps fund local bridge projects; and
- $100 million in local government funding to continue the Pave Our Potholes (POP) program, first established as part of the SFY 2022-23 Enacted Budget to help improve road conditions and prevent deterioration.

The Budget does not include Appropriation or Article VII language specifically associated with PAVE NY, BRIDGE NY and POP programs; rather, proposed amounts for these programs are referenced in other Executive Budget public documents.

The Executive Budget includes several legislative proposals that could affect local governments:

[28] See Chapter 577 of the Laws of 2021 which created the North Shore Water Authority and amended General Municipal Law Section 239-bb.

- Grant permanent authority to all counties and cities that currently have additional sales tax rates, to impose a local sales tax at the greater of an additional 1% or their currently, authorized additional rate. This would eliminate the periodic need for the Legislature to approve extension of these rates;
- Change the interest rate charged to local governments and the State on court judgements or accrued claims, from the current fixed rate of 9 percent to a market rate;
- Allow local governments to pay nominal fees to volunteer firefighters for responding to calls and completing specific trainings. The Executive Budget provides $6.5 million in State funding to directly pay training stipends to volunteer firefighters;
- Authorize the closure of the Catskill off-track betting corporation (OTB) upon satisfaction of outstanding debts and obligations and distribution of any remaining assets. Counties located within the Catskill OTB would be allowed to enter into an agreement to join a different regional OTB;
- Expand the definition of emergency medical services (EMS) and create ten regional EMS service districts, which will be considered special districts that could provide EMS services regionally either directly, or through contracts with, local governments; and
- Increase the assigned counsel program attorney hourly rates and increase the overall cap on total compensation.

Migrant Services

The Executive Budget provides $1 billion to reimburse New York City for migrant shelter and humanitarian emergency response and relief centers (HERRC) costs for individuals entering short-term shelter. Under this initiative, the State reimburses the City for 29 percent of expenditures associated with the migrant resettlement process. The reimbursement is for costs incurred on or after April 1, 2022 and before April 1, 2024.

The Executive Budget also provides $162 million for ongoing National Guard deployment to NYC homeless shelters, $37 million for migrants' health care needs, $25 million for resettlement costs, $10 million for legal assistance and $6 million in direct payments to the City for the Brooklyn Cruise Terminal shelter site.

Additionally, the Executive Budget provides $5 million in new funding for an enhanced migrant resettlement program modeled on the existing Enhanced Services for Refugees Program (this program provides enhanced services to newly arrived refugees in the U.S., Special Immigrant Visa holders, Afghan humanitarian parolees as well as their wives and children and asylees).

The Executive Budget also includes $43 million in funding – a $23 million increase from SFY 2022-23 – for a network of community providers to help immigrant New Yorkers navigate citizenship applications, legal services, workforce development and retraining programs for immigrant engineers. In addition, the State's Essential Plan provides health insurance coverage for legally residing immigrants in New York not eligible for Medicaid, CHP, or other employer-sponsored coverage.

General State Charges

The State's costs associated with employee fringe benefits and certain other expenses are known collectively as General State Charges (GSC). The Financial Plan projects State Operating Funds spending for GSC will total $10.0 billion in SFY 2023-24, a decrease of 0.2 percent compared to SFY 2022-23. Overall, spending for employee fringe benefits is projected at $9.5 billion in the coming year, a decrease of 0.2 percent.

This reflects the impact of two actions in the current State fiscal year: an increase of $600 million in payments to the Retiree Health Benefit Trust Fund and repayment of $24 million of Social Security tax payments deferred for employees in Executive agencies and the Judiciary from April through December 2020 as permitted under the federal CARES Act. Over the financial plan period, spending for fringe benefits is projected to grow due to higher utilization of health insurance and the impact of medical inflation along with increases in workers compensation and pension costs due to anticipated higher employer contribution rates. DOB projects employer contribution rates will rise due to the pension system actuarial adjustments, higher salaries and cost of living adjustments.

In SFY 2021-22, the State made its first deposit to the Retiree Health Benefit Trust Fund totaling $320 million. The planned deposit of a similar amount in SFY 2022-23 was increased by $600 million to $920 million due to the General Fund surplus in the current state fiscal year. The Executive Budget plans to make deposits of $375 million in SFYs 2023-24 and 2024-25 as fiscal conditions allow, but no longer plans to make a deposit for this purpose in SFY 2025-26. A payment of $150 million is planned for SFY 2026-27, decreased from the original scheduled amount of $375 million. This fund was established in 2018 for paying health benefits of retirees and dependents. These deposits serve as an asset against New York's Other Post-Employment Benefits (OPEB) liability. The SFY 2022-23 Enacted Budget increased the maximum allowable deposit for this purpose from 0.5 percent of outstanding OPEB liability to 1.5 percent.

Pension costs, or contributions, are projected to increase by 9.6 percent in SFY 2023-24 to $2.3 billion, and are estimated to grow annually by the following amounts for the next three respective years: 26.3, 27.9 and 23.2 percent. This results in a projected pension cost to the State of $4.6 billion in SFY 2026-27.

All Funds spending for GSC, including costs for federally funded State employees, is projected to be $10.4 billion for SFY 2023-24.

Minimum Wage

As of January 1, 2023, the minimum wage in New York is $15 per hour in New York City, Westchester County, and on Long Island; for the rest of the State, it is $14.20 per hour. However, for the fast food industry, regardless of location, the minimum wage is also $15 per hour and for home health aides it is $2 per hour above the minimum wage rate for that area (increasing to $3 per hour on October 1, 2023).[29]

[29] For example, the minimum wage for home health aides in the rest of the State is $16.20 per hour.

Under current law, the minimum wage outside the specific downstate areas is adjusted annually. Such adjustment is based on a variety of economic factors including the inflation rate and personal income and wage growth, but is ultimately determined by the Director of the Budget. When the minimum wage is $15 per hour statewide, this annual adjustment stops.

The Budget proposes to index the minimum wage to inflation, which would be calculated as the change in the consumer price index (CPI) for urban wage earners and clerical workers in the Northeast region for the period of August 1 to July 31 each year, capped at 3 percent. In the downstate areas where the minimum wage is currently $15 per hour, the indexing would apply on January 1, 2024. For the rest of the State, annual indexing would occur once the minimum wage reaches $15 per hour.

For home health aides, the minimum wage rate would be capped at $18 per hour until the minimum wage for all other workers reaches $18 per hour. For example, home health aides in New York City will have a minimum wage of $18 per hour as of October 1, 2023. This wage will not be indexed to inflation until the New York City minimum wage for all other workers reaches $18 per hour. Based upon inflation projections from S&P Global, home health aides would not realize an increase in the minimum wage until 2030.

In addition, indexing could be halted due to adverse economic conditions. The minimum wage would not increase if:

- The inflation rate is negative,
- The unemployment rate increases by half a percentage point, or
- Employment decreases in two consecutive quarters.

The Budget also includes funding of $19 million in SFY 2023-24 and $63 million in SFY 2024-25 to fund the indexing on “State service providers.”

Environmental Conservation, Parks and Agriculture

Environmental Conservation

The Executive Budget for SFY 2023-24 projects $2.1 billion in spending at the Department of Environmental Conservation (DEC), an increase of 7.3 percent over the current fiscal year. The Executive Budget proposes to increase full time equivalent staffing at the DEC by 231 positions. Of these positions, 131 would be associated with implementation of the Clean Water, Clean Air, Green Jobs Bond Act and some of these positions may be assigned to Bond Act implementation work at other agencies. An additional 28 of these positions would be assigned to developing the Cap and Invest program discussed earlier and other new Executive Budget initiatives.

The Executive Budget proposes appropriations of $400 million in the Environmental Protection Fund (EPF) but proposes to authorize expenditure of a portion of this appropriation on agency staff for the first time in the 30-year life of the Fund. The Executive Budget projects a $5 million increase in SFY 2022-23 EPF spending, to $375 million, an increase of approximately 1.4 percent. Approximately $15 million of this spending is proposed to go towards funding staff that implement EPF programs. The Executive Budget also proposes to transfer $100 million from the General Fund and $5 million in Regional Greenhouse Gas Initiative revenues to the EPF.

The Executive Budget proposes to appropriate an additional $500 million in water infrastructure funding, for a total of $5.4 billion in such appropriations since SFY 2015-16. Approximately $60 million of this funding would be earmarked for remediation of so-called "forever chemicals," such as PFOA or PFOS, contaminating public water supplies.

The Executive Budget proposes to create a Waste Reduction and Recycling Act that would require companies that manufacture or sell packaging and paper products in the State to establish producer responsibility organizations to provide for collection, processing and recycling of the products that are sold, or used in the State. Under the proposal, companies, other than farmers, that generate gross in-state sales of $1 million or more and that generate one ton or more of materials would be required to develop and implement a plan that includes a minimum list of products for recycling. Municipalities or private waste haulers would then be responsible for collecting and processing these materials while receiving reimbursement for the costs incurred in these processes from producers. In addition, the legislation establishes minimum recycled content requirements and minimum recovery and recycling rates for packaging and paper products that increase each year. Packaging producers would be required to reduce the mass of their products by 15 percent. Producers are required to pay registration fees to the DEC, to be collected in a new Waste Reduction, Reuse and Recycling Fund, which would defray DEC's cost of administering the program and provide funding for planning and implementation grants.

The Executive Budget proposes amendments to the Environmental Restoration Program—a contaminated site cleanup program established in the 1996 Clean Water, Clean Air Bond Act—to enable this program to be funded with available appropriations. In addition, the proposal amends eligibility criteria for the program. Previously, municipalities that participated in activities that caused the contamination to be addressed, even simply as owners of the contaminated property, were excluded from the program. New eligibility language would only prohibit from participation those municipalities that acted deliberately and intentionally outside of the performance of their governmental functions to cause contamination. Other amendments would:

- Allow municipalities to use funds received in settlement from parties responsible for the contamination as matching funds for State grants under the program;
- Allow State superfund sites into the program; and,
- Require that municipalities complete remediation projects to receive State indemnification and restrict indemnification to causes of action related to the environmental restoration projects.

The Executive Budget also proposes legislation consolidating sewer districts and unsewered areas in Suffolk County into one county-wide wastewater district. This new district would have all of the powers of a sewer district and a wastewater disposal district and would not be subject to the Comptroller's special district approval authority. This new district would be empowered to raise revenues through special assessments, ad valorem levies and sewer rents and to distribute grants to implement the County's subwatershed wastewater plan. Prior to spending the revenues so raised, the County is required to establish an implementation plan that lists all of the projects it intends to pursue and to explain how each project will improve existing water qualify.

Other Executive Budget proposals include:

- Criteria establishing guidelines for lead service line replacement programs adopted by municipalities;
- Removing the sunset on enhanced pesticide registration fees; and,
- Appropriations of $90 million for stewardship of State lands and facilities under the control of the DEC.

Parks, Recreation and Historic Preservation

The Executive Budget for SFY 2023-24 projects $481 million in spending for the Office of Parks, Recreation and Historic Preservation (State Parks), an increase of 20.5 percent over spending in the current fiscal year. The Executive Budget proposes to increase full time equivalent staffing levels at State Parks by 237. The Executive Budget also proposes to:

- Appropriate $200 million in parks infrastructure capital;
- Raise the snowmobile registration fee from $90 to $125 for snowmobile owners who are not members of snowmobile clubs, and from $35 to $55 for such owners who are snowmobile club members; and,
- Establish new safety equipment standards for vessels operated on New York State waters.

Agriculture

The Executive Budget for SFY 2023-24 projects $140.5 million at the Department of Agriculture and Markets (DAM), a decrease of 4.3 percent from spending in the current fiscal year. The Executive Budget proposes to increase full time equivalent staffing at DAM by 26.

The Executive Budget proposes to amend State law that limits direct purchases of New York produced foods by school districts by removing purchase amount limits and limits on the maximum number of farmers in a farmers' association that a school district may purchase from. In addition, the proposal allows school districts to purchase food products in an amount up to $250,000 without using a formal competitive procurement process and requires school districts to report their purchases of New York grown food to the New York State Office of General Services and DAM.

Other agricultural proposals in Executive Budget include:

- Amending the Tax Law to allow the investment tax credit for farmers to be refundable for eligible investments made prior to the 2028 tax year;
- Appropriation of $14 million for maintenance and improvements of the State Fairgrounds;
- Appropriation of $10 million for the food access expansion grant program in support of increasing food access in underserved communities; and,
- Appropriation of $10 million to support the development of school kitchen facilities to allow for the preparation of fresh, locally sourced food.

Public Protection and Criminal Justice

The Executive Budget proposes increasing State Operating Funds spending for Public Protection and Criminal Justice agencies by $340 million, or 7.0 percent, to $4.83 billion in SFY 2023-24. All Funds spending would increase by $286 million, or 3.0 percent, to $8.0 billion in SFY 2023-24. The major areas of spending include increased gun violence reduction initiatives, expansion of the State Police workforce and the hiring of new District Attorneys, criminal justice system changes, and capital projects to renovate facilities that support public safety.

As reflected in the Financial Plan, All Funds spending for the Division of Criminal Justice Services (DCJS) is projected to increase by $93.6 million, or 22.7 percent, to $506.4 million in SFY 2023-24. This reflects additional Local Assistance and State Operations spending, as well as a 71.0 percent increase in capital spending, and is largely attributed to the Executive's proposal to invest a total of $337 million in gun violence prevention efforts this year. Several of those initiatives are to be administered by DCJS, including:

- $70 million in continued support for community-based gun violence outreach programs, based on plans designed by local stakeholders;
- $37 million in additional support for youth employment programs, aimed at crime reduction and gang prevention;
- $18.2 million in new funding for the Gun Involved Violence Elimination (GIVE) program. Through GIVE, the State provides funding, training and technical support to police agencies in 17 counties with high rates of violent and firearm-related crime; and
- $1 million for a new crime analysis center in New York City.

These initiatives, totaling approximately $126 million, are in addition to proposed enhancements in the State Police workforce and enhanced parole supervision by DOCCS aimed at reducing gun violence, described in more detail below.

The increase in DCJS capital disbursements would support $50 million in grants to communities most affected by gun violence, as well as $35 million in new capital grants to combat hate crime in communities. In addition, the Budget proposes a $123.4 million investment in reforms to the State's criminal justice system, including:

- $40 million toward discovery reform, aimed at increasing efficiencies in the processing of criminal cases;
- $40 million to hire new District Attorneys across the State, and an additional $34.5 million for new specialized prosecutorial units to target the flow of fentanyl into communities;
- $20 million to support pretrial services, such as probation and community-based providers that often replace the need for pretrial detention;
- $15.7 million in additional funding to support the alternatives to incarceration program; and
- $7.7 million in additional reentry services for individuals recently released from incarceration, aimed at reducing instances of recidivism.

The Budget also proposes an amendment to the bail reform law to remove the requirement that the court, when making a securing order for a bail qualifying offense, impose the least restrictive means necessary to ensure the defendant's return to court. The stated intent is to provide judges greater flexibility in deciding about whether an individual must remain in pre-trial confinement. Although the Executive does not envision any fiscal impact to the State by this amendment, the change could result in a greater share of criminal defendants experiencing pre-trial confinement or in need of other pre-trial criminal justice services.

The Budget proposes to increase All Funds spending for the Division of State Police by $139.7 million or 14.4 percent to $1.1 billion in SFY 2023-24. This increase would fund an expansion of the State Police workforce by 407 FTEs, or a 7.0 percent increase, reflecting two additional recruiting classes (for a total of four), expansion of community stabilization units which partner with local law enforcement to address community-specific crime, additional cyber security analysts focused on internet crimes against children, and increased participation on federal task forces. The Budget also appropriates additional capital investments for the State Police, including $100 million for the purchase and renovation of a new forensic laboratory and $17.6 million to replace and add to the State Police vehicle fleet.

Projected All Funds spending for DOCCS, which represents the largest share (38.0 percent) of overall spending in the State's public safety agencies, remains roughly steady from last year at $3 billion, showing a projected decrease of $28.6 million. Proposed DOCCS spending includes increases related to enhanced parole supervision of violent and gun-related offenders and general salary increases. The Executive Budget does not envision additional closures of correctional facilities which, in SFY 2022-23, accounted for major proposed spending decreases for DOCCS.

All Funds spending for the Division of Military and Naval Affairs (DMNA) would increase by $241.5 million to $395.3 million in SFY 2023-24, a 157.1 percent increase. This reflects $172 million in increased State Operations spending aimed, in large part, at continuance of a program to provide National Guard services for migrants seeking asylum in New York City (projected to cost $162 million in SFY 2023-24). The Budget proposes to increase overall DMNA capital spending by $69.6 million in SFY 2023-24 to support, among other things, a renovation of the Lexington Avenue Armory. The Executive Budget also includes $4 million to support the World Trade Center death and disability payments for qualifying service members.

All Funds spending remains flat in this year's Executive Budget for the Commission on Prosecutorial Conduct (which was created in 2021 to review and investigate complaints about the conduct of prosecutors in the State), as well as for the Commission on Judicial Nomination (which was established to make recommendations for appointment to the Court of Appeals) and the Judicial Screening Committees (which was established to make recommendations for judgeships other than those on the Court of Appeals). All Funds spending for the Commission on Judicial Conduct (which was established to investigate complaints of misconduct against State judges and local justices) would increase this year by $835,000, or 11.4 percent to $8.1 million. The increase represents general salary increases, a staffing increase of six FTEs, and increased equipment and lease costs.

The Budget also proposes statutory changes to the Concealed Carry Improvement Act, the law passed in response to the Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, that would change the sensitive-place and private-property provisions in the law; and as well as make changes to provisions related to the purchase and sale of body armor and semiautomatic rifles.

VII. Appendix B: Public Authorities

The Executive Budget increases statutory bond caps (total authorizations to borrow) for 26 existing programs financed through State-Supported debt issued by public authorities. As shown in Figure 23, such bonding authorizations would be increased by nearly $19.0 billion or 9.1 percent over current limits.

Figure 23
SFY 2023-24 State-Supported Bond Caps and Authorizations
(in millions of dollars)

Program	SFY 2022-23 Enacted Cap [1]	SFY 2023-24 Executive Cap	Proposed Change: Dollars	Proposed Change: Percentage
Housing Capital Programs	13,082.9	13,700.7	617.8	4.7%
Economic Development Initiatives	14,968.4	16,972.6	2,004.2	13.4%
Gateway Project	2,350.0	2,850.0	500.0	21.3%
Dedicated Highway & Bridge Trust	19,776.9	20,648.5	871.6	4.4%
Health Care Initiatives	4,653.0	5,153.0	500.0	10.7%
Transportation Initiatives	10,147.9	12,308.3	2,160.4	21.3%
SUNY Educational Facilities	16,611.6	17,937.6	1,326.0	8.0%
Environmental Infrastructure Projects	8,171.1	9,308.2	1,137.1	13.9%
Consolidated Highway Improvement Program (CHIPs)	13,053.9	13,847.2	793.3	6.1%
CUNY Educational Facilities	10,254.7	10,870.7	616.0	6.0%
Mental Health Facilities	10,942.8	12,409.2	1,466.4	13.4%
Prison Facilities	9,502.7	9,865.9	363.2	3.8%
State Office Buildings and Other Facilities	1,605.0	1,710.1	105.1	6.5%
Energy Efficiency Projects/NYPA Refunding	200.0	475.0	275.0	137.5%
Information Technology	1,152.6	1,288.9	136.3	11.8%
Statewide Equipment	393.0	493.0	100.0	25.4%
Youth Facilities	962.7	1,014.7	52.0	5.4%
Special Education and Other Educational Facilities	301.7	321.8	20.1	6.7%
SUNY Upstate Community Colleges	1,123.1	1,227.1	104.0	9.3%
Water Pollution Control (State Revolving Fund)	1,085.0	1,175.0	90.0	8.3%
Division of State Police	426.1	538.1	112.0	26.3%
NYRA Belmont Park	-	455.0	455.0	N/A
Homeland Security and Training Facilities	383.5	476.5	93.0	24.3%
Library Facilities	333.0	347.0	14.0	4.2%
Division of Military & Naval Affairs	197.0	247.0	50.0	25.4%
Food Laboratory	40.8	40.9	0.1	0.2%
Total Public Authority Bond Caps with Changes	**141,719.4**	**155,682.0**	**13,962.6**	**9.9%**
PIT Notes	**3,000.0**	**3,000.0**	**3,000.0**	**100.0%**
Lines of Credit	**2,000.0**	**2,000.0**	**2,000.0**	**100.0%**
All Other Public Authority Bond Caps	**37,765.9**	**37,765.9**	**0.0**	**0.0%**
Total Public Authority Bond Caps[2]	**184,485.3**	**198,447.9**	**18,962.6**	**10.3%**
General Obligation Bond Act Authorizations[3]	**23,135.0**	**23,135.0**	**-**	**0.0%**
Total State-Supported Bond Caps/Authorizations	**207,620.3**	**221,582.9**	**18,962.6**	**9.1%**

Sources: Division of the Budget, Office of the State Comptroller

Note: Totals may not add due to rounding.

[1] The current cap reflects the amount previously authorized, some or all of which may already have been issued.

[2] The Executive Budget proposes new temporary financing of up to $5 billion through PIT Notes ($3 billion) and Lines of Credit ($2 billion). These amounts are not subject to the limitations of the Debt Reform Act. Starting in SFY 2020-21, the Enacted Budget has authorized new issuances of the PIT Notes and Lines of Credit each year. Being temporary, the authorization amount did not change from the current cap to the proposed cap, but a new authorization is required each fiscal year, which is reflected in the propsed change amount.

[3] This table reflects General Obligation Bond Acts for which there is a remaining authorized but unissued amount and/or a remaining debt outstanding balance. The SFY 2022-23 Enacted Budget authorized $4.2 billion for the Clean Water, Clean Air and Green Jobs Bond Act. Voters approved the bond act in November 2022.

More than 14 percent of the increase is attributed to economic development, with an increase of $2.0 billion. Health and mental hygiene capital programs would be increased $2.0 billion or 12.6 percent. In addition, the authorization for Youth Facilities would be modified to permit the funding of project costs for the capital projects fund. The budget proposal included a new cap for the New York Racing Association (NYRA) for $455 million to update the racing facility. The bonds are only expected to be issued if NYRA could not repay the loan from the State. The Executive Budget also proposes a new authorization for $3 billion in PIT notes and $2 billion in lines of credit.

In addition to the increased bonding authority for the Gateway project, the Aid to Localities budget includes an appropriation of $24.3 million for the Gateway Development Commission for New York State's share of annual operating expenses.

Transfers

The Executive Budget proposes a total of $142.6 million in transfers and other uses of funds from public authorities. Of this, $46.9 million is intended to provide State General Fund support. The Budget would authorize the transfer of $90.7 million from the State of New York Mortgage Agency (SONYMA) Mortgage Insurance Fund (MIF) to the Housing Trust Fund Corporation (HTFC) and Homeless Housing and Assistance Corporation (HHAC) in "excess" reserves to support community development and rental assistance programs. This would include $12.8 million for the neighborhood preservation program, $5.4 million for the rural preservation program, $21.7 million for the rural rental assistance program, and $50.8 million for the New York state supportive housing program, the solutions to end homelessness program or the operational support for AIDS housing program, or to qualified grantees under such programs.

VIII. Appendix C: Pass-Through Entity Tax

The PTET was enacted in SFY 2021-22 as a workaround to the limitation on the federal itemized deduction for state and local taxes paid (SALT) for members of partnerships and S-corporations. The PTET imposes a tax on the entire income of these business entities rather than the PIT being imposed on the members' share of the income. As a result, the full amount of the PTET can be deducted at the federal level rather than being limited under the PIT. The PTET rates are the same as those under the PIT, a top rate of 10.9 percent. In order to avoid double taxation of the same income, members of the businesses are authorized to claim a State PIT credit for their share of the PTET paid.

Businesses are not required to pay the PTET; instead, they opt-in annually by March 15 to participate. When the business opts in, it is required to make quarterly estimated payments throughout the year and remit a final annual return by March 15. Because the PTET was a new tax and was effective for all of the 2021 tax year, the opt-in deadline for 2021 was October 15, 2021, and businesses had the option of making estimated payments for the full 2021 tax year by December 31, 2021. All businesses that decided to participate were required to file annual returns by March 15, 2022, with the liability that was due for the 2021 tax year; however, businesses were also authorized to request a six-month filing extension. For tax year 2022, the opt-in deadline was extended until September 15, 2022. Figure 23 shows the opt-in due dates and payment dates for the PTET since enactment.

As noted above, taxpayers who are members/shareholders of the participating businesses are authorized to claim a PIT credit for the PTET. Since the definitions for the components of income reported under New York's PIT "piggyback" off the federal PIT, these taxpayers report their share of the income from the business as part of their taxable income. Since a tax has already been paid on this income (the PTET), these taxpayers claim a credit against the PIT for their share of the PTET that was paid during the tax year.

Although the PTET is a new tax in New York, it is not a new source of revenue. It simply shifts tax collections that would have been reflected in the PIT into the PTET. As a result, DOB states that the PTET is expected to be revenue neutral over the span of the Financial Plan. However, the PTET is not revenue neutral in any one fiscal year. Taxpayer behavior in relation to claiming the PIT credits and PTET participation as well as varying opt-in deadlines and estimated payment thresholds make it difficult to project how much the PTET will impact State revenues during the fiscal year.

Figure 24
Pass-Through Entity Tax Due Dates

Tax Year	Opt-In Deadline	Estimated Payments Due	Final Returns Due
2021	October 15, 2021	100% of total estimated liability for 2021 tax year due by December 31, 2021	March 15, 2022
2022	September 15, 2022	For elections made prior to June 15 - 25% of 2022 annual liability due on date of election and 25% due by June 15, September 15, and December 15	March 15, 2023
		For elections made between June 15 and September 15 - 50% of 2022 annual liability due on date of election; 25% due by September 15 and December 15	
2023 and after	March 15 of Current Tax Year	25% of full year current tax year liability due March 15, June 15, September 15, and December 15	March 15 of Following Year

Note: Taxpayers had the option of paying estimated taxes for the 2021 tax year.

For example, estimated payments for the PTET for tax year 2021 were due by December 31, 2021, but were optional. While the State collected over $11 billion in estimated payments, this was attributable to just over half (52.7 percent) of participating businesses. Collections through the end of SFY 2021-22 totaled $16.4 billion.

With the enactment of the PTET, taxpayers were prohibited from adjusting the final quarterly estimated payment for the 2021 tax year (due January 15, 2022) by the amount of their share of the PTET paid. Total revenues through January 2021 included the $11 billion in PTET as well as $11 billion in PIT resulting, in part, to total tax collections for SFY 2021-22 being over $38.7 billion (47.1 percent) higher than the prior fiscal year.

Due to the prohibition on adjusting estimated payments, the PIT credits would be claimed when taxpayers filed their tax year 2021 annual returns. DOB projected most would be reflected as a large increase in refunds as well as a small decline in payments made with filing extension requests. For the 2022 tax year, DOB assumed taxpayers would adjust their quarterly estimated payments for most of the amount of the quarterly PTET paid. As a result, SFY 2022-23 PIT collections were projected to decline by $19 billion (28 percent).[30]

[30] NYS Division of the Budget, FY 2023 Executive Budget Financial Plan, Updated for Governor's Amendments and Forecast Revisions.

However, the projected impact on the 2021 tax year settlement did not come to fruition; payments with extension requests were much higher than anticipated while refunds were lower. In addition, the actual liability collected under the PTET for tax 2021 is unclear. With the estimated payments for the tax year optional, there were many businesses that had to make a full year's tax payment in March. According to Tax Department data, just under half of participating businesses requested extensions and over $1.5 billion was issued in refunds through October 2022.[31]

Obscuring part of the impact of the PIT credits was the amount of income earned by the affected taxpayers in 2021 resulting from a second year of record financial market levels as well as a full year of economic growth after the pandemic shutdown. In addition, according to the State Tax Commissioner, some taxpayers decided to carry forward their excess tax credits to the 2022 tax year. How the PTET impacted the 2021 tax year, and, in some cases, SFY 2022-23 PIT collections will not be known until the Tax Department releases the final PIT results later in 2023.

While the 2022 tax year was the second year of the PTET program, the interaction between the businesses paying the tax and individual taxpayers claiming the credit was also difficult to ascertain. With the economic contractions in the first half of the year and volatility in the financial markets throughout, quarterly estimated payment collections under the PIT likely reflected these economic conditions. In addition, because the PTET was only collected at the end of 2021 and estimated payments were not allowed to be adjusted, there were not year-over-year statistics by which to compare. As quarterly estimated payments through September exceeded DOB's forecast for the full fiscal year, taxpayers were likely not adjusting for the PTET credits as DOB had projected.

Adding to the confusion was the change in the deadline when businesses could opt into the PTET and when estimated payments were due and how much was required to be remitted. For the 2022 tax year, businesses could opt in from January 1, 2022 to March 15, 2022 when the PTET was originally enacted. However, legislation passed in May 2022 extended the deadline until September 15, 2022. As a result, the required amount of estimated payments under the PTET varied depending on when the business opted into the program.

As the PTET matures and collections become somewhat consistent – because the PTET is an optional tax, the number of participating taxpayers will likely fluctuate from year to year – understanding its impact from one fiscal year to the next could potentially become easier. That said, while permanent in statute, DOB expects participation in the PTET to continue only as long as the limited itemized deduction for SALT exists at the federal level; it is currently due to expire with other provisions of the Tax Cuts and Jobs Act (TCJA) on December 31, 2025.

[31] Filing extensions are for 6 months. As a result, most final returns associated with extensions would have been filed by September 15, 2022.

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