New York State Comptroller
THOMAS P. DiNAPOLI

Enacted Budget Report

State Fiscal Year 2023-24

May 2023

Message from the Comptroller

May 2023

Earlier this month, the State Legislature enacted the New York State Budget for State Fiscal Year (SFY) 2023-24. The Budget includes new recurring spending on critical services, including full funding of Foundation Aid for our schools, new investments in mental health services, and increasing funding to support health care providers and human services workers. It also has temporary programs, like continued emergency rental assistance and appropriations for the Metropolitan Transportation Authority, that address areas of continuing concern.

While these measures will increase spending, revenues are projected to decrease for the second year in a row, as temporary federal aid is depleted and tax collections decline. While employment growth continues nationally and in New York, persistent inflation, interest rate hikes, stock market volatility and large bank failures present worrying signs and could impact revenues further. Failure to raise the federal debt ceiling would also have terrible effects on the national economy.

To deal with these challenges, the Budget affirms the importance of maintaining reserve funds with an expansion of maximum allowable deposits and balances for the Rainy Day Reserve Fund. The State's statutory rainy day reserves now total almost $6.3 billion. Looking ahead, policymakers should continue to bolster these reserves, and will need to carefully monitor the economy and revenues and work to put the State on a sustainable fiscal course.

Finally, the Budget also includes troubling provisions that limit transparency and accountability. Almost $7.5 billion of appropriation authority remains exempt from oversight by the Office of the State Comptroller or competitive bidding requirements. Furthermore, the State's continued reliance on "backdoor borrowing" and other practices that bypass statutory debt limits is concerning for the State's long-term fiscal standing. New Yorkers deserve greater transparency and accountability in State fiscal matters so taxpayers can be confident their hard-earned dollars are being used effectively.

Thomas P. DiNapoli
State Comptroller

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Economic Outlook and Revenue

Decline in Projected Revenues

Based upon the most recent Financial Plan released in conjunction with 30-Day Amendments to the Executive Budget, as well as public estimates for revenue actions included in the Enacted Budget, All Funds revenue for SFY 2023-24 is projected to total $223.9 billion. At this level, SFY 2023-24 All Funds revenue will be almost $9.2 billion, or 3.9 percent, lower than SFY 2022-23 and would be the second consecutive year that revenue declines. These declines are driven by projected reductions in both forecasted tax collections and federal receipts, as the funds associated with the temporary federal assistance to deal with the impacts of the COVID-19 pandemic are depleted.

Figure 1
All Funds Revenue, SFY 2021-22 – SFY 2023-24
(dollars in millions)

	SFY 2021-22	SFY 2022-23		SFY 2023-24	
	Amount	Amount	Percent Change	Amount	Percent Change
Personal Income Tax	$ 70,737.3	$ 58,775.6	-16.9%	$ 60,261.0	2.5%
Consumption/Use Taxes	$ 19,621.3	$ 20,585.2	4.9%	$ 21,858.0	6.2%
Business Taxes	$ 27,724.6	$ 28,616.4	3.2%	$ 23,369.0	-18.3%
Other Taxes	$ 3,052.8	$ 3,678.9	20.5%	$ 2,647.0	-28.0%
Total All Funds Taxes	**$ 121,136.0**	**$ 111,656.1**	**-7.8%**	**$ 108,135.0**	**-3.2%**
Miscellaneous Receipts	$ 27,932.2	$ 31,841.1	14.0%	$ 27,270.0	-14.4%
Federal Receipts	$ 95,306.4	$ 89,563.1	-6.0%	$ 88,492.0	-1.2%
Total All Funds Revenue	**$ 244,374.6**	**$ 233,060.3**	**-4.6%**	**$ 223,897.0**	**-3.9%**

Note: SFY 2023-24 amounts are Division of the Budget projections included in the FY 2024 Executive Budget Financial Plan Update for 30-Day Amendments, adjusted for provisions included in the Enacted Budget.

Decreased tax revenues of 7.8 percent in SFY 2022-23 were primarily concentrated in the Personal Income Tax (PIT) reflecting an estimated 26 percent decline in Wall Street bonuses, the volatility in the financial markets and its impact on estimated payments throughout the year, as well as the tax credits claimed for the first year of the pass-through entity tax (PTET), which allows certain businesses to make payments that are later credited via the personal income tax.[1]

SFY 2023-24 All Funds tax collections are projected to decrease by $3.5 billion, or 3.2 percent, primarily due to weaker business tax collections resulting from a forecasted decline in corporate profits and lower audit collections under the corporate franchise tax. Offsetting a portion of this decrease is projected growth in PIT mainly from personal income and wage growth, tempered by the full-year impact of lower tax rates on the middle class. Increased consumption tax collections reflect, in part, the expiration of the “gas tax holiday” which suspended the sales and excise taxes on motor fuels from June to December in 2022.

Provisions in the Enacted Budget affecting the State's revenues are expected to have little impact on the current fiscal year, with an estimated net loss of $19 million primarily from the increase in the cigarette excise tax from $4.35 to $5.35 per pack. In subsequent fiscal years, tax changes enacted as part of the Budget are estimated to result in a net increase in revenues of $562 million in SFY 2024-25, $748 million in SFY 2025-26, and $298 million in SFY 2026-27 due mainly to the extension of the increased corporate franchise tax rates from December 31, 2023 to December 31, 2026.[2] Offsetting a portion of the revenues from these higher tax rates are:

- Expanding the Empire State Child Tax Credit to include children under the age of 4 ($179 million annually starting in SFY 2024-25).
- Extending the Film Tax Credit by five years, increasing the cap on credits from $420 million to $700 million per year, and increasing the credit from 25 percent to 30 percent of production costs ($115 million in SFY 2025-26, $208 million in SFY 2026-27 and $280 million in SFY 2027-28).

When the increased corporate franchise tax rates expire, the impact of all the other revenue provisions is projected by DOB to reduce collections by $604 million in SFY 2027-28.

Heightened Economic Uncertainty

The consensus forecast report produced by the Division of Budget (DOB) and Legislature in March projected economic growth would continue in the current calendar year, albeit at a slower pace, but noted a recession was a risk to the outlook. For 2024, the economy was forecasted to expand at a faster rate. (See Figure 2.)

Based on the latest projections, other economic forecasters project somewhat stronger economic growth than consensus in 2023 but significantly weaker growth in 2024. Both Blue Chip Consensus and S&P Global forecast a sharp slowdown in 2024. In addition, Blue Chip Consensus projects an economic contraction in the third quarter, and forecasters continue to place a high probability (61 percent) on a recession in the current year.[3]

Figure 2
Comparison of Economic Projections, United States, 2023 and 2024

U.S. ECONOMIC INDICATORS (Annual Percentage Change)								
	REAL GDP		CONSUMER PRICE INDEX		EMPLOYMENT		CORPORATE PROFITS	
	2023	2024	2023	2024	2023	2024	2023	2024
Consensus	1.0	1.9	4.1	2.6	1.6	0.3	(0.4)	3.5
Blue Chip	1.1	0.7	4.0	2.5	N/A	N/A	(1.4)	1.2
S&P Global	1.2	0.9	4.2	2.5	2.0	(0.1)	3.4	(2.2)

Source: FY 2024 Consensus Economic and Revenue Forecast Report, May 2023 Blue Chip Economic Indicators, S&P Global Market Intelligence May 2023 National Forecast

Through the first four months of 2023, the economy has been showing both positive and negative signs. In the first quarter, the real Gross Domestic Product (GDP) increased by 1.1

percent, with personal consumption growth remaining strong. However, this was below the estimates of 1.5 percent growth for the first quarter by the Blue Chip Consensus.

Inflation, while slowing, is still an issue. As measured by the change in the Consumer Price Index (CPI), inflation in April increased by 0.4 percent, an acceleration from the 0.1 percent rate in March, and by 4.9 percent from April 2022. Although energy prices decreased, food prices remained elevated, 7.7 percent higher than the previous year. Concerningly, services have realized persistent price increases, averaging 0.6 percent per month over the 12-month period.

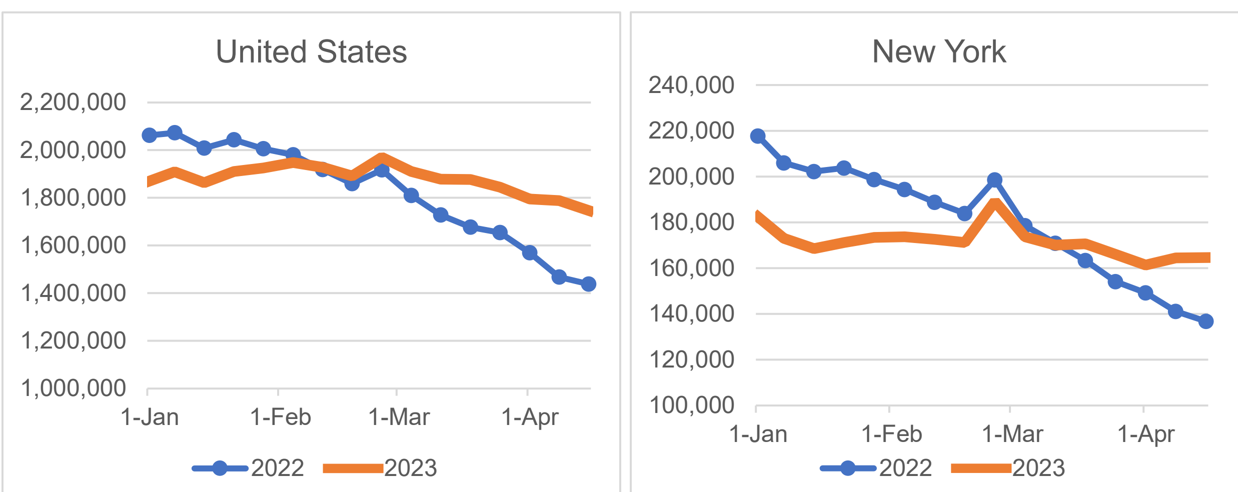
In addition, the Personal Consumption Expenditure (PCE) price index, which the Federal Reserve Board (the Fed) uses as an inflation indicator, increased in the first quarter, by 4.2 percent, faster than the 3.7 percent in the fourth quarter of 2022. With inflation remaining above its target inflation rate of 2 percent, the Fed increased interest rates by a quarter of a percentage point on May 3, 2023, the tenth consecutive rate hike since March 2022.

Financial markets in 2023 have shown similar volatility to 2022. For the month of January, the S&P 500 grew by just over 355 points; by the middle of March, most of this gain had been erased. While it ended the first quarter 7.0 percent higher than January 1, the S&P 500's average growth was just 3.9 percent.

Employment, on the other hand, has continued to grow both nationally and in New York. According to the U.S. Bureau of Labor Statistics, the nation added over 1.1 million jobs from January to April (3.3 million above pre-pandemic levels). In New York, employment increased by nearly 47,000 jobs in the first three months of the year but has not fully recovered from the pandemic losses.

However, weekly unemployment claims at the beginning of March for both New York and nationwide began trending higher than the number of claims during the same period in 2022. Through the middle of April, the difference between the two years widened; claims in 2022 continued to decline while those in 2023 have shown little change.

Figure 3
Weekly Unemployment Claims, United States and New York,
January – April, 2022 and 2023



Source: U.S. Department of Labor Office of Unemployment Insurance

Other concerns for the economy in the current year include the resolution of the federal debt ceiling crisis and the stability of the banking system. Besides increasing volatility in the financial markets, both issues could have impacts on interest rates which could, in turn, have ripple effects across other areas of the economy.

The failure to raise the debt ceiling could result in the perceived notion of a default by investors or an actual default. As a result, the nation's credit rating would decrease, causing interest rates on its debt to increase. Increased rates would follow for consumer debt such as mortgages and consumer loans, reducing consumption as houses and certain durable goods become less affordable. Higher interest rates would also impact business investment in new equipment and facilities, constraining expansion and potentially the creation of new jobs.

So far this year, there have been three domestic bank failures – Silicon Valley Bank and Signature Bank in March and First Republic Bank in May. In addition, there was the collapse of Credit Suisse, a multinational financial institution. According to the Federal Deposit Insurance Corporation (FDIC), there have been failures in 18 of the past 23 years, with the years during the Great Recessions having the largest number. However, the difference from past years is that the banks that failed recently were relatively larger financial institutions.[4] If the Federal Reserve Board perceives any future instability among other large banks, it may consider re-instituting quantitative easing or cutting interest rates. Lower interest rates could exacerbate inflation, with higher prices also reducing consumption growth.

Early Revenue Concerns

Although only a month into the new fiscal year, April tax collections may be a cause for concern, particularly in relation to the PIT. A large share of April PIT receipts is related to the settlement of the previous tax year as the majority of taxpayers file their annual returns during the month. These settlement collections are not based on current economic circumstances but those of last year. For example, they reflect the overall decline in the financial markets which impacted taxpayers' investment income, such as dividends, interest, and capital gains. According to reports from the Department of Taxation and Finance, the net settlement for the 2022 tax year totaled $3.6 billion, 66.3 percent lower than that for 2021.

In addition to these settlement payments, April collections also include quarterly estimated payments and withholding that are based on current economic conditions. Quarterly estimated collections for the 2023 tax year were $531.7 million in April, 33.6 percent lower than the same month last year. Withholding receipts did increase from April 2022, by 1.4 percent. In comparison, withholding in April 2022 realized 3.6 percent year-over-year growth. Some of the slower growth can be attributed to the lower middle-class tax rates that went into effect in January.

In the aggregate, April PIT collections totaled $7.5 billion, 49.4 percent below last year. While a year-over-year decline was anticipated, these revenues were 39.1 percent lower than DOB cash flow projections for the month in the most recent Financial Plan released in conjunction with 30-Day Amendments to the Executive Budget. However, whether these lower collections fully reflect economic conditions, taxpayer behavior relating to the offsetting PIT credits for the PTET paid, or a combination of both remains unclear.

Spending

Currently, multi-year spending projections and detailed estimates for SFY 2023-24 are not available, pending release of the Enacted Budget Financial Plan report by DOB. However, as shown in Figure 4, All Funds spending is projected to total $229 billion for SFY 2023-24.[5] This would represent a nearly 4 percent increase year-over-year and a 32.4 percent increase since SFY 2019-20, prior to the onset of the COVID-19 pandemic.

Figure 4
General Fund, State Operating Funds and All Funds Spending,
SFY 2019-20 – SFY 2023-24
(dollars in millions)

	SFY 19-20 Actuals	SFY 22-23 Actuals	SFY 23-24 Forecast	SFY 19-20 to SFY 23-24 $ Change	SFY 19-20 to SFY 23-24 % Change	SFY 22-23 to SFY 23-24 $ Change	SFY 22-23 to SFY 23-24 % Change
General Fund	$ 77,469	$ 92,799	$ 108,085	$ 30,616	39.5%	$ 15,286	16.5%
State Operating Funds	$ 102,160	$ 123,750	$ 127,157	$ 24,997	24.5%	$ 3,407	2.8%
All Funds	$ 172,980	$ 220,461	$ 229,039	$ 56,059	32.4%	$ 8,578	3.9%

Source: Division of the Budget, Legislative projections, Office of the State Comptroller analysis

On a State Operating Funds basis, spending is projected to total $127.2 billion, an almost 3 percent year-over-year increase and a 24.5 percent increase since SFY 2019-20.[6] On a General Fund basis, spending is forecast to total $108.1 billion, a 16.5 percent year-over-year increase and an almost 40 percent increase since SFY 2019-20.[7]

Many of the changes made in the budget will increase spending on education, health and mental health, and other social services on a recurring basis. Other programs will increase State spending to provide temporary assistance. These elevated levels of spending may present a growing fiscal challenge to the State, particularly as temporary federal aid wanes and if a more pronounced or extended economic downturn occurs.

Recurring Spending Increases

Education Aid

The Enacted Budget will provide $34.5 billion in total School Aid for school year (SY) 2023-24, an increase of $3.3 billion from $31.3 billion in SY 2022-23 (10.4 percent). This amount includes a year-over-year increase of $2.6 billion (12.3 percent) in Foundation Aid to a level of $24 billion in SY 2023-24. Funding for Universal Pre-Kindergarten (UPK) programs would total $1.2 billion, including $150 million in new funding ($100 million in formula-based allocation and a $50 million grant to be competitively awarded).

As shown in Figure 5, in SFY 2019-20, School Aid totaled $27.8 billion. Over the ensuing four years, School Aid has grown to $34.5 billion, an increase of $6.7 billion or 24 percent. This growth largely reflects the three-year pledge to fully fund the Foundation Aid formula, which is completed with adoption of the SFY 2023-24 Budget.

Figure 5
School Aid by School Year, 2019-20 – 2023-24
(dollars in millions)

		Annual		Five-Year	
School Year	**Amount**	**$ Change**	**% Change**	**$ Change**	**% Change**
SY 19-20	$ 27,812				
SY 20-21	$ 26,515	$ (1,297)	-4.7%		
SY 21-22	$ 29,111	$ 2,596	9.8%		
SY 22-23	$ 31,250	$ 2,139	7.3%		
SY 23-24	$ 34,500	$ 3,250	10.4%	$ 6,688	24.0%

Source: Division of the Budget, Office of the State Comptroller analysis

Health and Human Services

The Enacted Budget includes several investments in the State's health care and human services delivery system that will drive higher levels of recurring spending. These include:

- Rate increases of up to 7.5 percent for Medicaid services including hospital inpatient and outpatient care, nursing homes, and assisted living programs. These actions are expected to increase annual State share Medicaid spending by $611 million in SFY 2023-24.
- Cost-of-Living Adjustments (COLAs) of 4 percent for human services providers funded by the Offices of Mental Health, for People with Developmental Disabilities, of Addiction Services and Supports, of Temporary and Disability Assistance, of Children and Family Services and for the Aging. The rate increase is expected to add $324 million in State costs in SFY 2023-24.

These actions are intended to assist with health care providers' fiscal and operational stability. However, as noted by the Office of the State Comptroller, elevated Medicaid enrollment levels caused by the COVID-19 pandemic may persist longer than anticipated by the State, and pose a significant financial risk.[8] The provider rate increases and COLAs will increase such risk if enrollment levels do not decline as projected. Policymakers should continue to actively monitor Medicaid enrollment levels and cost trends.

The Enacted Budget also includes a provision impacting counties and the City of New York. The Executive Budget proposed the State would retain enhanced federal Medicaid benefits related to implementation of the Affordable Care Act to generate State savings of $624 million in SFY 2023-24 and $709 million in SFY 2024-25. The Enacted Budget accepts the proposal, but on a phased-in schedule that will reduce State savings to $219 million in SFY 2023-24 and $439 million in SFY 2024-25.[9] This represents a significant cost-shift to local governments that is a departure from a long-term trend in which the State has taken on a greater share of non-federal Medicaid costs.

Finally, the Enacted Budget reinvests savings generated by implementing the previously approved transition of Medicaid pharmacy benefits from managed care plans to fee-for-service in 340B eligible providers, including Ryan White clinics, Federal Qualified Health Centers, and hospitals affected by the transition. The 340B program requires drug manufacturers participating in Medicaid to provide outpatient drugs to eligible providers at significantly reduced prices, but allows them to bill managed care plans at higher negotiated rates and to use the additional revenue they receive to reach more eligible patients and provide more comprehensive services for the communities that they serve. According to the Executive, annual reinvestment of savings generated by the transition of the pharmacy benefit would "ensure that safety net providers are made 'whole' from the changes in 340B reimbursement post-transition."[10]

Mental Health

The SFY 2023-24 Enacted Budget includes a $1 billion multi-year plan for mental health services that includes:

- $890 million in capital spending over five years for 2,150 new residential beds for people with mental illness;
- Increasing inpatient psychiatric treatment capacity by 1,000 beds (850 community beds; 150 State-operated beds);
- Creating 3,500 new housing units for New Yorkers with mental illness;
- Expanding outpatient treatment services;
- Prohibiting insurers from denying access to mental health care; and
- Increasing Medicaid rates to expand access to mental health services in schools.

Child Care

The Enacted Budget expands Office of Children and Family Services (OCFS) funding of child care services by $147.2 million to nearly $480 million in SFY 2023-24. In addition, the Budget uses $376 million in unspent, non-recurring federal COVID-19 recovery funding to support policy changes that include expanding income eligibility for child care subsidies, from just under $70,000 to nearly $80,000 for a family of three. DOB expects this action to make 113,000 more children eligible for assistance. The Enacted Budget also uses the federal COVID-19 recovery funding to provide $500 million in workforce retention grants to help providers stabilize existing childcare staff.

As a result, DOB estimates that $7.6 billion in All Funds spending will support child care subsidies over the next four years and that 500,000 more children would be eligible for subsidies.[11]

Temporary Spending Additions

Metropolitan Transportation Authority (MTA)

The Enacted Budget includes multiple actions to address projected budget shortfalls at the MTA. The State will provide the MTA with one-time funding of $300 million. As part of the Budget agreement, the MTA has agreed to lower its proposed fare and toll increase from 5.5 percent to 4 percent and enhance subway service on weekends and other off-peak times to meet current demand. The Budget also allows a pilot program to provide one fare-free bus route in each of New York City's five boroughs. The City of New York will also provide a maximum of $330 million in additional funding over two years for paratransit services.

The Budget also includes provisions that will provide recurring revenues for the MTA. It raises the Payroll Mobility Tax (PMT) for employers in New York City that have payroll expenses higher than $437,500 in any calendar quarter (not including those that are already exempted) from 0.34 percent of payroll expenses to 0.6 percent, beginning July 1, 2023. The PMT rate for those who are self-employed in the City and have annual earnings that exceed $50,000 will increase in two phases, from 0.34 percent to 0.47 percent for tax year 2023 then to 0.6 percent for tax year 2024. This is the first time changes made to PMT were limited to New York City and not the entire Metropolitan Transportation Commuter District. These rate increases are estimated to raise $1.1 billion annually for the MTA's operating budget.

The Budget also dedicates a portion of new revenues anticipated from the issuance of new, downstate casino licenses to support the MTA. All revenue from newly issued licenses, expected to total at least $1.5 billion on a one-time basis, would be dedicated to the MTA. In addition, gaming taxes from downstate casinos would also be directed, in part, to the MTA.

COVID-19 Recovery Programs

Reflecting the persistent economic impacts of the COVID-19 pandemic, the Budget includes $591 million for assistance programs that are expected to be non-recurring:

- $356 million in emergency rental assistance for applications submitted by January 20, 2023 by tenants or occupants of federal- or state-funded subsidized public housing authorities or other federal- or state-funded subsidized housing that limits the household's share of the rent to a set percentage of income;
- $200 million for the Department of Public Service to provide bill credits for utility customers with household incomes below the State median, who are not eligible for other energy affordability programs; and
- $35 million for COVID rental arrears costs for tenants or residents of the New York City housing authority.

Migrant Services

The Enacted Budget provides $1 billion for the City of New York as reimbursement for expenses incurred for migrant shelter and Humanitarian Emergency Response and Relief Centers. The State funds will cover costs incurred between April 1, 2022, and April 1, 2024. Although presently expected to be temporary costs, the $1 billion, two-year expense is a stark reminder that unexpected, significant costs can emerge in a short period of time.

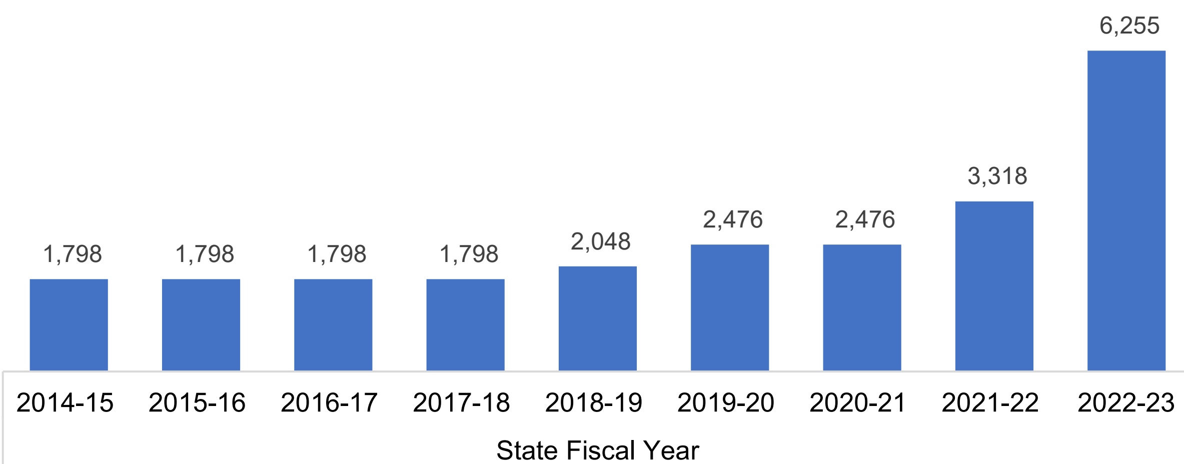
On May 9, 2023, the Governor issued Executive Order Number 28 authorizing a variety of State actions to address an expected increase in migrants due to the expiration of the United States Centers for Disease Control "Title 42 Order." The Executive Order will be in effect until June 8, 2023 and will facilitate provision of migrant services.

Reserve Funds

Uncertain revenue and increased spending underscore the importance of building rainy day reserves to preserve the stability of State finances and services through economic downturns and other unexpected shocks.

For decades, the State underfunded its statutory rainy day reserves. As described in a 2019 report by the Office of the State Comptroller, by the end of SFY 2018-2019 the State had only $2 billion set aside in the Tax Stabilization Reserve Fund (TSRF) and the Rainy Day Reserve Fund (RDRF).[12] New York was well under national medians with respect to the rainy day balance as a percentage of General Fund spending metrics. Since that time, the State has made progress increasing the size of reserve funds. By the end of SFY 2022-23, statutory rainy day fund balances had increased to $6.26 billion.[13] Yet even with this sizeable increase, preliminary data compiled from the Pew Charitable Trusts indicate New York (25.2) remains far below the national median (44.5) in terms of the number of days each state could run on savings alone.[14]

Figure 6
Rainy Day Reserves, SFY 2014-15 – SFY 2022-23
(dollars in millions)



Note: Includes Tax Stabilization Reserve Fund and Rainy Day Reserve Fund

Source: Office of the State Comptroller

The SFY 2023-24 Enacted Budget contains provisions that would allow the State to continue the recent pattern of progress. Under prior law, the maximum balance of the RDRF was limited to an amount equal to 15 percent of General Fund spending and maximum annual deposits were limited to 3 percent of General Fund spending. The Enacted Budget increases the maximum balance to 25 percent of General Fund spending, and maximum annual deposits to 15 percent of General Fund spending. Compared to prior law, the increased limits will result in an estimated $10.7 billion increase in maximum allowable rainy day reserve fund levels based upon forecasted SFY 2023-24 General Fund spending.

At this time, it is unclear what the State's plans are for additional contributions to the statutory rainy day reserve funds. The Amended Executive Budget indicated the State would deposit $3.1 billion into the rainy day reserves in SFY 2022-23 and maintain a balance of $6.5 billion in these funds through SFY 2024-2025. The actual SFY 2022-23 deposit was $212.7 million less than that projected deposit. It is unclear whether the State's expanded authority will be utilized to grow the balances of the statutory reserves further.

In addition to the statutory rainy day funds, the Executive indicates that informal reserves will also be maintained such that combined reserves will total $19.5 billion in SFY 2023-24, an amount equal to more than 15 percent of SFY 2023-24 State Operating Funds spending. At that level, informal "economic uncertainties" funds would equal $13.2 billion, absent additional deposits to the statutory reserves. Information is not yet available concerning expected reserve fund levels in the outyears of the Financial Plan.

The recent improvements in reserve fund levels and statutory authorization are encouraging. However, weaknesses remain. The Office of the State Comptroller has advanced a proposal for a disciplined approach to building statutory reserves by requiring ongoing deposits of at least 0.35 percent of General Fund revenues on a monthly basis, with limited exceptions.[15] Supplemented deposits would also be allowed up to the newly established limits.

Moreover, greater emphasis should be placed upon statutory reserves rather than informal reserves, which are an administrative designation of fund balance by the Executive. As a result, informal reserves such as the "economic uncertainties" fund can be used by the Executive for any appropriated purpose, without requirements for replenishment. In contrast, the TSRF and RDRF are governed by statutory requirements, including terms and conditions for withdrawals and mandatory repayment provisions.

In short, policymakers should further build upon the recent progress to bolster reserve funds by requiring mandatory deposit levels and by increasing reliance on reserve funds governed by statutory withdrawal conditions and mandatory repayment provisions. These actions will ensure that the recent progress is not lost before the next true rainy day arrives.

Capital Plan and Debt

Continued Reliance on Backdoor Borrowing to Fund $21 Billion in Capital Spending

The SFY 2023-24 Executive Budget proposed a $94.6 billion five-year Capital Plan, with $21.4 billion in capital spending estimated for SFY 2023-24 alone. Major capital initiatives authorized in the Executive Budget Capital Plan included:

- Funding for the second year of the Department of Transportation's (DOT's) $32.8 billion five-year capital plan;
- Continuation of the State's $3 billion commitment to support the MTA's capital plan;
- $2 billion in new capital funding for higher education facilities at the State and City Universities of New York (SUNY and CUNY);
- An additional $1 billion for healthcare facility transformation funding;
- Over $1 billion in authorizations for environmental infrastructure and parks projects;
- Nearly $1 billion to support the expansion of mental health capital programs; and
- $1.3 billion in new economic development capital funding, including the continuation of annual incentive competitions such as the Regional Economic Development Council grants and the Downtown Revitalization Initiative, as well as $455 million to fund NYRA's redevelopment of the Belmont Park Racetrack.

The SFY 2023-24 Enacted Budget further added at least $1.5 billion in new or increased capital appropriation authority beyond those amounts included in the Executive Budget proposal. Major increases include:

- $683 million more for various economic development programs, including $385 million in new funding added to the Community Resiliency, Economic Sustainability and Technology (CREST) program;
- Over $600 million in additional funding for SUNY and CUNY facilities;
- $100 million more for local highway and bridge projects;
- $50 million for technology purposes to support implementation of discovery reform;
- $40 million for the Higher Education Capital Assistance Program (HECAP);
- $25 million for grants to volunteer fire departments;
- $22.5 million for environmental purposes;
- $20 million for libraries;
- $15 million for voting technology efforts with the State Board of Elections; and
- $10 million for zoos, botanical gardens and aquaria.

Concerningly, these capital increases will almost exclusively be funded by State "backdoor" borrowing issued by public authorities, further adding to the State's already high debt burden and utilizing limited remaining capacity under the State's debt caps.

More details on capital and debt estimates during the State's five-year capital plan period will be available once the SFY 2023-24 Enacted Budget Capital Program and Financing Plan is released.

Figure 7
SFY 2023-24 State-Supported Bond Authorizations
(in millions of dollars)

Program	Law [1]	Proposal	Budget	Increase	Change	Increase
Housing Capital Programs	13,082.9	13,700.7	13,635.4	617.8	(65.3)	552.5
Economic Development Initiatives	14,968.4	16,972.6	17,655.6	2,004.2	683.0	2,687.2
Gateway Project	2,350.0	2,850.0	2,850.0	500.0	-	500.0
Dedicated Highway & Bridge Trust	19,776.9	20,648.5	20,648.5	871.6	-	871.6
Health Care Initiatives	4,653.0	5,153.0	5,153.0	500.0	-	500.0
Transportation Initiatives	10,147.9	12,308.3	12,308.3	2,160.4	-	2,160.4
SUNY Educational Facilities	16,611.6	17,937.6	18,111.0	1,326.0	173.4	1,499.4
Environmental Infrastructure Projects	8,171.1	9,308.2	9,335.7	1,137.1	27.5	1,164.6
Consolidated Highway Improvement Program (CHIPs)	13,053.9	13,847.2	13,949.2	793.4	102.0	895.4
CUNY Educational Facilities	10,254.7	10,870.7	11,314.4	616.0	443.7	1,059.7
Mental Health Facilities	10,942.8	12,409.2	12,418.3	1,466.3	9.2	1,475.5
Prison Facilities	9,502.7	9,865.9	9,865.9	363.1	-	363.1
State Office Buildings and Other Facilities	1,605.0	1,710.1	1,713.1	105.1	3.0	108.1
Energy Efficiency Projects/NYPA Refunding	200.0	475.0	475.0	275.0	-	275.0
Information Technology	1,152.6	1,288.9	1,353.9	136.3	65.0	201.3
Statewide Equipment	393.0	493.0	493.0	100.0	-	100.0
Youth Facilities	962.7	1,014.7	1,014.7	52.0	-	52.0
Special Education and Other Educational Facilities	301.7	321.8	321.8	20.1	-	20.1
SUNY Upstate Community Colleges	1,123.1	1,227.1	1,227.1	104.0	-	104.0
Water Pollution Control (State Revolving Fund)	1,100.0	1,190.0	1,190.0	90.0	-	90.0
Division of State Police	426.1	538.1	538.1	112.0	-	112.0
NYRA Belmont Park	-	455.0	455.0	455.0	-	455.0
Homeland Security and Training Facilities	383.5	476.5	501.5	93.0	25.0	118.0
Library Facilities	333.0	347.0	367.0	14.0	20.0	34.0
Higher Education Capital Matching Grants	345.0	345.0	385.0	-	40.0	40.0
Division of Military & Naval Affairs	197.0	247.0	247.0	50.0	-	50.0
Food Laboratory	40.8	40.9	40.9	0.1	-	0.1
Total Public Authority Bond Caps with Changes	**$142,079.4**	**$156,041.9**	**$157,568.4**	**$13,962.5**	**$1,526.5**	**$15,489.0**
PIT Notes	-	3,000.0	3,000.0	3,000.0	-	3,000.0
Lines of Credit	-	2,000.0	1,000.0	2,000.0	(1,000.0)	1,000.0
All Other Public Authority Bond Caps	37,420.9	37,420.9	37,420.9	0.0	-	0.0
Total Public Authority Bond Caps[2]	**$179,500.3**	**$198,462.8**	**$198,989.3**	**$18,962.5**	**$526.5**	**$19,489.0**
General Obligation Bond Act Authorizations[3]	23,135.0	23,135.0	23,135.0	-	-	-
Total State-Supported Bond Caps/Authorizations	**$202,635.3**	**$221,597.8**	**$222,124.3**	**$18,962.5**	**$526.5**	**$19,489.0**

Notes: 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 Enacted Budget authorizes short-term cash flow financings of up to $4 billion through PIT Notes ($3 billion) and Lines of Credit ($1 billion). These amounts are not subject to the limitations of the Debt Reform Act. Starting in SFY 2020-21, each annual budget has authorized new issuances of PIT Notes and Lines of Credit which expire each March 31st. Being temporary, a new authorization has been done each fiscal year.

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, which voters approved in November 2022.

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

$15.5 Billion Increase in Debt Authorizations

As shown in Figure 7, the Executive Budget proposed increasing State-supported bond authorizations used to finance State capital programs by $14 billion. Nearly all of these were adopted and the Enacted Budget increased such authorizations by a further $1.5 billion, for a total increase of $15.5 billion. Notable increases for debt-financed capital programs include a total of over $4.4 billion for State and local transportation programs; over $3.1 billion for various economic development initiatives and the New York Racing Association's redevelopment of Belmont Park; nearly $2.8 billion for SUNY, CUNY and other education-related programs; nearly $2.0 billion for mental health and other healthcare initiatives; and nearly $1.3 billion for environmental programs.

Poor Debt Practices Persist

The Enacted Budget continues recent efforts to circumvent the State's debt cap by utilizing a loophole in the Debt Reform Act, which only counts "bonds or notes." The Gateway debt (increased by $500 million, to total $2.85 billion) is structured as a federal loan, to be repaid by the State through a service contract mechanism. By not issuing bonds or notes, this form of State debt threads through the Debt Reform Act's loophole to avoid being counted under the State's debt limit. The Budget further reduces transparency and accountability by inappropriately classifying the Gateway loan in a modified classification of State-related debt, inconsistent with past practice. The Gateway loan otherwise meets all of the criteria of being State-supported debt. Despite the fact that this debt is imminent enough for repayments to be appropriated in this year's debt service bill for the first time, this debt was not counted in projections of any debt outstanding measure at all. Collectively, these actions only serve to make misleading statements about the size of the State's debt burden.

The Enacted Budget also re-authorized the ability to issue State-supported bonds for MTA purposes with maturities up to 50 years, far beyond the Debt Reform Act's otherwise 30-year maturity limit for all State-supported debt.

The Enacted Budget also authorized up to $4 billion in short-term cash flow borrowings during SFY 2023-24, including up to $3 billion in PIT Notes and $1 billion in lines of credit. While they are not expected to be utilized, these authorizations are unnecessary given the State's strong General Fund cash balance position, and are redundant to the ability to issue more cost-effective Tax and Revenue Anticipation Notes (TRANs).[16] The more costly "backdoor" public authority borrowings otherwise serve only to circumvent the reforms embodied in the Local Government Assistance Corporation (LGAC) Act, which require the Governor and Legislative leaders to certify the emergency or extraordinary factors needed before issuing lower-cost TRANs for any potential cash flow needs.

Collectively, these and other actions have rendered the State's current statutory debt limits functionally meaningless. Earlier this year, Comptroller DiNapoli issued a 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 to restore accountability.

Transparency and Independent Oversight

Public Engagement and Timeliness

The SFY 2023-24 Enacted Budget falls short of the high standards of transparency in the budget adoption process that would allow the people of the State of New York a meaningful window into the process.

Following the Governor's submission of the Executive Budget, section 54-a of the Legislative Law requires the Legislature to establish a joint budget conference committee or committees "to consider and reconcile such … budget bills as may be passed by each house" and to establish a schedule for, among other things, "issuance of final reports." This year, the Legislature announced membership of such conference committees, and conducted initial meetings on March 20 and 21, 2023. However, no subsequent meetings occurred and no final reports were issued. The meetings are one of the few windows the public has into developments, or the lack thereof, as negotiations progress.

Article 3, Section 14 of the Constitution of the State of New York requires that no bill shall be passed without having been printed and upon the desks of the members, in final form, at least three calendar legislative days prior to final passage, unless the Governor has issued a "message of necessity" for an immediate vote. For the SFY 2023-24 Enacted Budget, all but one of ten budget bills (the debt service bill) was approved with a message of necessity. While passage of budget bills with messages of necessity is a common occurrence, it is a practice that should be extremely limited, as it forecloses the opportunity for a full public review of the contents of the budget.

Finally, it should be noted that the Enacted Budget was the first budget in more than a decade to not be adopted on a timely basis, with 32 days passing from the first day of the fiscal year until Legislative approval of the final budget bills on May 2, 2023. The Executive and Legislature worked to avoid significant disruption during this period through enactment of short-term budget extender bills, but the uncertainty that is created by a late budget is detrimental to the State workforce, local governments, school districts, State vendors and all New Yorkers.

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 independent oversight authority to review certain SUNY, CUNY and OGS contracts. This authority, which had been significantly reduced 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 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; yet, the Enacted Budget authorizes nearly $5 billion in State spending without standard protections such as competitive bidding and State Comptroller review and approval of contracts before they become effective. In addition to this amount, the Enacted Budget includes provisions that notwithstand only Section 163 of the State Finance Law or other competitive bidding requirements which total approximately $2.5 billion.

The Office of the State Comptroller'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 the Comptroller's oversight and competitive bidding requirements reduces transparency and removes critical checks on State procurements. Examples where this contract oversight and competitive bidding requirements were eliminated include:

- A $4.2 billion Office for People with Developmental Disabilities appropriation for the provision of home and community-based services;
- A $60 million Miscellaneous All State Departments and Agencies appropriation for a local assistance resource program; and
- A $45 million Urban Development Corporation appropriation for economic development initiatives.

The Budget also continues to include problematic provisions with respect to accounting standards that have the potential to distort the appearance of reported receipts, disbursements, and liabilities, and obscure the picture of true spending growth.[17]

Endnotes

[1] An extensive explanation of the PTET is provided in Office of the State Comptroller, *Report on the State Fiscal Year 2023-24 Executive Budget*, March 2023, available at https://www.osc.state.ny.us/files/reports/budget/pdf/executive-budget-report-2023-24.pdf.

[2] The SFY 2021-22 Budget increased the net income base tax rate on businesses with incomes over $5 million from 6.5 percent to 7.25 percent and the capital base tax rate from .025 percent to 0.1875 percent of a corporation's total business capital in New York.

[3] Blue Chip Economic Indicators, Vol.48, No.5, May 10, 2023.

[4] Federal Deposit Insurance Corporation, "Bank Failures in Brief," last updated May 1, 2023, available at https://www.fdic.gov/bank/historical/bank.

[5] All Funds (All Governmental Funds) includes spending from all State Operating Funds, as well as spending from Capital Projects Funds and Federal Funds. It is the broadest measure of the budget. See: Office of Governor Kathy Hochul, "Governor Hochul Announces Highlights of Historic FY 2024 New York State Budget," May 3, 2023, available at https://www.governor.ny.gov/news/governor-hochul-announces-highlights-historic-fy-2024-new-york-state-budget.

[6] State Operating Funds is a measure of spending for operations funded with State resources. It includes financial activity in the General Fund, as well as State-funded Special Revenue Funds and Debt Service Funds (spending from Capital Projects Funds and Federal Funds is excluded). Figures for SFY 2023-24 State Operating Funds spending are from New York State Assembly Ways and Means Committee (Assembly Ways and Means), *Summary of the Recommended Changes to the Executive Budget: Fiscal Year April 1, 2023 to March 31, 2024* (Summary), May 2023, available at https://www.nyassembly.gov/Reports/WAM/2023summary_changes.

[7] The General Fund is the major operating fund of the State. It receives all State income not earmarked for a particular program or activity. State law requires the enactment of a budget that is balanced in the General Fund. Figures for SFY 2023-24 General Fund spending are from Assembly Ways and Means, Summary.

[8] Office of the State Comptroller, *Medicaid: Enrollment Growth, COVID-19 and the Future*, December 2021, available at medicaid-enrollment-growth-covid-19-and-the-future.pdf (state.ny.us)

[9] Assembly Ways and Means, Summary, pg. 45-2.

[10] NYS Department of Health, SFY 2023-24 Executive Budget Briefing Webinar Slide Presentation, February 23, 2023, available at https://www.health.ny.gov/health_care/medicaid/redesign/2023/docs/fy2024_exec_budget_present.pdf.

[11] Office of Governor Kathy Hochul, "Governor Hochul Announces Significant Actions to Expand Affordable Child Care Access Statewide as Part of FY 2024 Budget," May 3, 2023, available at https://www.governor.ny.gov/news/governor-hochul-announces-significant-actions-expand-affordable-child-care-access-statewide.

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

[13] As of March 31, 2023 the Tax Stabilization Reserve fund balance was $1.62 billion and the Rainy Day Reserve fund balance was $4.64 billion.

[14] Preliminary data for 2023 based on state enacted budgets as of March 23, 2023. Data for 2022 indicates New York's $3.3 billion statutory rainy day reserve balance would provide 14.4 days of spending compared to a national median of 42.3 in that year. Data available at Pew, "Record State Budget Reserves Buffer Against Mounting Fiscal

Threats," March 22, 2023, available at https://www.pewtrusts.org/en/research-and-analysis/articles/2023/03/16/record-state-budget-reserves-buffer-against-mounting-fiscal-threats.

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

[16] As of May 5, 2023, the General Fund balance was $44.1 billion.

[17] 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 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.

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