
Unfinished Business: Fiscal Reform in New York State



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

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Message from the Comptroller

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New York State's short-term fiscal picture has improved in recent years, thanks to factors that include an extraordinary level of one-time financial settlement resources. Despite this progress, it is important to recognize that real concerns remain with regard to policies and practices of State spending, budget reserves, debt, and capital planning.



Issues regarding transparency and accountability for State spending include “backdoor spending” through public authorities, reliance on discretionary pools of State funds with little or no detail provided regarding how the funds will be used, and annual Budgets that are not readily understandable by taxpayers. These flaws contribute to increased risk of waste, fraud and abuse, and hinder a full and open public discussion of critical budgeting decisions.

Our rainy day reserve funds are not as robust as those in many other states, and the State has missed opportunities to bolster its reserves and better prepare for the next downturn or catastrophic event.

New York continues to have a high debt burden, shrinking statutory debt capacity and too many examples of less responsible debt practices. The State relies heavily on backdoor borrowing by public authorities to circumvent the constitutional requirement that the voters who ultimately pay the bills approve new debt. Questions also persist regarding the effectiveness of the State's planning and prioritization for investment in essential capital infrastructure for transportation, education, environmental and other purposes.

This report provides a plan to address these four key areas of concern – spending accountability, sufficiency of reserves, appropriate levels and use of debt, and capital planning and prioritization. The plan includes both constitutional and statutory reforms for consideration by policy makers to address these concerns. The overall goal is to commit New York State to the highest standards of accountable, transparent and effective budgeting.

New York's taxpayers, and those who rely on the wide range of essential State services, deserve no less.

Thomas P. DiNapoli
State Comptroller

I. Executive Summary

New York State has taken important steps to improve its budget practices and financial condition over the past decade, but much work remains to be done. This is evidenced by issues that persist with respect to State spending, reserves, debt, and capital planning. Key challenges include:

- Lack of adequate transparency and accountability for State spending, including an increasing dependence on public authorities for “backdoor spending” on purposes that may be vaguely defined in law, if at all. Spending decisions for discretionary pools of funding, totaling well into the billions of dollars, are made through processes that can be opaque, out of the public’s eye, and often with unclear justification and unsubstantiated merit.
- Relatively low levels of statutory “rainy day” reserve funds, which may leave the State with insufficient flexibility to respond to economic downturns or catastrophic events. More robust reserves are particularly desirable because New York relies heavily on revenues that can be volatile depending on economic conditions, including its Personal Income Tax.
- A debt burden that is among the highest in the nation, and statutory debt capacity that is shrinking, potentially limiting the State’s ability to make critical future capital investments as needed. The State has responded to this challenge, in part, by making less responsible debt choices. In addition, the State’s reliance on “backdoor borrowing” by public authorities for nearly all its borrowing reduces transparency and evades voter control over decisions about whether to borrow for various purposes.
- Persistent questions as to whether the State invests appropriately in the upkeep and replacement of essential capital assets. Such questions are especially difficult to answer because the State does not have an effective, transparent and comprehensive capital planning process. In recent years, some efforts have been made to focus attention on the need for improved capital planning and some progress has been made to increase support for New York’s infrastructure. However, further reforms are needed to assure that public resources devoted to capital investment are used as cost-effectively as possible.

Comptroller DiNapoli proposes a comprehensive fiscal reform package, including proposed constitutional and statutory amendments, to address these four key issue areas and commit New York State to the highest standards of accountable, transparent and effective budgeting, as well as fiscal sustainability. Key components of the plan include:

- **State spending reforms**, to require greater accountability, transparency and oversight for broadly allocated State funds and for public authority spending on behalf of the State, and to enhance transparency with respect to the State's spending plan. These would include banning backdoor spending, requiring greater disclosure of public authority activities, expanding restrictions and requirements related to lump sum appropriations and unallocated, discretionary funds, and improving clarity and disclosures with respect to the State Budget and the Financial Plan. These changes would protect the public interest, ensure that taxpayers can clearly see how their dollars are being used, and promote integrity in State funding decisions.
- **New rules for budget reserves** to require deposits to the State's statutory rainy day reserve funds and mandate further steps to bring such reserves to maximum statutory levels. More robust reserves would mitigate the potential budgetary impact of an economic downturn or catastrophic event by reducing the need for painful spending cuts, significant tax increases, or the use of fiscal manipulation, temporary "one-shot" fixes or other budgetary ploys.
- **Reforms to promote more responsible debt practices**, including a constitutional and statutory debt cap using a comprehensive definition of State debt, to strengthen the current limits on outstanding debt and broaden the scope of borrowing subject to the cap. This would provide a more meaningful constraint, as the current statutory debt caps are narrowly defined and susceptible to evasion. The proposal would provide voters a greater voice in borrowing decisions made on their behalf by prohibiting backdoor borrowing by public authorities and requiring voter approval of State debt with limited exceptions and tight controls.
- **A comprehensive capital prioritization and planning process** to ensure the cost-effective use of billions of dollars in annual infrastructure spending. This proposal would create a comprehensive inventory and condition assessment of all State capital assets, and would be the basis for the State's five-year Capital Plan as well as a 20-year planning window. It would provide a much-needed, long-term capital planning mechanism to allow policy makers to prioritize capital investments, identify critical infrastructure needs and ensure that the State's limited resources, including its debt capacity, are used effectively.

II. The Comptroller's Fiscal Reform Agenda

Fiscal reform is a recurring imperative as financial practices change over time. Statutory reform efforts in recent years have resulted in some progress. These include the Debt Reform Act of 2000, which established statutory caps on State-Supported debt outstanding and debt service; the Budget Reform Act of 2007, which endeavored to make the State budget process more transparent, timely and responsible; and the Public Authorities Reform Act of 2009, which sought to improve the transparency and accountability of State and local public authorities through expanded reporting, oversight and governance provisions.

Since enactment of the most recent major fiscal reforms in New York, the State has experienced dramatic changes in its economic and financial condition. The State's financial position deteriorated sharply during and after the Great Recession that began in December 2007, but has improved in recent years. Improved economic conditions and more than \$8 billion in unanticipated resources from settlements with financial institutions have helped boost the General Fund's year-ending balance to its highest level in years. Budget adoption in each of the past five years has been timely.

Despite this progress, concerns persist with respect to transparency and accountability for billions of dollars in spending, as well as the State's increased reliance on public authorities and higher debt levels. Questions have also been raised regarding the integrity of certain spending and budget practices, due in part to the opaque processes surrounding many of them.

Comptroller DiNapoli's Fiscal Reform Agenda offers a comprehensive plan designed to improve the State's budget and fiscal practices by addressing these questions and concerns. The methods by which these steps can be accomplished are outlined in proposed legislation, including both statutory and constitutional reforms.

A. End Backdoor Spending and Ensure Accountability for Every Budget Dollar

With an annual State budget totaling over \$150 billion, New Yorkers have a right to expect transparent and accountable budgeting to help ensure that public resources are protected from waste and abuse and that relevant information is readily accessible. Generally speaking, funds that flow to and through State agencies are subject to oversight and checks and balances designed to mitigate the potential for inefficiency or misuse of public funds. This includes rigorous oversight, monitoring and reporting by the Office of the State Comptroller.

For spending by public authorities – including spending on behalf of the State with funds provided by the State – this detailed information and rigorous accountability is typically not available. While public authority reform efforts have brought some progress, more work is needed. In addition, best practices of transparency and

accountability would require that allocations of public resources made after the budget is enacted be done through a clearly defined, fair and equitable process, with ongoing public disclosure. The Comptroller's Reform Agenda would accomplish these goals through the following actions:

1. Ban backdoor spending and require greater disclosure of public authority activities.

In contrast to the checks and balances on State agency spending, different processes apply to spending through public authorities, depending in part on the enacted budget language that allocates funds to the administering authority. In addition, hundreds of millions of dollars are allocated through opaque processes with unclear or inconsistent criteria.

This spending could be characterized as “backdoor spending” because, like backdoor borrowing, it circumvents traditional checks and balances that are intended to provide oversight, accountability and transparency while preventing waste, fraud and abuse.

Under Comptroller DiNapoli's Reform Agenda, all public authority spending on behalf of the State, including spending of State-Funded bond proceeds, would have to be appropriated and subject to pre-audit review by the Office of the State Comptroller. Public authorities would be prohibited from receiving any State-appropriated funds until projects were identified, scored, and ranked using clear, measurable and objective criteria, unless such appropriations provide an allocation either by statutory formula or to a specific recipient.¹

Authorities would be required to publicly report quarterly on the expenditure of such funds, including identifying the amount allocated by project, the selection process and each funded project score, as well as the overall scoring and ranking of projects evaluated.

In addition, the Public Authorities Control Board Act would be amended to require that all proposed board resolutions, project applications and related board materials, including project lists prepared for the Board's meetings, be available to the public for at least ten years. Making such historical information readily available would allow ongoing monitoring of authority-funded projects, which often have costs and useful lives extending over long periods.

¹ These exceptions are provided because each of these mechanisms to determine the allocation of funds – either through specificity within an appropriation, or by statutory formula – would allow the public and other interested parties to readily identify recipients of State funds and to assess such funding choices.

2. Expand the existing limitation on lump sum appropriations, require objective processes for spending unallocated funds, and improve reporting requirements.

While the New York State Constitution, as interpreted by the State Court of Appeals, anticipates sufficient itemization of appropriations in the Budget, State funds are often allocated to agencies and authorities through broadly defined appropriations, sometimes referred to as lump sum appropriations.² This approach can result in a murky picture of how such funds will be allocated, how they are used and by whom. In an effort to improve transparency and accountability, the Budget Reform Act of 2007 generally prohibited the use of lump sums in appropriations added by the Legislature, but provided a mechanism by which such funds could be used in certain circumstances.³

Moreover, because the 2007 reforms are statutory, the use of “notwithstanding” provisions in later legislation can override such restrictions. In addition, the broad 2007 statutory prohibition does not apply to appropriations advanced by the Executive, with certain exceptions. This results in another way to circumvent the prohibition, since appropriation bills enacted by the Legislature in recent years have often been Executive resubmissions.⁴

The State and Municipal Facilities Program (SAM) is an example of substantial spending that lacks transparency. The SAM lump sum appropriations include little or no detail regarding the process for allocating funds, or the purposes for which such funds are to be used, and the agency or authority that will ultimately administer the funds is not identified. Such gaps leave public funds open to expenditure with inadequate oversight, transparency and accountability.

Appropriations for the SAM program over the past four years (including the SFY 2016-17 Enacted Budget) allow the allocation of more than \$1.5 billion in State resources

² Article VII of the State Constitution, as interpreted by the Court of Appeals, anticipates sufficient itemization, both in the Governor's submissions and any additional appropriations by the Legislature. The courts have not fully defined, however, what constitutes sufficient itemization for the Governor, except to say “the items must be sufficient to furnish the information necessary to determine whether in the judgment of the Legislature all that is demanded should be granted or is required.” *People v. Tremaine*, 281 N.Y. 1, 5 (1939); see also *Pataki v. N.Y. State Assembly*, 4 N.Y.3d 75, 96 (2004); *Saxton v. Carey*, 61 A.D.2d 645, 649 (3d Dept 1978); *Hidley v. Rockefeller*, 36 A.D.2d 387, 389 (3d Dept 1971).

³ The Act defines a lump-sum appropriation as “an item of appropriation with a single related object or purpose, the purpose of which is to fund more than one grantee by a means other than a statutorily prescribed formula, a competitive process, or an allocation pursuant to subdivision five of section 24 of this chapter.” Subdivision five relates to any appropriation added by the Legislature without designating a grantee. Such provision requires that such funds shall be allocated “only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the chair of the senate finance committee, the chair of the assembly ways and means committee, and the director of the budget, and thereafter shall be included in a concurrent resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to each house upon a roll call vote.”

⁴ The 2007 Act prohibited the use of lump sum appropriations by the Executive for Temporary Assistance for Needy Families, the Environmental Protection Fund, and the Medical Assistance Program. For more information about the Executive's budget bill resubmissions, see the Office of the State Comptroller's Report on the SFY 2015-16 Enacted Budget, Appendix C, Evolution of the SFY 2015-16 Budget Bills, available at http://www.osc.state.ny.us/reports/budget/2015/2015-16_enacted_budget.pdf.

(currently planned to be financed by borrowing). SAM does not have any clearly defined statutory process through which proposed projects are objectively assessed. To date, some such funds have flowed through the Dormitory Authority of the State of New York (DASNY), using an opaque process that includes the designation of a project “sponsor,” which is either the Governor or a member of the Legislature. Details on expenditures – purposes, recipients and other key factors – remain largely outside the State accounting system.

SAM is just one example of several that reflect a process wherein billions of State budget dollars have been moved into less transparent and accountable spending mechanisms, which provide minimal disclosure of the decision making process or other information on the expenditure of public funds. As a result, it is difficult for the public to be assured that the funds are being put to good use in a cost-efficient and effective manner.

In addition, there are no comprehensive or standardized mechanisms to track the spending of these dollars in detail. Furthermore, Budget provisions often include authorization to transfer, interchange, or suballocate funds among agencies and to public authorities, clouding the picture of how such funds are used. When spending is shifted to public authorities, the oversight and the checks and balances that would apply to State agency spending are also eliminated.⁵

Comptroller DiNapoli’s Reform Agenda expands statutory provisions enacted in 2007 that prohibit lump sum appropriations to cover all appropriations, including those advanced by the Executive.⁶

The reforms would repeal 2007 provisions that allow the use of lump sum appropriations if certain legislative processes are followed. Instead, new provisions would require any unallocated funds – defined as appropriated funds not allocated either by statutory formula established in law or to a specific recipient – to be subject to allocation pursuant to a competitive process with clear, measurable, public and objective criteria defined in statute or by regulation. This allocation process would apply to funds appropriated to both State agencies and public authorities.

The Comptroller’s Reform Agenda includes a statutory amendment to require the Division of the Budget (DOB) to report information about each unallocated appropriation in the budget, the process by which such funds were subsequently allocated, the scoring of each project based on objective criteria, and the amounts spent by project.

⁵ For more information on these and other lump sum appropriations, see the Office of the State Comptroller’s Report on the State Fiscal Year 2015-16 Enacted Budget, pages 11-13 and 24-27, available at http://www.osc.state.ny.us/reports/budget/2015/2015-16_enacted_budget.pdf.

⁶ See Section 24(5) of the State Finance Law.

DOB would also be required to identify by agency, fund and program the purpose, amount, and projected and actual disbursements of each appropriation subject to transfer, interchange, or suballocation of funds.

3. Make the Budget more understandable and transparent.

Volumes of detailed information accompany the Executive's proposed budget each year, including a multiyear Financial Plan with estimates for the current year, projections for the upcoming proposed budget year and three subsequent years of expected cash disbursements, by agency, Financial Plan component and high level program. Additionally, a considerable amount of detail is provided with the Enacted Budget and with each quarterly update of the Financial Plan.

Despite this information, the budget can often be impenetrable to New Yorkers who want to understand the State's revenues and expenditures and to participate in the process of determining priorities. Reasons for this include the following:

- There is no clear connection between the proposed and enacted budget bills and the Financial Plan, because appropriations in budget bills are not tied to projected disbursements shown in the Financial Plan.
- The Financial Plan included with the Budget typically fails to disclose clearly the specific future year impact of new spending proposals or major program changes.
- The Budget includes extensive suballocation, interchange and transfer language that authorizes the movement of funds between and among agencies and public authorities after the enactment of the Budget, and authorizes the transfer of moneys among funds without any identification of the amounts or the affected funds (including "blanket sweeps").

To provide greater clarity and transparency in the budget, there should be an explicit reconciliation – a crosswalk – of the Enacted Budget with the Financial Plan, as well as multiyear spending estimates for new and existing programs.

The Comptroller's Reform Agenda includes statutory revisions that require the Executive to report four years (the proposed year plus three subsequent years) of expected cash disbursements, by agency, for each major program appropriation. It also requires spending detail for any proposals, including new programs or major program changes that entail significant increases or reductions in spending. More detailed cash flow projections would be required in Financial Plan Updates – by specific funds, taxes and programs. This reform would highlight the future budget impact of current year actions and clarify the connections between budget bills and the Financial Plan.

The Comptroller's Reform Agenda also prohibits the use of "blanket sweeps" and requires the Executive, for each sweep, transfer,

suballocation, and interchange of funds, to identify the fund and amount affected and provide an assessment of the fiscal and programmatic impact of the transaction on the program or activity.

Finally, the Comptroller's Reform Agenda requires DOB to provide a preliminary impact assessment and description of revisions that occurred between the Governor's budget submission (including amendments) and the final changes made by the Legislature, including preliminary estimates of changes in revenue and spending projections, upon the printing of the final budget bills, and such assessment and description would be required to be made available to the public before passage of the budget. This would provide the Legislature, policy makers and the public with important information and time to consider such changes to the State's spending plan.

B. Better Prepare for Inevitable Downturns and Catastrophic Events

The State's economy has been growing and the State's fiscal position has improved in recent years. However, it is important to keep the bigger fiscal picture in mind: times change, and economic cycles include both ups and downs. The State's restricted and unrestricted reserves stood at \$5.1 billion at the end of State Fiscal Year (SFY) 1999-2000, but were largely depleted after the September 11th attacks in 2001.

Despite rapid revenue growth from 2004 through 2007, due to a strong economy and record profits in the financial industry, these reserves were not fully replenished. Just six years ago, in late 2009 and early 2010, New York was facing historically low cash levels in the State Treasury which resulted in extraordinary actions, including the delay of certain payments, to avoid cash shortfalls in December 2009 as well as March 2010. The SFY 2009-10 Enacted Budget also increased the period for which the General Fund could temporarily borrow from certain other available funds from one month to four months or the end of the fiscal year, whichever period is shorter.

The current national economic expansion has lasted longer than the post-war average. The State has both an opportunity and an obligation to prepare itself for the next economic downturn or catastrophic event.

1. Bolster the State's "rainy day" reserve funds.

The combined balances in the State's two largest statutory rainy day reserve funds – which, for the purpose of this report, refers to the Tax Stabilization Reserve Fund and the Rainy Day Reserve Fund – totaled just under \$1.8 billion as of March 31, 2016, representing almost 2.5 percent of General Fund expenditures. In addition to the State's restricted reserves, the General Fund also has unrestricted funds, which includes certain monetary settlement funds.

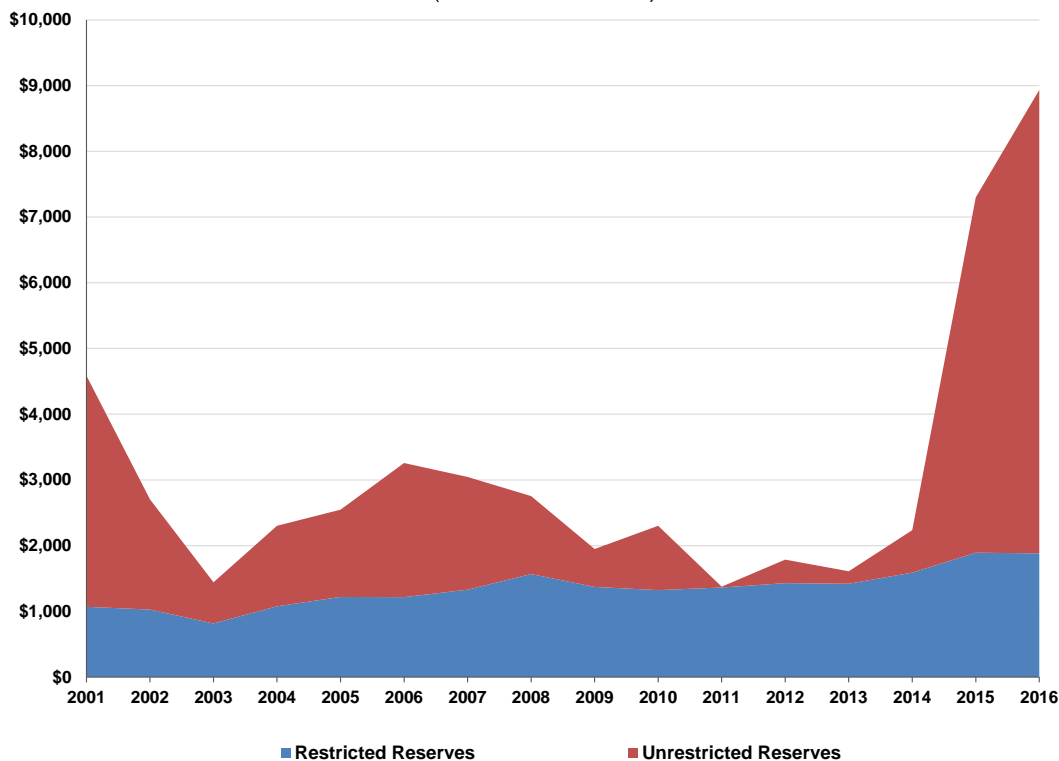
The closing General Fund balance as of the end of the last fiscal year was \$8.9 billion, reflecting all restricted and unrestricted reserves. The language authorizing the Dedicated Infrastructure Investment Fund (DIIF) permits the transfer of available funds to the General Fund in certain circumstances, including in the event of an economic downturn, which suggests that moneys in the DIIF are potentially available for use as an additional undesignated reserve for the State.

Although DOB identified over \$1.6 billion in unanticipated resources during SFY 2015-16, the Executive Budget did not anticipate any new deposits to either the Rainy Day Reserve Fund or the Tax Stabilization Reserve Fund, nor were any made at year-end. Figure 1 shows the contrast between the State’s statutory rainy day reserves, which have been relatively flat, and recent year-end balances in the General Fund, which have been more variable. The times when the General Fund has shown relatively high balances represent potential opportunities for the State to bolster its statutory reserves.

DOB deposited \$316 million into the State’s statutory rainy day reserve funds in March 2015, and the SFY 2015-16 Enacted Budget included legislation authorizing both higher annual deposits and a higher maximum balance in the Rainy Day Reserve Fund. Still, the State’s statutory rainy day reserve funds remain at low levels compared to those in many other states.

Figure 1

General Fund Balance and Statutory Reserves – SFY 2000-01 to SFY 2015-16
(in millions of dollars)



Source: Office of the State Comptroller

Credit rating agencies, including Standard & Poor's Ratings Services, Moody's Investors Service and Fitch Ratings, have raised ratings on the State's General Obligation (GO) bonds in recent years. None has assigned its highest rating, however, in part because of concern regarding the State's comparatively low reserves. Moody's, for example, has given its AAA rating to states including Texas, New Mexico, Iowa, Utah, Indiana, South Carolina and Delaware. Each of those states had a higher level of rainy day reserves as a proportion of its General Fund spending than the same measure for New York as of 2015.⁷

At the same time, New York's dependence on revenue from the often volatile financial sector leaves the State susceptible to large, unanticipated variations in tax revenue. The Great Recession and previous downturns have resulted in the need for deficit reduction actions during the year, including difficult spending cuts and significant tax increases, at times when such steps may have been especially damaging. Other budget management actions have included sweeps of funds originally dedicated to other purposes, changes in timing of payments, and other fiscal gimmicks. More robust reserves could reduce the need for such measures going forward.

Comptroller DiNapoli's Reform Agenda builds on the progress made in the SFY 2015-16 Enacted Budget to require increased reserves to cushion against budget shocks. Deposits to the Rainy Day Reserve Fund would be required annually in years when the State experiences a cash surplus, except during economic downturns. Deposits to this Fund would end when it reaches a maximum level of 8.0 percent of General Fund spending (\$5.7 billion based on current spending levels). Any cash surplus in excess of this amount would be required to be deposited in the Debt Reduction Reserve Fund. Under this proposal and based on current spending levels, reserves in the Rainy Day Reserve Fund and the Tax Stabilization Reserve Fund would total approximately \$7.1 billion.

C. Promote More Responsible Debt Practices

Contravening the spirit of the State Constitution, the State relies heavily on borrowing by public authorities on its behalf. Unlike State general obligation borrowing, issuance of public authority debt does not require the approval of voters. Such "backdoor borrowing" now comprises the great majority of the debt that has been issued to finance the State's capital spending. Less than 6 percent of the current State-Funded debt burden received voter approval. Reliance on non-voter-approved borrowing has become the rule, rather than the exception.

The Debt Reform Act of 2000 (the Act) defined State-Supported debt and, in an effort to control the growth of State debt, imposed limits on outstanding State-Supported debt and annual debt service associated with such borrowing. The legislation:

⁷ Data on reserves and General Fund spending comes from the National Association of State Budget Officers.

- Capped the level of State-Supported debt outstanding at 4.0 percent of personal income for debt issued after April 1, 2000. This cap was phased in over 10 years and was fully phased in during SFY 2010-11.
- Capped debt service on new State-Supported debt issued after April 1, 2000 at 5.0 percent of All Funds receipts. This cap was phased in over 13 years and was fully phased in during SFY 2012-13.
- Provided that State-Supported debt can only be used for capital works or purposes and cannot have a maturity longer than 30 years.

However, these provisions have not adequately restrained questionable borrowing practices or the growth in State debt due to the fact that, since the Debt Reform Act was passed, its provisions have been circumvented on numerous occasions. This has had the effect of masking the State's true debt burden.

Significant borrowing over much of the past 15 years, coupled with weak economic conditions during and after the Great Recession, has depleted a large portion of the State's statutory debt capacity as measured by debt outstanding. In February 2016, DOB projected that available capacity for outstanding debt under the statutory limit would fall to \$189 million by the end of SFY 2019-20, before increasing to \$584 million in SFY 2020-21, based on Executive Budget projections for debt issuance, retirement and personal income.⁸ DOB also projected that available capacity under the statutory cap on debt service will fall to \$2.3 billion by SFY 2020-21.

According to Moody's Investors Service, New York's debt burden is among the highest in the nation. In 2014, New York State was the second most-indebted state behind California, and had nearly twice as much debt as the third most-indebted state. New York also ranked fifth among all states in debt per person, with a per capita debt burden of \$3,092.⁹ The State's borrowing practices must be made more transparent and accountable, and its debt burden more affordable.

1. Ban backdoor borrowing and return control of State debt to voters.

The SFY 2016-17 Enacted Budget contains no new borrowing proposals requiring voter approval, but instead continues to rely heavily upon backdoor borrowing by public authorities. As of March 31, 2015, approximately 95 percent of State-Funded debt outstanding had been issued by public authorities without voter approval. Proposed reforms will eliminate backdoor borrowing by public authorities by having the State Comptroller issue all State debt.

Comptroller DiNapoli's Reform Agenda constitutionally bans "backdoor borrowing" on behalf of the State by public authorities. All new State debt must be approved by the Legislature and the voters, with limited exceptions, before being issued by the State Comptroller, with the same

⁸ See the 2016-17 Executive Budget Financial Plan, Updated for the 30-Day Amendments.

⁹ State Debt Medians 2015, Moody's Investors Service, June 2015.

legal protections and controls that apply to General Obligation debt. Existing exceptions would be preserved (to repel invasion, suppress insurrection, defend the State in war, and to suppress forest fires, as well as certain short-term borrowing), with a new exception added to respond to acts of terrorism.

In addition, approved annual issuances of up to 0.5 percent of All Funds tax receipts would be allowed without voter approval to meet critical capital needs. (Such a figure would equate to approximately \$355 million in SFY 2014-15, reflecting 10.9 percent of actual State-Supported debt issuances in that year.) Also, to facilitate improved planning and appropriate use of borrowing for capital investments, authorization would be provided to allow multiple bond acts to be presented to voters at the same time.

2. Impose a meaningful debt cap using a comprehensive definition of State debt.

The 2000 Debt Reform Act did not adequately restrain dubious borrowing practices or control the growth of debt. This is largely because the Act defines debt too narrowly, and because new financing programs have circumvented the statutory definition and thus, the established limits and restrictions on such debt. State-Supported debt is narrowly defined in the State Finance Law to include the State's voter-approved General Obligation bonds and certain public authority debt issued on behalf of the State.¹⁰

The Office of the State Comptroller uses a more comprehensive measure of the State's debt burden to identify all State-Funded debt. This includes State-Supported debt as well as other debt supported by any financing arrangement whereby the State agrees to make payments with State resources, directly or indirectly, to a public authority, bank trustee or municipal issuer to enable them to make payments on debt issued for State purposes.¹¹

Examples of State-Funded debt that are not included in the statutory definition of State-Supported debt include bonds issued by the Tobacco Settlement Financing Corporation, backed by revenues from the 1998 Master Settlement Agreement with

¹⁰ State-Supported debt is defined in subdivision 1 of Section 67-a of the State Finance Law as follows: "'State-Supported debt' shall mean any bonds or notes, including bonds or notes issued to fund reserve funds or costs of issuance, issued by the state or a state public corporation for which the state is constitutionally obligated to pay debt service or is contractually obligated to pay debt service subject to an appropriation, except where the state has a contingent contractual obligation."

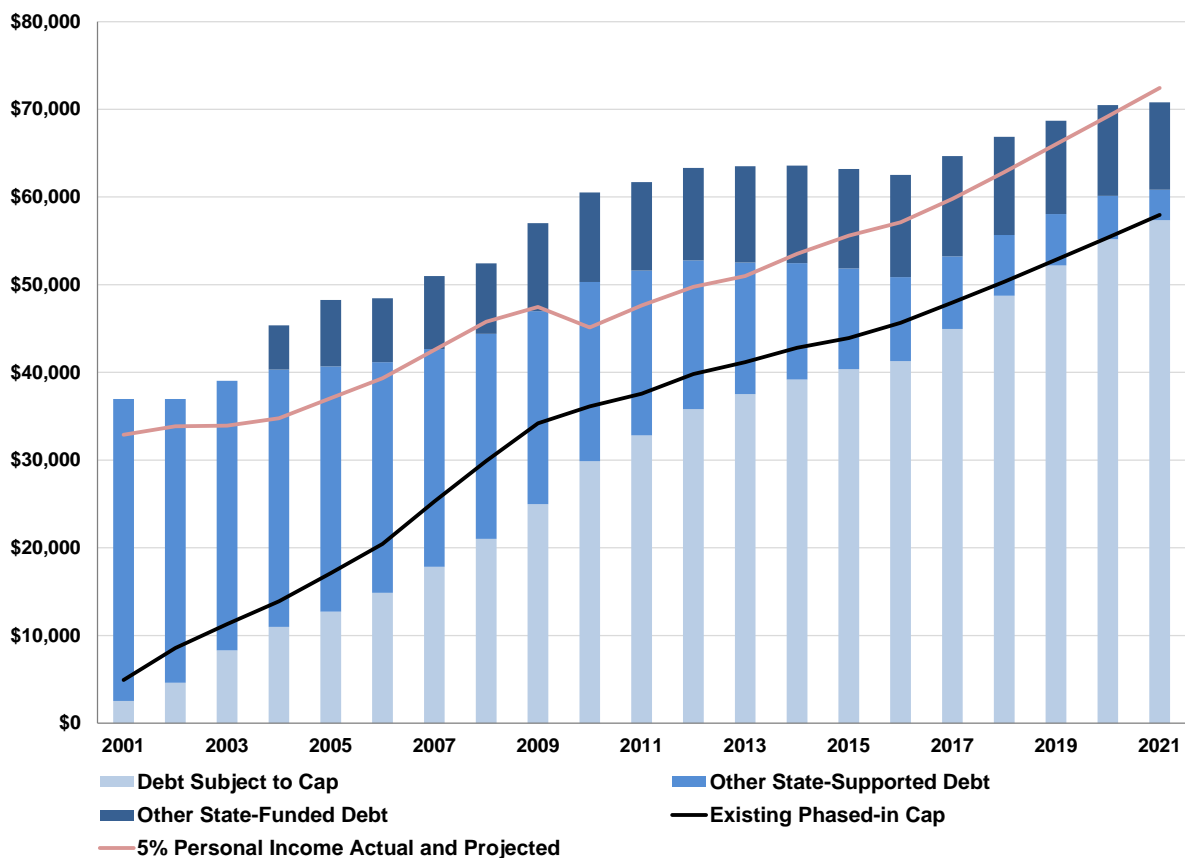
¹¹ State-Funded debt includes debt supported by any financing arrangement whereby the State agrees to make payments which will be used, directly or indirectly, for the payment of principal, interest, or related payments on indebtedness incurred or contracted by the State itself for any purpose, or by any State agency, municipality, individual, public authority or other public or private corporation or any other entity for State capital or operating purposes or to finance grants, loans or other assistance payments made or to be made by or on behalf of the State for any purpose. Among other provisions, the definition applies: (i) whether or not the obligation of the State to make payments is subject to appropriation; or (ii) whether or not debt service is to be paid from a revenue stream transferred by the State to another party that is responsible for making such payments.

major tobacco manufacturers, and borrowing in recent years by DASNY to fund construction of State University of New York dormitories.

Figure 2 illustrates State-Supported and State-Funded debt outstanding from SFY 2000-01 through SFY 2020-21. The black line in Figure 2 shows the level of debt capacity under the cap on State-Supported debt outstanding established pursuant to the Debt Reform Act of 2000. As Figure 2 illustrates, the State is projected to have limited statutory debt capacity for the foreseeable future.

Figure 2

**State-Supported and State-Funded Debt Outstanding –
SFY 2000-01 through SFY 2020-21**
(in millions of dollars)



Sources: Office of the State Comptroller, the Division of the Budget, the Dormitory Authority of the State of New York (DASNY), and the New York City Office of Management and Budget (NYC OMB)

Notes: “Debt Subject to Cap” and “Other State-Supported Debt” are as reported by the Division of the Budget. The figures for fiscal years ending in 2001 through 2015 are reported actual levels of outstanding debt; for fiscal years ending in 2016 and after, the figures are estimated or projected by DOB, DASNY, and NYC OMB. The definition of State-Funded debt was developed in SFY 2004-05 and Other State-Funded Debt does not capture debt issued before SFY 2003-04.

The debt counted under the statutory cap on State-Supported debt outstanding does not include all borrowing funded with State resources, due to the narrowly constructed definition of State-Supported debt. The Debt Reform Act excluded from its caps all debt that was outstanding at the time of enactment. As of March 31, 2015, this debt totaled \$11.5 billion. Debt outstanding that has been authorized since 2000 but does not fall within the narrow definition of State-Supported debt, as well as other existing debt not subject to these caps, but whose repayment comes from State resources, totaled \$11.3 billion as of March 31, 2015. Debt not subject to the statutory cap (including Other State-Supported Debt and Other State-Funded Debt) comprises more than one-third of the \$63.2 billion in State-Funded debt outstanding as of March 31, 2015.

Certain of these new debt authorizations also circumvented the provision of the Act that limits the issuance of debt to capital purposes. As a result, approximately \$7.6 billion has been issued for non-capital purposes since 2000. As of March 31, 2015, over 10 percent of the State's debt outstanding was for non-capital purposes.

Comptroller DiNapoli's Reform Agenda establishes a more comprehensive and effective cap on New York's debt outstanding through a Constitutional amendment to limit all State-Funded debt to 5.0 percent of personal income in the State.

A plan would be required to be submitted with the Executive Budget for SFY 2017-18 setting forth target percentages and the methodology for achieving compliance with the new debt cap by its effective date of April 1, 2026. Each Executive Budget thereafter would be required to contain a progress report with respect to meeting the target percentages, an explanation of deviations from target percentages, and proposed remedial actions deemed necessary to comply with the new debt cap by the effective date.

A Constitutional amendment would also restrict the use of long-term State-Funded debt to capital purposes (as is currently provided in State law), with limited exceptions. The debt cap and the restriction on the use of debt would help New York further rein in its debt load and avoid questionable borrowing practices.

D. Institute Comprehensive Planning for Capital Investments

Although New York borrows and spends billions of dollars annually to finance projects with long useful lives, such as roads, bridges, dams, prisons and educational facilities, the State lacks an effective planning policy to comprehensively identify and track these capital assets and their condition, and to establish a long-term prioritization plan for maintaining, replacing, improving or adding to its capital inventory.

Without knowing what the State has, it is impossible to know what is needed. As a result, it is difficult to determine if the State's limited resources are being put to the best use or if the State's infrastructure will be able to support its residents' future needs. In recent years, some focus has been directed towards improving the State's capital planning, including the New York Works initiative. More recent efforts have targeted increasing support for New York's infrastructure. However, challenges persist and more progress is needed.

1. Create a Capital Asset and Infrastructure Council.

The Executive currently prepares a five-year Capital Program and Financing Plan presenting information regarding planned appropriations, spending and financing sources for all capital programs. Each State agency has its own capital planning process, but the plans rarely extend beyond five years. There is little coordination or consistency among the various agency plans, and there is no mechanism to comprehensively identify current infrastructure needs or assist the State in setting capital investment goals and priorities. Improvements are needed to better integrate the capital planning and prioritization process across State agencies and authorities.

Comptroller DiNapoli's Reform Agenda establishes a Capital Asset and Infrastructure Council to create a comprehensive inventory and condition assessment of all State capital assets and certain other assets which receive a significant amount of State funding. The Council would evaluate local capital projects that are significantly funded with State resources and determine whether such projects should be included in the State capital inventory and condition assessment.

The Council will also create an annual comprehensive statewide capital needs assessment, with priorities and recommendations for planning and funding of the capital assets inventoried as well as to address future needs, and prepare a comprehensive 20-year long-term strategic plan. Such plan would be updated every two years.

2. Require a long-term statewide capital inventory and needs assessment, and improve the planning and prioritization of capital projects.

In recent years, capital planning efforts beyond the five-year Capital Plan were initiated. This included the creation of the New York Works Task Force, as well as stated intentions to "coordinate a statewide infrastructure plan that will more effectively and strategically allocate New York's capital investment funding."¹²

From SFY 2013-14 through SFY 2015-16, the State's Capital Plans provided rolling ten-year capital commitment and disbursement projections for State agencies, including State financial assistance for the capital activities of certain State authorities

¹² For more information about the New York Works Task Force, see <https://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-appoint-members-ny-works-task-force>.

(e.g., the Metropolitan Transportation Authority), as well as projections for personal income and certain State debt. The plans indicated that these projections were made, in part, to meet long-term planning goals and that the commitments and disbursements over the ten-year period were calibrated to help ensure compliance with the State's debt limit.

DOB had indicated in past plans that the projections reflected a uniform set of capital planning assumptions for all State agencies, making it easier to compare and prioritize investments. Although the ten-year projections were of a high-level summary nature and provided minimal detail related to the uniform criteria that were used, they offered a longer term outlook and perspective with respect to the direction of the State's Capital Plan and certain related debt.

After being provided in Capital Program and Financing Plans from SFY 2013-14 through SFY 2015-16, such projections were omitted from the proposed SFY 2016-17 Capital Program and Financing Plan. The loss of this information reduces transparency surrounding the State's disbursement of capital funds and its debt burden.

The Capital Asset and Infrastructure Council's 20-year strategic plan, based on the capital projects identified in the comprehensive statewide capital needs assessment and the future capital project needs of the State, would be the foundation of the State's capital planning process. It would serve to assist policy makers in identifying and providing resources for the capital projects that are most critical, and assessing how projected funding will impact asset conditions.

The State's Five-Year Capital Program and Financing Plan, along with capital appropriations proposed in the Executive Budget or enacted by the Legislature, would be required to derive from the long-term strategic plan and to justify any deviations from it.

This would result in a greater likelihood that the State's most critical infrastructure needs will be met, and reduce the risk that the State's limited capital resources would be used inefficiently.

III. Conclusion

Despite progress in recent years, the task of achieving comprehensive fiscal reform for New York State remains unfinished. Further steps to enhance State financial and capital planning can help ensure that public resources are used wisely, that critical needs can be met both today and in the future, and that the State conducts its business in the most transparent and accountable manner possible. More specifically, benefits of the Comptroller's reform agenda would include:

- **More cost-effective spending.** Ensuring accountability and transparency for every dollar in State spending can be expected to result in better use of taxpayer resources and less waste. This could translate into improved services, more support for local governments and schools, and lower costs for taxpayers.
- **Stronger safeguards against future budget crises.** More robust budget reserves would help mitigate the need for damaging or undesired spending cuts and tax increases, or the use of fiscal gimmicks in the event of a catastrophic event or economic downturn.
- **Fair and equitable access to State dollars.** Objective criteria and clear, public processes for distribution of State resources will help ensure more cost-effective allocation of funds, restore New Yorkers' confidence that resources are allocated on the merits, and maximize the benefit of publicly funded programs and services.
- **Appropriate, affordable and transparent use of debt.** Better controls on debt will help ensure that future generations will have the capacity to meet capital needs and will not be unnecessarily burdened with deteriorated assets. Imposing a more meaningful cap on State debt and eliminating backdoor borrowing by public authorities would promote affordability and accountability in the debt incurred on behalf of New Yorkers.
- **Better investment in capital assets.** Effective planning and prioritization of capital spending would help to promote better road and bridge conditions, improve the quality of the State's air and public waters, and create an overall infrastructure system that better supports economic growth and quality of life.

Effective fiscal reform can help restore public trust in State government, and enhance the State's ability to act in the best interests of all New Yorkers – now and in the future. While New York has taken important steps in the right direction, further progress is essential.

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