



# Lump Sum Warning

\$14.8 Billion in Proposed State FY 2024 Discretionary Lump Sum Spending Authority Invites Waste and Corruption



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## ***Introduction***

Governor Kathy Hochul’s Fiscal Year 2024 Executive Budget proposal appropriates \$14.8 billion in “lump sums,” which are appropriations that authorize spending on a broad range of projects or purposes to be determined and allocated at a later date. In New York, lump sums are often also called “discretionary funds” because the Governor and the Legislature decide where, when, and how they are spent, typically months or years after they are budgeted, and without public scrutiny.

Both watchdog groups and the Office of the State Comptroller (OSC) have issued repeated warnings about the elevated risk of waste and corruption from lump sum spending.<sup>1</sup> Aggravating the risk of abuse is the private process for awarding the money, which is often not subject to Comptroller’s contract oversight—a crucial check against abuse and a way to help ensure the taxpayer gets the best value on goods and services.<sup>2</sup>

Furthermore, the Governor and legislative leaders can use the lump sum funded projects they control as carrots (or sticks) to influence individual lawmakers. Lump sum spending can fuel undemocratic and special interest driven policies since they are allocated in private, outside of the relatively more transparent process of negotiating, publishing and adopting the State budget.

From what little that has been disclosed, it appears that lump sum spending is too often allocated based on politics rather than public benefit. The State’s resources should be allocated transparently and based on clearly articulated priorities, quantified assessments of needs, and the likely evidence-driven benefits of the spending. Furthermore, being allocated outside the budget process means the impact of billions of dollars of lump sum spending is rarely well documented or assessed.

Notably, the \$14.8 billion includes \$8 billion in lump sums for the COVID emergency that were also passed in the prior two enacted budgets; given that the COVID emergency has ended, this appropriation is unnecessary.

Public dollars should not be spent through lump sum appropriations that increase the risks of waste, distortion of priorities, low return on investment, and corruption. New York State should not approve new lump sums and should vastly improve the transparency of existing lump sums to show the public exactly where its money has, and will be, spent.

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<sup>1</sup> See Citizens Union’s “Spending in the Shadows” reports.

FY 2017:

<https://citizensunion.org/wp-content/uploads/2016/02/FINAL20CU20Spending20in20the20Shadows20Report20FY1720Executive20Budget20-202202920162.pdf>

FY 2014-2016:

[https://citizensunion.org/wp-content/uploads/2016/02/CU\\_SpendingInTheShadows\\_FY2014-16\\_Update\\_3-19-15.pdf](https://citizensunion.org/wp-content/uploads/2016/02/CU_SpendingInTheShadows_FY2014-16_Update_3-19-15.pdf)

2013:

[https://citizensunion.org/wp-content/uploads/2016/02/CU\\_SpendingintheShadows\\_DiscretionaryFundsInNYS\\_Sep\\_tember\\_2013.pdf](https://citizensunion.org/wp-content/uploads/2016/02/CU_SpendingintheShadows_DiscretionaryFundsInNYS_Sep_tember_2013.pdf)

<sup>2</sup> Office of the State Comptroller. “State Fiscal Year 2022-23 Enacted Budget Analysis.” May 2022. Available at:

<https://www.osc.state.ny.us/reports/state-fiscal-year-2022-23-enacted-budget-analysis>

## ***Recommendations***

- **This budget, the Governor and Legislature should:**
  - **Not enact any new lump sum appropriations.** The State should not enact lump sum appropriations that authorize spending on a broad range of projects or purposes to be determined and allocated at a later date. Lump sum appropriations do not allow legislators and the public to know what programs will be funded. The practice also encourages wasteful spending that does not maximize public benefit or return on investment.
  - **Omit the \$6 billion Special Public Health Emergency Appropriation from the budget.**
  - **Reduce the Special Emergency Appropriation to \$1 billion,** and ensure it is subject to OSC oversight and competitive procurement rules.
  - **Fully and completely disclose distributions from all lump sum pots currently being spent.** The Executive should improve the transparency of existing lump sum databases and disclosures by consolidating them as much as possible. The Senate and Assembly should also provide a centralized database of lump sum spending, with much more detail than currently provided in the resolutions passed by each house. The Governor and Legislature should provide the following information in a tabular, open data format:
    - the agency administering the distribution;
    - individual legislative sponsors' names, if any, or statewide elected official involved in the distribution;
    - approval date;
    - authorizing budget legislation information (bill name, chapter, page, etc);
    - fund and/or program name;
    - amount of grant/distribution;
    - recipient names, EINs, and addresses;
    - project status;
    - detailed description of the intended use of the funding; and
    - criteria used for distribution.
- **Within the next few years, the Governor and Legislature should:**
  - **Pass a law codifying the Governor's discretionary lump sum database.** This should include improved requirements for disclosure. As spending from prior lump sums continues, there should be robust transparency and accountability for that spending.
  - **Provide full data for lump sum spending dating back to at least 2020.**

## ***Background on Lump Sum Appropriations***

The Fiscal Year 2024 Executive Budget includes \$864 billion in total appropriations, comprising \$413 billion in new appropriations and \$451 billion in reappropriations (spending authority enacted in previous years extended in this year’s budget).<sup>3</sup> Appropriations authorize the State to spend public dollars; according to the State Constitution:

*“No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law.” The Constitution further requires that appropriations shall “distinctly specify the sum appropriated, and the object or purpose to which it is to be applied.”<sup>4</sup>*

Most appropriations contain a brief description of the intended use of funds, identifying a specific purpose, project, or recipient of the funding, followed by the maximum amount that can be spent in the coming year. Some appropriations differ in structure. They may have extensive ‘leader language,’ containing detailed requirements for how funds can be spent. For example, appropriations for the State’s Medicaid program contain six pages of leader language that establishes rules for when and how the appropriations may be spent.

While most appropriations contain descriptions of the purpose, project, or recipient of the funds, others—lump sum appropriations—are loosely defined; their allocations to individual purposes, projects, or recipients are discretionary. Rather than the appropriation language identifying specific recipients or projects, the appropriation and leader language is vague, and may explicitly exempt the spending authority from oversight provisions or tie its use to post hoc allocations plans made by elected officials. Spending details for these appropriations are not determined during the budget process and are not dictated by separate statutory provisions defining their use. Instead, individual legislators, legislative conferences, legislative leaders, or Executive leaders are able to allocate funding from lump sums to individual recipients or projects outside of the budget process.

Lump sums appropriations can take many forms, but all exhibit common characteristics that make them easy to identify. Lump sum appropriations are:

- Allocated by Executive and/or Legislative leadership through discretionary processes, such as:
  - Unilateral plans developed by the Executive through the Division of the Budget, agencies, or authorities;
  - Joint agreements developed by the Executive and legislative leaders;
  - Plans developed by one or both legislative leaders; or
  - Sub-allocations for individual legislators.
- Not distributed to individual projects or recipients based on rigorous, predetermined criteria; they are:

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<sup>3</sup> Total appropriations are significantly more than planned spending of \$227 billion for fiscal year 2024. This is for several reasons, including inclusion of two-year appropriations for major programs, ‘dry’ appropriation authority, and reappropriations from prior years. Staff analysis of Fiscal Year 2024 Executive Budget appropriations. See “Open Budget” (accessed March 4, 2023), <https://openbudget.ny.gov/>.

<sup>4</sup> See Section 7 of Article 7 of the New York State Constitution

- Not defined by statutory provisions outlining the program or permissible uses;
- Exempt from Comptroller’s oversight authorities; or
- Exempt from competitive bidding requirements

These characteristics align with definitions of lump sum appropriations in State Finance Law and as cataloged by the Division of the Budget (DOB). State Finance law 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 twenty-four of this chapter.”<sup>5</sup> DOB further defines lump sums as “an appropriation in which amounts for specific activities or individual objects of expenditure are not itemized within the text of the appropriation. These appropriations are discretionary in nature and cannot be obligated or expended without an allocation approved by the Budget Director.”<sup>6</sup>

### ***The Difference Between “Pork” and “Lump Sums”***

“Pork” projects and lump sums overlap but are different. “Pork” commonly refers to spending that is allocated based on politics, often for dubious uses. Lump sum appropriations may include both pork projects and spending on policy needs or priorities. However, a basic feature of lump sum spending is that exactly how it will be spent is not specified by the budget. For example, the Fiscal Year 2023 Enacted Budget included funding for the construction of a football stadium in Buffalo, renovations to the Syracuse Dome, and other capital projects throughout the state, that some might call pork, but are not lump sums. That same budget also included \$350 million for the Long Island Investment Fund, an appropriation that is both considered pork and a lump sum because it will be allocated to projects on a discretionary basis.

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<sup>5</sup> See Section 2 of Article 2 of State Finance Law Subdivision 5 of Section 24 of Article 3 of State Finance Law refers to requirements that certain lump sum spending allocations be accompanied by a plan listing grantees approved by Division of the Budget, Senate Finance Chair, Assembly Ways and Means Chair, and passed in a concurrent resolution.

<sup>6</sup> New York State Division of the Budget, “Discretionary Lump Sums” (accessed March 20, 2023), <https://openbudget.ny.gov/discretionary.html>.

## ***The Risks of Using Lump Sum Funds***

Official “member items” for legislators and the governor ended under former Governor Paterson, but the practice of elected officials awarding grants to local groups continues.<sup>7</sup> Discretionary funds that look a lot like member items morphed into lump sum appropriations. While lump sums were not new, eliminating member items may have had the unintentional consequence of driving more discretionary funding activity into these less accountable and more opaque pots. OSC noted that the Fiscal Year 2023 Enacted Budget “continue[d] and expand[ed] the State’s use of lump-sum and other broad-scoped appropriations for yet-to-be-determined projects and purposes.”<sup>8</sup> The Comptroller wrote:

*“While the projects and purposes these funds are intended to support may be worthwhile, using lump-sum appropriations results in less transparent mechanisms to distribute hundreds of millions of dollars, providing minimal disclosure of decision making regarding the allocation of funds, the intended recipients of such funding, specific expenditures and the potential benefits of such spending for New Yorkers.*

*State dollars should be allocated in a fair, objective, and transparent manner, with information about actual expenditures made public in a timely and detailed manner.”*

Beyond lump sums being opaque, they also create: (1) funding flows to the powerful and politically connected, (2) the ability of legislative leaders to use them as leverage over rank-and-file members, (3) the potential for waste and uncertainty when they are not subject to thoughtful planning or competitive procurement, and (4) the risk of corruption.

### ***Funding Flows to Powerful and Connected Members***

Due to delays and gaps in reporting on lump sums, it is difficult to determine the political dynamics behind ongoing lump sums allocations. However, when member items – the predecessor of lump sums – existed, the Senate and Assembly in practice had provided lists of items by district and member. These itemized lists of member items allowed the press and watchdog organizations to determine how funds were distributed throughout the state. Not surprisingly, the member items were awarded largely to majority party members, meaning the residents of districts with minority party legislators received less funding through this source. Lessened scrutiny combined with the increased use of lump sum distributions has ironically resulted in the public having less information about discretionary funds directed by elected officials, and therefore whether the funding is equitably distributed. The concern that lump sum funding distributions are driven by politics rather than needs, however, remains.

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<sup>7</sup> Breidenbach, Michelle. “NY Gov. David Paterson vetoes pork barrel grants to dozens of CNY organizations.” Syracuse.com. July 8, 2010. Available at:

[https://www.syracuse.com/news/2010/07/ny\\_gov\\_david\\_paterson\\_vetoes\\_p.html](https://www.syracuse.com/news/2010/07/ny_gov_david_paterson_vetoes_p.html)

See Community Projects items via the Division of the Budget for Executive items. The Division of the Budget maintains an archive for Executive items. : <https://www.budget.ny.gov/pubs/community/lars.html#gsc.tab=0>.

Senate and Assembly member items are not longer posted on the legislative websites. See New York State Division of the Budget, “Community Projects Fund Initiatives” (accessed March 20, 2023),

[www.budget.ny.gov/pubs/community/lars.html#gsc.tab=0](http://www.budget.ny.gov/pubs/community/lars.html#gsc.tab=0).

<sup>8</sup> Office of the State Comptroller. “State Fiscal Year 2022-23 Enacted Budget Analysis.”

### ***Governor and Legislative Leaders Can Use as Leverage Over Rank-and-File Members***

Because distribution of these funds is controlled by the Executive, legislative leadership, or in combination, the funds can be used to incentivize legislators to support certain policies or proposals. Certain lump sum pots are distributed by the legislative leaders, leaving individual members dependent on their relationship with the leadership to receive funding for projects in their districts. This gives legislative leaders the power to leverage this funding to shore up votes on the budget or their other priorities. Control over lump sum appropriations also enables the Governor to offer funding to legislators and the legislative leaders in exchange for support of the Governor's budget priorities.

### ***Potential Waste and Uncertainty Without Competitive Procurement or Thoughtful Planning***

Many lump sum appropriations are specifically exempted from review by OSC under Sections 112 and 163 of the State Finance Law, so they do not require competitive bidding or pre-clearance by OSC. The Comptroller's review helps ensure that taxpayers are getting a good price for goods or services, and that the funds are not going to organizations or vendors that have a poor track record for delivering services or goods.

Additionally, lump sum pots lack rigorous criteria for their distribution, and are separate from the State's capital planning process. OSC noted that for \$8 billion in COVID emergency funds in last year's budget, the significant discretion provided to the Executive:

*"[fell] short with respect to high standards of transparency, accountability and oversight, including language in several appropriations which provides significant flexibility to the Executive after enactment of the Budget regarding the use of billions of dollars of spending. This flexibility creates uncertainty as to how their use might affect important programs and services, State agencies, local governments, nonprofit organizations and individual New Yorkers who rely on State funding."*<sup>9</sup>

In restoring the Comptroller's oversight authority for certain areas of state spending in 2022, the Legislature and Governor directly supported the value of OSC oversight. The Legislature passed their bill with bipartisan, near-unanimous support.<sup>10</sup> The Governor's approval memo stated that, "OSC plays an important and pivotal role in ensuring that there is integrity in our procurement system and works to ensure that contract decisions are based on which contractor will provide the best and most cost-effective product or service."<sup>11</sup> Yet, many lump sums subvert OSC oversight by exempting appropriations from provisions that require competitive procurements and/or OSC reviews.

### ***Risk of Corruption***

Recent cases of corruption have exposed the risk of lump sum funds being used for unethical and illegal purposes, though attention from the press has been episodic. The Moreland Commission, formed by Governor Cuomo in 2013 to examine corruption concerns, turned its attention to lump sum funding at

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<sup>9</sup> Office of the State Comptroller. "State Fiscal Year 2022-23 Enacted Budget Analysis."

<sup>10</sup> See S6809-A/A7925-A of 2022.

<sup>11</sup> See Governor's Approval Memo 114 of 2022.



the urging of watchdog group Citizens Union.<sup>12</sup> Other high-profile corruption cases involving the use of lump sums have included:

- 2013: Former Senate Temporary President Malcolm Smith was charged by federal prosecutors in a bribery scheme in which he volunteered the use of multi-modal funds in exchange for support for his campaign for mayor of New York City. He said of the funds: “Multi-modal money is outside the budget and it’s always around.”<sup>13</sup>
- 2015: Former Speaker Sheldon Silver was charged by federal prosecutors for steering \$500,000 in State grants to a university research center of a physician who referred patients made ill by asbestos back to Silver’s law firm in a kick-back scheme.<sup>14</sup>
- 2022: Former State Senator and Lt. Governor Brian Benjamin’s alleged use of lump sums through the State and Municipal Facilities (SAM) program were part of bribery charges initially made by federal prosecutors in relation to campaign donations for his run for New York City Comptroller. The bribery charges have subsequently been dropped, but the criminal case is ongoing.<sup>15</sup>

## ***Lump Sums in This Year’s Budget***

The Fiscal Year 2024 Executive Budget includes \$14.8 billion in lump sum appropriations. This includes \$6.8 billion in standard lump sums appropriations – meaning lump sums that have a source of funding provided – plus another \$8.0 billion in “dry” lump sum pots that are intended as emergency authority to respond to the COVID pandemic or another emergency. “Dry” lump sums do not have a specific source of funding identified for their use.

### ***COVID-19 Emergency Lump Sums***

The \$8 billion emergency lump sums—including the \$6 billion “Special Public Health Emergency Appropriation” and the \$2 billion “Special Emergency Appropriation”—are considered separately in this report because they are not expected to be spent, but rather serve as contingency funds. Nonetheless, these appropriations are lump sums because they are broadly defined, not supported by associated statutory provisions guiding their use, and are exempted from OSC oversight and competitive procurement provisions.

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<sup>12</sup> Citizens Union. “New Report Highlights Albany Spending In The Shadows.” September 24, 2013.

<https://citizensunion.org/portfolio-item/new-report-highlights-albany-spending-in-the-shadows/>

<sup>13</sup> “The Complaint Against Smith, Malcolm, Et Al.” Published by the New York Times. April 2, 2013. Available at:

[https://archive.nytimes.com/www.nytimes.com/interactive/2013/04/03/nyregion/03smith-complaint-document.html?\\_r=0](https://archive.nytimes.com/www.nytimes.com/interactive/2013/04/03/nyregion/03smith-complaint-document.html?_r=0)

<sup>14</sup> Southern District of New York. Press Release. “New York State Assembly Speaker Sheldon Silver Arrested On Corruption Charges.” January 22, 2015. Available at:

<https://www.justice.gov/usao-sdny/pr/new-york-state-assembly-speaker-sheldon-silver-arrested-corruption-charge>

<sup>15</sup> Southern District of New York. Press Release. “New York Lieutenant Governor Brian Benjamin Charged With Bribery And Related Offenses.” April 12, 2022. Available at:

<https://www.justice.gov/usao-sdny/pr/new-york-lieutenant-governor-brian-benjamin-charged-bribery-and-related-offenses>

See also Honen, Katie. Gonen, Yoav. “Brian Benjamin Bribery Charges Dismissed but Criminal Case Proceeds.” The City. December 5, 2022.

<https://www.thecity.nyc/politics/2022/12/5/23495342/brian-benjamin-charges-dismissed-lieutenant-governor>

Watchdogs have repeatedly called for the Special Public Health Emergency Appropriation to be omitted from the budget and for the Special Emergency Appropriation to be reduced to \$1 billion and subjected to OSC oversight and competitive procurement rules.<sup>16</sup> To its credit, the Senate reflected these recommendations in its budget proposal for Fiscal Year 2024. The Assembly restored the OSC oversight to both emergency pots, but did not omit the public health emergency appropriation or reduce the special emergency appropriation.

**Standard Lump Sums**

The remaining \$6.8 billion in non-emergency lump sums are varied in their structure, use, and allocation process.

Lump sums are predominantly for capital projects, and have been in the budget for many years. (See Table 1.) The vast majority of the lump sums—\$5.8 billion—are reappropriations, including \$5.4 billion for Capital Projects and \$397 million for Aid to Localities. A total of \$943 million in new appropriations are lump sums, with \$615 million in the Aid to Localities budget bill and \$328 million in the Capital Projects budget bill.

<b>Table 1: FY 2024 Executive Budget Lump Sums, by Spending Type</b> <i>(dollars in millions)</i>			
	<u>FY 2024 Appropriations</u>	<u>FY 2024 Reappropriations</u>	<u>Total Lump Sums</u>
Aid to Localities	\$615	\$397	\$1,011
Capital Projects	\$328	\$5,426	\$5,754
<b>Total</b>	<b>\$943</b>	<b>\$5,822</b>	<b>\$6,765</b>

Notes: Tables exclude \$8 billion emergency lump sums, which are appropriated in the State Operations Bill.  
Source: Staff analysis of Fiscal Year 2024 Amended Executive Budget appropriations bills. See S4000-A/A3000-A, S4003-A/A3003-A, and S4004-A/A4003-A of 2023.

Grouping lump sums by function or program area shows that economic development and local capital funding comprise 72 percent of the lump sum spending. (See Table 2.) Of the \$6.8 billion in non-emergency lump sums, \$2.8 billion is for Economic Development, including several programs that award large discretionary grants, such as the Regional Economic and Community Assistance Program (\$800 million) and Long Island Investment Fund (\$350 million), among others. Another \$2.1 billion is for the State and Municipal (SAM) Facilities program, which makes discretionary grants to state and governmental agencies and other entities for capital projects. There are four areas with significant new appropriations, in three cases exceeding the level of reappropriated funding, suggesting these are new priorities: \$350 million for health and social services, \$298 million for housing, \$272 million for public protection, and \$20 million for education and higher education. The remaining \$926 million are reappropriations split among many areas.

<sup>16</sup> See joint letter from watchdog groups to Governor Kathy Hochul dated May 24, 2022. “Re: Billions of Opaque “Lump Sums” Passed In the Budget Risk Massive Waste and Major Corruption, and are the Opposite of the “New Era of Transparency.” Available at: <https://cbcny.org/advocacy/watchdog-groups-ask-governor-show-how-billions-lump-sums-are-spent>

**Table 2: Fiscal Year 2024 Executive Budget Lump Sums, by Program Area**  
*(dollars in millions)*

	<u>FY 2024 Appropriations</u>	<u>FY 2024 Reappropriations</u>	<u>Total Lump Sums</u>
Economic Development	\$2	\$2,798	\$2,800
State and Municipal Facilities	\$0	\$2,099	\$2,099
Health and Social Services	\$351	\$248	\$598
Housing	\$298	\$99	\$397
Public Protection	\$272	\$35	\$308
Transportation	\$0	\$305	\$305
Education and Higher Education	\$20	\$147	\$167
Energy and Environment	\$0	\$45	\$45
General Government	\$0	\$43	\$43
Parks and Recreation	\$0	\$3	\$3
<b>Total</b>	<b>\$943</b>	<b>\$5,822</b>	<b>\$6,765</b>

Notes: Tables exclude \$8 billion emergency lump sums.

Source: Staff analysis of Fiscal Year 2024 Amended Executive Budget appropriations bills. See S4000-A/A3000-A, S4003-A/A3003-A, and S4004-A/A4003-A of 2023.

Lump sum appropriation language, while not sufficiently specific about the program areas where they can be spent, does indicate how the funds are to be allocated. Most appropriations explicitly state that allocations will be subject to an agreement or memorandum of understanding (MOU) among the Executive and/or one or more houses of the Legislature. (See Table 3.) The Executive alone has discretion to allocate 46 percent of the lump sums (\$3.1 billion), while another 45 percent (\$3.0 billion) is subject to joint agreements between all three parties. The remaining \$656 million is subject to allocation by one house alone, or a combination of the houses and/or the Executive.

**Table 3: Fiscal Year 2024 Executive Budget Lump Sums, by Allocation Type**  
(dollars in millions)

	<u>FY 2024</u> <u>Appropriations</u>	<u>FY 2024</u> <u>Reappropriations</u>	<u>Total Lump Sums</u>
Executive only	\$793	\$2,297	\$3,090
Joint Agreement	\$0	\$3,019	\$3,019
Assembly and Executive	\$150	\$53	\$203
Assembly Only	\$0	\$138	\$138
Senate and Assembly	\$0	\$138	\$138
Senate and Executive	\$0	\$103	\$103
Senate Only	\$0	\$75	\$75
<b>Total</b>	<b>\$943</b>	<b>\$5,822</b>	<b>\$6,765</b>

Notes: Tables exclude \$8 billion emergency lump sums, which would be allocated by the Executive only.

Source: Staff analysis of Fiscal Year 2024 Amended Executive Budget appropriations bills. See S4000-A/A3000-A, S4003-A/A3003-A, and S4004-A/A4003-A of 2023.

More than three-quarters of the lump sum appropriations, \$5.3 billion, are in just 26 programs that each exceed \$100 million. (See Table 4.) Another \$821 million is spread out over 117 smaller appropriations that are less than \$100 million. The remaining \$685 million is in 11 appropriations that are broadly defined and exempted from OSC oversight and competitive bidding provisions. Importantly, this last category does not include all appropriations that are exempt from oversight provisions, but only programs that are loosely defined. It is important to highlight these oversight-exempt appropriations separately because they explicitly sidestep provisions meant to prevent waste and maximize the value of public spending.<sup>17</sup>

<sup>17</sup> OSC has identified additional items that bring the total amount of oversight and bidding exemptions present in the FY 2024 budget to \$15.4 billion. Office of the Comptroller of the State of New York, *Report on the State Fiscal Year 2023-24 Executive Budget* (March 2023), p. 40, [www.osc.state.ny.us/files/reports/budget/pdf/executive-budget-report-2023-24.pdf](http://www.osc.state.ny.us/files/reports/budget/pdf/executive-budget-report-2023-24.pdf).

<b>Table 4: Fiscal Year 2024 Executive Budget Lump Sums, by Type</b> <i>(dollars in millions)</i>			
	<u>FY 2024</u> <u>Appropriations</u>	<u>FY 2024</u> <u>Reappropriations</u>	<u>Total Lump Sums</u>
Major Discretionary Programs	\$400	\$4,859	\$5,259
Minor Discretionary Programs	\$70	\$751	\$821
Discretionary Exempt from Oversight	\$473	\$213	\$685
<b>Total</b>	<b>\$943</b>	<b>\$5,822</b>	<b>\$6,765</b>

Notes: Tables exclude \$8 billion emergency lump sums.  
Source: Staff analysis of Fiscal Year 2024 Amended Executive Budget appropriations bills. See S4000-A/A3000-A, S4003-A/A3003-A, and S4004-A/A4003-A of 2023.

**Legislative Additions to Lump Sum Appropriations**

The Senate and Assembly one-house budget proposals add lump sums that would substantially increase the totals above, if included in the final budget. The Senate’s Aid to Localities budget amendment includes an additional \$2.1 billion beyond what was proposed in the Executive Budget in funds to be itemized by the Senate and Division of the Budget, and voted on via a Senate resolution. This is largely from two separate \$1 billion lump sums pots for distressed hospitals that the Senate has a significant role in designating. The Senate also adds \$115 million in new lump sums for their distribution, and \$28 million in restorations of prior Senate-distributed lump sums.

The Assembly one-house Aid to Localities bill largely restored past lump sums, including those of the Senate’s. It adds \$5.3 million in new lump sums for the Assembly to distribute via resolution, and restores \$23 million in prior Assembly-distributed lump sums.

Capital Projects bills from the Senate and Assembly also add a new appropriation for the RESTORE New York program at \$150 million and \$250 million, respectively.

In the past, lump sum funds also have appeared in the enacted budget without being present in either the Executive Budget or the one-house budget proposals from the Assembly and Senate. The \$350 million Long Island Investment Fund was added to the fiscal year 2023 budget, for example, in the final days of negotiations.<sup>18</sup>

<sup>18</sup> See Patrick Orecki, “Late Addition” (Citizens Budget Commission, July 2022), <https://cbcny.org/research/late-addition>.

### ***On the Margins: Billions of Dollars of Nearly Lump Sums***

The budget also contains billions in appropriations that are nearly, but not, quite lump sums:

- Many economic development programs provide little basis for explaining how they will be distributed, but are not lump sums under the criteria included in this report. For example, funding through Regional Economic Development Councils, including \$150 million in annual discretionary grants, are not explicitly defined in law. However, their distributions are informed in part by unelected regional councils based on a predetermined scoring system. Without a doubt, the distribution of these funds should be based on more rigorous needs assessments, a State strategy, and more standard criteria, and their impact evaluated. But they are not considered lump sums in this analysis.
- A \$10 billion appropriation in the Executive Budget authorizes spending from federal funds associated with emergencies. This appropriation is very similar to the \$8 billion appropriations counted as lump sums in this analysis; its uses are near-universal and there is a loose framework for its allocation to specific grants or projects. However, two distinctions leave this appropriation just outside of the definition of lump sums. First, it is tied to a section of State Finance Law that limits its uses to specific emergency response actions. Second, the appropriation from the Executive Budget was not exempted from OSC oversight. The Assembly one-house bill restored the Comptroller's oversight of this appropriation, while the Senate omitted it altogether.

### ***Inadequate Transparency of Current Lump Sum Pots***

Ensuring that the public can see how its resources are spent is essential to the government's accountability to the public. Lump sums by definition allow spending decisions to be made largely out of public view, after the State budget is passed by the Governor and Legislature. Without sufficient public disclosure of the spending decisions that have been made, the use of lump sum funds is counter to best practices in government accountability and transparency, and the intentions of our State's transparency laws.

Transparency of government spending is also a core principle of our State's Freedom of Information Law, as recognized in the legislative intent of Article 6 of the Public Officers Law<sup>19</sup>:

*"As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible."*

While some progress has been made over the last two decades to improve transparency of lump sum spending, these efforts are incomplete and scattered through multiple databases, and have not heeded

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<sup>19</sup> Full section of law at <https://dos.ny.gov/coog/foil2.html>

the recommendations from watchdog groups and OSC regarding increasing transparency of lump sum spending.<sup>20</sup> Additionally, there is a stark contrast between the level of transparency of legislative discretionary funds in the New York City Council compared to the State Legislature.<sup>21</sup> Four public disclosure mechanisms currently used for a portion of State lump sums are:

1. **Senate and Assembly Resolutions** – Some lump sum funds are distributed via resolutions that are approved by a roll call vote of the Senate and/or Assembly. Resolutions are not subject to the three day aging requirement for legislation. While the resolutions provide a certain level of transparency because they are provided on the legislative search portal, they lack the following:
  - a. Disclosure as open data in a centralized portal;
  - b. Names of legislators sponsoring individual items;
  - c. Addresses of entities receiving funds;
  - d. The purposes or uses of the funds; and
  - e. The criteria used for their distribution.<sup>22</sup>
  
2. **SAM Funds Disclosure** – The Dormitory Authority of the State of New York (DASNY) administers State capital grants that “support community and economic development,” including a number of pots that are passed as lump sums in the State budget. Perhaps the most well known is the State and Municipal Facilities (SAM) Program, which is used for local projects by legislators who often tout their distribution in press releases.<sup>23</sup> Disclosures of SAM fund and other capital grants items on the DASNY website<sup>24</sup> have several shortcomings:
  - a. It is provided as a 500-page PDF, not open data;
  - b. Individual legislative sponsors’ names are not listed, only the sponsoring house of the Legislature;
  - c. The file posted overrides the previous versions, so it is not clear whether historical funding information is provided;
  - d. No dates are provided for the duration or fiscal year of the grants;
  - e. No addresses are provided for the recipients of funds; and
  - f. No criteria is provided for their distribution.

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<sup>20</sup> Letter from watchdog groups to Governor Kathy Hochul dated May 24, 2022. “Re: Billions of Opaque “Lump Sums” Passed In the Budget Risk Massive Waste and Major Corruption, and are the Opposite of the “New Era of Transparency.”

Office of the State Comptroller. “State Fiscal Year 2022-23 Enacted Budget Analysis.”

<sup>21</sup> See New York City Council, “Discretionary Funding Policies and Procedures,” January 20, 2023, <http://council.nyc.gov/wp-content/uploads/2023/01/FY2024-Discretionary-Funding-Policies-and-Procedures-1.5.23-Final-003.pdf> and the searchable portal of discretionary grants at [https://www.nyc.gov/html/citycouncil/html/budget/expense\\_funding.shtml](https://www.nyc.gov/html/citycouncil/html/budget/expense_funding.shtml)

<sup>22</sup> See Resolution E1075 of 2022, passed by the State Assembly for an example of a legislative lump sum resolution. [https://assembly.state.ny.us/leg/?default\\_fld=&leg\\_video=&bn=E01075&term=2021&Summary=Y&Actions=Y&Mo=Y&Text=Y](https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=E01075&term=2021&Summary=Y&Actions=Y&Mo=Y&Text=Y)

<sup>23</sup> Senator Pete Harckham. Press Release. “Harckham Announces State Funding for Yorktown Stage.” October 25, 2021. Available at: <https://www.nysenate.gov/newsroom/press-releases/pete-harckham/harckham-announces-state-funding-yorktown-stage>

<sup>24</sup> Grants Administered by the Dormitory Authority of the State of New York (DASNY). March 23, 2023. <https://www.dasny.org/sites/default/files/inline-files/GrantReport.pdf>

- 3. Lump Sum Funds Website** – Governor Hochul’s 2021 Executive Chamber transparency plan<sup>25</sup> and the Division of the Budget’s plan<sup>26</sup> promised to publish plans distributing lump sum appropriations. To fulfill this promise, the Division of the Budget created a web portal for grants.<sup>27</sup> While the portal laudably is exportable in Excel, and includes the names of grantees, the amount and approval date of the grants, linked to the original appropriation, the portal has the following shortcomings:
- a. It only includes lump sum items approved by the Division of the Budget from September 2021 onward;
  - b. It does not appear to be updated routinely; the last update was made in November 22, 2022;
  - c. A number of lump sum pots are omitted from the listing, instead provided as PDFs (DASNY grants, SUNY and CUNY Nonrecurring Strategic Investment funds), or as a link to a separate database, ESD’s Database of Economic Incentives (see more information below about this database below);
  - d. Individual legislative sponsors’ names are not listed, only the sponsoring house of the Legislature;
  - e. No addresses are provided for the recipients of funds; and
  - f. No criteria is provided for their distribution.
- 4. Database of Economic Incentives** – Empire State Development (ESD) first published a “database of economic incentives”<sup>28</sup> in 2021 in response to calls from dozens of advocates and legislators for more transparency of economic development deals. Subsequently, legislation was passed in the 2022 State budget<sup>29</sup> to codify and place further requirements on the database. The database provides information for 3,275 projects as of March 28, 2023. While there is a field titled “If the project is a Member Item, the originating district,” more than 3,000 cells for this field are completely blank.
- a. Notes in the database indicate that three agencies, the Department of State (DOS), ESD, and Homes and Community Renewal (HCR), will be providing information about the district of the legislator sponsoring any projects that are member items. However, this information is incomplete.
    - i. DOS lists “N/A” for all 74 of its items.
    - ii. ESD provides district information for only 90 of its 3,125 items; the rest have blank cells for this field.

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<sup>25</sup> State of New York Executive Chamber. “Executive Chamber Transparency Implementation Plan.” November 2021. Available at: [https://www.governor.ny.gov/sites/default/files/2021-12/Executive\\_Chamber\\_Transparency\\_Plan.pdf](https://www.governor.ny.gov/sites/default/files/2021-12/Executive_Chamber_Transparency_Plan.pdf).

<sup>26</sup> New York State Division of the Budget, “Transparency Plan.” October 2021. Available at: [https://www.governor.ny.gov/sites/default/files/2021-10/Budget\\_TransparencyPlan.pdf](https://www.governor.ny.gov/sites/default/files/2021-10/Budget_TransparencyPlan.pdf)

<sup>27</sup> New York State Division of the Budget, “Discretionary Lump Sums” Portal. Available at: <https://openbudget.ny.gov/discretionary.html>.

<sup>28</sup> Database of Economic Incentives available here: <https://data.ny.gov/Economic-Development/Database-of-Economic-Incentives/26ei-n4eb>

<sup>29</sup> Reinvent Albany. “Reinvent Albany Hopeful New Database of Deals Will Increase Transparency of \$5 B/Yr in NYS Biz Subsidies.” April 8, 2022. <https://reinventalbany.org/2022/04/reinvent-albany-hopeful-new-database-of-deals-will-evolve-and-increase-transparency-of-5-billion-year-in-ny-state-subsidies-to-businesses>



- b. For two agencies included in the database, the notes say that for New York Power Authority (NYPA) and New York State Energy Research and Development (NYSERDA), it is “Not applicable or not currently collected.” The cells for this field are completely blank for these two agencies, so it is impossible to determine whether or not they could be member items.

If the Database of Economic Incentives had complete information for each project, and better clarity about which items are, or could be, member items, it would come closest to having the level of disclosure recommended by this report for lump sum distributions. The criteria for distribution of the items is still missing, however.

### ***Future Research Question - Off-Budget Lump Sums***

This report examined lump sum appropriations in the Fiscal Year 2024 Executive Budget. However, lump sum pots may be authorized by special, dedicated revenue streams that do not need to be appropriated annually.

For example, in 2018, the State created the “Outer Borough Transit Fund,” which is funded by the for-hire vehicle fee and remitted to the Metropolitan Transportation Authority (MTA) off-budget. Pursuant to Section 1270-I of the Public Authorities Law, the projects are approved by the voting members appointed by the Governor, Assembly Speaker, and Temporary President of the Senate of the MTA Capital Program Review Board.

The program has not yet generated sufficient funds due to delays from a lawsuit and the effects of the COVID-19 pandemic. However, at the time it was initially approved, legislators announced securing projects from the fund<sup>30</sup> in a manner reminiscent of member items, with one legislator saying to the press: “When I finally came to the conclusion that congestion pricing was going to happen, I decided to get my constituents something out of it.” Given that these pots were provided for the Legislature as a means to provide incentives for members to support congestion pricing – a highly visible program that is nearing final approval from the federal government – there is high public value in understanding the distribution of these pots.

Reinvent Albany, the Citizens Budget Commission, and other groups asked the MTA and/or Legislature to publish the outer borough transportation account project lists as open data.<sup>31</sup> This is only one example of a lump sum pot authorized in prior state budget legislation, but not subject to annual appropriations. Therefore, there may be other pots that are funded by special revenues or other funds that are absent from this analysis and are worthy of future research.

<sup>30</sup> Hinman, Michael. “Borough's motorists catch a break.” The Riverdale Press. April 21, 2019. Available at: <https://www.riverdalepress.com/stories/boroughs-motorists-catch-a-break,68717>

<sup>31</sup> Reinvent Albany. “Letter from 18 Groups Asking for Transparency of MTA Funded “Member Items.” August 21, 2019. Available at: <https://reinventalbany.org/2019/08/letter-from-18-groups-asking-for-transparency-of-legislative-mta-funds/>

## ***List of Lump Sums***

The full list of lumps sums and tables from this report are available [here](#).