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## **Testimony before the City Council on the NYC Department of Education’s failure to plan for class size reduction**

February 29, 2024

Thank you Chair Joseph and the other members of the Education Committee for holding these important hearings today. My name is Leonie Haimson, and I am the Executive Director of Class Size Matters and I am here with my Associate, Michael Rance.

In 2003, New York state’s highest court, the Court of Appeals, ruled in the Campaign for Fiscal Equity case that New York City students were denied their right under the State Constitution of a sound basic education, in part because their class sizes were too large. that On June 2, 2022, in recognition of the fact that NYC Department of Education was finally due to receive their full complement of Foundation funding of more than \$1.3 billion a year as a result of the CFE lawsuit, the NY State Legislature overwhelming passed a bill to require NYC schools to implement a five-year class size reduction plan, beginning in the fall of 2022.

This bill was approved by a vote of 59-4 in the Senate and 147-2 in the Assembly. Then, on Sept. 8, 2022, Gov. Kathy Hochul signed the bill into law, based upon an agreement that the five-year phase-in period should begin in fall of 2023 instead of the fall of 2022, thereby giving the city an extra year of planning.<sup>1</sup> This bill is now known as Chapter 556 of the Laws of 2022.

Unfortunately, there is no evidence that the city took advantage of this extra year to plan, and even today, nearly two years after the class size law was passed, has done nothing to ensure that schools will be able to meet its goals. These law calls for the phase-in over five years of smaller classes of no more than 20 students per class in grades K-3, no more than 23 students per class in grades 4<sup>th</sup>-8<sup>th</sup>, and no more than 25 students per class in high school, except for physical education and performing groups such as orchestra and band, which must be capped at forty students per class. These are the same class sizes in NYC’s original Contract for Excellence plan that was approved by the NY State Education Department in 2007, yet as class size limits rather than averages and never implemented by the Department of Education.

Each year starting this year, in September 2023, 20 percent of all public school classes are supposed to achieve these caps, with an additional 20 percent of classes added each year, until the smaller class sizes are achieved citywide by the end of the 2027-2028 school year. The city’s plan must prioritize schools with high levels of poverty to implement these caps first.

Two years ago, we interviewed parents, teachers, and principals, when class sizes were unprecedentedly small because enrollment had declined, and the DOE had refrained from cutting school budgets. Many teachers said this was the first year that their class sizes had allowed them to reach every student, no matter their

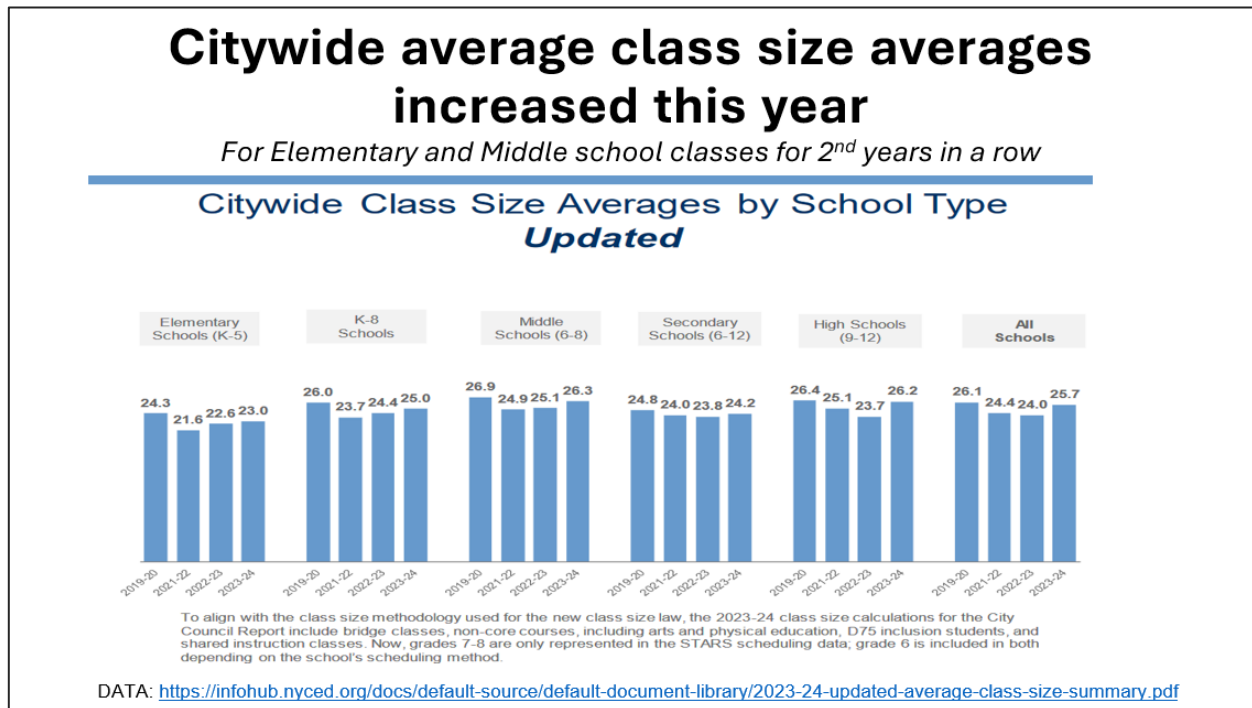
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<sup>1</sup> <https://www.nysenate.gov/legislation/laws/EDN/211-D>

needs, whether academically or emotionally. Parents told us that this was the first year they felt that their child’s teachers actually knew them well.

Sadly, class sizes have increased in most schools for the last two years in a row, and likely will continue to increase without significant changes in Department of Education policies and planning.

See the chart below, posted by DOE on February 15, which shows that as of this fall, citywide average class sizes had increased at all levels, and for elementary and middle schools this was the second year in a row of increases.<sup>2</sup>



While this year’s class size goal of 20% was met, next year’s goal of 40% looks questionable at this point, while the out-year goals for years three to five are implausible, given current DOE plans to continue to shrink school budgets and the capital plan.

This year only about 39.2% of classes met the cap compared to more than 42% of classes two years ago, according to our analysis of DOE class size data, which means the 40% benchmark will not be reached if current trends continue.

One of the claims made by the DOE and their allies who oppose the law is that reducing class size would be somehow inequitable, which is absurd, given the fact that students who are disadvantaged, whether from low-income families, students of color, English Language Learners, or those with disabilities have been shown to benefit the most from smaller classes.<sup>3</sup>

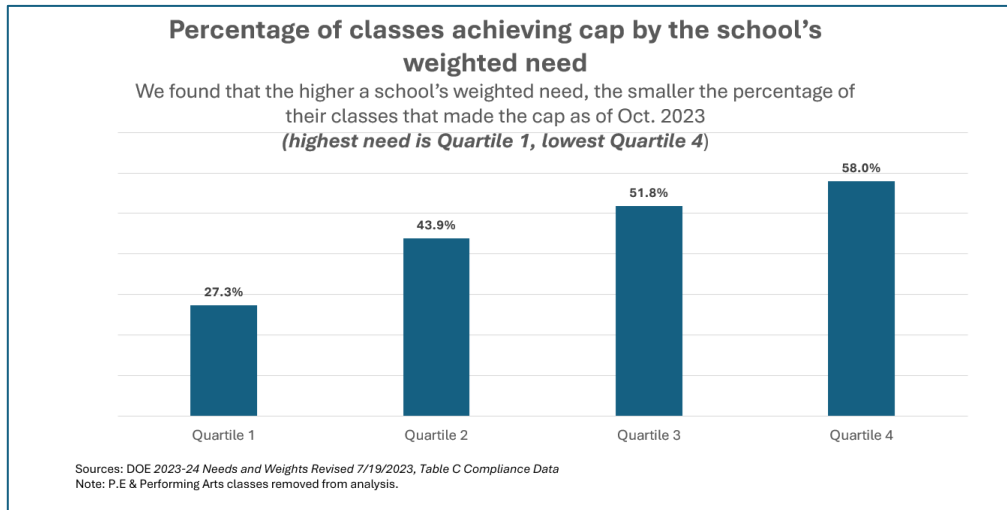
The DOE base their claim by arguing that the highest need schools already have small enough classes. Yet when one analyzes the class sizes of schools with the highest weighted need, according to a formula devised by the New York State Education Department that takes account of both the percentage and number of high needs students in a school, we found the opposite to be true.<sup>4</sup>

<sup>2</sup> <https://infohub.nyced.org/docs/default-source/default-document-library/2023-24-updated-average-class-size-summary.pdf>

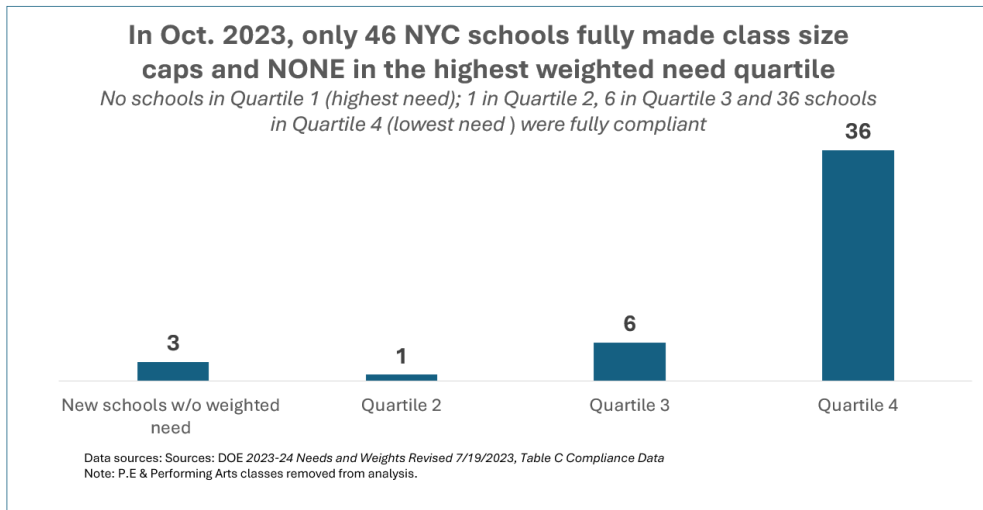
<sup>3</sup> See published studies here: <https://classsizematters.org/research-and-links/#opportunity>

<sup>4</sup> The NYSED weighted need formula takes the percentages of English Language Learners, students with disabilities, 2 students in poverty and those at the lowest achievement levels (Level I) in each school. These percentages are then

When NYC schools are separated into quartiles according to their weighted need, we found that the higher a school’s need, the smaller the percentage of their classes that met the new class size caps as of this fall, as shown in the chart below. **Only 27.3% of classes met the cap among Quartile 1 schools, which were the schools with the highest weighted need, compared to 58% of schools in the lowest weighted need.**



A similar pattern holds when analyzing which NYC schools met all of the class size caps this fall. Only 46 of more than 1500 NYC public schools had all their classes in compliance with the caps, and not one of these schools was in the highest weighted need quartile, while 36 schools were in the lowest weighted need quartile.



Last April, the Chancellor appointed a Class Size Working Group to develop recommendations for the steps DOE should take to comply with the law. I was appointed as a member of this group, along with more than 40 other parent leaders, educators, and other advocates. In December, we released our report that included many actionable, effective proposals, including some that would be cost-free or even cost-saving. They include but are not limited to the following:

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multiplied by the school’s enrollment and then added to yield a summed to yield a pupil weighted need value for each school. Those schools with the highest weighted need are supposed to receive most of the Contract for Excellence funds. [https://www.p12.nysed.gov/mgtserv/C4E/11-12\\_C4E/doc/technical\\_supplement\\_need\\_analysis\\_C4E\\_11-12.pdf](https://www.p12.nysed.gov/mgtserv/C4E/11-12_C4E/doc/technical_supplement_need_analysis_C4E_11-12.pdf) The DOE list of NYC schools according to their weighted need is here: [https://www.p12.nysed.gov/mgtserv/C4E/23-24\\_C4E/2023-24-c4e-needs-weights-nyc-updated.xlsx](https://www.p12.nysed.gov/mgtserv/C4E/23-24_C4E/2023-24-c4e-needs-weights-nyc-updated.xlsx)

- Stop co-locating schools without an analysis, including in their Educational Impact Statements, to show that these changes will not prevent the ability of existing schools to lower class size;
- Adjust enrollment at nearby schools that have the same grade levels to better ensure that all schools have enough space for smaller classes;
- Accelerate and build more schools in overcrowded communities, including adding annexes and acquiring empty parochial and charter school buildings;
- Strengthen the teacher pipeline and provide incentives to teachers to work especially in the highest need schools;
- Consider adding a separate budget line for class size reduction & keep the Fair Student Funding allocation for other critical school & classroom needs.

A substantial and growing number of Community Education Councils have adopted a resolution urging the DOE to adopt these proposals and implement a real plan to lower class size in accordance with the law.<sup>5</sup>

Yet so far the DoE has not accepted any of these recommendations. Instead, they are doing the opposite. They continue to co-locate schools without any analysis of whether this will prevent existing schools from being able to lower class size. They are planning to slash the DOE budget by over \$700 million each year for the next four years, and they are cutting the funding for new school construction in half.<sup>6</sup> They have also told principals at overcrowded schools that they cannot ask to cap their enrollment at lower levels next year to reduce class size. This refusal to take any steps to allow for smaller classes will likely cause class sizes to increase rather than decrease.

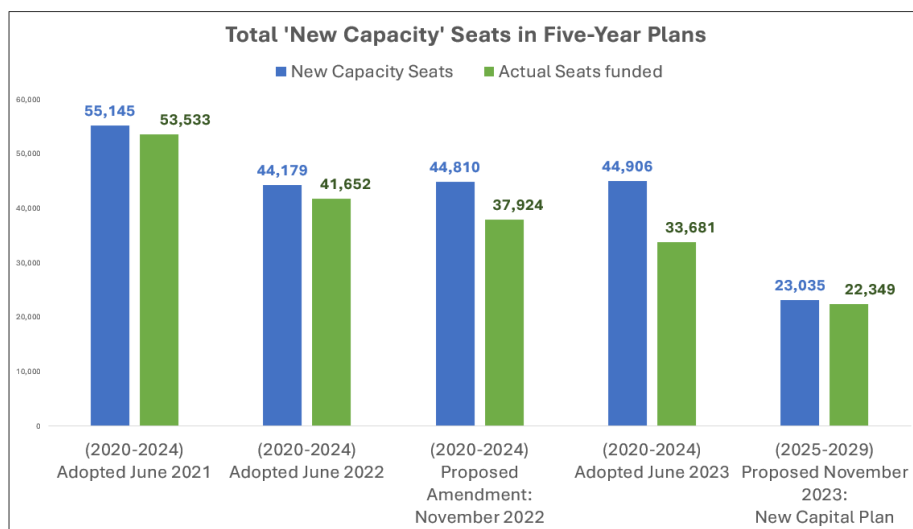
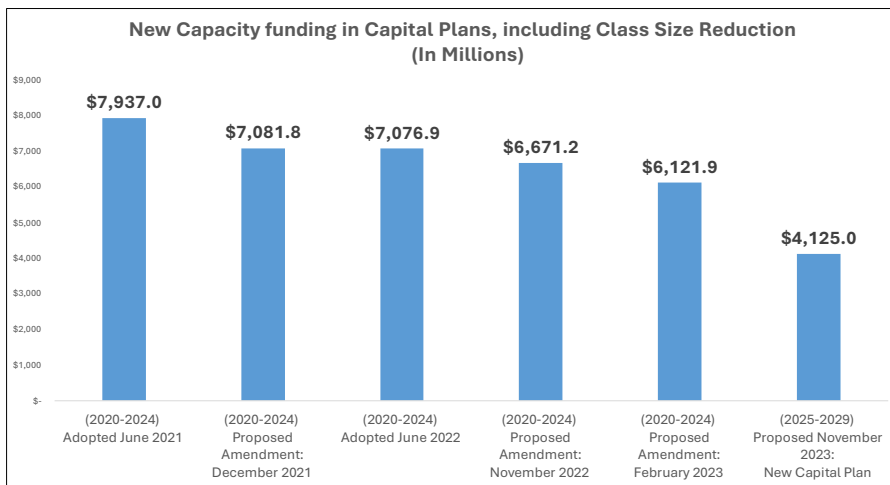
I would like to focus on the capital plan, which gets the least attention generally, but is critical if schools in the most overcrowded community are to have the space for smaller classes. Rather than ramp up the creation of new seats as soon as the bill passed and was signed into law, the SCA has cut the funding for new seats by over \$2.5 billion, and the number of new seats nearly in half.<sup>7</sup>

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<sup>5</sup> As of this date, the following CECs, parent groups and Community Boards including [Manhattan HS Presidents Council](#), [CEC 4](#), [CEC 5](#), [CEC 6](#), [CEC 15](#), [CEC 19](#), [CEC 21](#), and the Citywide Council on Special Education, as well as Community Board 11 and [Community Board 12](#) in Manhattan have adopted similar resolutions posted here: <https://classsizematters.org/resolution-for-cecs-community-groups-on-need-for-doe-to-lower-class-size-in-compliance-with-the-law/>

<sup>6</sup> <https://www.nyc.gov/assets/omb/downloads/pdf/peg1-24.pdf> & NYC School Construction Authority, FY 2025-2029 Proposed Five-Year Capital Plan, Feb. 2024 at <http://nycsca.org/Community/Capital-Plan-Reports-Data#Capital-Plan-67>

<sup>7</sup> When the Chancellor and Deputy Chancellor was asked about these radical cuts to the capital plan at a meeting on Nov. 10, 2023, they said that this was a decision made not by them but by the NYC Office of Management and Budget. See: <https://vimeo.com/manage/videos/883381018>



Because it takes at least four to five years to site and build a school, if the new proposed five-year capital plan for 2025-2029 is adopted, it is extremely unlikely that there will be enough space to lower class size in the most overcrowded communities.

It is also greatly concerning that 77% of seats funded in the new five-year plan lack any identification as to their borough, district, or grade level. Instead, the SCA asserts that new capacity projects will only be listed in the plan “*following the identification of a suitable site and the commencement of the school facility’s design process.*”<sup>8</sup>

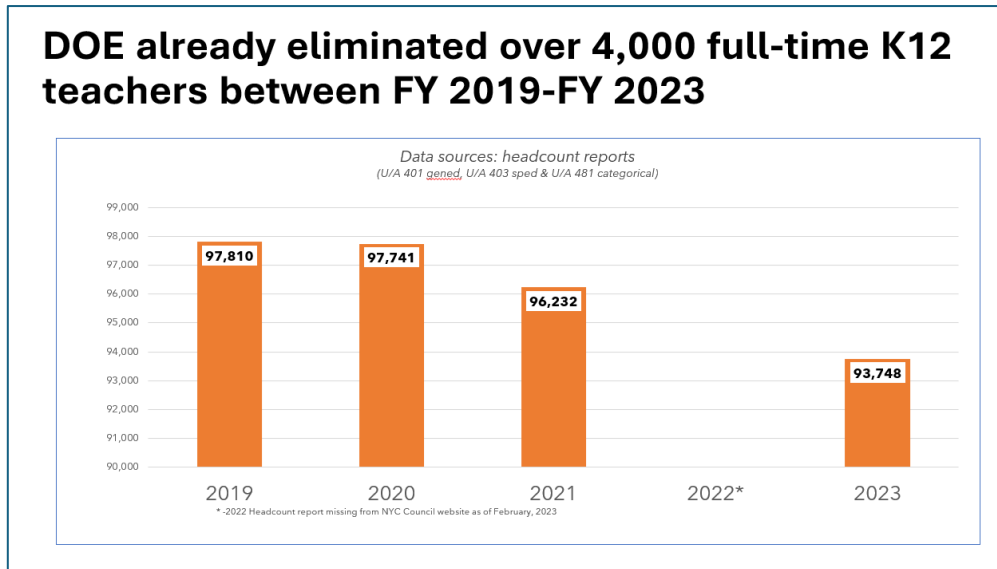
This lack of transparency not only leaves the public and elected officials entirely out of the potential siting of schools and their input ignored as to where new schools are needed, it also appears to violate two state laws. First, EDN § 2590-o requires the Chancellor to annually prepare an “*educational facilities master plan...including a list of prioritized projects to the extent ascertainable and [to] list each proposed new*

<sup>8</sup> NYC School Construction Authority, FY 2025-2029 Proposed Five-Year Capital Plan, February 2024 [https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital\\_Plan/Capital\\_plans/02012024\\_25\\_29\\_CapitalPlan.pdf?sv=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=ExyJ25yWw4Gt5zwwG%2F%2F9rdA14929cO%2Ba%2FMb0vAWq7G5v%3D](https://dnnhh5cc1.blob.core.windows.net/portals/0/Capital_Plan/Capital_plans/02012024_25_29_CapitalPlan.pdf?sv=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=ExyJ25yWw4Gt5zwwG%2F%2F9rdA14929cO%2Ba%2FMb0vAWq7G5v%3D), p. 16

educational facility and set forth a justification, including demographic data, documenting the long term need therefor.”<sup>9</sup>

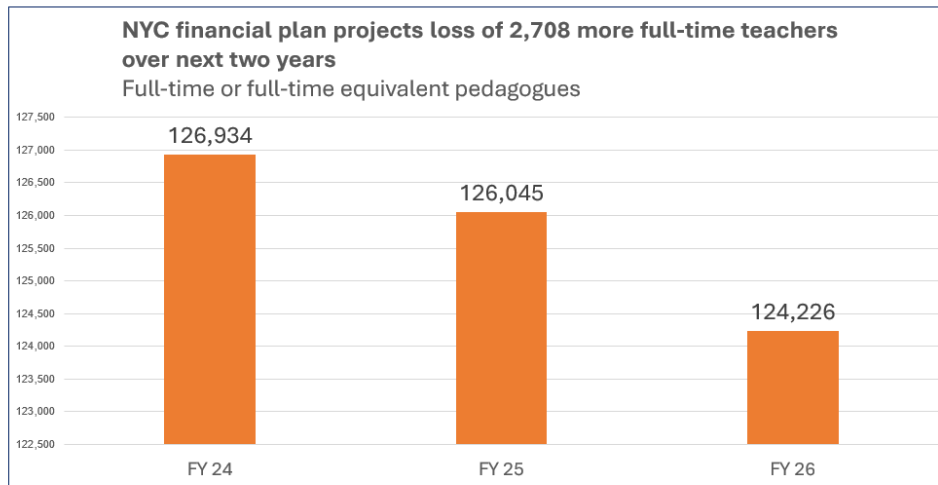
It also appears to violate the class size law, now known as Chapter 556 of the Laws of 2022. which states that the annual class size plan submitted to the state must include “the annual capital plan for school construction and leasing to show how many classrooms will be added in each year and in which schools and districts to achieve the class size targets.”<sup>10</sup>

Similarly, rather than adding to the teaching force as will be necessary to lower class size, the DOE has already shrunk the K12 teaching force by over 4000 teachers since 2020, and according to the just-released NYC Financial Plan, they intend to further shrink the full time teaching force by another 2,700 over the next two years. Obviously, the more the teaching force is diminished, the more difficult it will be to hire the teachers necessary to staff smaller classes, starting next year and beyond.



<sup>9</sup> <https://codes.findlaw.com/ny/education-law/edn-sect-2590-o/>

<sup>10</sup> <https://www.nysenate.gov/legislation/laws/EDN/211-D> this refusal to divulge where new schools are planned appears contrary to the promises in an Memorandum of Understanding with the Council, signed by Mayor, Speaker and Chancellor on November 10, 2004, renewed annually which “Requires the annual amendment to the capital plan to include siting and/or location of each project (by building or school district, as appropriate), cost estimates, start dates and completion dates for each project. The 2022 version of the MOU is posted at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5691569&GUID=DF0D66A7-2A38-470D-9CEA-4D084DBEE5EC&Options=&Search=>



The other argument that the administration has put forward against lowering class size is that there is not enough funding. How much will it cost?

The DOE has said that about 10,000 to 12,000 additional teachers would have to be hired, while the Independent Budget Office has estimated 17,000 teachers.<sup>11</sup> The IBO says the cost will be \$214 million in 2026, \$427 million in 2027, and \$427 million in 2028. Meanwhile, not only has the DOE received more than \$1.3 billion in additional Foundation Aid from the state to finally settle the CFE lawsuit, but also next year's city budget will have a \$3.3 billion surplus, as the IBO points out.<sup>12</sup>

There are other sources of additional savings and revenue that could help DOE pay for the additional staffing that will be necessary. Overall, charter schools are costing the DOE nearly \$3 billion a year. In addition, DOE is required to subsidize the rent for charter schools, the only school district in the state and indeed the nation with this onerous obligation. The cost to DOE of these rental subsidies is about \$100 million this year, an amount that is rising fast.<sup>13</sup> In 2021, Class Size Matters released a report, showing how in many cases, these rents are inflated by Charter Management Organizations in order to leverage more dollars out of DOE.<sup>14</sup> A bill in the Legislature, S2137/A5672, sponsored by Senator Liu and AM Benedetto, would remove the obligation of DOE to help pay for charter rent, and we urge the Council to pass a resolutions in support of this legislation.<sup>15</sup>

DOE has also been denied any state charter transition aid, the only school district in the state of New York that does not receive this aid, designed to help districts pay for part of the cost of charter school expansion. The Education Law Center estimates that the city has lost out on \$2.81 billion of transition aid between 2011 and 2022 and would receive about \$93 million this year if the city were eligible for transition aid.<sup>16</sup>

<sup>11</sup> <https://drive.google.com/file/d/1lPni5TPXvTDnTeTZwEN8FO7Wng2Gas-v/view>

<sup>12</sup> <https://www.ibo.nyc.ny.us/iboreports/print-2024-preliminary-budget-report-february.pdf>

<sup>13</sup> The spreadsheet with DOE charter rental subsidies for FY 2024 is here; <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2024/02/Department-of-Education-Charter-School-Lease-Assistance-Report.xlsx> The total is \$235,607,179. As the state reimburses 60%, the estimated cost this year to DOE will be more than \$94 million.

<sup>14</sup> <https://classsizematters.org/new-report-finds-doe-overspent-by-many-millions-on-charter-school-rental-subsidies-for-charter-schools-and-owed-millions-to-co-located-public-schools-for-facility-upgrades/>

<sup>15</sup> <https://www.nysenate.gov/legislation/bills/2023/S2137> and <https://www.nysenate.gov/legislation/bills/2023/a5672>

<sup>16</sup> <https://edlawcenter.org/the-unsustainable-cost-to-new-york-city-schools-of-charter-school-growth/> Other revenue options posted here: <https://classsizematters.org/revenue-options-for-nyc-to-prevent-big-budget-cuts/>

The Legislature should also raise the capital reimbursement rate for new school construction to 50%, where we believe it was originally, which could potentially yield billions more in capital funds. According to SCA/DOE, NYC currently receives only 25% reimbursement for new school construction, while still receiving 50% for other capital improvements.

We also need more accurate and more granular class size reporting and want to thank Council Chair Joseph for introducing Local Law 1075, and 15 number of co-sponsors so far.<sup>17</sup> Right now, the DOE only reports on the size of classes as of Oct. 31, but as we know, class sizes often grow significantly over the course of the year. Thus, we need to know what size they are as of Feb. 15, and also at the end of the year, especially as DOE is supposed to be in full compliance with the law at the end of 2027-2028 school year. We also need to know the actual class sizes by school, rather than just class size averages and ranges as currently reported. Finally, the class sizes of specialized inclusion classes, such as NEST, Horizon, and AIMS classes should be reported, to ensure that they remain small enough and far below the caps in the law. Currently, the class sizes of these special programs are not separately reported at all.

Thank you again for introducing this important bill and for holding these hearings today.

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<sup>17</sup> <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6252767&GUID=0BA07C97-A9BE-418F-B20F-F52682D3E50E&Options=&Search=> 8