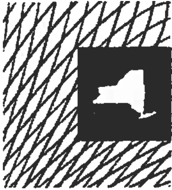

Testimony to

Senate Finance Committee and Assembly Ways and Means Committee

FY 2016 Executive Budget: Economic Development, Business Climate and Business Taxation Issues

Presented by

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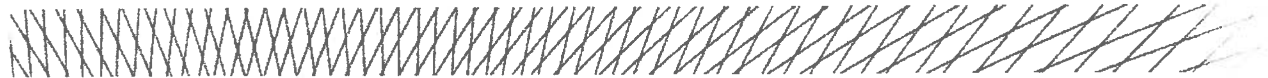

As always, we appreciate this opportunity to address members of the Senate Finance and Assembly Ways and Means Committee on issues in and related to the Executive Budget. In my presentation this morning, I will focus on those issues most directly related to the state's economic development efforts and those with the greatest potential impact on the state's business climate. Our written testimony addresses the broader range of Executive Budget issues of concern to The Business Council.

The Business Council strongly supports the Executive Budget's continued commitment to fiscal discipline. The past four state budgets, as approved by the Senate and Assembly, have significantly improved New York's fiscal condition, resulting in balanced budgets and projected operating surpluses at a time when about half of the other states in the U.S. are facing budget deficits.

In 2014, we were strong advocates for modernizing the state's corporate franchise tax, which was done as part of the FY 2015 budget. That package provided broad based tax and compliance relief for business. It greatly simplified compliance for large, multi-jurisdiction business taxpayers, and will streamline the tax collection and tax audit process for the Tax Department as well. It provided tax relief for both large and small manufacturers statewide. It extended the life of NOLs, assuring the availability of this significant deferred tax asset for many taxpayers.

This year, we generally support the proposal – advanced by New York City - to bring New York City's general corporation tax into conformance with the updated Article 9A business tax. And, unlike the last major city tax conformance bill adopted in 2009 that had up to ten-year phase-in provisions, most of this year's reform package will be effective for the 2015 tax year. Bringing the city's business tax into line with state reforms is beneficial to business and the revenue agencies alike. But we have two significant concerns regarding this bill.

First, the city's revised business tax would retain a capital base tax calculation and increase its maximum liability from $1 million to $10 million per taxpayer per year. The Business Council strongly opposed a similar, "temporary" capital base cap adopted in the FY 2009 state budget. This approach will adversely and disproportionately impact taxpayers with significant physical or financial capital located in the city, but with cyclical changes in their net income. We believe that any tax structure that penalizes employers for having a significant presence in the jurisdiction is bad tax policy.

Second, the bill would adopt an economic nexus proposal for the city's business tax. That means a business not located in the city would be subject to the city's business tax if it had more than $1 million in receipts from activity in the city. In the context of promoting a better New York State tax climate, adopting an economic nexus standard at the city level has a very different impact than does

adopting a similar standard at the state-level that applies to non-New York employers. Since this provision generates relatively little additional revenues for the city, and because it will adversely impact businesses elsewhere in the state, we recommend it be dropped from the conformance package.

We agree with the Governor's call for a significant, $1.5 billion economic development program targeting Upstate New York. Upstate is facing widespread economic challenges; as example, forty of fifty-two upstate counties have yet to see their private sector employment return to their pre-recession job levels. Therefore, we believe this upstate initiative is very timely; however, we also believe it should be broadly accessible to significant projects across upstate, and not limited to projects in just three of eight upstate regions.

In general, we support additional reforms to the brownfield cleanup program that will make the program more accessible and more efficient – a new expedited cleanup approval process for projects agreeing to forego tax credit eligibility, and the inclusion of state superfund "class 2" sites in the program - as well as a ten-year extension of its cleanup and redevelopment tax credits. This program has proven to be an effective economic development program, having already resulted in more than $8 billion in private sector spending on the clean-up and redevelopment of contaminated and abandoned or underutilized properties. It has been a cost-effective program as well, with a 7 to 1 ratio of economic benefits to state tax credits, considering direct expenditures on cleanup and redevelopment projects alone. As detailed in our written comments, however, we believe several specific proposals are counterproductive and unnecessary, especially the language precluding the "tangible property" redevelopment tax credit for property whose uncontaminated value is more than the projected site cleanup costs.

The most significant new business cost that would result from the Executive Budget is its minimum wage increase, and we oppose its proposal for a $10.50 statewide minimum wage, with an $11.50 minimum wage in New York City. This may be well-intentioned legislation, but it will have unintended, adverse job impacts. It would result in a nearly $4,200 per job per year cost increase, on a full time equivalent basis, and nearly a $6,600 per job per year cost increase in New York City, when you consider the direct payroll cost increases (20 and 31 percent, respectively), as well as the resultant increases in federal social security and Medicare taxes, as well as the increased costs of mandated state-level unemployment taxes and workers' compensation coverage. To accommodate these increased costs, business have limited choices: they can increase prices, divert resources from other purposes, attempt to become even more "efficient," or purchase less labor, meaning either a reduction in hours or elimination of jobs for some workers. A recent study showed that an earlier minimum wage hike in New York resulted in a 12.2 percent reduction in jobs for young, low-skilled

workers who are among the intended beneficiaries of a minimum wage increase. While relatively few New York employers and employees were directly affected by the 2013 wage increases, this year's proposal would affect far more employers, for more business sectors, and far more occupation categories.

I would like to close my comments with suggestions on two additional issues to be included in the final budget agreement.

First, a portion of the windfall should be used for the expedited elimination of the Section 18-A energy assessment. This assessment is a gross receipts tax in effect, if not in name, and will impose $173 million in add-on costs on power customers in 2015 and another $134 million in 2016. Ironically, since the state repealed its statutory energy gross receipts tax in 2000, with about $150 million per year in tax relief, the state has added more than $1 billion in annual energy-based assessments. Getting rid of 18-A for good would be a good step toward reversing this trend.

Second, we also recommend that, as part of its financial settlement spending plan, and its additional spending on public infrastructure, the final budget agreement should include Article VII language reforming the strict liability standard applied under Labor Law sections 240 and 241. A comparative liability standard will be a significant cost savings for state (and private) project related liability coverage, and will help assure the state receives the maximum public benefits from its capital spending.

Our written comments provide further information on these issues, and address a number of additional Executive Budget issues as well. As always, we welcome your comments and questions as we continue to review and respond to the Executive Budget proposal.

MINIMUM WAGE

We oppose the Executive Budget's proposal to raise the minimum wage to $10.50 per hour, and to $11.50 per hour for New York City employers. This may be well-intentioned legislation, but it will have unintended, adverse job impacts. This proposal would result in a nearly $4,200 per job per year cost increase, on a full time equivalent basis, and nearly a $6,600 per job per year cost increase in New York City, when you consider the direct payroll cost increases (20 and 31 percent, respectively), as well as the resultant increases in federal social security and Medicare taxes, as well as the increased costs of mandated state-level unemployment taxes and workers' compensation coverage.

To accommodate these increased costs, business have limited choices: they can increase prices, divert resources from other purposes, attempt to become even more "efficient," or purchase less labor, meaning either a reduction in hours or elimination of jobs for some workers. A recent study by Cornell and American University showed that an earlier minimum wage hike in New York resulted in a 12.2 percent reduction in jobs for young, low-skilled workers who are among the intended beneficiaries of a minimum wage increase.

While relatively few New York employers and employees were directly affected by the 2013 wage increases, this year's proposal would affect far more employers, for more business sectors, and far more occupation categories. We are developing a jobs- and wage-data based projection of the actual costs of this proposal. To illustrate the breadth of this proposal, more than 25 percent of all occupation categories, with 2.6 million employees, will be significantly affected by this proposal. And while these affected sector include expected job categories – food preparation and service, retail sales and store clerks, cashiers, and others – it also includes occupations as diverse as pharmacy aids, electronic equipment assemblers, and industrial truck/tractor operations.

Moreover, the minimum wage is not an efficient poverty fighter. The left-leaning Economic Policy Institute found that almost half of the benefits of the minimum wage nationwide goes to households earning more than $40,000, and 30% to households earning more than $60,000 (the median household income in the U.S. was $52,000 in 2013), and recognized the "earned-income tax credit" as a far more efficient, focused program, with federal and state tax benefits distributed solely on family size and family income. We agree with that analysis. Likewise, a minimum wage increase does nothing the significant percentage of impoverished adults who do not work (according to the Census Bureau, in 2013, 60% of 18 to 64 year olds in the US in poverty did not work a single week that year.)

TAXATION AND TAX CREDITS

New York City Business Tax Conformance – We generally support the proposal to conform New York City's general corporation tax to the corporate franchise tax reforms adopted at the state level in 2014. Positive features of this proposal include: merging of the city's financial corporation tax into a modernized general corporation tax; continued phase-in of single sales factor apportionment; use of customer sourcing rules; small business and manufacturing rate reductions; repeal of the subsidiary capital tax and alternative base tax; net operating loss reforms; and the adoption of a reasonable combined reporting test.

Our major concern with this city tax proposal is that, unlike the state's reform package adopted last year which phases out the state-level capital based tax calculation, the city's revised business tax would retain a capital base tax calculation and increase the maximum liability under this alternative calculation from $1 million to $10 million per taxpayer per year. The Business Council strongly opposed a similar, "temporary" capital base cap adopted in the FY 2009 state budget. This approach will adversely and disproportionately impact taxpayers with significant physical or financial capital locate in the city, but with cyclical changes in their net income. We believe that any tax structure that penalizes employers for having a significant presence in the jurisdiction is bad tax policy. Therefore, we oppose adoption of this capital base proposal.

Our second concern is with its economic nexus proposal. Specifically, the bill would subject a business to the city's general corporation tax if it derives receipts exceeding $1 million from activity in the city. Under current law, the city's business tax only applies to entities with capital, property or offices within the city limits, activities that amount to a physical nexus. Under this proposal, a New York State business with no physical presence in the city would become subject to the city's business income tax if it had more than $1 million in in-city sales. As a matter of New York State tax climate, adopting an economic nexus standard at the city level has a very different impact than does adopting a similar standard at the state-level that applies to non-New York employers. Since this provision generates relatively little additional revenues for the city, and because it will adversely impact businesses elsewhere in the state, we recommend it be dropped from the conformance package.

Brownfield Tax Credits – We believe that the brownfield cleanup program has been a cost-effective development initiative for the state, and we support the ten year extension of the brownfield program's tax credits, as well as other components of the Executive Budget brownfield proposal, including the creation of an expedited cleanup approval process (for projects agreeing to forego tax credit eligibility), the inclusion of state superfund "class 2" sites in the program (under limited circumstances). However, we have concerns regarding several

"reform" proposals. As example, we opposed the language precluding the "tangible property" redevelopment tax credit for property whose uncontaminated value is more than the projected site cleanup costs. This test would eliminate redevelopment credits for many sites with existing reusable structures, and – given other cost-containment provision in the legislation – seem unnecessary and counterproductive. We will be submitting detailed comments and recommendations on brownfield reform to the Administration, Senate and Assembly within the next several days.

Gross Receipts Tax Expansion – In general, gross receipts taxes represent bad tax policy; among other reasons, they result in the "pyramiding" of taxes, with the state tax imposed on revenues collected by the taxpayer to pay other state and local tax laws such as sales taxes, real property taxes and others.

Therefore, we strongly oppose the proposal to subject "mobile communications" providers to the Section 184 transportation/transmission industry gross receipts tax (and its related MTA surcharge set forth in Section 184-A). This proposal is contrary to the state's overall business tax reform efforts, including last year's corporate franchise tax reform legislation, and earlier legislation that outright repealed the state's energy utility gross receipts – moving those businesses into Article 9-A. This proposal has other problems. It treats different categories of telecommunication providers differently, with some receiving an exemption for certain categories of calls that are taxable receipts for other providers. Moreover, it adds to the already high tax burden on mobile communications; according to the Tax Foundation, New York already has the third highest combined state and local tax rate on cellular service of any state, at 17.7 percent.

The state Tax Reform and Fairness Commission (aka Solomon Commission) report issued in December, 2013 noted that the state's telecommunications taxes were out of date, and recommended a comprehensive study that would provide recommendations for improvement. We support that recommendation while rejecting this GRT expansion.

GRT Refunds – We recommend an important clarification to the proposed Article 9, Section 195 (S.2009/a/3009, Part Q). The Executive Budget language would require a taxpayer that passes the cost of any component of the corporation tax onto its customers (typically an energy or telecommunications utility) to document the return of the value of any Article 9 tax refund to its customers before the refund can be made to the taxpayer. If it is to be adopted, this provision should specify that it only applies to a tax refund that is subject to a final determination by the Tax Department, so that it cannot be interpreted as applying to possible or requested refunds.

Article 9A Technical Amendments –We have recommendations on several of the "technical amendments" proposed to address the Article 9-A reforms adopted in the FY 2015 state budget (S.209/A.3009, Part T).

- It proposes to amend the Article 9-A definition of "investment capital" to mean stocks that "have never been used by the taxpayer in the regular course of business," rather than the current reference to stock that is "not held for sale to customers." The new language is very restrictive and would effective prevent financial service companies from having investment capital, since it would be all but impossible to demonstrate that particular stock had never been so used. For example, a taxpayer owns stock in company X as an investment, but at some point in time the taxpayer or an affiliate would have had (or currently have) stock of the same company X in a trading account. The effect of this proposal is to taint the entire pool no matter how tangentially related. And, the proposed amendment provide no indication as to how a taxpayer can prove the negative (i.e., that the stock was never used in the regular course of business) or who will bear the burden to prove such use or non-use. We oppose this proposed amendment.

- In determining whether a stock holding qualifies as investment capital, Article 9-A currently provides that, if stock is acquired in the second half of the taxpayer's tax year and it is still held on the last tax of the tax year, that stock will be presumed to have been held for six months. The Executive Budget would amend this to say that this presumption only applies if the stock is still held on the date that the taxpayer files its original report for the tax year (typically March 15 of the following year.) We believe that a more workable amendment would be to say, "If the taxpayer does not own the stock at the time it files its original report for the taxable year in which it acquires the stock then the presumption in the presumption shall not apply to the taxpayer and the actual period of time during which the taxpayer owned the stock shall be used to determine whether the stock should be classified as investment capital after it is acquired."

- The Executive Budget would amend the Article 9-A definition of "qualified financial instruments" to apply to financial instruments that are "eligible or required to be marked-to-market..." Under current law, the QFI election only applied to instruments actually marked-to-market as opposed to items that could be. This proposed change makes the compliance process much more onerous and has the potential to grab instruments that otherwise would be exempt or would have a zero apportionment as opposed to the 8 election. Further, it results in inconsistencies between federal tax treatment and New York State (and New York City) tax treatment. If a taxpayer does not mark-to-market an instrument, the taxpayer does not compute and recognized any of the gains that accrued over the year. With this proposed amendment, however, the state would require a

taxpayer compute the MTM gain (which does not exist federally) to populate its apportionment percentage. This would result in massive new compliance obligations for firms with thousand if not millions of stocks holdings. In addition, while not addressed in the Executive Budget, we recommend an additional amendment that allow a taxpayer to elect to use the fixed percentage method of determining its apportionment factor on an amended return, and not just on an original return, as allowed in the current language of Article 9-A.

- While not addressed in the Executive Budget, we recommend that Article 9-A be amended to include the following apportionment rules for trucking business, in Section 201(a)(6), "Receipts from the conduct of a trucking business are included in the numerator of the apportionment fraction as follows. The amount of receipts from the conduct of a trucking business included in the numerator of the apportionment fraction is determined by multiplying the amount of receipts from such business by a fraction, the numerator of which is 80% of miles in such business within the state during the period covered by the taxpayer's report and the denominator of which is the miles in such business within and without the state during such period. Receipts from the conduct of a trucking business are included in the denominator of the apportionment fraction."

"Loophole Closings" – Part Y of the Executive Budget revenue bill (S.2009/A.3009) is described as eliminating sales tax loopholes and tax avoidance strategies. We appreciate the Administration's concerns, and believe they can be effectively addressed with modified language that avoids imposing sales tax on common, legitimate business transactions which are currently sales tax exempt under New York tax law and that of most other states.

- Related party leases – The proposal to require full up front sales tax payments on leases between related parties should be modified to exempt any such leases that are short-term (i.e., no longer than the useful life of the property being leased) and the total lease payments are equal to at least 100 percent of the lessor's initial purchase price.

- Related party transfers – While there may be some tax avoidance schemes using related party transfer, we believe the vast majority of corporate and partnership transactions represent *bona fide* business purposes, and should not lose their sales tax exemption as proposed in Part Y, section 2. The Department has legal recourse to address tax avoidance schemes in income tax settings; these include the business purpose, economic substance and/or sham transaction doctrines. We welcome the opportunity to work with the Department to develop similarly focused legislation to address their concerns. However, as proposed, this legislation would impose sales tax on a large number of valid asset transactions

- Single member LLCs – Again, we believe that the state can address concerns regarding tax avoidance schemes through a far narrower amendment than proposed here. For example, it could propose to treat a single member LLC and its sole member as the same entity for sales tax purposes in instances where the sole member is a natural person. As proposed, however, this amendment would subject business purchases to sales tax, when the ultimate sale/use may be non-taxable (i.e., the purchase of food service containers that are used in sales tax exempt sales to customers.)

Small business tax rate reduction – We appreciate the proposal (S.2009/A.3009, Part N) to reduce the corporate franchise tax rate on certain "small business taxpayers." Under this proposal, an incorporated small business with less than 100 employees, less than $1 million in capital and an income base under $390,000, would see their net income tax rate go from 6.5% today (with a marginal rate of 4.35% for taxable income between $350,000 and $390,000) to 3.25% in 2016, 2.9% in 2017, and 2.5% in 2018 and thereafter. This would produce an estimated $26 million in small business tax cuts.

However, this proposal would provide to a small percentage of small business taxpayers in New York. The nearly 400,000 mostly small business S-corporations that file Article 9A returns pay its "fixed dollar minimum" tax (with an average tax payment of just $267), not the "net income" tax whose rates are being reduced here. Instead, the bulk of small business income is taxed at the individual taxpayer level under the personal income tax.

To provide significant, broad based small business tax relief, the legislature should consider amendments to the personal income tax rate to either reduce rates or exempt some portion of business income. Here are two options.

First, a rate structure like that proposed for Article 9-A could be applied to business income subject to Article 22 tax liability, using the same eligibility criteria proposed for this Article 9A tax reduction.

Second, the state could amend Article 22 to exempt a portion of business income paid to taxpayers by pass thru entities. The Business Council proposed this approach during the Tax Cut Commission process in early 2014. As example, exempting the first $25,000 of business and/or farm income reported on New York IT-201 forms, for taxpayers with taxable income under $100,000, would produce about $406 million in small business tax savings. Taking the same approach for income reported as "rent/royalty" income (which includes sub-S corporation income) would generate $255 million in cost savings.

Either approach would provide tax reductions to a far greater number of small businesses than would the Executive Budget proposal. We welcome the

opportunity to work with the Senate and Assembly on a broader small business tax reform package.

Urban Youth Jobs Tax Credit Program – We support the proposal to extend the youth works tax credit (renamed as the "urban youth jobs program tax credit") with an additional $10 million in tax credit authority for each of calendar 2015, 2016 and 2017. However, we are concerned with the modified geographic eligibility criteria. Under current law, new employers of low income or "at risk" youths are eligible for the credit if the individual resides in a city with a population of 55,000 or more or in a town with a population of 480,000 or more. The proposal would limit eligibility to residents of only those towns and cities that meet these population thresholds and are in one of the six highest unemployment rate counties among those counties which contain one or more eligible municipalities. By our calculation, this would limit eligibility to the following cities: New York City, Utica, Buffalo, Rochester, Syracuse and Schenectady. As there are only eleven municipalities in New York that meet these population thresholds, just five jurisdictions are left out: Brookhaven and Hempstead townships, and the cities of Albany, Mount Vernon, New Rochelle. Each is in the relatively low unemployment rate counties of Albany, Westchester, Nassau and Suffolk. Our concern is that with modest relative changes in county unemployment rates (there is just a 0.5% difference between the 5th and 9th highest counties), youths and employers in eligible jurisdictions in one year could find themselves ineligible in subsequent years, and county-level unemployment improve, even if municipal levels do not.

Additional Business Tax Reform Issue – While not in the Executive Budget, we support extending the sales tax exemption for transportation services to include livery, black car and similar services. This proposal was before the state legislature in 2014 as S.4920/A.8751, when it passed the Senate but not the Assembly. We believe this reform establishes fair and equal sales tax treatment for similar transportation services.

"Tax Clearance" Provisions – We urge the legislation to carefully consider several proposals contained in S.2009/A.3009 establishing tax delinquency clearance mechanism for several new categories of state authorizations. In 2013, a similar provision was adopted that prohibited the issuance or renewal of driver licenses for taxpayers that were delinquent on a "fixed and final" state tax liability of at least $10,000. In this Executive Budget similar language is proposed for professional licenses and state-issued permits, state and local grants, and other categories of state approvals (in addition, the threshold for drivers licenses is proposed to be reduced to $5,000.) While we appreciate the need to assure effective enforcement of the state's tax laws, we are concerned that these proposes give excessive leverage to the Department, given that once all administrative and judicial challenges are exhausted, the taxpayer will be subject

to the decisions of the Department's collection unit, which can require payment plans with no due process review. Given that this new authority could result in the withholding of a state permit needed to allow a business' continued operations, we do not support these proposals as presented in the Executive Budget. We are developing additional recommendations for your consideration on this tax enforcement mechanism.

Mobile Workforce Reform – The legislature should consider supporting, and making budget accommodations for, a federal tax reform proposal to address an issue that, in the words of one New York business tax expert, is "making enemies of New York one executive at a time." The *Mobile Workforce State Income Tax Simplification Act* was recently introduced in the U.S. Senate as S.386 by Senator Thune of South Dakota and Senator Brown of Ohio. This is identical to legislation that passed the House in 2014, and that will be reintroduced there shortly. This bill sets a thirty day safe harbor from state-level personal income tax and withholding obligations for traveling employees and their employers, meaning that employees traveling to a nonresident state for fewer than thirty days would incur no personal income tax liability in the nonresident state, and the employer would have no withholding obligation. Employers and employees would continue to fulfill tax obligations to the state of residency during the 30-day safe harbor. In New York, a non-resident coming into the state to work a single day technically own income tax for that day, and after the fourteenth day the employer is obligated to withhold taxes for New York. Our members take these obligations seriously, as the Department audits this issue for corporate executives traveling to New York. In addition to assuring tax filings for key executives and officials traveling to New York for even one work day, our members have also told us that their companies have avoided holding meetings and events in New York because of this day-one PIT liability. While New York is one of seventeen states with a one-day threshold, it is the only one that we are aware of that aggressively audits this issue, and the dollar impact is by far greatest in New York (estimates vary between $60 and $120 million per year, on a state income tax base of nearly $48 billion. The Business Council supports congressional passage of the mobile workforce bill.

ENVIRONMENTAL/ENERGY ISSUES

Section 18-A Assessment Repeal – In principle, we agree that the $5.7 billion in "one shot" resources available through the state's windfall settlement income should be matched to one-time, non-recurring expenditures, such as infrastructure projects. However, we strongly recommend that the windfall be used for at least one "two-shot" measure – the expedited elimination of the Section 18-A energy assessment. Under last year's budget agreement, there

remains a 1.00 percent Section 18-A assessment for 2015, and .73% for 2016. The 18-A assessment is a gross receipts tax in effect, if not in name, and will impose $173 million in add-on costs on power customers this year and another $134 million in 2016. Ironically, since the state repealed its statutory energy gross receipts tax in 2000, with about $150 million per year in tax relief, the state has added more than $1 billion in annual energy-based assessments. Getting rid of the residual 18-A would be a good step toward reversing this trend.

Oil Spill Fund – We do not support the Executive Budget proposal (S.2008/A.3008, Part X) related to the state's oil spill fund. This proposal would transfer administration of the Oil Spill Fund from the Office of State Comptroller (OSC) to the Department of Environmental Conservation; increase the fees for oil transported through New York to 13.75 cents per barrel and to increase the per-barrel license fee for major oil storage facilities (MOSFs), irrespective of whether the oil remains in New York or is transferred to another State; and expands the authorized purpose of fund expenditures to non-remedial projects. We believe that the OSC has been a responsible steward of the oil spill fund, and would be concern that the elimination of its oversight role would result in less efficient use of fund resources. For these same reasons, we oppose using these funds that are intended for remedial projects to be used for various planning and risk assessment projects. If the state believes that new planning and oversight programs are needed, they should consider other revenue sources for their support.

Environmental Permit Fees – We do not support proposed increases in operating permit program fees for sources subject to federal Clean Air Act permitting ($2,500 for a source subject to state facility permit, $250 for a source subject to a minor facility registration, and $2,500 for a facility with any other operating approval) or the proposal to increase State Pollutant Discharge Elimination System (SPDES) permit fees, with those hikes ranging between 15 25 percent, depending on the facility. (S.2008/A.3008, Part Y.) These revenues go directly to support the Department of Environmental Conservation's regulatory and permit programs. We do not believe the Department has demonstrated the need for additional resources for its air and water regulatory programs; therefore we oppose these proposed fee increases.

RGGI Transfers – The Executive Budget proposes to transfer $36 million of "regional greenhouse gas" (RGGI) allowance proceeds to the State, including $13 million to Environmental Protection Fund (EPF) to cover revenue shortfalls and to increase the EPF (S.2005/A.3005, Part P.) While the Business Council maintains significant concerns with the cost to consumers of the RGGI program, we are equally concerned that RGGI proceeds are being diverted from programs which would have mitigated consumer impacts. New York State already spends the

most on administration and the least on consumer mitigation than any other state. Therefore we oppose this proposed RGGI funds sweep.

Environmental Initiatives - The Executive budget presentation contained a number of new initiatives which have no immediate budget impact but long term could be significant costs to New York businesses. One such proposal would require a New York specific approach to the regulation of the chemistry of consumer goods. In other states such initiatives have proven to be costly and provided questionable results. New York State should join with others and request that consumer product safety requirements be updated, instead of a State by State approach. The second proposal requests some significant amendments to the New York Independent System Operator. The NYISO administers the wholesale power market for New York State. New York's wholesale power is some of the cheapest and cleanest in the country. The State should tread very lightly with the wholesale power market because it is very unlike the New York retail market which has become burdened by high taxes, fees and social programs leading to some of the highest energy costs in the nation.

HEALTH POLICY ISSUES

Health Exchange Tax - The Business Council opposes the Governor's proposed new $69 million state tax on fully-insured health and dental premiums to finance the New York State of Health, the state's health exchange, which would be in addition to the over $5 billion per year worth of state HCRA taxes and federal ACA taxes already being levied on premium payers. Given the Department of Health's February 4, 2015 health exchange enrollment data, that shows 2015 exchange enrollment at 2 million people, approximately 90 percent of whom were previously uninsured; we can see no reason why with such a significant increase in the HCRA tax pool, any new tax is necessary. The Governor has in the past called for funding the exchange through dedicated HCRA funding, a position that continues to make good sense based on the new revenues generated from millions of newly insured. Additionally, with now 1.8 million less uninsured in the state, another obvious source of funding for the exchange can be found in the $792 million in HCRA monies allocated for indigent care, the same amount allocated in the FY 2014-15 budget; millions of newly insured people should logically lead to a decrease in need for indigent care rather than a flat allocation.

Pharmaceutical Mandates - The Budget proposal calls for two new Medicaid mandatory supplemental rebates on pharmaceutical manufacturers on top of the two which are already in place. While referred to as rebates these are unequivocally sales taxes. Creating another entrance fee or price control on pharmaceuticals sends exactly the wrong message to New York's bio-pharma and

biotechnology industries. Instead of endorsing policies that support these industries' key roles in the state's economy, we are proposing new taxes on their products that inevitably undercut the desire for new research and innovation and the good-paying jobs that come with them in New York. We have long supported the establishment of limited services clinics in the state as a tool to both contain the ever rising costs of healthcare for employers and to deal with the growing shortage of primary care providers in the state. The use of limited care clinics provides a cost-effective alternative to expensive emergency room visits and serves as a needed access point that will encourage the use of primary care for the two million newly insured New Yorkers who will require care as part of health care reform.

OTHER ISSUES OF CONCERN TO EMPLOYERS

School performance and accountability - The Business Council remains committed to high education attainment standards, renewed focus on technical skills training that meet the needs of "middle skills" jobs, and supporting educational initiatives such as P-TECH schools that provide a new form of local school/employer partnerships designed at meeting skills needs in the local economy. We support the Executive Budget proposals to raise the charter school cap by 100 (to 560) and funding for a third round of P-TECH partnerships. Note that our board level education committee continues to review the Executive Budget's education policy reforms, and we will be submitting additional comments on education reforms included in the Executive Budget, including: authorizing the Commissioner of Education to a categorize a school district as failing and appoint a receiver to create and enact a plan to improve student achievement; requiring institutions with graduate-level teacher education programs to adopt rigorous selection criteria including, including achievement of 3.0 or higher GPA in a candidate's undergraduate program and a minimum GRE score (or comparable admission examination) as determined by the institution; creating the New York State Masters-in-Education Teacher Incentive for CUNY and SUNY students; amendments to the teacher evaluation system; and amendments to the tenure process for teachers and principals hired after July 1, 2015.

LLC Restrictions – We strongly oppose the proposal included in the Executive Budget (S.2005/A.3005, Part E, Section 7) that, first, adds "limited liability companies" to the categories of entities generally prohibited from making campaign contributions under the Election Law, and, second, lowers the allowable annual, aggregate contributions by corporations only from $5,000 to $1,000. While we point out that the bill as drafted is inconsistent with the intent stated in the Executive Budget narrative, which suggested LLCs would be subject to the same $1,000 annual aggregate allowable contribution that is afforded to

corporations, our real concern is that this is an example of onerous limitations on political advocacy being imposed on just one category of entities. In contrast, labor unions which are typically neither incorporated nor LLCs would not be subject to this level of restrictions. If nothing else, campaign contribution reforms need to be even handed, not designed to favor one category of political advocate over others.

IDA Restrictions – Other organizations will be submitting detailed comments raising concerns regarding legislative amendments to the operation of, and offering of state tax credits by, industrial development agencies (S.2009/A.3009, Part W.) We would like to raise three specific concerns. First, we are concerned that the 45 day ESDC review for state-level tax credits will add excessive time and additional uncertainty to the project decision making process. Second, the proposal sets forth ambiguous, open-ended criteria for defining when an application for state credits will be determined as "complete and in processible form," which will likely add additional uncertainty and delays. Third, the proposal requires the tax commissioner to recover the value of state tax credits from any IDA project that fails to meet job, investment, construction or other project targets, but only allows for the consideration of the degree of compliance or non-compliance and partial tax credit recovery. If any additional claw-back provisions are adopted, they should be proportional to the degree to which project obligations have been met.

CPA Firm Ownership – We strongly support the proposal (S.2006/A.3006, Part G) that allows public accounting firms to incorporate in New York State with minority ownership by individuals who are not Certified Public Accountants. This practice is currently allowed in forty-seven states. New York's outdated restrictions in-state firms at a disadvantage when it comes to recruiting and retaining top talent, such as IT experts, data analysts and others that complement a firm's accountancy practice. This amendment will put New York firms on a level playing field with neighboring and competing states.

Other proposals of concern include: increases in environmental air and water permit fees; new mandated rebates on pharmaceuticals under the state Medicaid program; and stringent limits on campaign contributions by corporations and LLCs.

"Design build" authority – We support the proposal (S.2008/A.3008, Part B) to make permanent the use of the design-build construction method on public projects, and expands its use to all State agencies and public authorities. We oppose the proposal to require projects over $50 million to prepare a project labor agreement feasibility study. PLAs are already authorized and used on construction projects in New York State. Authorizing agencies have a deliberative process to determine if a PLA should be used. This proposal would bypass the current process and require PLA use. PLAs require that virtually all workers hired

on a project be union members. In contrast, approximately 75% of construction workers in New York State are not union members. Mandating PLAs in design-build projects precludes this significant majority of New Yorkers from work on these state-funded projects. Since most Minority and Women owned Business Enterprises (MWBEs) are not unionized, most would be precluded from participation on design-build projects. Not only does this have a direct impact on (mostly small business) MWBEs, but it also makes achievement of the state's MWBE contracting targets more difficult. Moreover, no other state mandates PLAs on design-build projects.