5

AGC
NEW YORK STATE

TESTIMONY OF ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE PRESIDENT & CEO MICHAEL J. ELMENDORF II

JOINT LEGISLATIVE PUBLIC HEARING ON THE 2016-17 EXECUTIVE BUDGET TRANSPORTATION PROPOSAL

Good morning Senate Finance Chairwoman Young, Assembly Ways and Means Chairman Farrell, and Members of the Committee. I am Mike Elmendorf, President and CEO of the Associated General Contractors of New York State (AGC NYS). AGC NYS is the leading statewide trade association for New York's construction industry. We represent nearly 600 contractor, subcontractor and related firms and have more than 80 years of experience working with public agencies and private developers to deliver quality projects that are the lifeblood of our economy. Our Members perform the majority of the public and private transportation, education, environmental and building infrastructure work in every region of New York State. I thank you for the opportunity to express our views on the 2016-17 Executive Budget transportation proposal.

There is widespread agreement that New York needs to invest in its infrastructure if we are going to remain competitive and create jobs. New York State's crumbling roads, bridges, and mass transportation systems are in serious need of attention and, more importantly, are in serious need of a multi-billion dollar, multi-year capital commitment from the State.

By the end of 2014, fifty percent of State paved roads were in fair or worse condition. Each day, 17.3 million New Yorkers drive over a bridge that is in a state of disrepair. In last year's "State of Opportunity Agenda," Governor Cuomo himself noted that New York has 6,000 bridges and 60% of our roads in need of repair. This crumbling infrastructure not only exacts a high cost on our economy, but, according to the national transportation research organization TRIP, costs each and every New York driver more than $1,500 annually. Investment now means safer, cheaper and more efficient travel for commerce and all New Yorkers—and a stronger economy, too.

Investing in infrastructure is a proven job creator, as well. According to George Mason University and AGC of America Chief Economist Ken Simonson, an additional $1 billion invested in nonresidential construction would add $3.4 billion to Gross Domestic Product (GDP), $1.1 billion to personal earnings and create or sustain 28,500 jobs.

Simply put, our economy and our communities do not function without safe, modern reliable infrastructure. Our businesses count on it to get customers to them; our farmers to get their goods to market. Our schools count on them to safely transport their students—our kids. Essentially every other priority for our State and our citizens is made possible by our infrastructure.

My comments today on the Executive Budget Proposal are limited to capital funding for roads, bridges and mass transportation; parity between the New York State Department of Transportation (DOT) and Metropolitan Transportation Authority (MTA); and legislative proposals. There are a number of other proposals in the Executive Budget of interest to the construction industry—and some of concern—that we look forward to discussing with the Legislature in the coming weeks.

The Governor has broadly proposed a vision for signature infrastructure projects supported by AGC NYS, including redeveloping Penn Station, expanding the Long Island Rail Road, redeveloping the Javits Center, airport redevelopment, and an $8.3 billion, multi-year state funding commitment for the Metropolitan Transportation Authority (MTA). Each of these initiatives shows a core commitment to infrastructure and an acknowledgement of its importance to our economy and our future. The Governor deserves credit for that—and for again working to advance key projects that in some cases have languished for decades.

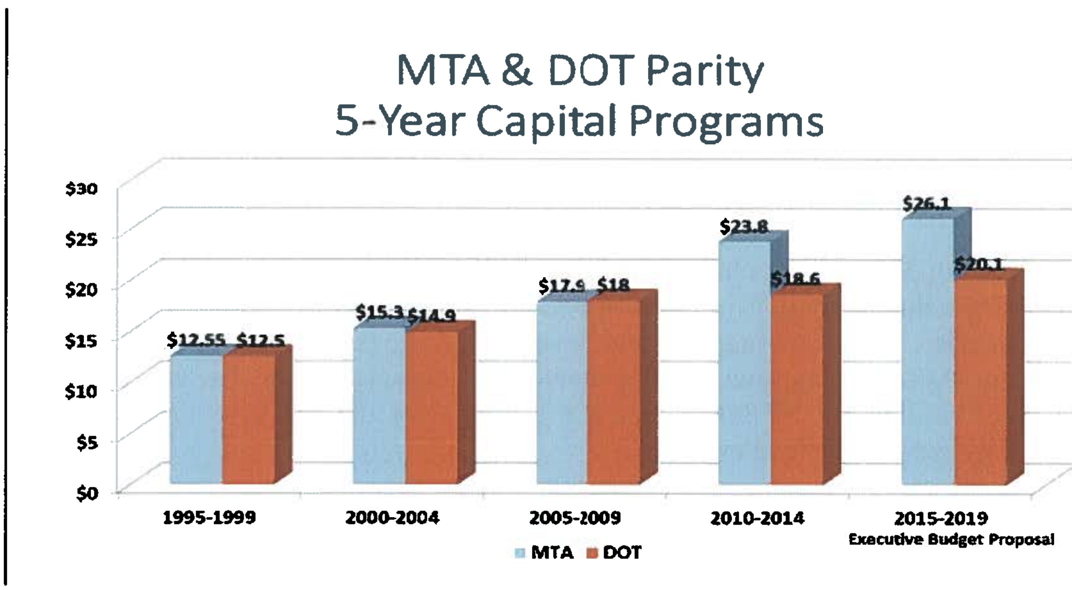
However, the Executive Budget Proposal falls quite short of the Governor's commitment in his address last week to restore parity between the New York State Department of Transportation (NYSDOT) and MTA capital programs. In fact, it would produce the biggest funding disparity between the two programs in history. Restoration of parity is a top priority for AGC NYS this year.

New York State Department of Transportation

With regard to the proposed New York State Department of Transportation (NYSDOT) capital program, we are pleased that, for the first time since 2009, the Executive Budget advances a five-year plan, running from 2015-16 to 2019-20. This is an important step for the long-term planning needs of NYSDOT, the construction industry, small businesses, local governments and urban planners. It provides drivers with much needed investment in our roads and bridges. Coupled with long overdue Congressional approval of a fully-funded, five year surface transportation bill in the form of the FAST Act—which, thanks to outstanding, bi-partisan collaboration on the part of New York's Congressional Delegation—provides increased funding to New York—this is the time to make a multi-year, fully funded commitment to meet the true needs of New York's deteriorating statewide network of roads and bridges.

Funding for the proposed five-year NYSDOT capital program is $20.1 billion, up from the projected $18.3 billion for 2015-20. The increase is attributable to a combined $700 million increase from the federal government and $1.1 billion from the State. Included in the proposal are the $1 billion PAVE NY and $1 billion BRIDGE NY programs with funding evenly split between state and local governments.

In his State of the State address, Governor Cuomo committed to achieve parity between the capital plans of the NYSDOT and Metropolitan Transportation Authority (MTA). However, the Governor's road and bridge program does not achieve parity. Proposed funding for the NYSDOT five-year program is $20.1 billion and the MTA is projected at $26.1 billion. **Far from being parity, this is actually the largest funding disparity ever between the two programs**.



As you can see in the included graph, in 1995, 2000 and 2005 there was true funding parity between the DOT and MTA capital programs. In 2010, the Executive and Legislature broke this historic parity and enacted a five-year capital program for the MTA but not the DOT. The Governor's 2016-17 DOT proposal is $6 billion less than the MTA's.

To meet the needs of a deteriorating infrastructure, plan for the future and achieve parity between the DOT and MTA capital programs, AGC NYS recommends that each be funded at $26.1 billion over the next five-years.

The commitment to parity began in the early 1990s, when statewide gas tax revenues were first committed to help meet the growing capital needs of the MTA. In return for this statewide taxpayer support of the MTA, it was agreed that parity would exist between the NYSDOT capital plan and the MTA capital plan approved by the Capital Plan Review Board. And, until parity was broken in 2009-10, that's precisely what existed—virtually equal capital plans between the two systems.

The Governor's historic commitment to the MTA's capital needs—which we support—presents a singular opportunity to right the wrong committed when parity was broken and restore it to meet the real needs of both systems. That is why AGC NYS has made this a priority and joined a broad and truly unprecedented coalition of groups calling for a return to true parity. This coalition, as you can see from the letter included as an addendum to this testimony, includes not just the construction industry, but organized labor, virtually every facet of the business community, counties, mayors, local governments, schools and the environmental community. It is a coalition of groups that sometimes, even often, do not agree—but who agree that restoring parity is essential.

The drive to restore parity has lead some to engage in discussion about just what parity is—or was. To be clear, it is and always was equality between the NYSDOT and MTA capital programs, as the chart above shows. Parity is not a term that was invented for this application; it is an actual word defined in the dictionary as *"the state or condition of being equal, especially regarding status or pay."*

Parity is also not about "upstate" and "downstate." It is about equal investment between the MTA system and our **statewide** system of roads and bridges. Every region of New York relies upon roads and bridges and suffers from deteriorating conditions. What's more, some 40% of MTA users access MTA services by getting to them in a car. The notion that parity is a divide or choice between one region over another is simply false. Parity is about equitable investment in statewide needs. A recent Siena College poll showed an overwhelming statewide support for parity, with 71% of New Yorkers supporting equal investment in transit and roads and bridges.

The Administration appears to be trying to redefine parity as NYSDOT getting approximately 4/5ths of the capital investment of the MTA. However, that was never truly the case and is not parity. In doing so, they omit the first concurrent capital plans from 1995 to 1999 that established parity and include in the calculation the most recent five year period in which there was not parity.

Furthermore, the Executive Budget seems to be attempting to make the gap between the NYSDOT and MTA capital plans smaller by including $2 billion in cash support to the Thruway Authority as part of the overall NYSDOT capital plan number. Thruway finances were never part of the parity calculation and are not part of the NYSDOT capital plan. As such, they should not be included in this calculation. The current capital program proposals stand at $20.1 billion for NYSDOT and $26.1 billion for the MTA; a disparity of $6 billion—again, the largest disparity between the two ever.

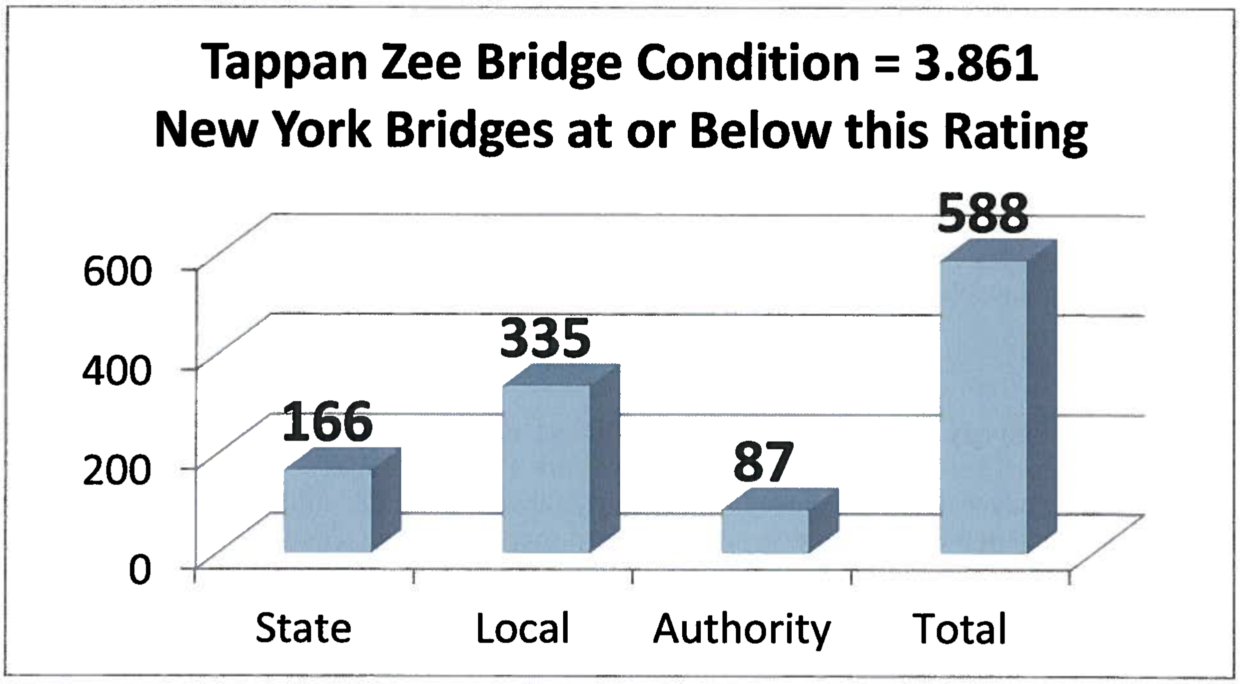
When parity existed, the funding levels for both systems were based on multi-year needs analysis released publicly by the DOT and MTA. This analysis was traditionally released in advance of the adoption of their five-year capital programs. The last NYSDOT needs analysis was released in 2009 and indicated needs in excess of $25 billion over the next five years. Because their capital program was nowhere near that size, those needs have obviously increased, not decreased, and the current need is believed to be approximately $28 billion. In September 2014, the MTA released its $29 billion core capital program request based on their needs analysis.

While the MTA's needs are clear, so too are those of the New York State Department of Transportation. Under the proposed funding levels, poor pavement will nearly double at planned funding levels. More than 50 percent of the State's 17,400 bridges have exceeded their design-life and 40 percent of State and local bridges are classified by the Federal Highway Administration (FHWA) as structurally deficient. This will worsen at current funding levels.

The Governor has rightly received strong praise for his leadership and resolve in moving forward the long stalled reconstruction of the Tappan Zee Bridge, a structure famously renowned for being rickety and decrepit. In a November 17, 2015 address to the Harvard University Kennedy Center School of Government's Center for Public Leadership, Governor Cuomo said:

> You drive over the Tappan Zee Bridge and they have these large metal plates in the middle of the roadway. But you could always see little daylight between the plate and the roadway and then the car ahead of you would go over the plate and the plate would jostle just a little bit. You would say, "Ah this is it. This is me. I'm going to go over that plate. I'm going down. Undo my seatbelt. Should I open the window? Should I swim?"

While certainly somewhat in jest, it is well known that the poor condition of the Tappan Zee Bridge was a key driver in the push to accelerate its replacement. However, it is certainly well less known that statewide nearly 600 bridges are rated as poorly or worse by the New York State Department of Transportation.



While other roads and bridges throughout the State may not be as famous as the Tappan Zee Bridge, they are no less in need of investment, repair and reconstruction. And, should they fail, they could quickly become just as infamous.

The sad irony should not be lost on anyone that not once, but twice in the last decade there have been failures on the elevated ramp structure used to access the Capitol, Legislative Office Building and Empire State Plaza. One of these, in late 2005, was a near disaster as segments of the roadway actually separated. Fortunately, it happened at night when there was little traffic. However, when the roads and bridges to access the very seat of state government are literally falling apart, it is an unsettling if not unsurprising reminder of the high cost of decades of under investment in our infrastructure.

These examples make clear the very real and pressing needs of the NYSDOT system—needs every bit as real and important as those of the MTA. Our Statewide network of roads and bridges are just as critical to our communities and economy as MTA transit. While we applaud the Governor's commitment to achieve parity, the current Executive Budget proposal falls far short of that goal. We look forward to working with our broad coalition partners and Members of the Legislature to work to restore true parity as the budget process moves forward.

Metropolitan Transportation Authority

The MTA's proposed 2015-2020 Capital Program is $26.1 billion, which includes an $8.3 billion state contribution and $2.7 billion from the City of New York. AGC NYS fully supports the Executive Budget proposal. It provides the resources to build upon the achievements of prior capital programs that will sustain the system's legacy for future generations and to avoid a repeat of the disinvestment and resulting crises of the past.

The MTA's planning and budgeting process provides lawmakers and commuters with a blueprint to provide safe and reliable service to the growing ridership. The MTA Capital plan includes replacement of 3,100 buses and 1,400 subway cars, $2.8 billion for station improvements, extending the 2nd Avenue Subway to East Harlem, builds a new LIRR station in Elmhurst, constructs four new Metro-North stations in the Bronx, and other proposals. The MTA is seeking innovative methods such as design-build, negotiated procurement processes and public-private partnerships to operate more efficiently, spread risk more broadly, and take advantage of innovative techniques.

AGC NYS commends the Governor for taking the lead on the MTA capital planning and budgeting process and recommends full funding at $26.1 billion over five years. The MTA is critical to New York City and the State's economy—and investing in it has real, statewide economic impact. However, again, that increased investment must be met with a restoration of parity between the MTA and NYSDOT Capital Plans.

New York State Canal Corporation

AGC NYS strongly supports the Executive Budget proposal to transfer the New York State Canal Corporation from the Thruway Authority to the New York Power Authority. This long overdue reform for which we have long advocated will relieve the Thruway Authority from $85 million in annual expenses for the maintenance and operation of the Canal system. These resources can and should be reinvested into the repair and reconstruction of the Thruway.

Thruway Toll Reduction Plan

The Governor is proposing a three-part Thruway Toll Reduction Plan and Protection Plan, which will keep tolls flat until at least 2020 for all users, cut tolls in half for nearly one million, frequent travelers through a new tax credit and eliminate tolls for farm vehicles. To offset these lost revenues, the Executive Budget provides $700 million in State support to the Thruway Authority, in addition to the $1.3 billion committed last year. While we appreciate the acknowledgement of the needs of the Thruway system, this proposal essentially continues a troubling pattern of State subsidy of what has always been and should be a toll-supported system. The Thruway system was essentially constructed all at the same time and many of its assets are largely at or nearing the end of their expected design-lives. As a result, the Thruway's needs are increasing—and its conditions are deteriorating. Indeed, there is currently a stretch of the Thruway in Western New York between milepost 452.34 to milepost 455.06 where the speed limit has been reduced because of poor conditions resulting from a delayed rehabilitation project. This is a harbinger of what is to come as the Thruway's needs increase if their revenues do not follow. The Thruway should continue to be a toll-supported system.

That said, we reiterate our strong support for the Executive Budget's proposal to transfer the Canal Corporation from the Thruway Authority to the Power Authority. This is sound policy and will free up an estimated $85 million annually for the Thruway Authority to reinvest in their system.

Creation of a New York State Design and Construction Office

AGC has significant concerns about the Executive Budget proposal to create a New York State Design and Construction Corporation (DCC), a new subsidiary of the Dormitory Authority of the State of New York (DASNY).

According to the Executive Budget proposal, the DCC's primary purpose will be to provide additional project management expertise and oversight on significant public works projects undertaken by state agencies, departments, public authorities and public benefit corporations throughout the State. The DCC, it says, will be able to collaborate with agencies and authorities to ensure that construction projects are managed efficiently and comply with construction deadlines and budget limits specified at the onset of these projects. Adding this layer of management reportedly will provide the State with additional costs savings on many of its large scale, publicly funded construction projects.

The Executive Budget claims that the creation of the DCC will curtail the loss of State dollars caused by avoidable construction delays by establishing design/build authority with ESDC and NYCCDC related to the Jacob V. Javits Convention Center, the Empire State Station Complex, the James A. Farley Building Replacement, and the Pennsylvania Station New York Redevelopment projects. With this authority, ESDC and NYCCDC would be able to award design and construction contracts to a single entity.

We concur that avoiding costly construction delays is very important, and look forward to sharing our ideas about finishing projects on-time and expediting payments to general contractors and small businesses. Rather than creating another layer of unnecessary government, I, along with the Members AGC NYS, propose that New York State review and reinvent construction procurement by implementing steps to ensure the timely completion and close-out of construction projects. It is unclear at this time how broadly beyond key NYC region "mega projects" this authority would extend—or the impact it could have on existing projects and contracts. The industry enjoys a strong partnership with our public agency colleagues with whom we deliver these projects, and looks forward to that continuing without the unnecessary administrative layer of an added public entity.

Conclusion

Modern, safe and reliable infrastructure is of paramount importance not only as a catalyst for job creation but also as a key driver for the State's economic performance and competitiveness. It contributes to the health, safety, education and quality of life of our citizens and as the means to ensure the efficient movement of people and goods. Simply put, New York State cannot be open for business if our roads, bridges and transit systems are closed. The Executive Budget proposal offers key advancements and investments, but also presents areas in need of improvement, such as falling far short of achieving parity. We look forward to working with the Legislature to improve upon the Executive Budget proposal to best meet the whole State's significant infrastructure needs. Thank you for this opportunity and I welcome your questions and comments.

The Honorable Andrew M. Cuomo
Governor of New York State
Executive Chamber
State Capitol
Albany, New York 12224

November 2, 2015

RE: Transportation Funding Parity

Dear Governor Cuomo:

We congratulate you on the historic agreement reached to provide an additional $8.3 billion to meet the needs of the Metropolitan Transportation Authority (MTA) Capital Program over the next five years. This critical investment will build a safer, stronger, more reliable transit system for the MTA, which serves as the backbone of the greater New York City region's economy. That said, it is only the first of two essential steps to meet New York's serious infrastructure needs. State and local roads, bridges and other transportation systems such as airports and rail also serve as the economic and social backbone for the entire state of New York and our nation—and have very significant needs that must be met as well.

There is wide spread agreement among elected officials and the public that New York needs to invest in its infrastructure if we are going to remain competitive and create jobs because our crumbling roads and bridges are in serious need of attention and, more importantly, are in serious need of a multi-billion dollar capital commitment from the State. As you noted yourself last year in your "Opportunity Agenda," New York has 6,000 bridges and 60% of our roads that are in need of repair or reconstruction. An October 26 Siena College poll showed that an overwhelming 71% of New Yorkers support equitable funding for transit and roads and bridges. Collectively, we urge you to include funding parity between the capital plans of the Metropolitan Transit Authority and the New York State Department of Transportation (NYSDOT) in the 2016-17 Executive Budget.

In the early 1990's, Governor Mario Cuomo and Legislature created the Dedicated Highway and Bridge Trust Fund (DHBTF) to pay for the NYSDOT capital program and the Dedicated Mass Transit Trust Fund (DMTTF) to assist with the MTA and other transit systems' capital programs. At that time, statewide drivers were asked to have a portion of their gas taxes and auto fees directed toward the DMTTF. In return, it was agreed that the DOT and MTA's five year capital programs would be similar in size and would be negotiated simultaneously—the concept broadly referred to as "parity." From then through 2005-09, both five-year capital programs were similar in size and adopted within months of each other. In 2009-10, the Executive and Legislature enacted a five-year capital program for the MTA but not the DOT, breaking parity. Since that time, investment in transit has outpaced investment in roads and bridges by some $6 billion.

A fully funded 5-year capital plan for the New York State Department of Transportation will be a significant step toward rebuilding and modernizing New York's state and local transportation infrastructure, creating jobs and sustaining economic development. For each $1 billion invested in infrastructure, some 28,000 jobs are created or supported. The entire system of roads and bridges requires a long-term commitment to ensure that the needs of our ailing infrastructure are met.

The unprecedented coalition of organizations signatory to this letter represent diverse industries and constituencies, and from time to time have been known to differ on issues. On the matter of infrastructure, however, we are united because all of us recognize that our economy and communities cannot function without safe and reliable infrastructure. Simply put, New York cannot be open for business if our roads and bridges are closed.

Infrastructure is literally the lifeblood of our communities. We rely upon it for our farmers to get their goods to market and for customers to get to our businesses. We count on it to get our kids safely to and from school—or our loved ones to a hospital in the event of an emergency. Modern infrastructure in a state of good repair is safer and decreases costs on motorists. The highly respected national transportation research organization TRIP last year reported, "additional vehicle operating costs borne by New York motorists as a result of poor road conditions is $6.3 billion annually." Better infrastructure is also better for the environment as it reduces excess motor fuel consumption that results from delays, congestion and detours. And, as we saw so clearly in the extreme weather events such as Sandy, Irene and Lee, which have become more common of late in New York, newer infrastructure in a better state of repair is far more resilient.

The agreement you achieved to fund the MTA Capital Program presents a once in a generation opportunity to also meet the needs of the rest of New York's transportation infrastructure. We are confident that your leadership can make that happen and look forward to working with you and your Administration to get it done.

Sincerely,

John A. Corlett
Legislative Committee Chairman, AAA

Michael J. Elmendorf II
President & CEO, AGC NYS

Dottie Gallagher-Cohen
President & CEO, Buffalo Niagara Partnership

Heather Briccetti
President & CEO, The Business Council of New York State, Inc.

Robert M. Simpson
President, CenterState CEO

Joseph W. Benedict Jr.
Executive Director, Construction Exchange of Buffalo and Western New York

Jay J. Simson
President, ACEC New York

Mark Egan
CEO, Capital Region Chamber of Commerce

Matthew Pepe
Building Contractors Association

David Haines
Regional Manager, Northeast Regional Council of Carpenters

Ross Pepe
President, Construction Industry Council

Gary Hill
Vice-Chairman, Fair Apportionment of Infrastructure Revenue

Denise M Richardson

Denise Richardson
Executive Director, General Contractors Association

Thomas Halligan

Thomas Halligan
Ironworkers Local 6

Scott M. Brydges

Scott M. Brydges
Business Manager, Ironworkers Local 9

William H. Eggleston

William H. Eggleston III
Ironworkers Local 12

Alan Swanson
Ironworkers Local 33

Gary E. Robb

Gary Rob
Ironworkers Local 60

Tom Thomas
Business Manager, Ironworkers Local 440

John Gorcznski
President, Upstate Ironworker Employers Association

William Shannon
Business Manager, Upstate New York Laborers' District Council

Marc Herbst
Executive Director, Long Island Contractors Association

Randy Wolken

Randy Wolken
President & CEO, The Manufacturers Association of Central New York

Samuel M. Fresina
Business Manager, Eastern New York Laborers' District Council

Kendra Hems

Kendra Hems
President, New York State Motor Truck Association

Mike Durant
State Director/New York, National Federation of Independent Business

Garry Douglas
North Country Chamber of Commerce

Dean E. Norton
President, New York Farm Bureau

David S. Hamling
President & CEO, New York Construction Materials Association, Inc.

James Cahill
President, New York State Building and Construction Trades Council

Peter A. Baynes
Executive Director, New York State Conference of Mayors

Stephen J. Acquario
Executive Director, New York State Association of Counties

Kevin S. Corbett
Chairman, New York State League of Conservation Voters

New York Roadway Improvement Coalition

Brian McMahon
Executive Director, New York State Economic Development Council

Tim Kremer
Executive Director, New York State School Boards Association

Jeffrey Griswold
President, New York State Association of Town Superintendents of Highways

Kevin P. O'Brien
President, New York State County Highway Superintendents Association

Gerald K. Geist
Executive Director, Association of Towns of the State of New York

Daniel McGraw
President, New York State Conference of Operating Engineers

Chris Wiest
Vice President, Public Policy and Advocacy
Rochester Business Alliance

Beth Ann Smith
American Society of Civil Engineers

Unshackle Upstate

John Ravitz
Executive Vice President/COO,
The Business Council of Westchester

Gib Gagnon
Chairman, Rebuild NY Now

William Mooney
CEO, Westchester County Association