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## ■ BRIEFING PAPER

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# The Business Council Growth Agenda

An outline of economic policies to create private-sector jobs and help revitalize New York's economy



The Business Council of New York State, Inc., is the primary advocacy group for business in New York State, supported by more than 3,000 Business Council members and their approximately 1 million employees. We serve our members' interests, and promote the economic health of the state of New York, by:

- ◆ Representing the business community before the legislative and executive branches of New York State government.
- ◆ Providing information on the state's economic needs to the news media, opinion leaders, and a wide segment of the general public.
- ◆ Helping our members understand and deal with state government policies and programs that will have an impact on their businesses.

September – 2010

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New York companies are incorporated under the laws of Delaware, which provides clear and consistent standards regarding corporate governance.

## CONCLUSION

2011 will bring a new Administration to Albany and a new opportunity shape the future of New York State.

Unfortunately, the state's daunting fiscal problems will continue into the next Administration. Until they are addressed head on, the new Governor's ability to launch other policy initiatives will be limited. Reducing spending and taxes, and achieving long term fiscal stability for the state, is job one.

Fiscal stability over the long term is a key component in any effort to improve the state's business climate. It is crucial for the state to become more competitive and more attractive for private investment, so we can assure that the state will participate fully in the national economic recovery.

In this plan, we attempt to focus on issues that we know are of priority to our large, and diverse membership, and offer practical, implementable solutions to some of the state's more pressing problems.

We greatly appreciate the opportunity to share the viewpoints and concerns of importance to The Business Council and our members across the state.

We welcome the opportunity to follow up with candidates for elected office on any issue addressed in this plan, and we look forward to working with the new Administration and Legislature in 2011 to restore the economic strength of the Empire State.

and rising taxes which limit the types of financing available. The federal and state government's inability to enact fully funded infrastructure capital plans threatens the viability of New York's economy.

Rebuilding New York's aging infrastructure requires alternatives to the standard approach of financing, constructing and operating our transportation system. The global financial crisis and environmental concerns have created the perfect storm for private transportation infrastructure investment.

The growing use of public-private partnerships for infrastructure projects in the United States and across the globe demonstrates a sensible alternative to traditional funding and procurement. Carefully crafted public-private partnerships would help to reduce additional transportation taxes; reduce the State's reliance on borrowing; adapt to a changing global economy; and create jobs.

## CORPORATE GOVERNANCE

New York has long been considered a prime "headquarters state," and in past years the state took specific action designed to encourage business to locate and maintain corporate offices in New York, (e.g. the 1945 corporate tax reform act).

In 2005 there were 602 stand-alone headquarter operations for major companies in the city of New York, and, according to Fortune magazine, 56 of the 500 U.S. corporations with the largest revenues in 2009 had headquarters in the state, including 42 headquartered in New York City. The economic benefit of the presence of these companies in New York is manifested in jobs, income tax revenue, increased economic activity, business tax revenue, local property tax revenue and more.

There is renewed interest in corporate governance issues since the passage of the Sarbanes-Oxley Act in 2002. It is critical that the State take great care to balance the well-intended desire to restore public confidence in corporate governance against creating a structure that makes New York State uncompetitive with other states.

In recent legislative sessions, bills were introduced which would place additional undue burdens on corporations formed under the laws of New York State, including bills which would:

- ◆ Require that corporations obtain approval of a majority of shareholders before making any political donations or expenditures on communications intended to encourage the public to contact a government official regarding legislation, public policy, or regulations.
- ◆ Mandate that every corporation whose shares are traded on a stock exchange or in the over-the-counter market adopt onerous and costly measures to provide shareholders not physically present at a shareholders' meeting an opportunity to participate or cast proxies via remote electronic communication.

The Business Council has consistently argued that New York State should develop corporate law that makes incorporation under New York State more attractive. Currently, the vast majority of

## INTRODUCTION

New York State's budget continues to grow at unsustainable levels. Spending growth coupled with a continuing economic downturn has resulted in massive, multi-billion dollar state budget deficits. During a time of declining employment and personal income, New York has imposed more than \$10 billion in new taxes and fees on its slumping economy over the past two years. New York has adopted new taxes on payrolls, new taxes on health care and health insurance, new taxes on our vital financial services industry, new assessments on already high cost energy supplies, and has taken away already-earned tax incentives for job creation and investments.

In short, even as New York continues its long record of underperforming the nation in terms of job creation and new investment, its budget and policy actions have produced an even less competitive economic climate.

The state desperately needs to bring its financial house in order to provide broad-based tax relief, and needs to adopt policies and programs that promote private sector reinvestment in key growth sectors that result in new jobs and new opportunities for all New Yorkers.

Improving the state's economic competitiveness is the only real mechanism for restoring the Empire State. Sustainable economic growth will provide revenues necessary to finance essential government functions, and allow the state to re-invest in areas crucial to supporting private sector investment: transportation infrastructure, higher education and others.

A new Administration in Albany brings with it an incredible opportunity for establishing a new direction for New York State on fiscal reform, tax reform and other major public policy issues.

In the following pages, we present a comprehensive and achievable plan to reform and restructure state and local government financing, and make the state more attractive for investment, job creation and economic growth. These recommendations address issues of priority concern to Business Council members.

We urge all statewide candidates to support this blueprint for restoring New York's private sector economy and its governmental finances.

On behalf of the 3,000 private sector employers that we represent, we look forward to working with you on this agenda.

***The state must adopt significant fiscal reform and spending reductions in order to overcome the state's enormous structural deficits.***

## FISCAL REFORM

*The New York State budget has increased more than \$30 billion in the last five years, and even with significant tax increases, the state is looking at upwards of \$40 billion in structural deficits over the next 3 years .*

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The Business Council believes that basic fiscal reforms are essential to returning the state's budget to a sustainable level and putting New York back on the path to economic growth and jobs.

Some of the following recommendations are designed to drive short-term savings for the state; some are longer-term solutions. However, we believe they are all part of a necessary, comprehensive fiscal reform plan for Albany.

### Cap Property Taxes

Local property taxes in New York are 59 percent above the national average. When property taxes are measured as a percentage of home value, 15 of the 25 highest taxed counties in the US are in New York State. New York must adopt a property tax cap to control and ultimately lower all property taxes.

To be effective, a property tax cap must have two key features: it must apply to all local taxing jurisdictions, and it must apply to all categories of real property. So-called "circuit breakers" and reliance on STAR are not solutions, as they merely shift the cost of property tax payments from local to state taxpayers. A hard cap on all types of property taxes is essential.

To help make a cap "workable" at the local level, the state government mandates imposed on local government must be reduced, and further consolidation of local governmental entities and services needs to be achieved.

### Cap State Spending

Over the last decade Albany has increased spending at more than twice the rate of inflation. Our current state budget would be at least \$18 billion smaller - and there would be no deficit - if the state had just kept spending hikes within the rate of inflation during this period. We need a cap to limit annual increases in state spending.

As an immediate step, the Administration should propose a FY 2011-12 budget at the FY 2009-10 expenditure levels.

For long term budget stability, the state should adopt a spending cap at a level that is realistic and related to inflation and performance-based analysis.

if the worker is at fault – for example, if the worker refused to use safety equipment or was impaired by drugs or alcohol. No other state maintains such a law.

- ◆ Adopt limits on the size of appeal bonds. A cap on the amount of an appeal bond would help companies facing potentially bankrupting judgments to post a bond without being forced to settle a case or declare bankruptcy in order to appeal.

## TELECOMMUNICATIONS

Telecommunications, with innovative new services and expanded service areas, is the new economic infrastructure of the 21<sup>st</sup> century. It is essential that New York adopt policies to promote continued private sector reinvestment in its telecom network investments that will help make New York's economy more competitive.

As is too often the case in New York, the state's policy initiatives for this sector focus on new regulations, new restrictions and new and expanded taxes, rather than the promotion of new investment.

The state needs to resist new, state-level regulatory schemes, such as imposing so-called "net neutrality" requirements on broadband services, new restrictions on the Public Service Commission's ability to approve telecom mergers, mandates on business practices such as the provision of call center services, and others.

The telecom industry has become increasingly competitive and innovative, largely due to the hands-off approach taken by all levels of government. Now is not the time to begin imposing state-specific regulations on telecom and internet services restrictions that would only inhibit investment and innovation.

## CONSTRUCTION AND TRANSPORTATION

New York's vast but aging transportation infrastructure is a key economic asset. Roads, bridges, ports, airports and railroads are critical for the goods and services, workforce, tourism, and other trade that drive our diverse economy.

New York's aging transportation infrastructure is at a critical crossroads. Roads, bridges, ports, airports, railroads and public facilities require massive investments from the state and federal government for continued maintenance, reconstruction and modernization to ensure the efficient flow of goods, services and employees. In addition, we cannot overlook investments for energy distribution, telecommunications, water treatment and other economic assets.

The enormous task of rebuilding New York's aging infrastructure is juxtaposed with a sluggish economy, burdensome state laws and regulations, already unsustainable state spending levels

insurers to write insurance without filing policy forms and rates; establishing special license privileges; and defining and setting standards for a "large commercial insured."

## LEGAL REFORM

New York's legal environment consistently ranks as one of the worst in the nation.

According to a 2009 report commissioned by New Yorkers for Lawsuit Reform, New York's legal system is the second most costly in the country and is costing taxpayers millions of dollars through higher taxes and increased costs for goods, insurance and health care.

New York needs meaningful legal reform that respects the rights of all parties and helps reduce the state's hidden "lawsuit tax."

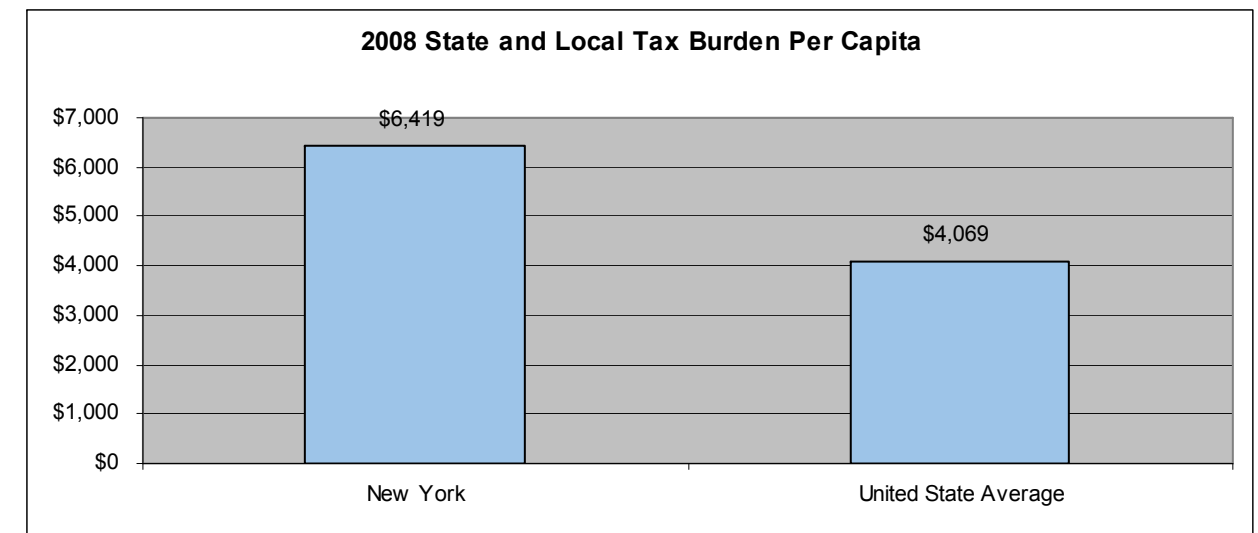
Rank State Losses	(billions of 2006 dollars)
1 California	\$19.88564164
2 New York	\$16.03554678
3 Florida	\$13.15094423
4 Texas	\$11.11467106
5 Illinois	\$8.37955028
6 New Jersey	\$8.09960781
7 Pennsylvania	\$7.56788353
8 Michigan	\$5.24460051
9 Ohio	\$4.93084065
10 Georgia	\$4.91344419

### Key Issues

- ◆ Adopt legal reforms such a \$250,000 cap on non-economic damages and the creation of health courts. The Legislature must enact these reforms to lower health care costs, increase access to obstetric and other health care services, limit defensive medicine, and stop doctors from leaving to practice in other states. In 2010, the New York State Insurance Department increased medical malpractice insurance rates by an average of five percent.
- ◆ Adopt a comparative negligence standard to be used for actions brought under Labor Law Section 240/241. Sections 240 and 241 of New York's Labor Law, which date back to the late 1800s, provide that if a worker is injured on the job as a result of falling from a certain height, or being hit with something that falls from a certain height, the owner and the contractor are absolutely liable. This is true even

## Reduce the Tax Burden

The burden of state and local taxes simply makes New York uncompetitive. Study after study show New York with among the highest combined state and local tax burdens. With such high taxes we are losing residents, businesses and jobs to other states. New York State needs to reduce its real property taxes, reduce its marginal personal income tax rates – which affect both residents and small businesses. It needs to reduce taxes, fees and assessments on energy. It needs to reduce taxes imposed on key business sectors such as financial services.



## Reform Public Employee Pensions

Pension costs are an increasing, and an increasingly unaffordable, share of state and local government budgets.

The state 2010-2011 budget includes approximately \$1.5 billion as the state's contribution to the retirement funds on behalf of its workforce, an increase of \$552 million from the prior year. The State Financial Plan projects the state's pension contribution rate as a percentage of salary to grow from 12.1 percent in FY 2011 to 23.5 percent in FY 2014.

In 2009, a new pension tier with reduced benefits was created for newly hired public employees - called Tier V. But more must be done to control public employee pension costs.

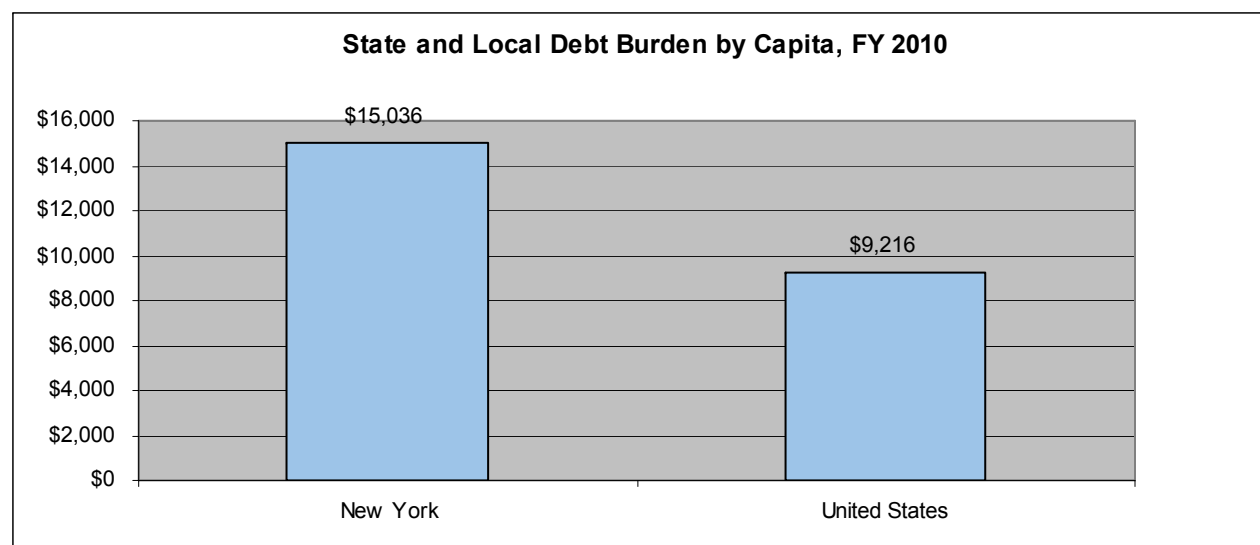
Since the state Constitution guarantees pension benefits for current employees, pension reform needs to be understood as a strategy that will impact state and local finances for the next generation of government workers and taxpayers, not current workers and taxpayers.

A minimum step would be to implement a new tier (VI) of the current pension system model which reinstates the employee contribution of 3 percent, lengthens the number of years of service required to reach maximum benefit levels, and makes other changes to limit the cost of the benefits to be provided.

For the long term, New York needs to consider alternative approaches for public sector pensions, and adopt plans more comparable to what is typically provided in the private sector. This would mean a shift to defined contribution plans, like a 401Ks, rather than defined benefit plans, for future hires in the public workforce.

### Limit Government Borrowing

New York State and local government debt has grown by 32 percent in the past five years. Our state and local debt per-capita is nearly double the national average. Increasingly, state and local officials borrow money in order to pay operating expenses. Government debt should only be issued to finance capital needs. New York should strictly prohibit government borrowing to pay state and local operating expenses.



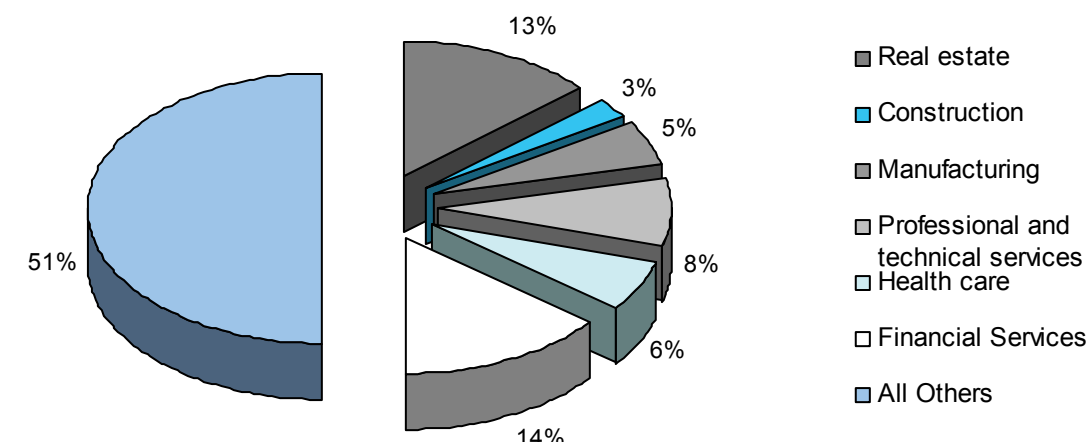
Further, the state should build on the 2000 debt reform legislation to, among other things, place a hard limit on state-funded debt to a fixed percent of New Yorkers' personal income.

### Performance-Based Budgeting

New York's budget process is an incremental one. Each year, the process builds off of prior year spending, resulting in ever increasing overall budget figures. The result is a spiral of spending that usually outpaces inflation and revenue growth, resulting in the current crisis.

Performance-based budgeting is a tool for improved expenditure prioritization — that is, helping to shift limited public resources to the services of greatest benefit. This type of performance budgeting must be tied to core missions and will only work if the budget process is fundamentally changed so that the Executive and Legislature systematically consider expenditure priorities when formulating the budget. This means more than just considering the priorities for new spending. It also requires having mechanisms to systematically review existing spending programs to identify ineffective and low priority programs that could be cut.

GSP percentage for 6 sectors, 2008 GSP



Despite the importance of this industry, the state continues to impose punitive new taxes, mandates and restrictions on the financial services sector, eroding the competitive climate for these key businesses and jobs.

In 2010, the New York State Legislature introduced no fewer than 94 bills and resolutions aimed at punishing Wall Street for the effects of the current recession. These proposals included increased business taxes, new taxes on Wall Street bonuses, regulations restricting or adding costs to specific financial services activities, and more.

The new Administration and Legislature has to recognize that New York is in an intense global competition to maintain its position of "Financial Capital of the World." Keeping that leadership role will require a cooperative spirit that places New York's international status and promise at the constant forefront of policy discussions.

### Key Issues

- ◆ The state should table its numerous "reform" proposals at the state level until financial services reform at the federal level is fully implemented, and there has been ample time to understand its effects in New York.
- ◆ The state must avoid imposing new or expanded state or local taxes on the sector's firms or its employees.
- ◆ New York State should repeal the stock transfer tax, which currently is collected and immediately rebated back to the taxpayer. To remove this administrative burden would send a message that the state will not look to retain the tax proceeds every time there is an economic downturn or more government spending is proposed.
- ◆ The state should reject proposals to subject publicly traded companies to the provisions of New York's broad Martin Act.
- ◆ The state should adopt legislation to modernize the regulation of commercial insurance markets in New York State. The key to modernization is permitting qualified

*The state also needs to avoid imposing new, unnecessary procedural obstacles to new investment in the state.*

Unfortunately, through administrative actions, the state has been trying to limit participation in the brownfield program by denying approval to clearly contaminated sites. Through legislative actions, the state has been pulling back on redevelopment tax credits, including a 2010 change that reduces tax credits available to businesses *already accepted* into the brownfield program – putting into jeopardy over \$20 billion in proposed cleanup and development projects.

An effective, workable brownfield program is an essential tool for meeting the state’s urban redevelopment and “smart growth” objectives, and the state must stop imposing new hurdles for brownfield developers.

The state also needs to avoid imposing new, unnecessary procedural obstacles to new investment in the state. These include proposals to dramatically expand the definition of, and state regulation of, small wetlands; and broad proposals to subject projects to lengthy “essential habitat” reviews and permitting. These proposals are layered upon already existing wetlands and SEQRA requirements that provide adequate protection for environmental resources.

### Natural Gas Exploration

New York has a long history in natural gas production. Some of the first natural gas wells were drilled in the early 1800’s near Fredonia. New York drilling companies drill approximately 1,000 wells each year in New York.

Marcellus production will yield extensive new job opportunities, provide increased state and local tax collections, boost local economies, and provide long-term growth particularly to the Southern Tier, an area in desperate need of economic growth.

We support reasonable and appropriate environmental safeguards that allow for timely development of the Marcellus shale formation. We encourage the Department of Environmental Conservation to finalize its drilling regulations and begin permitting wells and policing New York’s production operations.

### FINANCIAL SERVICES

The financial services industry is New York’s largest sector in terms of its contribution to New York’s gross state product (GSP) and total payroll. The sector is composed of companies that engage in financial transactions, including the creation, liquidation or alteration of financial assets, or are involved in the facilitation of such transactions. Covered firms include traditional banking firms, investment banks and security firms, mutual funds, stock and commodity exchanges, insurance companies and trust and other financial instrument and asset managers. In 2008 the financial sector directly contributed \$187.2 billion or 14 percent toward New York’s \$1.145 trillion economic output, making it the largest single driver of New York’s GSP.

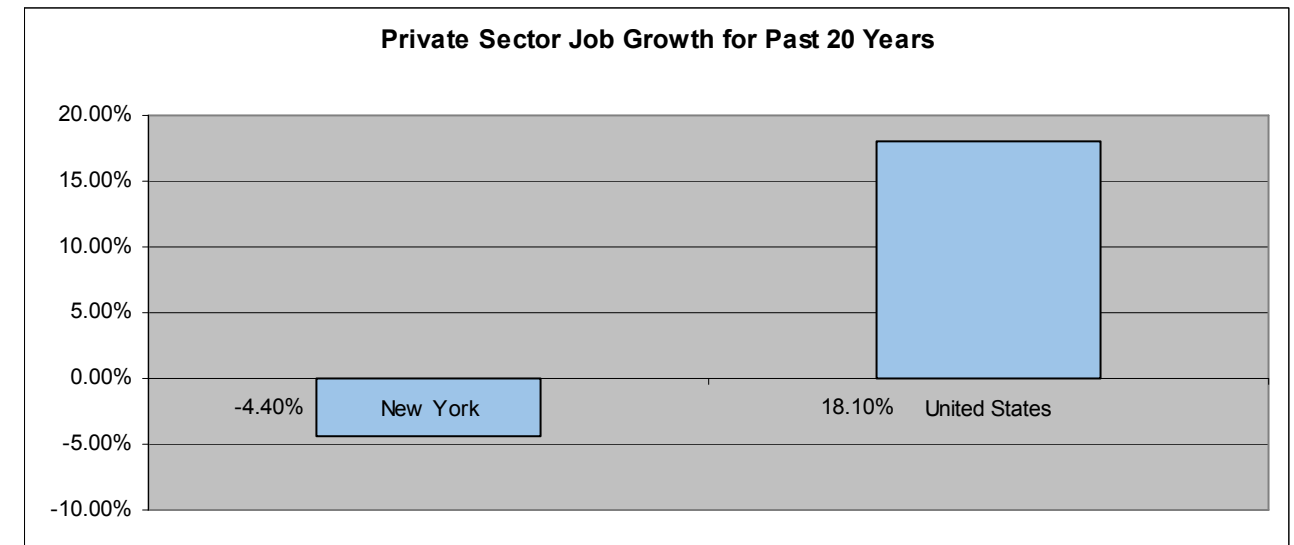
In the short term, the state needs to identify areas where agencies are duplicating efforts and streamline those functions. Likewise, state agencies need to define their core mission and shed programs that do not advance that mission.

Longer term, the Administration should require state agencies to submit goals and objectives to execute their core mission with their annual budget request, and tie the funding to performance criteria.

As a transition step, agencies should submit a “zero base” budget for FY 2011-12, which forces an explanation of each budgetary request, permitting only existing contractual costs (i.e., collective bargaining agreements) to be carried over from the prior year. By doing so, the executive could more effectively determine which functions are critical to the core mission of the agencies, and eliminate programs that stray from that mission until such time as the state is in a more stable financial condition.

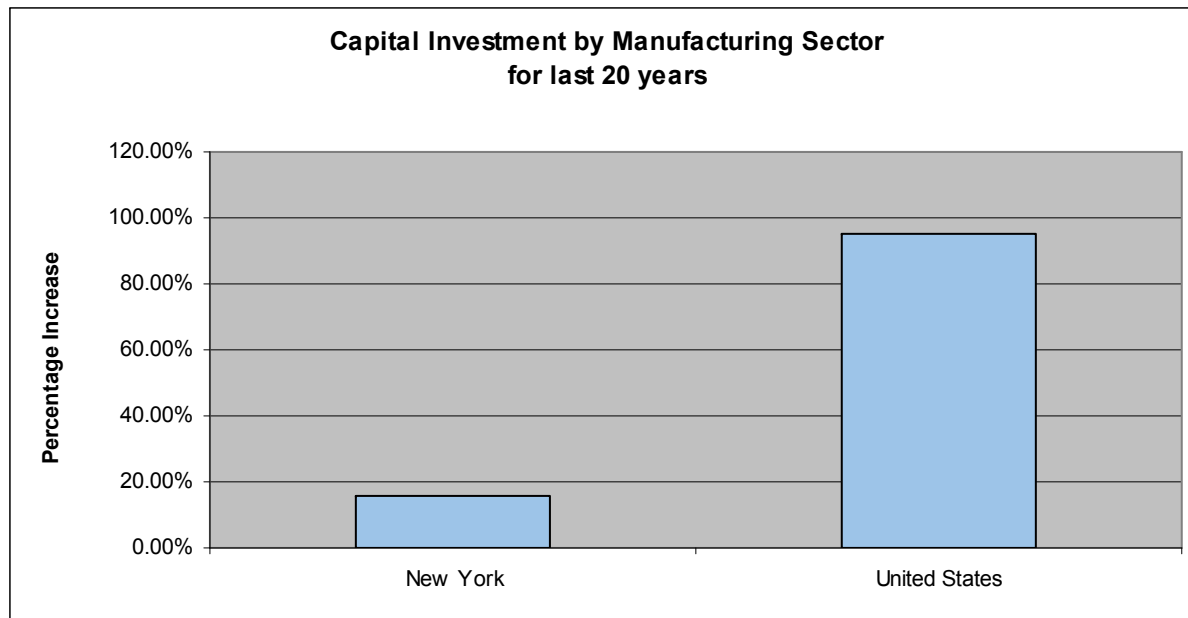
### ECONOMIC DEVELOPMENT/ECONOMIC CLIMATE

New York’s job growth and levels of capital investment have lagged behind national trends for the past two decades. New York grew at about half the national rate during the 1990’s, about 60 percent of the national rate in the 2000’s. Too many New Yorkers, especially the young and well educated, continue to leave for better job opportunities in other states. New York’s high cost-of-doing business – taxes, especially real property taxes; energy costs, health care costs and others – discourage new investments by existing business, smother entrepreneurs and limit the creation of new businesses and new jobs in emerging technology sectors.



Because of our weak competitive position, New York has lagged significantly behind national trends in recovering from the last two recessions. We need to become more competitive, not less, in order to fully participate in the eventual national economic recovery.

We believe that the most effective economic development program would be a more competitive business climate. We need to control state-imposed cost mandates on employers, reduce the cost of energy, and lower real property taxes.



Recognizing that these types of major business climate improvements will take time, we also believe the state needs to continue to offer effective, efficient economic incentive programs that target strategic industries and that produce significant returns on the state's "investment."

Key approaches include the following:

### Improved Business Climate

*Property taxes represent the largest, and - when compared to other states - the most disproportionate tax imposed on New York's business sector.*

Focus on, and establish metrics for, improvements in overall business climate and reductions in broad cost of doing business factors, in addition to targeted development incentives. Over the past several years, there has been significant focus on certain state economic development programs, especially the Empire Zones program, in order to evaluate their efficiency and effectiveness - whether programs like Empire Zones do enough to create jobs and whether the economic benefits to the state outweigh their cost.

However, incentive programs by nature can only affect a small fraction of the state's businesses. Unfortunately, despite this recent focus on incentive programs, little attention has been paid to the overall competitiveness of the state's economic climate, and/or whether - and to what extent - the myriad of legislative actions help or hurt the private sector's ability to invest capital and create or retain jobs in New York.

While the state needs economic incentive programs that focus on strategic industry sectors, the next Governor needs to promote an overall more competitive business climate, by reducing state-imposed costs - including taxes, fees, mandates and restrictions. Moreover, the next Governor should continuously evaluate the state's business cost structure, and evalu-

nesses and manufacturers, including those in New York, could follow. New York should work with the federal government and take advantage of its resources in addressing issues of importance to the state in terms of chemical regulation.

### Expanded Private Rights of Action

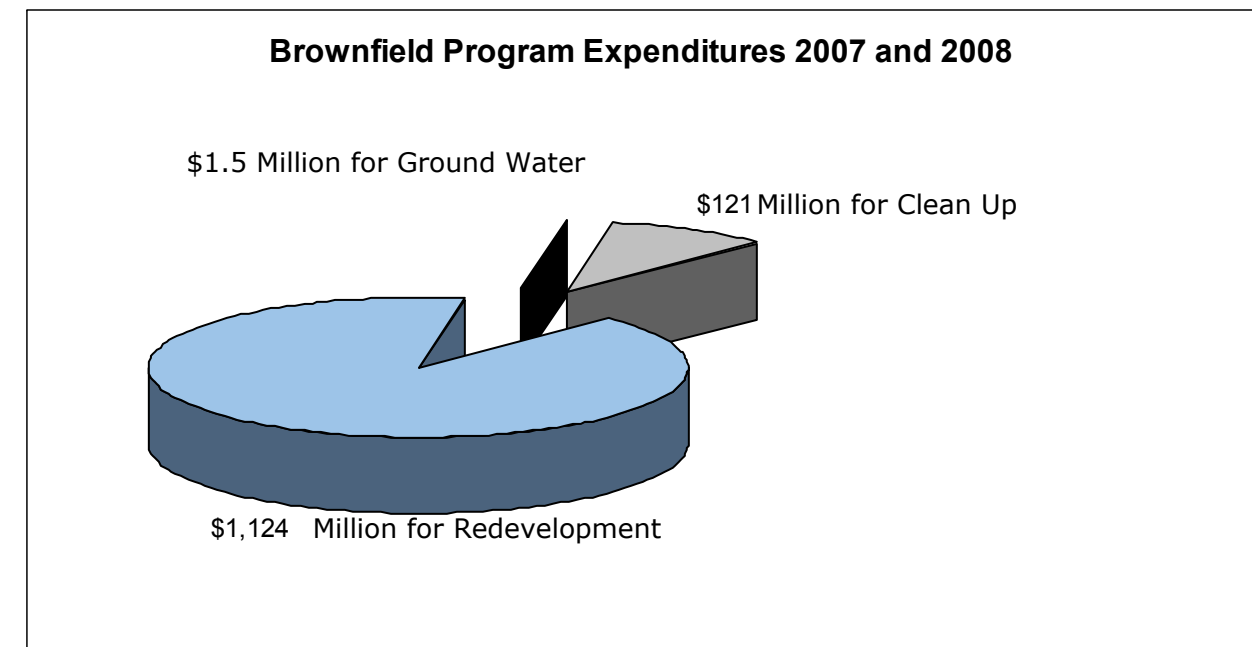
The Business Council opposes legislation which would allow for expanded standing and private "citizen suits" to be brought in response to alleged violations of SEQRA and the Environmental Conservation Law. We believe that these types of bills will not significantly enhance environmental protection in New York, and are simply unnecessary given the significant enforcement authority and resources available to the Department of Environmental Conservation and the Office of the Attorney General.

Looking at recent experience in New York, citizen suit filings are mostly influenced by easily accessible data, or the ability to recover legal costs, rather than the significance of possible environmental violations, or the lack of effective state enforcement. Few cases are brought to address environmental issues that are not already being addressed, or that have already been addressed, through actions by the Department of Environmental Conservation.

The Business Council believes that private rights of action will result in more meritless suits, and more suits regarding insignificant violations, but no real improvements in environmental quality.

### Remediation and Development

Despite its arduous procedural requirements, the state's brownfield program has been a tremendous success, supporting more than \$1.25 billion in new capital investments in New York, bringing back into productive use urban sites that have sat contaminated and unused for decades.



This regulatory climate imposes costs and operational restrictions on business that impede economic development projects and discourage new investments and jobs in New York State.

In developing environmental policies and regulations, the new Administration needs to consider both incremental benefits and new costs, and look for solutions that are economically efficient as well as environmentally effective, and that allow flexibility in how regulated business achieve new compliance standards.

This approach is consistent with the state's environmental policy as set forth in the Environmental Conservation Law, to not only to conserve, improve and protect its natural resources and environment but to also create and maintain conditions that help "achieve social, economic and technological progress."

### Climate Change

New York is already among the most energy and carbon-efficient states, a result of our fuel mix for electric power generation, including significant nuclear and hydro capacity; downstate's extensive mass transit system; as well as our regulatory structure and incentive programs that restrict emissions and promote efficiency.

The Business Council supports a workable Climate Action Plan that sets reasonable, cost-effective emissions reduction goals and strategies based on consideration of emission impacts and compliance costs. This process was set in motion with Executive Order 24, and its final report is due out this fall. We expect it to provide the next Administration with reasoned alternatives for additional carbon reduction measures.

New York should also continue to participate in the national debate on a federal carbon program that will result in both more meaningful emission reductions and a more level regulatory environment for in-state business.

The Business Council believes that recent legislative proposals for state-specific, economy-wide greenhouse gas emission reduction mandates will have insignificant impact on global carbon emissions yet put the state at additional economic disadvantage compared to other states and nations. Moreover, stringent, single state carbon limits will have the effect of shifting activity from New York to other jurisdictions, further limiting the impact of such mandates on actual greenhouse gas emissions.

### Chemical Regulation

The Business Council is concerned with any legislation that imposes state specific chemical use bans and restrictions. Regulation of chemicals in interstate and international commerce is more appropriately done at the federal level, rather than having individual states impose inconsistent, and at times unwarranted, standards for chemical and product safety.

New York should allow Congress to continue its review and reform of the federal Toxic Substances Control Act (TSCA) and EPA's completion of its designated chemical action plans. This would provide a sound, national statutory and regulatory system that all busi-

ate legislative initiatives as to their impact on the state's business climate.

### Power for Jobs and Energy Cost Savings Benefit Program

It is critical that the state adopt a new, permanent, statewide economic development power program. More than twenty other business and economic development organizations from across the state have endorsed the "Energize New York" proposal, which was the result of negotiations between the Paterson administration and the State Senate, and which passed the Senate with broad, bipartisan support (vote of 59 to 2).

This legislation includes key provisions necessary to support high paying jobs and promote new capital and energy efficiency investments, resulting in significant economic returns to the state, including:

- ◆ A 910 MW program that will give the state more economic development power resources than are available under expiring programs, that can accommodate new program participants statewide.
- ◆ Allocation-based power benefits and long-term contracts of up to seven years that will provide competitive, stable electric power prices to energy intensive businesses.
- ◆ Eligibility criteria that assure significant, long-term economic return to the state, including the number and value (wages and benefits) of jobs created and retained, investments in capital equipment and energy efficiency, the significance of energy costs to a business' competitiveness, and the local economic significance of the facility.

### Excelsior Program

While we support several key components of the Excelsior program, including its sector focus, its statewide applicability and its investment-based eligibility criteria, we believe its incentive structure is too limited to provide the level of incentive necessary to encourage major new projects in New York State.

Most importantly, we would urge the next Governor and Legislature to adopt legislation improving Excelsior's real property tax credit, changing the basis of the credit from pre-program application tax payments to tax payments based on the improved value of a site; allowing for credits of up to 100 percent of the taxes imposed on the improved value; and allowing for credits of up to ten years, with a credit phase out similar to that in the final version of Empire Zones.

We also believe that the annual cap of \$50 million on new tax credits under the program is inadequate for a broad, statewide program. The Excelsior cap should be increased to \$100 million per year, and any unallocated cap recourses in a given year should be made avail-

*We would urge the next Governor and Legislature to adopt legislation improving Excelsior's real property tax credit, changing the basis of the credit from pre-program application tax payments to tax payments based on the improved value of a site.*

able in the subsequent year. Other modifications include more clear eligibility criteria, and elimination of the requirement that an Excelsior applicant permanently decertify from the Empire Zone program if admitted into Excelsior.

### “Qualified Emerging Technology Company” Investment Credit

*New York can and should do more to promote research and development investments within its existing business community.*

We agree with the need to promote investment in new businesses in emerging technology sectors, and we believe that the state’s existing QETC – qualified emerging technology company – tax credit is a valuable tool for supporting investment and growth in nanotechnology, life science, clean energy and other emerging sectors.

To become more competitive in fostering these business sectors, we support both extension and expansion of this innovation incentive by:

- ◆ Increasing revenue eligibility threshold from \$20 million to \$40 million.
- ◆ Increasing the credit for investment in R&D property from 18 to 30 percent.
- ◆ Increasing the credit for “qualified research expenses” from 9 to 15 percent.

### Research and Development Investment Tax Credit

There is broad agreement that continual investment in research and development is key to promoting future economic growth. The Business Council believes that New York can and should do more to promote research and development investments within its existing business community. Specifically, we recommend adoption of a new, refundable R&D tax credit of 15% for investments in R&D property and 7.5% for “qualified research expenses” such as in-house research and processes; the preparation and submission of patent applications; and other expenses directly related to R&D efforts.

### Industrial Development Agencies

Local industrial development agencies (IDA) have proven to be one of the state’s most effective, efficient economic development tools, supporting large, mid-sized and smaller investment projects deemed to be strategically important at the local level. Unfortunately, recent legislative efforts threaten to greatly reduce the ability of IDAs to support new investments in New York State.

The next Governor must support the role of IDAs in the state’s economic development “toolbox,” and reject proposals to impose new wage mandates on IDA-assisted projects. The Business Council has shown that increased costs that would result from proposed construction and building service prevailing wage mandates will outweigh the financing and tax abatement benefits available through IDAs.

### Medicaid Spending

New York’s Medicaid spending exceeds that of any other state. We spend 22 percent more than California, which has almost twice as many people and more than twice the national average on a per capita basis.

“Cutting Medicaid spending” and “reducing reimbursement rates to hospitals and nursing homes” are not solutions to the underlying problem. New York’s spending problem with Medicaid is long and well-documented. This calls for a New York solution to a New York problem. The solvency of Medicaid cannot continue to be borne by New Yorkers through taxes on private health insurance, and through General Fund revenues, without a critical look at the delivery system and the menu of services provided to identify real efficiencies. A program of this size and scale compels serious review of the results, not just the spending. What is often lacking from the public policy dialog on Medicaid is an accountability analysis to evaluate where effective spending on particular services is achieving better health care outcomes. It is time to turn the tables and bring heightened scrutiny to solutions that retain the integrity of Medicaid with a critical eye toward targeting investments toward results.

### TOP 5 STATES IN TOTAL MEDICAID SPENDING FY 2008

State	Total medicaid spending	Population	Spending per capita
NY	\$47,618,463,035	19,490,297	\$2,443
CA	\$38,747,885,430	36,756,666	\$1,054
TX	\$21,461,296,293	24,326,974	\$882
PA	\$16,299,966,377	12,448,279	\$1,309
FL	\$14,690,880,444	18,328,340	\$802
US	\$338,791,482,443	301,621,157	\$1,123.24

### ENVIRONMENT

New York is seen as having a stringent environmental regulatory climate. The state often exceeds the scope and requirements of the federal environmental laws and regulations it is charged with implementing, adopts state-specific mandates and restrictions, and is ahead of the nation on some major regulatory initiatives (e.g., New York spearheaded the regional CO2 cap and trade program.)

Business supports environmental regulations that are necessary to protect environmental resources and public health and maintain a high quality of life in New York. But New York State often displays a regulatory mindset in which “more stringent” is always the right approach, regardless of existing federal and state requirements, the marginal environmental or public health benefit to be achieved or the increased cost of compliance.

## HEALTH AND HEALTH INSURANCE

Among Business Council members, large and small, self-insured or in the commercial market, the rising cost of health care has been their number one concern for the past six years. Even with the United States spending much more on health care than countries with similar kinds of economies, Americans do not see doctors more often, or live longer, healthier lives, according to data from the Organization for Economic Cooperation and Development. Costs need to be examined more closely if we are to ever attain the goal of cost containment of federal health care reform.

If costs can be contained, then there needs to be the political support and will for the tough decisions ahead.

### Health Insurance Coverage Mandates

With the advancement of federal health care reform and the changes this is bringing to the commercial and self-insured products, New York should impose a moratorium on any new coverage mandates.

Existing coverage mandates need to be evaluated in terms of how they align with federal mandates, and whether any form of mandate relief can be considered. The State Department of Health never convened the statutorily-authorized mandate commission, examined closely what is mandated, or what the costs of those mandates are with a commitment toward quality not quantity.

The failure of federal health care reform to “bend the cost curve” means that states and their communities must address increasing premiums and increasing utilization.

Federal and state actions have done nothing to provide meaningful relief to premiums in the community rated/small business market. The time to provide relief to this market is now – health exchanges through federal health care reform may provide access but will not address affordability.

Bundled payments and value-based health approaches in federal health care reform call for community-wide approaches on how to ensure hospitals remain viable. Facilitating those conversations now is essential before this hits crisis proportions.

Health insurance taxes, sales taxes on hospital and nursing home stays, and similar costs imposed by the state on the privately insured in New York total over \$4.1 billions dollars per year. These taxes are not just a burden. They can prove to be the tipping point on whether a business can maintain coverage or not. Public policy should not squeeze the commercial insurance market to sustain the subsidized pool without a full evaluation of the gap subsidized plans are intended to fill, how best public policy should be supporting those subsidized pools, and a measurement on the effectiveness and efficiency of the subsidized pools.

While some additional IDA reforms may be warranted to assure their efficient operation and public transparency, new proposals must be evaluated in context of the recent Public Authorities Reform Act.

### Wine In Grocery Stores

New York should become the thirty-sixth state to allow the sale of wine in grocery stores. This widely supported proposal would result in expanded markets for New York wineries, more choice for consumers and much needed increase in New York State revenues.

## TAXATION

The 2010 Tax Foundation State Tax Index – which measures business and personal income taxes as well as sales, property and UI taxes – has New York’s tax burden as 49<sup>th</sup> among the states, ahead of only New Jersey. Its corporate income tax climate was in the middle of the pack, ranked 22<sup>nd</sup>, but other categories of taxes that impact business and the state’s economic climate were all in the bottom quintile. Given the vastly different approaches taken by these two states in dealing with this year’s budget deficits, New York may well slip to the bottom of the pack in next year’s index.

The Council on State Taxation, in its annual business tax climate study prepared by Ernst and Young, found that only California levied more in total state and local taxes on business than did New York, and New York’s state and local taxes as a share of its gross state produce was exceeded by only ten other states.

Over the past two budget cycles, New York adopted nearly \$10 billion in new taxes, as it attempted to close massive gaps between projected incomes and desired spending levels.

It is crucial that New York bring its tax burden under control in order to repair its economic climate and position itself to compete in a national economic recovery.

- ◆ First, do no more harm. The next Governor must oppose new and increased business taxes, fees, assessments and other adverse “revenue actions” (including deferral of tax credits that have the damaging effects of increasing current year tax liability and diminishing the book value of deferred tax assets.)
- ◆ The next Governor should consider additional business tax reforms that help make New York a more attractive place to invest, create and retain jobs, develop new business, and locate new investments. These include:
  - ◇ Aggressive tax reductions that target key industries and struggling regions. For example, adopt a three year phase out of Article 9-A for taxpayers that are manufacturers. This would be an especially significant reform for upstate regional economies that are typically dependent on their manufacturing sector.

- ◇ Broad business tax reform, including integration of Article 9A (corporate franchise tax) and Article 32 (bank tax) in a way that makes New York State's tax code more competitive, promotes investment in New York, reduces compliance costs and need for extensive audits.
- ◇ Eliminate the corporate franchise tax alternative minimum tax that currently erodes the value of non-refundable investment tax credits.
- ◇ Repeal the \$10 million cap on capital-based corporate income tax liability; this increased cap, adopted as a temporary measure in 2009, and made permanent for all Article 9-A taxpayers in 2010, penalizes businesses with limited net revenues but significant in-state capital.
- ◇ Adopt more reasonable approach to DT&F policy on PIT liability and withholding for employees on temporary assignment in New York State.
- ◇ Oppose new product and/or sector-specific taxes and fees.
- ◇ Oppose increases in PIT as it adversely affects the state's overall business and tax climate and directly impacts business taxpayers, especially small independent businesses including sub-S corporations, LLCs and partnerships.
- ◇ Adopt a cap on all locally imposed real property taxes for all categories of properties/taxpayers. Property taxes represent the largest, and - when compared to other states - the most disproportionate tax imposed on New York's business sector. A property tax cap, imposed on all categories of local taxing jurisdictions (coupled with state mandate relief and further municipal consolidation) is the most effective approach to providing economy-wide relief from the high burden of property taxes.

## LABOR AND EMPLOYMENT

An important aspect of economic recovery is a stable employment regulatory environment and the ability of employers to design pay and benefit programs that fit their industry, size, location, profitability and competitive environment, especially across state and national borders.

At every turn, New York State interferes in the relationship between the state's private employers and their employees and unions. Legislation involving terms and conditions of employment, areas traditionally collectively bargained between private employers and their employee representatives, is routinely introduced and sometimes approved by the Legislature and Governor. The traditional collective bargaining process is ignored. The passage of this type of legislation places state government in a "we know better" anti-business posture. New York State must take affirmative action to shed this label.

The line between the public sector and the private sector is becoming less clear as public sector unions promote employment related legislation that impacts the private sector. This is a role in which they have no standing and New York State should not accept or support it.

ples to stimulate economic development in New York while not jeopardizing the continued viability of the state's existing businesses.

- ◆ Ensure that all existing energy efficiency, demand response, and environmental emissions reduction programs and policies are cost-effective, and evaluate the cumulative impacts of the existing programs and initiatives on system reliability and energy prices.
- ◆ Impose a moratorium on new energy surcharges, levies, and assessments.
- ◆ Balance proposed expansion of environmental restrictions with the impact of such restrictions on the ability of existing business to continue operating and on the attraction of new businesses to the state.
  - ◇ Assure reasonable requirements and flexibility in implementing CWA Section 316-b Water Quality Permits; avoid fixed mandate for "best technology available" for cooling water intakes.
  - ◇ Oppose state-level, economy-wide GHG emission reduction mandates. Instead, assure reasonable, workable Climate Action Plan (currently under development pursuant to Executive Order No. 24; a draft Climate Action Plan is required to be issued by September 30, 2010.)
- ◆ Adopt a fuel-neutral siting law that: provides 12 month, "one-stop" review process with expedited review of re-powering projects; reasonable limits on intervener funding; and that does not include new emission standards.
- ◆ Continue to support competitive electricity markets, with safeguards to ensure efficient and fair pricing for all, continue to examine and implement measures to prevent abuses that harm consumers, and avoid statutorily mandated market changes.
- ◆ Improve coordination between the New York Power Authority, Empire State Development Corporation, New York State Energy Research and Development Authority, public utilities, and regulatory agencies to provide comprehensive incentive/investment packages and consistency in treatment to all developers and manufacturers to remain, expand, or locate in New York.
- ◆ Support relicensing of Indian Point Power Plant, an essential step for maintaining an adequate energy supply downstate and a diversified generating capacity that reduces greenhouse gases.
- ◆ Repeal the recently enacted increase to the Public Service Law 18-a assessment and avoid new energy taxes and assessments.
- ◆ Promote investment in transmission and distribution infrastructure necessary for system reliability; the addition of new renewable sources of generation, and smart grid applications, allowing utilities appropriate, timely and adequate recovery of investments.
- ◆ Support reasonable/appropriate environmental safeguards for timely development of Marcellus shale formation.

## ENERGY

The Business Council encourages the next Governor to support revitalization of the state's economy by making New York's energy costs more competitive. While new sources of power generation and other energy solutions are needed, New York must balance the benefits to be derived by investments in energy efficiency, alternate sources of electricity generation, and infrastructure with the costs of those investments and the burdens they place on New York's businesses and consumers.

<b>2009 New York State and Local Energy Industry Taxation Figures in \$ millions</b>	
Property taxes	\$3,368
Sales and use taxes	822
18-a	695
GRT	654
Alternative energy	569
Franchise and income	212
Environmental fees	38
MTA payroll tax	9
<b>Total state and local taxes</b>	<b>\$6,367</b>

Research done by our Public Policy Institute shows that state imposed taxes, fees and assessments account for more than 25 percent of the cost of electric power in New York State – a total of more than \$6 billion a year – adding to the state's already uncompetitively high energy costs. These include the Energy Efficiency Portfolio Standard, Renewable Portfolio Standard ("RPS"), System Benefits Charge, and increased Public Service Law §18-a assessment. Additionally, the Department of Environmental Conservation has implemented or will implement a host of new regulations that will impact energy costs. These measures include the Regional Greenhouse Gas Initiative, limitations on SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, and mercury; more stringent New Source Review requirements and regulations for cooling water intakes; and a new "policy" on considering GHG emissions and energy use under SEQRA.

The state must reconsider all of these state imposed add-on charges to ensure that only needed cost effective public policy programs and initiatives are added to the state's already high energy costs.

While New York has historically been a national leader in environmental and energy policy, the state needs to be aware of the economic costs imposed by its environmental and energy initiatives.

The Business Council recommends that the new Governor adhere to the following princi-

On the regulatory side, the last few years have seen an increase in legislation proposing and granting the Labor Department increased enforcement authority and increased employer penalties with no demonstration that current enforcement authority is insufficient.

When businesses with multi-state operations decide where capital investments and job expansions will go, our state's legislative and regulatory business environments is a major deterrent.

### Wage Mandates

The new Governor should avoid any mandated wage rates for private sector employees, especially in the area of prevailing wage. There is a recent trend toward classifying certain private service work in the utility industry as work requiring prevailing wage rates even when there is no public funding involved in the work. Prevailing wage requirements for publicly funded work is one thing but prevailing wage requirements for non-publicly funded private industry work is unacceptable.

### Time-off Mandates

There is a growing number of state and local proposals to require private employers to award certain levels of time off to their employees. Proposals exist for mandated time off for school activities, voting, organ donation and sick time as well as proposals on whom to and how to grant time off under employer's existing time off programs. Paid time off programs are and should remain voluntary arrangements between employers and their employees and unions and should be determined in a competitive market environment.

### Paid Family Leave

For over a decade, New York State private employers of fifty or more employees have been required by federal law to provide up to twelve weeks of unpaid leave in certain disability and family care situations. Employees then usually use a variety of their accrued paid time off to continue their income during part of this unpaid leave period. Congress made a deliberate decision years ago to exclude employers of less than fifty employees through an understanding that this mandate would be a significant burden on smaller employers across the country. For years, New York state elected and non-elected officials and organized labor have pushed for a state level twelve week paid leave proposal using our state's statutory disability program. It would apply to all private employers in New York State and affect hundreds of thousands of businesses currently excluded by Congress from the federal family leave program. By using the disability insurance system, it would authorize the payment of disability benefits to non-disabled employees absent from work on family care matters. Such legislation will discourage job creation in New York. Private employers, especially smaller ones, have handled and continue to handle matters of absence for em-

*The new Governor should avoid any mandated wage rates for private sector employees, especially in the area of prevailing wage.*

ployee family care situations based on individual circumstances. It should remain a private matter between the employer and its employees.

## Unemployment Insurance

As the economic recovery continues to lag, the insolvency of New York's unemployment insurance trust fund continues to become a larger problem for New York's employers. As a benefit funded solely through a dedicated employer tax, the solvency of the trust fund needs to be prioritized.

New York employers recognize that benefit levels have not increased in over ten years. Only "Albany as usual" would tie fund solvency to a benefit increase. Bringing the trust fund into solvency and putting it on a more stable footing will require business tax increases for at least the next five years. Many state employers will be hit with significant tax increases, even though they were able to maintain a stable workforce throughout this economic downturn. To hit those same employers with additional tax increases to pay for immediate benefit increases is unreasonable.

Businesses also oppose the indexing of unemployment benefits. Proposals have been advanced which would allow for "automatic" tax increase authority to be granted to the Department of Labor, removing the Executive and Legislature from their role in setting policy and practice. This "automatic" tax authority also removes the incentive to negotiate systemic reforms for a system fully funded by employer taxes.

Finally, unemployment insurance was never intended to act as wage insurance. The model for unemployment insurance has not changed significantly since its inception in the 1930s. It is worth a conversation to discuss new models for unemployment insurance which might include a wage insurance component – and offer the opportunity for employee buy-in. In a few states, unemployment insurance is an employee-employer tax; in most states it is a 100% employer funded tax. Indexing of benefits provides the illusion of wage protection – but in the modern world of work, new models should be explored which maintain a base benefit level but provide employees with the option to provide additional coverage, at employee expense, for some form of "wage insurance."

## Workers' Compensation

Employers remain frustrated by the pace at which the executive agencies implemented the 2007 reforms. The reforms were a much heralded successful negotiation between business and labor which called for sizeable benefit increases and a series of actions which would help to offset the cost of those increases while not diminishing the quality of care to injured workers.

Four straight years of benefit increases have occurred; and benefits are now permanently indexed to increases in the state's average weekly wage. Medical treatment guidelines for only four body parts - guidelines which were a key part of measuring the cost savings to pay for the benefit increase and to help limit friction costs within the system – are just now, almost four years later, coming out of the rulemaking process. Rulemaking on how to evaluate impairment under the 2007 reforms has yet to be published.

Concerns remain over numerous other aspects of how the 2007 reforms have been imple-

mented: the benefits from the pharmacy fee schedule and pharmacy networks have not been fully realized because many believe the rules were so onerous as to limit participation. Procedural issues within the Workers' Compensation Board raise concerns as the number of forms required continues to proliferate, seen by many as nothing more than a way to generate penalty revenue for state coffers.

Workers' Compensation remains a significant cost of doing business in New York State and without a vigilant eye and strong leadership on ensuring that the system remains in balance – that process does not trump outcome – employers and workers will not be well served by a system whose very purpose was to provide seamless care and benefits for those with workplace injuries.

## Workforce Development

New York State's economic competitiveness is inextricably linked to the success of our workforce preparation system: the K-12 education system; the post-secondary education and training system; and the ancillary employment preparation services captured in certificate and non-degree granting programs provided through organizations such as unions, community colleges, BOCES and employers. It is an economic issue when data shows that eight out of ten new jobs will require workforce training or higher education by the end of this decade. And it is an economic issue that efforts to align the services and investments (public and private) have still resulted in a fragmented system with fragmented accountability to both the investors (taxpayers, business and individual) and the end-user (students and workers).

The adoption by the SUNY trustees of a strategic plan which encompasses both a vision and a roadmap on how to leverage the tremendous public investment in SUNY into regional economic development success is an important first step for this statewide asset. For the plan to be realized, however, state elected leaders need to show the political will to allow SUNY campuses the flexibility to enter into public-private partnerships; to align campus objectives with regional economic goals; and along with providing flexibility, compel accountability to ensure the goals are being attained.

New York State is rich in higher education assets – both public and private – and these assets need to be more fully integrated into the overall economic success of our state. Merely graduating students is no longer an acceptable goal; and certainly not acceptable when substantial public investments continue to support higher education. If higher education institutions are to be equal partners in the economic development agendas of their regions, they need to be able to operate with flexible, modern business models. Private higher education institutions across New York State have shown the way for decades on how these public-private partnerships can lead to innovative practices, can better integrate applied learning into the workplace, and can respond to business training needs in real time. Now is the time to allow for this innovation within the public higher education system.

Workforce training, however, is not limited to higher education. A lack of a cohesive vision for the vast public resources across state agencies has perpetuated investments without ensuring those investments are aligned toward state or regional goals. Regardless of the program - these funding sources represent an opportunity to harness the power of a strong vision to provide the best economic opportunity for our citizens, and the best economic climate for businesses to remain viable in New York State.