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TO: Government Affairs Council Members

FROM: Kenneth J. Pokalsky

SUBJECT: Draft 2018 Legislative Advocacy Agenda

DATE: December 7, 2017

The following presents The Business Council's draft Legislative and Regulatory Agenda for 2018. It is based on input to date from general members and members of our committees and councils. Our focus continues to be on broad-based improvements to the state's economic and regulatory climate. We welcome any additional input on these or other issues of interest to you. We look forward to working with all our members as we prepare for the upcoming Legislative Agenda.

Priority Issues – Significant issues on our proactive Legislative Agenda for 2018 include:

- Improve the state's workforce development efforts to more directly address current employer workforce needs.
- Expand and update NYS's energy infrastructure, expedite state review and approval of new transmission capacity, and provide for extension of natural gas service. Reduce state-imposed energy assessments on industrial/commercial customers.
- Adopt broad labor law reforms, including standards for pay periods and methods of pay, workable standards for defining employees and contractors, statewide provisions for scheduling (with local preemption), limits on DOL wage order authority, restoration of full "experience rating" in UI tax tables, others.
- Additional state tax reform, including small business income tax reductions for pass thru entities, Article 9A technical amendments, repeal of the false claims act's extension to tax cases, a refundable R&D investment credit, and others.
- Adopt long-necessary liability reform, including adoption of a comparative liability standard under Labor Law Section 240 (which can be addressed as part of Executive Law 15-A/MWBE extension).
- Continued support for education policies and initiatives that promote college and workforce readiness.
- Update and reform SEQRA and other project review programs and requirements in order to promote new private sector investments.
- Eliminate sector-specific barriers to growth, such as limits on CPA ownership and others.

Priority Issues of Concern – Each session, the state's business community faces a large number of adverse proposals that add costs, restrictions or mandates to private sector activities. Issues of significant concern for 2018 include:

- Expansion of prevailing wage mandates to private sector projects.
- New revenue measures related to a state budget deficit and/or federal tax changes.
- "Pay equity" related mandates.
- Other additional labor law mandates, including those on scheduling, screening, benefits and others.
- Government-sponsored retirement programs that require employer support and/or involvement.
- Unworkable cyber security mandates.
- Extension of Article 15-A/MWBE program without meaningful reforms.

- Proposals for a state-level single payer health plan.
- Campaign financing reforms that further restricts private sector political advocacy.
- Workers' compensation legislation that add to system costs (e.g., coverage for workplace stress, penalties on employers/carriers who "delay" process, others)
- New private rights of action proposals.

2018 Legislative/Regulatory Program – The following provides our detailed legislative and regulatory program agenda for 2018.

Campaign Finance Reform - The call for campaign finance reform has been renewed in the wake of additional scandals involving state officials. Many proposals to "fix corruption" focus on creating a taxpayer financed campaign system, similar to the New York City system, and do not address changes necessary for true reform and parity amongst all parties impacted by elections. The Business Council:

- Supports the fair and equal treatment of all participants in political advocacy with regard to the ability to generate and use resources. We oppose proposals to impose significantly disparate rules and/or limitations on participants in political advocacy.
- Supports adoption of four-year legislative terms as a means to reduce campaign spending and fundraising, as an alternative to more onerous "reform" proposals that would limit political advocacy.
- Opposes proposals to use enforcement-related revenues to support public campaign financing.
- Opposes taxpayer financing of campaigns.

Construction Council - Significant investment in public infrastructure is necessary to ensure the efficient flow of goods, services and people. Rebuilding New York's aging infrastructure requires alternatives to the standard approach of financing, constructing and operating our transportation systems. The Business Council:

- Supports amendments to the state's MWBE program to insure that it allies realistic, attainable participation targets and provides for waivers that are fairly applied.
- Supports continued upstate/downstate parity in state spending on transportation infrastructure.
- Will monitor state public works letting levels to ensure timeliness of both letting and payment schedules.
- Supports expansion and permanent extension of the design-build method of project delivery.
- Supports reforms to ensure that "prevailing wage" determinations accurately reflect regional private sector wage levels.
- Supports efforts to expand workforce development in the skilled trades.
- Opposes any mandatory Project Labor Agreement (PLA) requirement.
- Opposes extension of prevailing wage mandates to private sector activities.

Consumer Affairs - New York needs to promote its consumer marketplace and avoid imposing restrictions on materials, goods and services in interstate commerce. The Business Council:

- Opposes legislation imposing state-specific mandates, restrictions, labeling requirements (e.g., beverage warning labels) or similar requirements on goods and products sold in interstate commerce.
- Opposes legislation creating a new "right of publicity," that creates a new property right for persons' name, voice, signature and "likeness," including but not limited to "gesture[s] and mannerism[s], and subject others to litigation and damage claims for improper use.
- Opposes legislation that would prohibit the zone pricing of gasoline.

Contract Procurement - The process of selling goods and services to state government is increasingly cumbersome, with many businesses, including Minority and Women's Business Enterprises (MWBEs), bypassing this significant business opportunity. Several business-friendly reforms to the procurement process were included in last year's budget. However, there is more work to be done. To make the procurement process more efficient, The Business Council:

- As part of legislation to extend Executive Law Article 15-A, supports: development of accurate MWBE capacity studies; requires contracts to consider local capacity in setting contract-specific targets; adopts workable requirements for workforce utilization reports by contractors and subcontractors.
- Supports streamlining MWBE certification and recertification process.
- Supports legislation allowing agencies to undertake competitive negotiations in cases where two or more offerors are deemed susceptible for being selected, when the agency has determined that using a competitive negotiation will maximize the agency's ability to obtain best value.
- Supports amending the Lobby Act definition of "restricted periods" to match newly amended State Finance Law amendments; streamlining the Lobby Act's provisions related to procurement lobbying; oppose legislative or regulatory restrictions on commissioned salesperson exemption.
- Supports the leasing of technology equipment by state and municipal government entities.
- Supports standardizing the FOIL process, which varies greatly among agencies.
- Supports clarification that a request for information (RFI) does not trigger a restricted period on communications.
- Opposes legislation to prohibit state contracts from being awarded to vendors using arbitration for alleged Title VII violations.
- Opposes creation of a Chief Procurement Officer (CPO) position within the Executive Branch and/or supports implementation of strict timeframes for CPO contract review.

Corporate Governance - It is critical that the state promote public confidence in corporate governance while avoiding mandates that make New York uncompetitive with other states for businesses organized under the laws of New York State. The Business Council:

- Supports legislation providing boards of directors the discretion to hold virtual shareholder meetings; oppose mandates for remote shareholder participation and proxy voting at shareholder meetings.
- Supports legislation allowing NYS-incorporated businesses to adopt bylaws that provide for changes in the number directors, rather than establishing a fixed number of directors.
- Supports updating the Business Corporation Law with respect to veil-piercing provisions, notice requirements for LLCs, age requirements for incorporators and rules for naming a corporation.
- Opposes new compliance burdens on New York State businesses, such as requiring companies to obtain majority shareholder approval for political donations or communications on public policy issues.

Economic Development - As New York works to improve its overall business climate, The Business Council backs measures that support new investment in strategic industries. Specifically, The Business Council:

- Opposes legislation to impose significant new procedural requirements or wage mandates on economic development assistance provided by state and local public authorities.
- Supports adoption of a new, refundable, research and development tax credit, with a component for both capital investments and for non-depreciable expenses.
- Supports clarifying industrial development agencies' authority to provide financial assistance in the form of loans and grants.
- Supports legislation to adjust the "tax base growth factor" under the real property tax cap to include value of property subject to PILOT agreements.

- Supports in-state pharma clinical trials through tax and financial incentives.
- Opposes any amendment of eminent domain laws that would apply new, broad definitions of “blight.”

Education/Workforce Development - The Business Council supports innovative education models to better prepare students for entrance into college and career. The Business Council:

- Supports funding for a statewide workforce development data center to inform regional community college and workforce development programs.
- Supports metrics that measure the effectiveness of existing state workforce training investments in meeting regional workforce needs.
- Supports resources to sustain and expand new and existing NYS P-TECH programs.
- Supports providing funding to ensure low-income students have access to cost-free AP exams and expand access to AP computer science courses.
- Supports a uniform AP credit policy for all public New York higher education institutions.
- Supports fully funding the Tuition Assistance Program (TAP) without restrictions that would make it more difficult for students to qualify.
- Supports increasing the aid-eligible salary for Boards of Cooperative Educational Services (BOCES) Career and Technical Education (CTE) instructor and increasing the amount of special services aid that provided to the Big 5 School Districts for CTE programs.
- Supports continued implementation of higher education standards and aligned assessments.

Energy - Reducing energy costs and promoting adequate and diverse energy supplies will help support economic growth. With those goals in mind, The Business Council:

- Supports a significant reduction in ratepayer assessments imposed by the Public Service Commission (PSC). Ratepayer funds should support the adoption of more cost effective and market driven solutions to achieving social objectives.
- Supports adoption of measures to reduce electric customer impacts from the Clean Energy Standard (CES), including but not limited to exemptions, tax hedges, and self-directed programs.
- Supports repeal of the statutory requirements for state approval of transportation routes for Liquefied Natural Gas (LNG).
- Supports expanded access to natural gas for employers, including dedicating state energy assessment resources to pipeline extensions; expediting the state and local review of applications for expansion of natural gas lines; and the authorizing of real property tax exemptions for the increased assessed value attributable to new natural gas distribution facilities.
- Supports standardized property tax assessments for distributed generation.
- Supports efforts to study and address power quality issues by NYSEERDA and the PSC. Power quality is the quality of the voltage in an electrical circuit or the fitness of electrical power to consumer devices. Poor quality can have a material effect on advance manufacturing processes.
- Supports streamlining the regulatory process for the approval of new energy infrastructure. The Clean Energy Standard (CES) obligates the state to significant increases in renewable energy, which will require additional energy infrastructure. The Business Council supports efforts to build needed energy infrastructure in a timely and economically efficient manner.
- Supports the expansion and permanence of the provisions of Chapter 475 of the Laws of 2013, which provide a uniform process of taxation of certain utility-owned properties throughout the state. Expand the coverage of existing law to include privately held public utility mass real property that is used in energy transmission and distribution.

- Opposes legislation creating a “Citizen Utility Board,” and imposing intervenor funds in rate cases, which create a duplicative and costly consumer advocate function within the Department of Public Service, funded by additional utility assessments.

Environment - New York has a stringent environmental regulatory program that imposes costs and operational restrictions on businesses and impedes capital investment and job growth. To improve the state’s environmental regulatory climate, The Business Council:

- Supports the adoption of legislative reforms to the State Environmental Quality Review Act (SEQRA) to provide more certainty in project reviews, including: clarifying the standard for complete applications; heightening the standard for issues to be subject to administrative adjudication; making adherence to state review timetables mandatory; and assuring the correct application of statutory and regulatory standards.
- Supports the adoption of incentives for asbestos abatement in redevelopment projects.
- Supports the simplification and ease of regulatory compliance by ensuring the state conforms with federal regulations wherever possible.
- Supports reforming air emission regulations, including Part 212 regulation of air toxins, and updating the reportable qualities for release reporting.
- Supports efforts to reduce the carbon intensity of our economy without reducing economic growth.
- Supports maintaining current levels of funding for the Environmental Protection Fund (EPF) to promote economic development; promote “smart” state capital investments that protect the state’s air, land, water and natural resources; and expand recreation opportunities.
- Oppose adoption of the so-called “precautionary principle” in setting environmental standards.
- Opposes expanded and unwarranted state-level chemical and product use restrictions, including legislation, which would mandate the state implement a complex chemical review process for which it does not have the staff, resources or expertise.
- Opposes mandates to require divestiture of holdings in traditional energy companies.
- Opposes efforts to impose new taxes on motor vehicle fuel carbon content or other carbon dioxide emission taxes.
- Oppose measures to require medical monitoring for all state superfund sites.

Financial Services - In order to promote continued growth and economic activity in the financial services industry, The Business Council:

- Supports legislation authorizing minority non-CPA ownership in public accountancy firms.
- Supports no-fault insurance reform.
- Supports amending the mortgage foreclosure chapter law of 2016.
- Opposes Secure Choice Savings Program legislation imposing additional compliance burdens on business related to retirement savings accounts.
- Opposes limiting the use of arbitration clauses in financial service agreements.
- Opposes any expansion of the Martin Act, including but not limited to, provisions allowing pension fund initiation of enforcement actions.

Health - The cost of health care remains a top concern of all Business Council members. During a time of unknown federal policy changes in healthcare, we are committed to guaranteeing that any New York State response to changes on the federal level are done in a way that will not harm the financial viability of our members. The Business Council:

- Supports efforts to ensure that the Department of Financial Services (DFS) adheres to state laws, specifically the State Administrator Procedure Act (SAPA), and not utilize non-SAPA documents to implement the law. To that end, we support amending SAPA to require that prior to publication of a proposed rulemaking, the agency head must attest in writing that true stakeholder outreach, economic impact and job impact analysis have occurred.
- Supports efforts to amend the Insurance Law Section 311(b)(1) to require that DFS's draft reports on insurance companies expressly state whether a fine or regulatory action will be imposed as a result of DFS' examination, as well as the specific amount and/or nature of the regulatory action.
- Supports transparency in rate-setting by DFS.
- Opposes any attempt to create a single-payer health insurance system in New York.
- Opposes any unfunded mandates on private insurance that lead to cost increases, including mandates on nursing staff ratios and healthcare provider reimbursement mandates.
- Opposes any attempt by the state to force a private business to unnecessarily divulge trade secrets and proprietary information, especially in order to impose further price controls on those same private employers. This includes opposition to DFS's methods of prior approval for health insurance premiums as well as opposition to measures which seek to require private industries, including prescription drug manufacturers, to report proprietary pricing information.
- Opposes unnecessary and duplicative state efforts to regulate FDA-regulated products such as the imposition of mandatory warranties on medical devices.
- Opposes state price controls.
- Support repeal of New York Health Care Reform Act taxes which are no longer used for their intended purposes.

Labor/Human Resources - Employers need a stable Labor Law environment and the ability to design pay and benefit programs that fit their industry, size, location, profitability and competitive environment. To achieve these objectives, The Business Council:

- Support a comprehensive update and reform of the state's Labor Law, including: reasonable standards for defining employees and independent contractors; workable rules for use of pay cards and other forms of employee payment; reasonable standards for employee scheduling; allow employers of any size to have biweekly payrolls for manual workers; and others.
- Supports workable regulations and standards for implementation of the 2016 Paid Family Leave law; assuring that DFS rules provide that 100 percent of premium costs are collected through employer wage withholdings.
- Supports additional reforms to NYS Department of Labor wage order authority and to specific wage orders.
- Supports legislation adopting workable definitions of employee and independent contractor to reflect practical issues relative to "sharing economy" employers.
- Opposes legislation imposing restrictions or pay mandates on the use of "on-call scheduling."
- Opposes proposed increases in disability benefit law levels.
- Opposes restrictions on employer's ability to conduct reasonable and relevant background checks in the employment process; these include proposals to limit the use of credit checks, criminal backgrounds, prior wages and others.
- Opposes significant additional restrictions or mandates on use of non-compete agreements.
- Opposes increasing the wage threshold for overtime exempt employees above the federal threshold.
- Opposes proposals for mandated leave including sick time, vacation time and other time-off.
- Opposes legislation to impose expansive new workforce demographic reporting requirements on state contractors.

- Opposes legislation authorizing the Department of Labor to enforce conditions of contracts with independent contractors.
- Opposes legislation to extend state labor law provisions on collective bargaining, overtime and disability to farm employees.

Legal Reform - A state's framework and policies for dealing with lawsuits and legal issues can have a significant issue on the state's overall business climate. To improve the state's legal climate for investment and growth, The Business Council:

- Supports reforming the antiquated Scaffold Law by adopting a standard that assigns comparative negligence similar to that in place for other forms of liability.
- Supports legislation which creates transparency between asbestos trust claims and asbestos tort actions by requiring the disclosure of all past, pending, and anticipated asbestos trust claims by a plaintiff.
- Oppose any legislation creating new private rights of action.
- Oppose any further expansion of the Martin Act.
- Opposes expansion of general jurisdiction of the state's courts for actions involving non-New York companies in activities completely unrelated to their activities in New York.
- Oppose legislation allowing indirect recovery from third party defendants.
- Support legislation regulating the practice of lawsuit lending.

Manufacturing - The manufacturing sector remains a critical component of the state's economy. It is incumbent on lawmakers to enact policies and regulations that promote growth within this sector. With that in mind, The Business Council:

- Supports expanded access to natural gas for manufacturing facilities, including: dedicating state energy assessment resources to pipeline extensions; expediting the state review of applications for expansion of natural gas infrastructure; authorize real property tax exemptions for the increased assessed value attributable to new natural gas distribution facilities; and repealing outdated requirement that the Department of Transportation create certified LNG transport routes.
- Supports the adoption of measures to provide price protection to large energy consumers from energy assessments. Adopt a self-directed energy program with a cap on percentage energy assessments as a percentage of energy assessments. Exclude large energy consumers from the cost associated with residential customer system upgrades associated with REV.
- Supports the adoption of a new, refundable, two-part research and development tax credit, with a component for capital investments modeled on existing Article 9A ITC language and a component for non-depreciable expenses based on the federal R&D credit, using current year R&D spending.
- Supports the continued expansion of the P-TECH program, where a majority of schools provide an advanced manufacturing career pathway; increase funding for summer youth employment in manufacturing and advanced manufacturing occupations; and provide funding for incumbent manufacturing employment training.
- Supports the adoption of legislative reforms to the State Environmental Quality Review Act to provide more certainty in project reviews, including: clarify the standard for complete applications; heighten the standard for issues to be subject to administrative adjudication; make adherence to state review timetables mandatory; and assure application of statutory and regulatory standards.

Taxation – New York State business are affected by an overall uncompetitive tax structure. While recent reforms have provided a streamlined corporate tax reform and rate reductions, other provisions of the tax code need to be addressed. To improve the state's tax competitiveness, The Business Council:

- Support federal corporate tax reform including reduced rates, expensing of capital investments, adoption of territorial taxation; reduction of tax rates for business income of proprietorships, partnerships and S-Corporations; maintain the PIT deductibility of state and local taxes paid. Assure that federal tax reform does not result in unintended consequences under state law for taxation of corporations or unincorporated businesses.
- Supports small business income tax reform, by increasing the PIT business and farm income tax exclusion and allowing all small businesses and small farms to claim the exclusion; and decreasing the Article 9-A net income tax rate for small businesses.
- Supports additional Article 9A reforms and technical amendments, including a “safe harbor” provisions for market sourcing hierarchy; assure preservation of historic net operating losses in the calculation of PNOL conversion subtractions; and others.
- Supports repeal of the extension of the state False Claims Act to tax controversies.
- Supports a sales tax exemption for sales of services between the affiliated business entities, in cases when either business entity in the transaction owns a controlling interest in the other business entity; or a controlling interest in each business entity in the transaction is owned by the same person or persons or business entity or business entities.
- Supports legislation prohibiting use of contingent fees for audits of local gross receipts taxes (and potentially other categories of taxes and fees).
- Supports repeal of the Highway Use Tax.
- Supports single sales factor apportionment for resident members of partnerships and LLCs.
- Supports Article 9-A apportionment of trucking companies to eliminate “pass-through miles.”
- Supports allowing a taxpayer to elect to compute its base business allocation percentage (“BAP”) for the prior net operating loss conversion subtraction amount (“PNOL”) based on an average BAP over a prior period (ten to 15 years) ending with the 2014 tax year as an alternative methodology of calculating the PNOL.
- Opposes legislation imposing sales tax collection mandates on “marketplace providers.”
- Oppose legislation mandating daily submission of sales tax receipts by vendors.
- Clarify 2017 amendments related to the sales tax treatment of energy sales by energy service companies.
- Adopt requirement that, when DTF uses external indices to determine sales and use tax due, such indices to reflect local economic conditions.
- Support the adoption of a new, refundable, two part research and development tax credit, with a component for capital investments modeled on existing Article 9A ITC language and a component for non-depreciable expenses based on the federal R&D credit, using current year R&D spending.
- Support the improvement and streamlining of real property tax administration.
- Supports the restoration of the five UI tax table rungs repealed in Chapter 57, Laws of 2013, to reflect the lower costs imposed by stable employers.

Technology/Telecommunications - To promote continued reinvestment in New York’s technology and telecommunications sectors, The Business Council:

- Opposes state-specific cybersecurity mandates or standards and other data security mandates.
- Supports legislation to expedite the approval of wireless facility upgrades.
- Supports legislation that would prohibit the state from imposing new regulations on phone services that use Voice over Internet Protocol (VoIP) technology.
- Supports the promotion of computer science curriculum in grade, middle and high school.
- Opposes call centers mandates.

- Opposes online consumer data restrictions.
- Opposes ban on employer access of employee personal accounts in specific work-related circumstances.
- Opposes Kill Switch Legislation.
- Opposes the creation of the Office of the Utility Consumer Advocate.
- Oppose mandates for the sale of diagnostic and repair information to third parties.

Transportation - To support the state's transportation industry and the statewide transportation infrastructure, The Business Council:

- Will monitor and respond to proposals for New York City congestion reduction that impose undue costs or restrictions on business-related transportation.
- Supports legislation to eliminate the Highway Use Tax/Ton Mileage Tax.
- Supports the NYS Emergency Responder Act.
- Supports legislation to exempt transit authorities from bond issuance charges.
- Opposes regulations to implement truck route restrictions across the state, which will significantly increase the cost and time to operate a truck in New York.
- Opposes legislation that imposes mandatory infrastructure railroad investments without industry input and/or study.
- Opposes legislation that usurps federal railroad authority.
- Opposes legislation that requires public transit authorities and their employees to submit all unresolvable contract negotiations to binding arbitration.

Travel and Tourism - New York has a broad tourism industry, including culture, history, restaurants, entertainment, destinations, parks and more. To help this statewide industry, The Business Council:

- Support a permanent extension of provisions of the alcoholic beverage control law authorizing manufacturers to transport alcoholic beverages to their retail establishments.
- Supports an increase in the discretionary program spending thresholds in the "I Love NY" program.
- Supports the streamlining brand label approval of alcoholic beverage control products to conform to Federal rules.
- Supports legislation to clarify the treatment of service charges added to dining bills, as to when such charges are considered receipts versus gratuities.

Unemployment Insurance - All employers pay for the state's unemployment insurance program. Reforms enacted in 2013 have brought the state's UI fund back into solvency, to that end, The Business Council:

- Supports the reestablishment of the six lowest tax brackets in the state's UI tax table as eliminated in the FY 2014 budget (returning the tax rate for the most positive experienced-rated employers to 0.9 percent from the current 1.5 percent).
- Support legislation to ensure that an employer will not be penalized for the dismissal of a temporary employee, hired to fill-in for an employee who is taking paid family leave time.
- Oppose legislation that expands the definition of involuntary separation for purpose of unemployment insurance eligibility.

Workers' Compensation – The 2017 session saw the passage of a comprehensive workers' compensation reform spearheaded by The Business Council. We are in the midst of implementing those reforms. To that end, The Business Council:

- Opposes any rollback of the cost-savings measures of the 2016 reform and any new attempts to expand benefits and costs.
- Supports the proper implementation of the cost-saving measures of the 2016 reforms, including and especially, updated impairment guidelines that will cut costs in the area of scheduled loss of use awards.
- Supports further reforms, mandating the use of panel providers for the first one hundred twenty days of medical treatment.
- Supports modifying workers' compensation attorney fees to allow claimants to keep more of their awards by ensuring that the amount of the legal fee will be commensurate with the services rendered, and having due regard for the financial status of the claimant.
- Supports creation of a mechanism by which non-defaulted self-insured trusts may avail bond funds in order to purchase assumption of liability policies.
- Supports the immediate repayment by the Workers' Compensation Board of all assessment levied upon all private self-insured employers during the trust crisis.
- Supports repealing the Aggregate Trust Fund Deposit mandated deposits.
- Supports the adoption of an offset provision for claimants who begin to receive non-workers' compensation disability benefits similar to offset provisions for retirement already codified in the WCL.

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