



Testimony on the FY2022 Executive Budget: Economic Development

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Testimony to Senate Finance Committee and Assembly Ways and Means Committee

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FY 2022 Executive Budget: Economic Development

Presented by:

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My name is Ken Pokalsky and I am Vice President of The Business Council of New York State, Inc. We are New York's largest statewide employer association, representing more than 2,200 private sector employers across New York, in all major business sectors.

We appreciate this opportunity to submit testimony to the Joint Legislative Budget Hearing on economic development issues.

Due to the COVID pandemic, the state is facing an unprecedented number of concerns being raised by workers and employers alike.

From our extensive engagement with employers in all sectors, of all sizes, from across New York, going back to the earliest days of the COVID emergency, we believe that New York's employer community has a very basic set of "asks" for the Administration and Legislature.

- Allow businesses to continue to operate, with as few additional restrictions, limitations or closures as necessary to address specific public health impacts. From the onset of the pandemic, we and our members agreed that economic policy will be driven by public health factors. However, we have come far in terms of establishing and implementing effective, workable standards in the workplace that have been protective of employees, customers and the general public. State-developed data shows that workplaces have not been a material source of COVID cases. In other words, what we have done so far in the workplace has been

working. Moreover, we believe that the state has developed approaches that provide limited, targeted and measured responses to local outbreaks or spikes in COVID cases, through its “hot spot” approach. We believe that approach will support both our essential public health objectives and our economic recovery efforts.

- Maintain effective and workable COVID operating standards, and continue to engage employers, as well as other stakeholders. Going back to late March 2020, The Business Council and other employer organizations and individual businesses worked hand in hand with our government partners to develop protocols to address potential workplace exposure to COVID. Those efforts produced a number of sector-specific operating protocols implemented through the NYForward program. While there were certainly challenges along the way, the effort has produced results – most importantly, many businesses are operating at something close to “normal,” albeit with various COVID-related physical changes and operational practices that have become the “new normal.” Importantly, we urge the legislature to reject proposals to impose additional, mostly duplicative workplace safety and notification mandates on employers, reject proposals to shift massive additional costs onto the state’s workers compensation program, and avoid other COVID-related mandates that do not provide anything additional to assure safe workplaces and employees.
- “Do no harm.” Even “essential businesses” that have been allowed to remain (mostly) fully open during the pandemic are facing additional operational requirements and costs. Overall, private sector employment is about 1 million jobs below levels at this time in 2020. Every state in the nation is looking at strategies to not just recover lost jobs, but to attract new jobs and investments. Maintaining a competitive economic climate in New York will be essential as we continue to work to recover jobs, promote new investments and growth, and further grow employment opportunities and income growth.
- The state should provide assistance to sectors with the most significant and enduring economic hardship. Looking at job trends by region and by sector across New York State shows some dramatic differences. Most significantly, while most major economic sectors have seen notable recovery, employment in the leisure and hospitality sector – as of the end of December – was still 40 percent below December 2020 levels, representing a continued loss of nearly 400,000 jobs, just over half lost in New York City. The Executive Budget’s proposed “Pandemic Recovery and Restart Program” (S.2508/A.3008, Part TT) does that by providing grants to small business in sectors that have seen the most significant, enduring forced business restrictions and/or significant loss in revenues. The legislature is considering a wide range of additional measures, too numerous to effectively address in this forum, but we will be providing the legislature with additional feedback on additional targeted assistance measures that can be adopted as part of the FY 2022 budget. However, we certainly recognize the limitations on state resources, and that the most significant financial assistance programs will come through federal actions.

Beyond these general comments, we want to share the following input on specific aspects of the Executive Budget that will impact on the state’s private sector and its overall economic climate (noting that tax and revenue components of the Executive Budget were addressed in separate testimony we submitted to the joint hearing on taxation.)

As always, we welcome the opportunity to discuss these and other budget-related issues with members of the Committees and other members of the Senate and Assembly.

Executive Budget provisions that we support include the following:

COVID-19 Recovery Workforce Initiative (S.2503 / A.3003) – We support the creation of the “COVID-19 Recovery Workforce Initiative”, which would invest \$50 million for training in high-growth industries, employer-driven training for low-income workers, and funding for small businesses to re-train and hire furloughed, laid-off, or new employees. Even prior to the pandemic, serious skill gaps plagued employers struggling to fill open positions. At the start of 2019, there were seven million unfilled jobs in the U.S. and employers consistently cited challenges in finding appropriately skilled workers to fill these positions. With increased investment in workforce development, we cannot emphasize enough the importance of employer engagement in the development of quality workforce programs. We believe this proposal advances that important goal. Our bill memo is here.

CPA reforms (S.2505 / A.3005, Part B) -- We strongly supports this provision that allows public accounting firms to incorporate in New York State with minority ownership by individuals who are not Certified Public Accountants. Similar legislation has passed the Senate six times since 2014, mostly with unanimous, bipartisan support. This practice is currently allowed in forty-seven states. New York’s outdated restrictions place in-state firms at a disadvantage when it comes to recruiting and retaining top talent, such as IT experts, data analysts and others that complement a firm’s accountancy practice. This reform will put New York firms on a level playing field so talented individuals in New York have the same opportunities they would in neighboring states. Our bill memo is here.

LIBOR Replacement (S.2508 / A.3008, Part PP) – We support this proposal to replace the disappearing LIBOR benchmark in financial contracts with the SOFR benchmark. This is the best option to mitigate any problems after LIBOR’s end. Since New York law is used in the vast majority of legacy contracts nationwide, this solution matters far beyond New York. The legislation guarantees that no borrower is disadvantaged by the change of benchmark and that the operation of law is essentially a pro forma change to contract to avoid ambiguity and unnecessary and unwanted litigation. This budget provision has broad support and has no downside to lender or borrower. It is a necessary change and simply put, good policy all around. Our bill memo is here.

Limits Annual Rate of Interest on Judgement or Accrued Claims (S.2505 / A.3005 Part AA) – We support this proposal to calculate the annual rate of interest to be paid on a judgment or accrued claim at the one-year United States treasury bill rate. Replacement of the current, excessively high, nine percent interest rate on judgments in civil lawsuits and replacing it with the prevailing market rate of interest is both logical and fair. Such a change would be good for New York consumers who have had to pay this excessive rate on judgments for years. It would also greatly benefit municipalities throughout the state and concurrently help control insurance rates for all purchasers. Our bill memo is here.

Employer protections in Cannabis program (S.2509/A.3009, Part H) - The Business Council has taken no position on the broader issue of legalization of recreational use of cannabis. However, the provision of the Executive Budget proposal impacting the workplace is of significant interest to employers. We support Part 4

and 5 of §127 of the bill that allows employers to continue to implement policies prohibiting the use or possession of cannabis in the workplace and to take adverse employment action against employees who violate these policies and/or are impaired at work. In addition, the bill allows employers to test according to law for the active ingredients of THC that cause impairment and to take adverse employment action against employees when those ingredients are present. Any level of workplace “impairment” should be sufficient to warrant employer action. In addition to the impact of cannabis use on an employee’s ability to perform their job duties, impaired employees could potentially be a hazard to themselves and others. Both New York State occupational safety laws and the Federal Occupational Safety and Health Act require employers to maintain a safe and healthful workplace free from recognized hazards. This important language will ensure an employer’s ability to maintain a workplace free from hazards, including those resulting from employee impairment.

Electronic Notarization (S.2508 / A.3008, Part P) – We support legislation that allows for electronic notarization in New York, easing some burden from transactions for both businesses and individuals alike.

During the initial stages of the pandemic, the Governor allowed, by Executive Order, and then later extended, the use of electronic video conference technology in notarization. The EO allowed for business and personal legal matters to continue through months when many New Yorkers could not leave their homes. The allowance was necessary, convenient and without any negative impacts. It was an experiment that proved that electronic notarization works in New York. With twenty-five other states passing laws to allow for electronic notarization, the time is now for New York to make this change permanent.

Expanded pharmacist scope of practice (S.2507 / A.3007, Part P) – We strongly support the expansion of the types of vaccines that pharmacists and certified nurse practitioners can administer to adults to include all CDC-recommended vaccines. Data continues to mount in New York that indicates that access to vaccination is not equal geographically and is unequal based on race. While we are certain that there are many factors at play, we know that there are many adults who do not regularly visit a primary care physician but are frequently in and out of pharmacies, putting them in direct contact with over 14,000 licensed pharmacists, ready to administer immunizations. Such expanded access to New York’s underserved communities will lead to continued growth in adult immunization. This budget provision is an example in that it expands access to underserved communities, promotes public health, saves healthcare funds and increases business productivity. Our bill memo is here.

Mobile sports betting (S.2509/A.3009, Part Y) – We support the expansion of mobile sports betting but have significant concerns with the basic structure proposed in the Executive Budget. It provides that the New York State Gaming Commission would select a platform provider or sports operator through an RFP and the state would run or manage it. We do not believe this is the best approach. Instead, we support legislation that would make New York competitive and the premier destination to wager on professional and collegiate sports. We know that New Jersey has seen a great number of New Yorkers go across the river to place their bets - transactions we need to keep in the state. New York should have a system like other states where casinos and racetracks can have several sportsbooks at their sites. New Jersey, which many in the industry consider to be a success story, has as many as seventeen legal online sportsbooks. The goal should be a long-term model that benefits consumers and gambling interests, resulting in increased tax revenue and assistance for New York State casinos. Our bill memo is here.

Cannabis Regulation and Taxation Act/Mandatory Labor Peace Agreements (S.2509/A.3009, Part H) -- The Business Council has taken no position on the broader issue of legalization of recreational use of cannabis. However, the provision of the Executive Budget proposal regarding license criteria is of significant interest to economic development interests. Section 35 of the proposed legislation requires, as a condition of obtaining a state license, that any entity receiving a license to cultivate, process, distribute and sell adult-use cannabis enter into a labor peace agreement with a bona fide labor organization. The maintenance of such a labor peace agreement would be an on-going condition of licensure. The state is not within its right to require such an arrangement in order to obtain a license. The National Labor Relations Act forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or from working together to improve terms and conditions of employment, or refraining from any such activity. Similarly, labor organizations may not restrain or coerce employees in the exercise of these rights. Requiring an organization – as a condition of doing business in New York - to recognize a bargaining unit and successfully reach a collective bargaining agreement is clearly contrary to federal law. This mandate is also arbitrary and unfair. No other private enterprise is held to this obligation. Any expansion of this requirement beyond the cannabis industry would never receive legislative approval – and if it did – would make New York State the least competitive state for business in the nation and begin an exodus of jobs and businesses from New York. For the reasons stated above, we encourage that, if the legislature acts to approve a version of Part H, this section be removed from any final legislation.

Executive Budget provisions of concern

New York Data Accountability and Transparency Act (S.2505/A.3005, Part II) – We have not taken a position on the Executive Budget’s proposed “Data Accountability and Transparency Act.” We support some provisions, especially in comparison with other legislative proposals, yet we also have significant concerns regarding certain provisions. As an example of our concerns, the bill would impose new responsibilities on covered entities but fails to specify the handling of data internally or externally by these entities. It also fails to clearly define what is considered a “sale” of data. We believe the bill needs a better definition of a consumer’s right to access. It also needs a “right to cure” provision so that violations can be addressed in reasonable time prior to the imposition of a civil penalty. Finally, the bill needs a broader list of federal exemptions and a longer lead time to allow industry to implement the law. We do appreciate that the bill precludes any private right of action and any “data fiduciary” provisions. Regardless of these specific critiques, we believe that New York residents and businesses would be better served by a single national data privacy regime, instead of the state-by-state patchwork of provisions that is now developing.

Broadband Service Provider mandate (S.2508 / A.3008, Parts OO and QQ) – We oppose Part OO and Part QQ of budget bill S.2508 / A.3008 pertaining to legislatively enacting at the state level changes in rate structures for entities covered by the Federal Communications Commission (FCC). Part OO would amend the public service law prohibiting broadband terminations by providers during periods of state emergencies under certain circumstances. Part QQ would amend the general business law to create a new legislatively imposed rate structure for low-income broadband customers of \$15 per month inclusive of any recurring taxes and fees such as recurring rental fees for service provider equipment. Federal law explicitly prohibits state regulation of

mobile wireless rates, thus prohibiting a state from mandating a particular rate for wireless service such as a legislatively imposed broadband service for low-income customers at the rate of \$15 per month. It should also be noted that broadband providers in New York have instituted numerous programs to help those who have experienced financial hardship during the pandemic as well as low-income customers requiring broadband programs, particularly for work and education purposes. New York broadband providers targeted by this change in law have already taken the “Keep America Connected Pledge” promoted by the Federal Communications Commission and have publicly promised their support to ensure that individuals’ access to communication networks is not impaired in anyway due to the pandemic and resultant emergencies, and have taken other steps to provide relief to their consumers, without legislation directing them to do so, and will continue providing high-quality, reliable and responsive service during this emergency. In fact, the broadband provider community already offers low-cost broadband packages - across the industry - that actually predate the pandemic. Finally, in the Consolidated Appropriations Act of 2021, Congress established the Emergency Broadband Connectivity Fund and allocated \$3.2 billion for the Emergency Broadband Benefit Program. Congress has directed the FCC to create an emergency broadband benefit to connect low-income households, especially households with school-aged children, to broadband networks at affordable rates. Broadband providers will be reimbursed up to \$50 per month per low-income household it serves (\$75 per month if the household is on Tribal land). The providers can also be reimbursed up to \$100 for providing the household with a connected device (desktop, laptop, or tablet computer) if the household contributes \$10-\$50 for the device. Plus, Congress is looking to provide an additional \$7.6 billion in funding to schools and libraries to assist with internet connections and remote learning. Respectfully, we ask lawmakers to be patient as this new program is expected to be up and running in the next two months. Our bill memo is [here](#).

Prevailing Wage Mandate for Renewable Energy Projects (S.2506/A.3006, Part AA) – We question the need for this provision of the Executive Budget. While we generally oppose prevailing wage expansion, this is not an expansion per se. Prevailing wage is already mandated for all projects under the CLCPA, and a PW requirement is currently included in all NYSERDA large-scale (25MW+) procurement solicitations. This seems to codify an existing practice for utility-scale projects. Part AA mandates prevailing wage for construction, engineering and consulting services related to “renewable energy projects” over 25 megawatts and with a total project cost of over ten million dollars (primarily offshore wind) and solar energy systems with a capacity over 5 megawatts with a total project cost of over five million dollars. Applies where the amount of public funds is at least 30% of the total construction project costs. The memo in support states that “setting clear standards for job quality will ensure the creation of good jobs, protect workers in the ongoing transition of our energy sector, and result in positive economic impacts.” However, we question whether this mandate will help attract the significant private investment the Governor envisioned in his State of the State. Further, this virtually ensures that non-union labor will be statutorily excluded from the construction of large-scale renewable energy projects over the next decade.

Regulation of Pharmacy Benefit Managers (S.2507 / A.3007 Part J) – We oppose this proposal that unnecessarily subjects Pharmacy Benefit Managers (PBMs) to state registration and licensure. PBMs have become the latest easy target to blame for increasing healthcare costs. However, there is no data that indicates that clients of PBMs are in any way impaired through the use of PBM services. On the contrary, PBMs have developed and successfully implemented programs such as drug utilization review, formulary management and

disease and health management which encourage the appropriate, safe and effective use of prescription drugs to improve patient outcomes and control costs. This proposal is duplicative at best and more likely a massive regulatory burden that will end up costing consumers. In an age of ever-increasing healthcare costs, the state needs to be looking for ways to increase flexibility in cost management rather than creating regulatory hurdles for those industries that are leaders in innovative cost-savings. Our bill memo is here.

Expanded leave for vaccinations (S.2506/A.3006, Part W) – We oppose this provision that provides potentially up to 8 hours of paid leave for employees to use to receive COVID-19 vaccine injections. This is simply an additional unnecessary mandate on employers. In addition to ongoing federal COVID paid sick leave benefits, the state has imposed significant leave requirements on all employers. As an example, on January 20th the Commissioner of Labor issued guidance regarding the state’s COVID Paid Sick Leave benefit that, in essence, provides unlimited employer paid leave for employees impacted by the virus. Moreover, the state’s new paid sick leave mandate (above and beyond mandated COVID paid sick leave), requires 40 or 56 hours of paid leave for many employers, and unpaid leave by smaller employers. These leave mandates already provide time off for employees who desire or need to take leave for the purpose of vaccination would have access to this leave. Our bill memo is here.

MTA Relocation of underground utility assets (S.2508 / A.3008, Part G) -- We oppose this provision that would overturn sixty years of fair practice by amending the Public Authorities Law to require “public service corporations” to bear the cost of required alterations or relocations of their facilities when performed in connection with construction projects (or other similar improvements or rehabilitations) undertaken by the Metropolitan Transit Authority (MTA). Current practice requires a collaborative approach between the MTA and public utilities involving the alterations and movements of utility infrastructure in areas undergoing MTA construction. This this bill would add significant costs to utilities with estimates ranging into the hundreds of millions. Our bill memo is available here.

Restructuring of CAT/CoE funding (S.2508 / A.3008, Part KK) – We oppose the consolidate the Centers of Excellence (COE) into the Centers for Advanced Technology (CAT) program, and the reduction of funding for the programs to \$19 million, a \$4.6 million cut from the FY 2021 combined CAT and COE funding. Both CATs and COEs provide New York State companies access to faculty expertise, talented students, leading edge technology, and cutting-edge research. While both CATs and COEs bridge the gap between academia and industry, they do so with distinct, yet complementary differences. CATs focus primarily on the research and development of new technologies, while COEs focus on the commercialization of new products and technologies. In its annual report, ESDC estimated non-job-related economic impacts for 2017-2019 to amount to \$2.57 billion and have helped create and retain 9,816 jobs. Providing an annual return on investment ranging from 25:1 to 45:1. ESDC’s reporting demonstrates that CATs and COEs are among the best programs the State has for job creation and economic growth. Our memo is available here.

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enter into a labor peace agreement with a bona fide labor organization. The maintenance of such a labor peace agreement would be an on-going condition of licensure. The National Labor Relations Act forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or from working together to improve terms and conditions of employment, or refraining from any such activity. Similarly, labor organizations may not restrain or coerce employees in the exercise of these rights. We recommend that, if the legislature acts to approve a version of Part H, this section be removed from any final legislation. Our bill memo is here.

As always, we welcome any additional opportunity to discuss these and other legislative proposals with Committee members and other state legislators, to provide more detailed analysis of key issues, and to answer any questions you may have.

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