



# PUBLIC FORUMS ON --- **REGULATORY REFORM**

NEW YORK STATE SENATE  
MAJORITY COALITION

Fall 2013





## **Majority Coalition Members**



**Senator Patrick M. Gallivan (59<sup>th</sup> District, Elma), Deputy Republican Conference Leader for Economic Development,** said: “It’s no secret that the biggest challenge facing New York’s families and businesses is the state’s still recovering economy, particularly upstate. This is the result of a myriad of problems, first among them being the state’s suffocating regulatory environment. Regulations in New York are tantamount to death by a thousand cuts for small businesses and large employers alike. I am proud to join with my colleagues in a bipartisan manner to eliminate needless red tape and foster an economic environment where existing business can grow and new ones want to locate.”



**Senator David J. Valesky (53<sup>rd</sup> District, Oneida), Chair of the Senate Committee on Commerce, Economic Development, and Small Business,** said: “We know that businesses in general are affected by over-regulation and bureaucracy. These forums will give us the opportunity to listen to the challenges faced by different sectors and industries, to learn which regulations are most cumbersome, and to find a way to help. I look forward to having these conversations and to working with my colleagues in the subsequent legislative session to find long-term solutions that will help New York State businesses thrive.”



**Senator Kathleen A. Marchione (43<sup>rd</sup> District, Halfmoon), Chair of the Senate’s Administrative Regulations Review Commission (ARRC),** said: “Making New York more affordable for families and creating more good-paying jobs so our kids can stay here, begins with rolling back, revising and cutting Albany’s costly bureaucratic red tape, rules and regulations. Our regulatory reform public forums are a critically important part of our ongoing efforts to deliver real regulatory relief and get New York’s private sector economy moving again. I am looking forward to taking part in these statewide forums so I can hear firsthand from job creators what we can do to have Albany stop hurting and start helping.”



**Senator David Carlucci (38<sup>th</sup> District, Rockland/Westchester), Past Chair of the Senate’s Administrative Regulations Review Commission (ARRC),** said: “Small businesses are the heart and soul of the New York state economy. These public forums will provide a genuine opportunity to discuss policy ideas to rid small businesses from bureaucratic red tape. We must do everything possible to attract and retain the best and the brightest to do business in the Empire State. This includes putting in place the regulatory framework that makes the most sense. I am looking forward to working with my Senate colleagues and small business owners on this important bipartisan initiative.”



## **Majority Coalition Staff**

Todd Aldinger	Senator Gallivan
Adriano Bongiorno	Senator Valesky
Keith Bryan	Senator Gallivan
Amanda Dermady	Senator Gallivan
Peter Gemellaro	Senator Marchione/ARRC
Jessica Joyce	Senator Valesky
John Koury	Senator Marchione/ARRC
Zachary Primeau	Senator Gallivan

## **Additional Thanks**

**Majority Coalition Leaders Dean Skelos and Jeffrey Klein**

**Participating Fellow Elected Officials:**

Senator Philip Boyle  
Senator John DeFrancisco  
Senator John Flanagan  
Senator Mark Grisanti  
Senator William Larkin  
Senator Elizabeth Little  
Senator Jack Martins  
Senator Thomas O'Mara  
Senator Patty Ritchie  
Senator Joseph Robach  
Senator James Seward  
Assemblyman Mark Johns

**Location Hosts:**

Corning Community College  
Dulles State Office Building  
Monroe County Office Building  
Nanuet Public Library  
Nassau County Executive & Legislative Building  
Quad Graphics  
Roswell Park Cancer Institute  
Syracuse City Hall



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# **Executive Summary**

## **Introduction**

In 2013, New York State was ranked the second worst state for the cost of doing business. The time and resources spent navigating and complying with New York State's complex regulatory environment significantly contributed to this inferior ranking. To be sure, regulations are a vital part of state government, critical in promoting public welfare. However, the rules should not be arbitrary, the reporting should not be duplicative, and the requirements should be easily accessible by those who must comply. Regulations become unnecessary and burdensome when the cost of compliance disadvantages New York State businesses without providing additional public benefit.

With a goal of identifying a minimum of 1,000 burdensome and unnecessary regulations, Senator Patrick M. Gallivan, Deputy Republican Conference Leader for Economic Development, Senator David J. Valesky, Chair of the Senate Committee on Commerce, Economic Development, and Small Business, Senator Kathleen A. Marchione, Chair of the Senate's Administrative Regulations Review Commission, and Senator David Carlucci, Past Chair of the Senate's Administrative Regulations Review Commission, held a series of nine industry-specific forums. The forums were held across the state: Buffalo, September 11, 2013; Watertown, September 19, 2013, Syracuse, September 20, 2013; Long Island, September 25, 2013; Saratoga, October 2, 2013; Hudson Valley, October 7, 2013; New York City, October 8, 2013; Corning, October 9, 2013; and Rochester, October 15, 2013.

While this report describes, in detail, the specifics of our methodology and results, common themes emerged:

- Agencies should provide guidance in navigating complex regulations, which can be more burdensome than complying with the regulation itself
- Agencies should work cooperatively with businesses towards compliance rather than immediately penalizing
- Agencies should be held accountable to timely respond to permit, license, and grant applications as well as inquiries from covered businesses
- Agencies should develop fair and predictable regulations
- Commissioners should be held accountable to conduct an agency-by-agency review of regulations as required by law
- Agencies should communicate to avoid conflicting regulatory interpretations
- The Legislature should strengthen the State Administrative Procedure Act

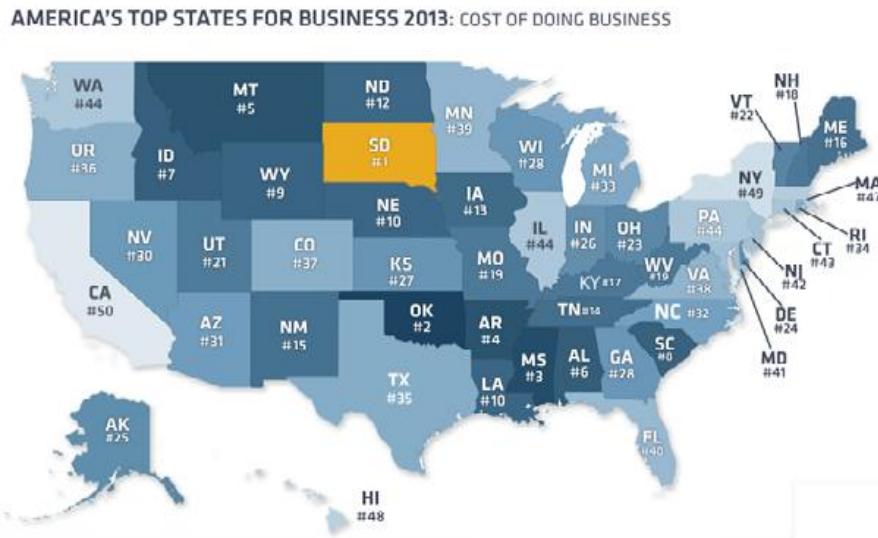
These “big picture” ideas are important to consider as we work to improve New York State’s regulatory environment. However, identifying specific regulations is just as important and provides a starting point for regulatory reform.

## Background

The cost of New York State's regulations is holding back our economy. In 2013, CNBC ranked New York State the 35<sup>th</sup> best state for doing business, one place worse than in 2012. A major factor for this below average and falling ranking was New York's performance as the 49<sup>th</sup> best state for the cost of doing business, a decline from last year's rank of 47.

These rankings make it clear

that, while many regulations provide benefits well worth their costs, for other regulations this is not the case.



Source: CNBC News<sup>1</sup>

Both the Senate Republicans and the Independent Democratic Conference (IDC) recognized that costly regulations are holding back New York State's economic growth and job creation. In February of 2012, the IDC announced a regulatory reform plan entitled Easing New York's Regulatory Burden: Promoting Business, Protecting the Public. In March, the Senate Republicans published their economic development plan, Blueprint for Jobs: ReThink. ReVitalize. ReBuild., which included significant regulatory reforms.

While some progress was made in the 2012 State Budget, much work was left to be done. In 2013, the Senate Majority Coalition introduced a package of bills addressing the regulatory burden. Each of these bills passed the Senate and included:

- S.1784 (Carlucci) - allows regulated businesses to petition a state agency for approval to use an alternative method to comply with a regulation
  - S.5166 (Marchionne) - seeks to start the process of repealing agency rules and regulations that are an impediment to economic growth and job creation
  - S.5657 (Gallivan) - establishes a task force to review the State Administrative Procedure Act to examine, evaluate, and make recommendations regarding the efficiency of the rulemaking process

In June, Senate Majority Coalition Leaders Dean Skelos and Jeff Klein announced that the Senate Majority Coalition would begin an unprecedented initiative to identify unnecessary government regulations for review to streamline or eliminate if appropriate, to remove unnecessary duplications, and to determine whether the public benefit justifies the cost. Throughout the process, the Senate Majority Coalition worked alongside the Administrative Regulations Review Commission (ARRC), utilizing its twenty-five years' experience with New York State regulations.

The ARRC began as a joint Senate-Assembly committee, created in 1977 by concurrent resolution of the Legislature. The following year it became a permanent commission, with the Legislature stating that "rulemaking power is delegated by the Legislature and the review of such power is an integral part of the legislative function." The membership of the ARRC consists of six legislators; currently there is one vacancy. For the 2013-14 legislative cycle, Senator Kathleen A. Marchione and Assemblymember Kenneth P. Zebrowski are the co-chairs. Senator Philip Boyle, Senator Liz Krueger and Assemblymember Andy Goodell also serve on the ARRC.

The ARRC's delegated responsibilities are to review agency rules with respect to a rule's statutory authority, compliance with legislative intent, impact on the economy and on state and local government operations, and impact on regulated parties. In fulfilling these duties, the ARRC reviews all agency rulemakings for procedural compliance with the State Administrative Procedure Act and the Executive Law. Often, the ARRC acts as a facilitator to bring together agencies, regulated parties and concerned legislators to discuss particular rules and to develop responsible alternatives when conflicts arise. Chapter laws, which contain rulemaking grants of authority, are also monitored to ensure the timely adoption of mandate rules. The ARRC also holds public hearings and initiates legislation to streamline and increase public participation in the rulemaking process. Finally, the Commission is often called upon to comment on pending legislation which affects the rulemaking process or contains rulemaking grants of authority.

### **Cost of Regulations**

Calculating the exact cost of New York State's regulatory burden is difficult given that there are approximately 750,000 regulations on the books. Some regulations have been analyzed and estimates of their costs have been quantified. For example, the annual notification requirement of the Wage Theft Prevention Act costs New York State employers an estimated \$181 million each year. Additionally, an outdated provision requiring car dealers to keep hardcopy records, instead of allowing them to maintain a digital database, costs an estimated \$2.7 million each year in new car sales alone. However, the actual cost of many New York State regulations is still unknown.

Fortunately, some recent studies can provide a rough estimate of the cost of New York State regulations. A recent study, commissioned by the Small Business Administration's Office of Advocacy, found the total impact of federal regulations on America's economy in 2008 to be \$1.75 trillion – over 12 percent of the economy. A 2009 study found that regulations in California, a state with a similarly burdensome regulatory regime to New York, cost \$493 billion annually. The high regulatory costs reduced business tax receipts by over \$16 billion and caused an estimated loss of 3.8 million jobs.

By extrapolating this study to New York State and adjusting for differences in the size of the two states' economies, the estimated cost of regulations is \$274 billion – approximately 23 percent of New York State's economy. These high regulatory costs are causing an estimated loss of 2 million jobs. To put this in perspective, New York State currently has 7.5 million private sector jobs and 716,000 unemployed. Repealing all regulations would create enough jobs to employ every unemployed individual in New York State and create a surplus of 1.3 million jobs.

Realistically, New York State will never reclaim all \$274 billion in estimated regulatory costs by eliminating its 750,000 regulations, nor should it. Some regulations clearly pass a cost-benefit test and are necessary to protect the public. However, repealing or reforming a fraction of the most burdensome, least beneficial regulations would give New York State's economy a meaningful boost and create thousands of jobs. While the 2,219 rules and regulations listed in this report represent a small fraction of the 750,000 imposed by New York State, these regulations have been specifically identified by businesses from all areas of the State as the most costly and burdensome. By eliminating just one percent of the total regulatory burden, New York State could create 20,000 new private sector jobs, roughly five times as many jobs it created this November.

## **Methodology**

While it is no secret that New York State is one of the most heavily regulated states in the nation, it has been difficult to identify which regulations are most harmful to New York State's economy. The Senate Majority Coalition decided that the best way to identify specific regulations was to hold nine industry-specific forums across New York State, focusing on specific industries vital to regional and statewide economic growth. Through this process, the Coalition was able to talk with the experts that comply with state regulations on a daily basis. This report summarizes each participant's testimony, organized by covered industry.<sup>2</sup> The industries covered included medical technology and health, agriculture, manufacturing, construction, hospitality and tourism, small business, financial services, and biotechnology.

By holding industry-specific hearings, the Senate Majority Coalition was able to narrow its focus to one segment of the economy at a time. Through this approach, the Coalition was able to identify common themes within each industry as well as view universal regulatory problems

through the lens of specific industries. The Senate Majority Coalition also reviewed surveys, letters, and emails, and held meetings with chambers of commerce, individual businesses, business groups, state and local organizations, and constituents. The culmination of this work led to the identification of 2,219 regulatory burdens. Each specific burden corresponds to a specific regulation or section of law, or a practice of an agency that has the effect of a regulation or statute in that it creates a burden on business as if it were a validly enacted law or rule.

While this report represents the culmination of the forum process, it is only the first step in what will be an ongoing effort by the Senate Majority Coalition to minimize the regulatory burden of New York State. Through further legislation, agency review, and continued cooperation with the ARRC, we can work to eliminate regulatory burdens and transform New York State into a place where people want to do business.

Sincerely,



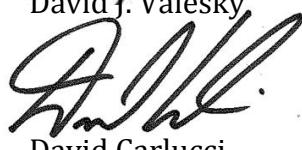
Patrick M. Gallivan



Kathleen A. Marchione



David J. Valesky



David Carlucci

## **Industry-Specific Forum Reports**

**Medical Technology & Health**  
September 11, 2013  
Roswell Park Cancer Institute  
Buffalo, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky  
Senator Mark J. Grisanti

**Speakers:**

Donald Trump, M.D.  
*President of Roswell Park Cancer Institute*

James Kaskie  
*President & CEO of Kaleida Health*

Thomas Madejski, M.D.  
*Assistant Treasurer for the Medical Society of Erie County*

Jessica Crawford  
*President of MedTech Association*

Donald Ingalls  
*Vice President of State & Federal Regulations for HealthNow New York*

Dennis Galluzzo  
*Executive Director of the Pharmacists Association of Western New York*

Roberta Rifkin  
*Vice President of Government Affairs for Independent Health*

Willie Underwood, M.D.  
*Chairman of the Legislative Committee for the Medical Society of Erie County*

Marlene Kraft  
*Vice President of Quality & Marketing Services for Palladian Health*

Dr. John Gillespie  
*Chief Medical Officer for Palladian Health*

Submitted Testimony:

Megan Tangjerd, MPA

*Senior Associate for Public Policy at the NYS Association of Health Care Providers, Inc.*

Chris Peterson

*Executive Director at the Arc of Livingston-Wyoming*

Laura Krolczyk

*Director of Government and Community Relations at Roswell Park Cancer Institute*

Communications Workers of America Local 1168

Summary of Speaker Testimony:

**Donald Trump, M.D.**

Dr. Trump is the President of Roswell Park Cancer Institute, a comprehensive cancer research and treatment center located in Buffalo, New York. Founded in 1898 by Dr. Roswell Park, it was the first dedicated medical facility for cancer treatment and research in the United States.

- *Opposed to the Safe Staffing for Quality Care Act and the Safe Patient Handling Act.* The Safe Staffing for Quality Care Act (S.3691 (Hannon)/A.6571 (Gottfried)) requires certain care facilities to implement direct care nurse-to-patient ratios in all nursing units, sets minimum staffing requirements, and requires facilities to submit an annual staffing plan, among other requirements. The Safe Patient Handling Act (S.1123-B (Maziarz)/A.2180-B (Gunther)) establishes a statewide safe patient handling policy for healthcare facilities. Instead of imposing a statewide policy, the legislature should trust healthcare professionals to safely staff their facilities on their own. The capability exists to address those few bad actors without imposing an across-the-board legislative solution to staffing patterns or numbers.
- *Reform the Certificate of Need (CON) process.* The playing field needs to be leveled and burdensome regulations should be eliminated.
- *Eliminate duplicative laboratory certifications.* Currently, clinical laboratories must be inspected by both New York State and the Joint Commission, a national organization that accredits and certifies health care organizations. This process is duplicative, time consuming, and costly without providing added value.
- *Streamline medical licensure.* The process for verifying the education of foreign-educated practitioners is long, cumbersome, and unnecessary. This is especially true considering that many of these physicians have been practicing in other states for up to two decades.

- *Modify regulations for telemedicine.* Telemedicine is an important tool in healthcare delivery and one way to address the shortage of the oncology workforce. New York State regulations prohibit state physicians from providing care via telemedicine to a patient in another state unless the physician is also licensed in that state.
- *Remove the requirement of some Medicaid managed care plans for cancer patients to obtain specialty medications from CVS Caremark in Connecticut.* These plans should use a specialty pharmacy located within New York State to keep Medicaid dollars here, provide business to a state pharmacy, and provide patients with their medications in a more timely fashion.
- *Modify the Public Authorities Accountability Act.* As a public benefit corporation, Roswell Park Cancer Institute uses accounting methods that are different from those required by the Public Authorities Budget Office. As a result, Roswell Park has to pay accountants to transform their statements into the required standardized method, causing the information to become skewed and distorting the meaning for public disclosure. The office has also informed Roswell Park that their mission statement – “to understand, prevent, and cure cancer” – does not meet proper criteria. This Act is an example of a universal solution that does not properly fit every business model that is subject to it.
- *Revise the Public Authorities Law to create more autonomy in collective bargaining agreements for institutions like Roswell Park.* The Triborough Amendment to the Taylor Law provides for the continuation of bargaining agreement provisions after their expiration and prior to the ratification of a new agreement. This causes challenges to Roswell Park who believes that it would be beneficial to have more autonomy in this process.
- *Repeal the annual wage notification requirement under Labor Law § 195(1).* This law requires every New York State employer to provide written notice to employees about the rate of pay, the regular pay cycle, and the rate of overtime pay and to obtain a written acknowledgement from each employee of receipt of notice. The notices must be provided at the time of hiring, upon rehire, when there are changes in pay rate, and every year on or before February 1. This law is a costly administrative burden.
- *Revise Civil Service Law § 71 and § 73.* These sections should be revised so that an employee’s amount of leave is based on the degree of disability and the likelihood the employee will return to work.

- *Reform § 25 of the Workers’ Compensation Law.* This section deals with employee payments and the degree of disability. It is complicated, costly, and incentivizes employees to remain out of work.

### **James Kaskie**

Mr. Kaskie is the President and Chief Executive Officer of Kaleida Health. As the largest healthcare provider in Western New York, Kaleida Health serves the area’s eight counties with state-of-the-art technology and comprehensive healthcare services. Its expert and compassionate healthcare professionals are committed to providing the best possible outcomes and experience for patients and visitors.

- *Advance meaningful tort reform to provide hospitals and physicians relief from the high cost of medical malpractice coverage.* Examples of reform include expanding the 2011 medical indemnity fund to cover the future medical costs of all neurologically impaired individuals. The legislature should also prevent the passage of bills that would increase medical malpractice premiums such as extending the statute of limitations for medical malpractice cases.
- *Reform the Certificate of Need (CON) process.* The legislature should amend state law to eliminate CON review of construction projects, regardless of cost, unless the project involves certain specified “cost drivers” or limits access to care. New York State should also rationalize the way in which it undertakes character and competence reviews as part of the process for establishing a new healthcare facility or certain new services.
- *Opposed to the Safe Staffing for Quality Care Act - S.3691 (Hannon)/A.6571 (Gottfried) - and any other legislation that would mandate minimum nurse-patient staffing ratios.* These ratios have not been proven to improve patient outcomes.
- *Opposed to the Safe Patient Handling Act - S.1123-B (Maziarz)/A.2180-B (Gunther).* Kaleida Health opposes legislation that would require healthcare facilities to implement a one-size-fits-all safe patient handling program. While Kaleida Health’s own safe-handling program has been extremely effective and successful, these programs should be a choice for an organization, not an unfunded mandate.

### **Thomas Madejski, M.D.**

Dr. Madejski is the Assistant Treasurer for the Medical Society of Erie County. The Medical Society of Erie County is the professional association of physicians of Erie County created to promote and preserve the science and art of medicine in our community through advocacy for patients and physicians.

- *Amend the mandated reporting requirements under the NY SAFE Act.* The legislature should ensure that the reporting requirements only apply to psychiatrists and other

professionals who provide mental health treatment. Further, the law should provide stronger liability protection based upon a physician's decision to report or not. Lastly, the legislature should clarify the duty to report standard to those situations where a physician believes there is an imminent threat of harm; this is similar to the standard for other exceptions to patient confidentiality in federal and state law.

- *Modify the I-STOP program.* I-STOP requires physicians to check an electronic prescribing database prior to prescribing a controlled substance and to electronically prescribe all prescriptions for controlled substances by March 27, 2015. There are three modifications that should be made to the I-STOP program. First, physicians' staff are required to check the electronic database twenty-four hours in advance of a patient's visit but does not allow staff to check the database on the Friday before a Monday patient visit. This is problematic, causes disruptions, and slows down patient care. Second, there is an exception to the duty to consult the electronic database when the physician is in a hospital emergency room and gives the patient a 5-day-or-less supply of a controlled substance. This exception should be extended to all post-surgical patients, or perhaps even all patients in a hospital setting. Lastly, all controlled substances must be electronically prescribed by March 27, 2015. This should be modified to provide exemptions for physicians approaching retirement and those who cannot afford the cost of the technology.
- *Create uniformity in physician claim submission.* Currently, New York State Medicaid, workers' compensation, and no-fault insurance each have their own unique claim submission forms mandated respectively by the Department of Health, the Workers' Compensation Board, and the Department of Financial Services. To make things even more complicated, all of these forms are different from those that physicians submit to commercial health insurers. Uniformity among these forms should be extended to all types of insurance coverage for patient healthcare costs.
- *Repeal Public Health Law § 2781-a and reduce the burden of mandated actions.* New York State policymakers have added to physicians' growing burden in the last few years by requiring physicians to offer HIV testing and palliative care, and soon will require Hepatitis C testing. Public Health Law § 2781-a requires that HIV testing be offered to all persons between the ages of thirteen and sixty-four that are receiving hospital or primary care services, with some limited exceptions. If physicians fail to take these required actions, they can face serious fines and possible licensure action. While the steps required by these mandates should be taken by physicians in many patient encounters, it should be left to the physician's discretion in discussion with his patient.

- *Opposed to legislation that would require physicians to undergo Certificate of Need approval to perform certain medical procedures.*
- *Opposed to legislation that would require physicians to adopt interoperable electronic medical-records systems and participate on the SHIN-NY network.*
- *Opposed to mandates for course-specific continuing medical education.* While Dr. Madejski supports the general requirement for physicians to obtain 50 hours of continuing medical education on a biennial basis, regulations should not mandate specific courses that may have no connection to an individual physician's practice.

### **Jessica Crawford**

Ms. Crawford is the President of MedTech Association, the hub of the bioscience and medical technology industry in New York State. MedTech is an active association of pharmaceutical, biotech, and medical technology companies, their supplies and service providers, and research universities.

- *Obtain public input for Medicaid redesign.* Governor Cuomo's Medicaid redesign team has set up a technology assessment process and has started to make decisions on eliminating technologies and devices from coverage under Medicaid. This process should be more open, transparent, and allow for public comment. Other states have processes that add transparency and integrity to the review process; for example, Oregon has a health-evidence review commission and Minnesota has a health-services advisory committee. New York should adopt a process that allows for public input and consults the advice of medical practitioners and professionals who can comment on effectiveness, cost, and impact on patients across the state.
- *Supports S.4509 (Hannon)/A.7528 (Morelle).* This bill, which passed the Senate in 2013, addresses the issue of Medicaid redesign. It directs the Department of Health to create a Health Technology Assessment Committee to advise the Commissioner of Health on coverage of health technology under Medicaid. The committee would consist of thirteen members with backgrounds in healthcare and health technology.

### **Donald Ingalls**

Mr. Ingalls is the Vice President of State & Federal Regulations for HealthNow New York. HealthNow New York is a premier and diversified health benefits and information company that provides innovative products, services, and technologies to improve the availability, quality, and cost of healthcare.

- *Opposed to additional health insurance mandates.* Health insurance mandates are the requirements in state law that insurance policies must cover specific services,

practitioners, and other items. New York has one of the largest number of mandates in the country, which increases the costs of health insurance.

- *Supports S.3042 (Gallivan).* This bill requires the New York State Healthcare Quality and Cost Containment Commission to evaluate each mandated benefit and investigate current practices of health plans with regard to the mandated benefit.

### **Dennis Galluzzo**

Mr. Galluzzo is the Executive Director of the Pharmacists Association of Western New York. PAWNY is an organization of pharmacists and associated healthcare professionals dedicated to the advancement of the profession of pharmacy.

- *Repeal 8 NYCRR § 63.9 (b)(1)(ii)(a).* Currently, a non-patient immunization order written by a physician or nurse practitioner is valid only if the immunizing pharmacist is located in the same county. This regulation serves no clinical, financial, or other reasonable purpose and serves as a barrier to prevent certified pharmacists from administering vaccines to consumers. While the regulation does allow a practitioner in one county to write the order for pharmacists in an adjacent county if it has less than 75,000 in population, it does not account for counties that are larger than this. This is causing a serious problem in Western New York, where health officials and physicians in Niagara County are refusing to write non-patient orders for pharmacists to give flu shots in Niagara County pharmacies. Not only is this regulation standing in the way of state and federal public health goals, but it also creates costs for pharmacies, which must pre-book the vaccine for the upcoming flu season. Pharmacies in Niagara County have been left with thousands of dollars worth of flu vaccine which they cannot administer.
- *Repeal 18 NYCRR § 505.3 which mandates that all enrolled Medicaid providers participate in the Average Acquisition Cost (AAC) survey.* This regulation requires every pharmacy enrolled in the Medicaid program to complete a survey asking for the actual invoice cost of each individual drug product purchased by the pharmacy. The survey requires twelve months of invoice costs, covering thousands of individual products that often fluctuate in price. New York State is one of only three states with a mandatory survey. This regulation is costly to the state in terms of staff time and costly to pharmacies which must request the data from wholesalers, ensure the information is in a specified format, sift through voluminous amounts of data, and take the time to compile all the information. This regulation is an example of one that is not useful, not cost-effective, burdensome, and wasteful for both New York State and its pharmacies.
- *Create laws to regulate Pharmacy Benefit Managers (PBMs).* Pharmacies contract directly with PBMs, which contract with health insurers to manage the pharmacy benefit. State insurance law regulates health plans but does not recognize, define, or regulate

PBMs. This lack of regulation leaves pharmacies vulnerable to PBMs, which often reimburse pharmacies below cost and do not update drug costs in a timely manner. PBMs lack the business incentive to treat pharmacies fairly since there are no state regulations to hold PBMs accountable and no state-regulated process for pharmacies to challenge underpayment. PBMs are the only entities in the healthcare delivery system that remain unregulated in New York State. The state should regulate PBMs to ensure fairness and provide due process protection for pharmacies and patients.

### **Roberta Rifkin**

Ms. Rifkin is the Vice President of Government Affairs for Independent Health, which provides insurance products and services that offer affordable access to quality healthcare. Independent Health began in 1980 as the culmination of a graduate-school research project through the State University of New York at Buffalo. Today, it has NCQA accreditation and is one of the country's leading health plans for customer service and satisfaction.

- *Review mandated insurance benefits.* Ms. Rifkin recommends that the value of mandated insurance benefits be routinely examined to meet evidence based standards of care and impact on costs. Regular review of these mandates would reduce unnecessary tests and protect consumers from undergoing treatments or services that could be invasive or stress-inducing without providing clear medical benefits.
- *Modify mandated insurance benefits.* Some mandates have become outdated and irrelevant as medical science has changed over time. For example, one mandate requires that insurers cover one mammogram per year for women over the age of forty even though evidence shows that annual exams are not necessary for many women before the age of fifty. Other mandates have very low enrollment while providing high costs to businesses. For example, the requirement to make available a rider that allows dependent coverage up to age twenty-nine can add one to two percent to premiums and currently has very low enrollment. With the new federal requirement to provide dependant coverage to age twenty-six and with new products available through the health benefits exchange, this rider has become redundant and adds costs without adding value.

### **Willie Underwood, M.D.**

Dr. Underwood is the Chairman of the Legislative Committee for the Medical Society of Erie County. The Medical Society of Erie County is the professional association of physicians of Erie County created to promote and preserve the science and art of medicine in our community through advocacy for patients and physicians.

- *Opposed to Certificate of Need (CON) review for some in-office procedures.* CON is a required legal document that must be issued prior to the purchase, expansion, or formation of healthcare facilities. CON review is bad for competition because competitors can use the process to delay or prevent others from providing certain

procedures. Further, CON review is bad for in-office procedures because it will result in limited options for patients.

### **Marlene Kraft**

Ms. Kraft is the Vice President of Quality & Marketing Services for Palladian Health. Palladian Health focuses on musculoskeletal healthcare. Dedicated to improving the coordination of patient care, enhancing the clinical effectiveness and efficiency of caregivers, and, ultimately, improving the quality of people's lives. The musculoskeletal care model integrates physical therapy, chiropractic and physical health, and fitness with primary care to provide optimal outcomes for health plan clients and their members, as well as large self-insured employer groups.

- *Modify Public Health Law § 4901.* This law deals with the registration of utilization review agents, which are required to register and submit necessary information to the Department of Health on a biennial basis. The Department of Health is unable to process these registrations in a timely fashion because it does not have the staff or the time to do so. Further, each health plan that delegates utilization review services already audits the delegate annually through a review of all its policies and procedures. The state should modify Public Health Law § 4901 by requiring registration or licensure through one initial application. Additionally, if the organization is already accredited, the state should accept documentation of the accreditation in lieu of a full application. Other states currently follow this process rather than go through the additional work of a full application.
- *Modify Public Health Law § 4903(2).* This law deals with utilization review determinations. It requires utilization review agents (URAs) to make a utilization review determination involving health care services that require pre-authorization. The URA must then provide notice of the determination to the enrollee or his designee and the enrollee's healthcare provider by telephone and in writing within three business days of receipt of the necessary information. The state should modify Public Health Law § 4903(2) by removing the requirement that notification be provided by telephone. The law should be changed because the notification is already provided in writing. Additionally, notification is often provided by fax to the healthcare provider on the determination date or electronically through web services, and 80 percent of telephone notifications to the enrollee or his designee result in unanswered calls, voice messages, and line errors. Further, network healthcare providers repeatedly ask to opt out of telephone notification but the Department of Health has indicated that opting out is not allowed under the law. Telephone notification should be removed from the law because it is an ineffective method of communication and creates an unnecessary and additional business expense for URAs.

- *Modify Public Health Law § 4903(3).* This law requires a utilization review agent to make a determination involving continued or extended healthcare service and additional services for an enrollee undergoing a course of continued treatment prescribed by a healthcare provider, and to provide notice of such determination to the enrollee or his designee by telephone and in writing within one business day of receipt of the necessary information. The law also says that this requirement may be satisfied by notice to the enrollee’s healthcare provider. Two modifications should be made to this law. First, the mandate for telephone notification should be removed for the reasons discussed above. Second, the legislature should clarify whether the healthcare provider notice is adequate for all determinations or whether the provider must agree to notify the enrollee or his designee. Various regional interpretations currently exist that add confusion to this notification requirement.
- *Clarify definitions under Public Health Law § 901 for co-payment practices.* This law provides definitions for “primary care practitioner” and “primary care physician.” However, these definitions are not complete and some healthcare providers are able to be misclassified as specialists. For example, chiropractors, physical therapists, and occupational therapists tend to be categorized by insurance companies as “specialists” and are therefore subject to a specialist co-pay. Because these practitioners are classified as specialists, the specialist co-payment often equals or exceeds the fee so the patient is left to pay the full cost of services and it appears that there is no creditable coverage for that service. These practitioners have an area of expertise involving specific body systems and do not meet the threshold of specialist like a psychiatrist, neurosurgeon, or ophthalmologist would. Further, practitioners who perform the same services as the “specialist” should be considered equivalent for those services. Otherwise, patients pay a higher cost for seeing a practitioner than for seeing a specialist. The state should modify the definitions under this law by providing clarification for co-payment practices and establishing that a specialist is a physician specialist.

### **Dr. John Gillespie**

Dr. Gillespie is the Chief Medical Officer for Palladian Health.

- *Modify Public Health Law § 4903(2).* This law should be modified to remove the notification mandate if the URA makes a determination accepting the patient’s healthcare services. If accepted, the patient already knows that they will be getting the service because their physician has ordered it and told them that they will be receiving it. For the patient to then receive a notification of acceptance in the mail and via telephone is duplicative and a waste of money. On the contrary, patients should be notified if the URA makes a determination denying the patient’s healthcare services. The state should make this distinction between acceptance and denial in the law.

Summary of Submitted Testimony:

**Megan Tangjerd, MPA**

Ms. Tangjerd is the Senior Associate for Public Policy at the New York State Association of Health Care Providers, Inc.

- *Repeal 10 NYCRR § 2.59 for Article 36 agencies.* The flu mask regulation requires all unvaccinated personnel in healthcare and residential facilities and agencies to wear surgical or procedure masks during times the State Commissioner of Health determines that influenza is present. Implementation in the home care setting poses unique challenges that are not experienced in institutional-based healthcare facilities. This regulation should be repealed for Article 36 agencies, those that provide home care services, or modified to more thoughtfully address the nuances of implementation in home and community-based care settings.
- *Repeal 10 NYCRR § 1002 which puts limits on executive compensation and administrative expenses in agency procurements.* This regulation restricts covered providers from spending more than \$199,000, to be reviewed annually, in state funds for the compensation of an executive. It also requires that at least 75% of a covered provider’s operating expenses paid for with state funds are for program services rather than administrative costs (this regulation commenced on July 1, 2013 with the percentage to increase by 5% each year until it reaches 85% in 2015). The home care industry is already heavily regulated by the Department of Health and the Office of the Medicaid Inspector General. Compliance will further complicate burdensome reporting requirements and shift service providers toward compliance with paperwork rather than their service missions and goals. This regulation should be repealed in its entirety.
- *Repeal the annual wage notification requirement under Labor Law § 195(1).* The notification requirement imposes a costly and burdensome administrative obligation on employers by mandating that employers send notices to each employee with salary information and then collect the signed notice. Failure to do so results in sanctions to the employer by the Department of Labor. This requirement is especially onerous in the home care setting. Employers are already required by law to provide staff with a wage earning statement during the month of January. The annual wage notification requirement should be repealed to eliminate these duplicative efforts and provide administrative relief to employers.
- *Phase out the regulatory requirement for personal care service providers to complete annual cost reports under 18 NYCRR § 505.14(h)(7)(i).* Providers of personal care services must submit annual cost reports to the Department of Health. These reports are used to determine Medicaid payment rates for personal care services providers that have

contracts with social services districts for any rate year. Compliance with this requirement is very costly and burdensome for agencies and is becoming obsolete with the implementation of mandatory managed care models throughout New York State. As the transition progresses, this regulatory requirement should be correspondingly phased out.

- *Eliminate the required submission of outstanding Department of Health statistical reports under 10 NYCRR § 766.12(c)(1) and 10 NYCRR § 763.14(b)(2).* Licensed and certified home care agencies are required to submit annual statistical reports to the Department of Health which includes summaries of the type, frequency, and reimbursement for services provided. Following the 2009 report, the Department of Health experienced a lapse in collection and has now moved ahead with plans to issue outstanding statistical reports for the years 2010, 2011, and 2012. The completion of these reports is highly burdensome and onerous for providers. The required submission of the remaining outstanding reports should be eliminated and the Department of Health should start fresh by collecting the most current data available. Further, providers that were unable to submit the 2010 report in a timely manner should not be penalized.
- *Modify the definition of “disaster emergency response personnel” found under New York State Executive Law, Article 2-B, § 20(g).* According to current state law, “disaster emergency response personnel” is defined as agencies, public officers, employees, or affiliated volunteers having duties and responsibilities under or pursuant to a comprehensive emergency management plan. This definition should be extended to staff employed by licensed or certified home health agencies and certified Hospice agencies. Home care workers perform a critical role during emergency situations, helping to maintain the safety and health of their clients. Further, an exception should be granted to these individuals and their vehicles from following curfews, prohibitions, and control of pedestrian and vehicle traffic established during a declared emergency.

### **Chris Peterson**

Mr. Peterson is the Executive Director at the Arc of Livingston-Wyoming.

- *Modify the new billing and payment system for the Early Intervention Program.* On April 1, 2013, New York State enacted a new billing and payment system for Early Intervention in an effort to cut costs. Prior to this change, counties would pay for the service and later be reimbursed by the state. Now, therapists and other providers are required to bill insurers through a fiscal agent contracted by the Department of Health. Since the change, many problems have occurred. Providers and therapists have not been paid for services provided. Parents, instead of healthcare providers, have received checks directly from insurance companies. Therapists and providers have had to attempt to make sense of the complicated billing process and spend hours on the phone with

insurance companies and others in an attempt to get reimbursed. Because of the lack of reimbursement, many small businesses have closed and children are no longer receiving services.

- *Expedite the process for background checks through the Office of Mental Health.* Private providers in New York have always been scrutinized through regular inspections and rigorous oversight. The newly enacted Justice Center was created to make sure that abusive people do not work providing care to people with disabilities. Private providers were, and are, doing an excellent job policing this already. One of the problems that providers are having with the enactment of this new agency is getting background checks done on a timely basis. Providers are having difficulty hiring people because background checks are so slow that they must wait weeks before hiring.

#### **Laura Krolczyk**

Ms. Krolczyk is the Director of Government and Community Relations at Roswell Park Cancer Institute, a comprehensive cancer research and treatment center located in Buffalo, New York. Founded in 1898 by Dr. Roswell Park, it was the first dedicated medical facility for cancer treatment and research in the United States.

- *Collaborative agreements between physicians and pharmacists allowed under the collaborative drug therapy management (CDTM) law are problematic when using electronic prescription systems.*
- *Duplicative entry of data is burdensome and costly.* Roswell Park invested in a reporting/contract management system to be able to generate the required data on minority and/or women-owned business enterprise (MWBE) procurement. However, they were recently told that they must duplicate all of that information into the state contract compliance module. The volume of data that would need to be inputted would force the company to hire additional staff. Further, the entrance of this data duplicates what the company is already doing.
- *IPRO should accept electronic records instead of requiring paper documentation.* IPRO is a private company under contract with the United States Centers for Medicare and Medicaid Services to improve health care for people with Medicare in New York State. Part of this job involves reviewing records submitted by New York health care providers. The company recently asked Roswell Park for paper copies of many records. This request resulted in several days of labor to print and collect medical records as well as shipping costs. The request for paper documentation is a heavy burden. IPRO should accept electronic records instead.

- *Streamline medical licensure for foreign educated physicians.* Medical licensure could be significantly streamlined. Roswell Park has recruited physicians from prestigious places like the Mayo Clinic who have been practicing medicine in the United States for twenty years but were educated at a foreign medical school. New York State’s process for verifying education is long, cumbersome, and largely unnecessary.
- *Eliminate duplicative state inspections.* New York State agency inspections of healthcare facilities adds substantial expense to healthcare delivery and is often duplicative among state, federal, and accrediting agency inspections. Multiple inspections for the same purpose take scarce staff resources away from their jobs of caring for patients and add additional administrative expenses of having to respond multiple times to different agencies. A prime example of this duplication is the inspections of hospital clinical laboratories conducted by both the Department of Health Wadsworth Laboratory and the Joint Commission.

### **Communications Workers of America Local 1168**

Communications Workers of America (CWA) Local 1168 represents approximately 5,000 health care workers of all job titles throughout Western New York. Members of CWA Local 1168 who provided testimony include: Ann Converso, RN, Mary Broginski, RN, Diana Butsh, RN, MaryAnn Janicki, HCC, Mary Beth Gallagher, RN, Dana McCarthy, MS, Kristen Ritter, Sarah Buckley, and Bill Nowak.

- *Supports Safe Patient Handling Act – S.1123-B (Maziarz)/A.2180-B (Gunther).* This bill establishes a statewide safe patient handling policy for healthcare facilities and creates a task force for implementation. This bill would increase the quality of care for patients, reduce worker and patient injuries, and save money by decreasing workers’ compensation claims, lost workday injury rates, restricted workdays, and insurance premiums.
- *Supports Safe Staffing for Quality Care Act – S.3691 (Hannon)/A.6571 (Gottfried).* This bill requires all acute care facilities to comply with minimum nurse-to-patient staffing ratios. Safe staffing levels will help cut healthcare system costs, reduce the occurrence of avoidable patient deaths, decrease adverse events including hospital-acquired infections, and decrease readmissions. Safe staffing can also lead to savings for hospitals and our healthcare system.

**Agriculture**  
September 19, 2013  
Dulles State Office Building  
Watertown, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky  
Senator Patty Ritchie

**Speakers:**

Mark Akins  
*Member of the St. Lawrence County Legislature*

Eric Behling  
*Co-owner of Behling Farms and Board Member of the Oswego County Farm Bureau*

Jay Matterson  
*Jefferson County Agriculture Coordinator and Ag Economic Developer for Jefferson IDA*

Phil Randazzo  
*Owner of Coyote Moon Winery*

Ron Robbins  
*Owner/Operator of North Harbor Dairy Farm and Old McDonald's Farm*

Morris Surbello  
*Owner/Operator of an Onion and Soy Bean Farm in Oswego County, New York*

Kathryn Canzonier  
*Vice President of Farm Credit East*

Tonya Van Slyke.  
*Executive Director of Northeast Dairy Producers Association*

David Fisher  
*Member of New York Farm Bureau, Board of Directors, District 7*  
*Operator of Maple View Dairy*

Pat McCormick  
*Vice President of Wyoming County Farm Bureau*

Faye Beckwith  
*Co-owner/Operator of a Christmas Tree Farm in Oswego County, New York*

## Summary of Speaker Testimony:

### **Mark Akins**

Mr. Akins is a St. Lawrence County Legislator and a member of Senator Ritchie's Agricultural Advisory Council. Formed in 2011, the Agricultural Advisory Council - comprised of leaders in the industry from Central and Northern New York - is tasked with identifying challenges and opportunities for growth in the agriculture industry which can be passed on to the Senate Agriculture Committee, which Senator Ritchie chairs.

- *Current regulations prevent the use of technology that would make farming more efficient and cost effective.* Concentrated Animal Feeding Operations (CAFO) regulations require farmers to keep records of daily temperatures, precipitations, and the amount of manure in storage. Information regarding temperature and precipitation are already kept by multiple outside sources such as news stations and weather reporters. Requiring the farmer to create and maintain daily records of this information is duplicative and creates an unneeded waste of time and resources.
- *Approve funding on a timely basis.* When a farming organization is approved for funding or applying for funding, the expenses need to be fronted by that organization. Waiting for approval can create uncertainty in future financial analysis. Additionally, when approved funding is delayed, the farming organization bears the initial costs. Therefore, such funds are not able to be appropriated to other aspects of the farming operations. For example producers submitted vouchers on January 22<sup>nd</sup> and payment was not made until after July 18<sup>th</sup>. When funded projects exceed hundreds of thousands of dollars, these extended delays can have a significant impact on farms.

### **Eric Behling**

Mr. Behling is a board member of the Oswego County Farm Bureau and a member of Senator Ritchie's Agricultural Advisory Council. Mr. Behling is also a 5<sup>th</sup> generation apple grower from Behling Orchards. Since 1947 Behling Orchards has grown from 6 acres to 160 acres, offers 70 varieties of apples, and offers a variety of family entertainment. In addition to Behling primarily being a U-pick farm, they also feature hayrides, pony rides, and mazes for children, pumpkins, a snack bar, fresh baked pies, and other apple and seasonal favorites, such as popcorn balls, and a cider mill.

- *Supports S.155 (Gallivan)/A.531 (Gunther) - Provides that the regulation of pesticides in New York State shall conform to the standards set by the U.S. Environmental Protection Agency.* New York has stricter regulations on pesticides than the U.S. Environmental Protection Agency. Pesticides that are eventually approved for use in New York have a significant lag behind the U.S. Environmental Protection Agency. This is a clear example of state government performing a duplicate function that offers no additional environmental benefit and prevents our growers from taking advantage of newer, better,

and safer products than our neighboring states. New York is known for having the slowest pesticide-product registration process in the nation.

- *Supports S.1951 (Ritchie)/A.169 (Magee) - Relates to the registration of certain farm vehicles sponsored.* State law limits farm-plated vehicles that travel within a 25-mile radius from the farm address to which that vehicle is registered. The farmer must file additional paperwork specifically addressing all points of destination for that specific registered farm vehicle. This information must then be kept on file with the vehicle registration as an attachment. Each time the farmer acquires additional land or finds it necessary to travel to an alternate destination in order to conduct business, he or she must file another document with the Department of Motor Vehicles which expends time and staff resources on behalf of the farmer and the state. With state law already strictly designating the use of farm plated vehicles to within 25 miles of the farm that the vehicle is registered to, the additional documentation and maintenance of such paperwork with New York State is duplicative and unnecessary.
- *Supports S.4260 (Ritchie)/A.6024 (Magee) – Farmers Regulatory Relief Act.* Particularly supports the provision which would allow corporations primarily engaged in farming to use net income when determining the filing fees for Limited Liability Companies and S Corporations. LLCs and S corporations are now assessed a fee based on gross income rather than net income. A farm can easily gross over a million dollars, but earn less than several thousand dollars in profit.
- *Modify N.Y. LLC. Law § 206 to remove the publishing requirement for the formation of a Limited Liability Company.* This requirement is antiquated.
- *Supports pending DEC regulations for maple tapping on state land.* Common sense regulations which bring parity to the marketplace can help family farms. These pending regulations are similar to the State of Vermont.
- *Eliminate the requirement that an ultraviolet light processor be inspected every three years.* The cost of re-inspection has tripled since the last inspection because there are very few inspectors available to comply with this regulatory requirement.
- *Opposes Farmworkers’ Fair Labor Practices Act which would require overtime and collective bargaining on family farms.* Such factory style mandates do not work for the fluctuating work schedule necessary to harvest crops. For example, a missed day of harvesting could result in \$100,000 loss to the farm. Family farms are especially vulnerable as New York farmers already spend substantially more on labor than the

national average. According to the U.S. Census data, for every \$100 of production sold, New York farmers paid \$13.82 to farm workers, compared to the U.S. average of \$8.88.

- *Allow for registration fees already paid for agricultural plates to be prorated towards the fee for farm plates.* As a vehicle ages, it may only be able to pass inspection for farm plates instead of agricultural plates. The exact date of such vehicle deterioration is hard to predict and therefore the registration fees for agricultural plates should be prorated towards the fee for farm plates when it is necessary to convert the vehicle.

### **Jay Matterson**

Mr. Matterson is the Jefferson County Agricultural Coordinator and a member of Senator Ritchie's Agricultural Advisory Council. Mr. Matterson also serves as the Agricultural Economic Developer for the Jefferson County Industrial Development Agency. The mission of the Jefferson County Agricultural Development Committee is to assist in the retention, growth, and promotion of Jefferson County's agricultural industry.

- *New York State requirements for Concentrated Animal Feeding Operations (CAFOs) should be the same as set by the U.S. Environmental Protection Agency.* New York should not go beyond federal regulations and put New York farmers at a disadvantage as compared to other states.
- *Winery permits should be expedited.* There is no reason for unneeded delay in approving the proper permitting to open a farm winery. For example, a gentleman in Jefferson County waited month after month to get the necessary permits to open a winery.
- *Dairy farmers should not need to record rainfall and wind direction daily when such information is readily accessible.* This data is already being collected by other organizations and collecting such data is a waste of time and resources for the farmer.
- *Commercial producers should be involved when promulgating laws defining “agricultural products.”* For example, there are discussions about changing the definition of “pure honey” without including commercial bee-keepers in the decision making process.
- *Establish a 10-year moratorium on any new, or changes to existing, environmental regulations in New York State impacting our dairy farms.* While it would be helpful to change existing environmental regulations, it is even more important to create a stable environment for dairy farmers. The dairy industry will grow as long as farmers know what is expected of them. For example, a farmer would not have to waste \$30,000 on a bunk-silo leachate collection system that no longer complied with regulations. New York's dairy farms are among the most highly regulated in the nation. As New York has already set the bar high, let the farms meet it before changing the regulations again.

- *Opposes the Farmworkers' Fair Labor Practices Act.* This bill would put employees out of work. It will cause full-time employees earning benefits to become part-time employees.
- *Supports affordable three-phase electrical power.* This is a barrier across New York State. Utilities are charging farmers to build the infrastructure as well as for the delivery and supply of that electricity.
- *Shared-use kitchens that are already permitted by Agriculture and Markets should not be inspected every time there is a new user.*

### **Phil Randazzo**

Mr. Randazzo is a member of Senator Ritchie's Agricultural Advisory Council and the owner of Coyote Moon Winery. The Randazzo family of Coyote Moon Vineyards handcrafts each award-winning wine at their vineyard located in the heart of the Thousand Islands in Clayton, New York. Phil Randazzo, patriarch of the family-owned and operated winery, is a self-taught winemaker. Phil and his wife Mary, along with their children, carefully create each bottle of Coyote Moon's award-winning wine.

- *New York State has made positive steps to help the wine industry.* Examples include the funding of research and marketing campaigns to the New York State Wine and Grape Foundation as well as increasing international press for New York State products. Also, the State Liquor Authority has been doing a great job under Chairman Rosen by expediting the permitting process and helping citizens understand the law, rules, and regulations. Applications used to take almost a year to process for a farm winery license, but just recently, an application for a store in downtown Clayton was processed in weeks. Sam Filler, Director of Industry and Strategic Business Development for Empire State Development, has also been extremely helpful in navigating the various levels of government and regulations.
- *Continue to support research.* If it was not for the University of Minnesota's research program developing cold-hearty varieties of grape that can be grown in New York, the wine industry would not be growing in places like Jefferson County and the surrounding areas.
- *More regulation on public utilities.* Rural communities need three-phase power and Internet service in order to grow businesses. Three-phase power is the power on which most big equipment and machinery operate. If there is no three-phase power in the building, the only option is a three-phase generator. The three-phase generators are expensive and only provide limited output. Therefore, multiple processes cannot be run at the same time, which increases time and costs. Internet service is necessary because a

significant portion of sales are done online and many businesses use social media for marketing.

- *Expedite New York State Energy Research and Development Authority (NYSERDA) applications.* The long waiting period creates uncertainty and difficulty in financial planning for NYSERDA applicants. The difficulties associated with the extended waiting period have caused many farmers to forgo the application process all together. Therefore many beneficial projects are not completed, hindering the effectiveness of NYSERDA.
- *Allow grape price information collected by Agriculture and Markets to be available anonymously.* Currently, a winery has to report the price they will pay for grapes to Agriculture and Markets. This database is tremendous and would provide a great marketing tool for grape growers.
- *Create a working group to discuss the Canadian-tariff issue.* Ontario charges a tariff on wine exported from New York, but no tariff is levied on wine imported to New York. Admittedly a federal issue, New York should start a working group to analyze and offer solutions to this problem. One such idea is to develop a wine trail spanning across both New York and Ontario.

### **Ron Robbins**

Mr. Robbins is a member of Senator Ritchie's Agricultural Advisory Council and the owner of North Harbor Dairy Farm and Old McDonald's Farm. Ron and Nancy Robbins, together with their son Brian, are the owners of a multi-generational diversified farm business just outside the historic village of Sackets Harbor. Founded in 1977 with 100 acres of rented land, Ron and Nancy have transformed the business to include 6,000 acres of owned and rented land raising a variety of field crops and vegetables, a 1,400 cow dairy, a grain processing enterprise, and a very popular and well respected farm tour and agricultural education enterprise.

- *New York regulations are not compatible with federal regulations.* For example, the recommendations from a U.S. Department of Transportation audit were not compatible with New York State Law.
- *Supports S.1951 (Ritchie)/A.169 (Magee) - Relates to the registration of certain farm vehicles.* The requirement for farm-plated vehicles to maintain paperwork on authorized routes and apply for changes to those routes is unworkable. For example, a farmer may need to change routes unexpectedly due to road closure. New York regulations are stricter than similar federal regulations which only require a farm vehicle to remain within a certain area of operation rather than file specific routes.

- *Regulations change suddenly at great cost to farmers.* For example, bunk-silo leachate systems were installed to comply with regulations. A year later, the regulations changed and the systems no longer complied with the new regulations.
- *New York State Energy Research and Development Authority (NYSERDA) is not working because the application is too complicated and even approved applicants experience extended delays in funding.* NYSERDA applications are very complicated and it is often necessary to hire a private consultant to navigate the process. Even when an applicant is approved, the delay in fund disbursement puts financial stress on the awarded applicant. For example, a project was completed and went online November 18, 2012 and there still has been no disbursement of the cost-share payment. For this project, the cost-share payment continues to get smaller every day as the lost interest increases. Due to these difficulties, the NYSERDA program is not helping those it was meant to serve.
- *One-size-fits-all contract format is unworkable for New York State.* The contract format does not fit and causes delays in contract negotiations. For example, the New York State Budget was signed in April. However, the contract for the allocation to the New York Farm Viability Institute is still in negotiations, passing by a whole growing season. Additionally, because the end of the year is approaching and a majority of projects are geared toward the growing season, the original appropriation may move to the re-appropriation process because the money was not spent. Such delays are an unnecessary waste of time and resources for farmers and New York State. The contract renewal process has similar delay issues even when little to nothing has changed on a renewed project.
- *Board of New York Farm Viability Institute has to focus on navigating bureaucracy.* The Institute has moved away from the mission of identifying the needs of the industry and providing research and education dollars and now spends more time navigating bureaucracy. The great advancements in the agricultural industry like milk processing, expansion in dairies, land coming back into production, and building wineries happened because of research and education; navigating bureaucracy is taking all the time from working on other projects.
- *Obtaining three-phase power in rural communities is difficult but necessary for farming operations.*
- *17 NYCRR § 182.1 – The Department of Transportation does not allow the construction of signs on a scenic byway.* The Department of Transportation allows the posting of a little blue sign that is expensive and difficult for drivers to see. For example, the Department of Transportation would not allow a billboard to be hung on the side of the barn identifying the business and stating “straight ahead, turn left.” Such restrictions

make it difficult for businesses located in rural areas to attract new customers; a person cannot visit a business if he or she does not know the business even exists.

### **Morris Surbello**

Mr. Surbello is an Oswego County Legislator and an onion and soybean farmer. In 1987, the Surbello Family formed the corporation of Surbello and Sons, Inc. Today, Surbello Farms has expanded to include 325 acres in onion production. Pockets of “muck” farms, conducive for growing the highest quality pungent yellow storage onions, span an area from Granby to Oswego in upstate New York.

- *Farm plates and other vehicle regulations are problematic.*
- *Opposes the Farmworkers’ Fair Labor Practices Act.* Proposed labor regulations do not work for the farming industry. Onions have to be dry on the ground before you can pick them up. In the mornings, onions cannot be harvested because it is damp. However, when the conditions are right for harvesting, it is best to work continuously through that time. Employees have not complained about the hours. Since the work schedule is determined by the weather, it would be difficult to operate under a standard regulation.
- *Supports S.155 (Gallivan)/A.531 (Gunther) - Provides that the regulation of pesticides in New York State shall conform to the standards set by the U.S. Environmental Protection Agency.* New York has stricter regulations on pesticides than the U.S. Environmental Protection Agency and most other states. In New York, a specific crop needs to be labeled on the pesticide product in order to be used. This process is slow and puts New York farmers at a disadvantage.
- *Modify 6 NYCRR Part 601 which prevents farmers from cleaning a ditch.* A ditch at the bottom of a stream needs the Department of Environmental Conservation’s approval before it can be cleaned. Denial or delay in this process is detrimental to farmers because undrained farmland quickly becomes wetland.

### **Kathryn Canzonier**

Ms. Canzonier is the Vice President and Branch Office Manager at Farm Credit East. Farm Credit East has been serving the agricultural community in the Northeast for 96 years and is the number one financial services cooperative for the Northeast agricultural industry. Farm Credit East serves people involved in the business of agriculture, including farmers, nursery and greenhouse operators, forest products businesses, fishermen, lobstermen, part-time growers, agribusinesses, and country home owners.

- *Empire State Link Deposit Program for farm expansions and the Farm Worker Housing Loan Program have been very successful in supporting New York State agriculture and should be continued.* Empire State Development has indicated the project cap for the Link Deposit Program was recently increased from \$1 million to \$2 million.

- *Appreciates the new law which will cap increases in agricultural-value assessments to 2 percent.* New York farmers pay significantly higher property taxes than farmers in most other states. Average property taxes per acre of farmland in New York State are slightly over \$26 per acre, compared to the U.S. average which is a little under \$7 per acre. When analyzed as a percentage of net farm income, New Yorkers pay 15 percent of their net income compared to the U.S. average of 10 percent, 8 percent in Michigan, and 7 percent in Ohio.
- *Regulations are making already shrinking profit margins even smaller.* Significant increases to the costs of production, coupled with national and global market pressures, are squeezing margins for farms. There is labor uncertainty with the ongoing debate regarding overtime pay and collective bargaining for farm workers. There is also uncertainty in the regulatory climate, with possible changes to labor, health care, environmental, and food-safety regulations.
- *Supports the Department of Environmental Conservation's action of increasing the Concentrated Animal Feeding Operations (CAFO) threshold from 200 to 300 cows.* However, the outcome of the current lawsuit against that change is a concern to many farmers.
- *Supports New York State economic development programs that encourage agricultural and dairy-processing firms to locate in New York.*
- *Opposes the passage of any legislative proposals that put New York farmers at a competitive disadvantage with farmers in other states.* Additionally, New York State should work to ensure that public-sector-related costs for New York farmers are not higher than other states.
- *Supports continued and enhanced applied research efforts, including those of the New York Farm Viability Institute, to ensure future industry competitiveness.*

### **Tonya Van Slyke**

Ms. Van Slyke is the owner of Van Slyke's Dairy Farm and Executive Director of Northeast Dairy Association. Northeast Dairy Association is a trade association whose membership is comprised of suppliers, vendor companies, and organizations servicing the dairy processing, manufacturing and distribution industries in the Northeast U.S.

- *Supports S.5929 (Gallivan) - Limits disclosures associated with freedom of information.* Farmers share data with New York State on a voluntary basis as part of the New York State Cattle Health Assurance Program (NYSCHAP). Farmers participate in order to improve animal health as well as to work toward food safety and public health. Farmers signed up for this program under the assumption that the information they volunteered

would be confidential. If New York State does not protect the data, farmers will not participate. Farmers want to participate, not only for animal health and food safety, but for emergency preparedness. As part of the program the number of employees and GPS coordinates are given to the state; such information can be very helpful in the event of an emergency. However, farmers will not participate in this program if the sensitive data they volunteer is public information.

- *Eliminate 6 NYCRR Part 601 - Department of Environmental Conservation, Water Withdrawal Regulation.* All agriculture facilities with the capacity to withdraw groundwater or surface water equal to or in excess of an average of 100,000 gallons per day in a 30-day consecutive period must file an annual report with the Department of Environmental Conservation on an annual basis. Farms have to submit their farmstead map which includes well locations. Farmers are concerned because when they provide this sensitive information to the state, it may be accessible by a group or person who may want to put a farm out of business and possibly contaminate the water supply. Farms are happy to have these farmstead maps available for inspection on the farm but do not want them on file with the state government.
- *Concerns about the next Concentrated Animal Feeding Operations (CAFO) permit development process.* New CAFO permits may require information to be submitted. Farmers are concerned about any new requirements because of the time wasted with multiple-agency reporting as well as sensitive information being part of the public record. CAFO already requires new construction to be over engineered, which results in excess costs to farmers with little environmental benefit.
- *Opposes the definition of “family farm” in the Farmworkers’ Fair Labor Practices Act.* Family farms will be treated like corporate farms under the bill and have a devastating fiscal impact on family farms. For example, the cost to a 200-cow dairy farm with one full-time employee and a couple of part-time employees would be approximately \$12,000 in overtime per year if the bill passed.
- *Look to Vermont’s model for guidance on the relationship between electricity and the farming community.*

### **David Fisher**

Mr. Fisher is the Director of New York Farm Bureau District 7 and the owner of Mapleview Dairy Farm. As a state-of-the-art dairy farm, Mapleview farm relies on hard work and ethical practices to produce quality milk. Having now been passed down several generations and expanded several times, this farm continues to thrive as a leading producer of milk in the North Country.

- *When crafting state regulations and internal-agency policy tools which carry the authority of regulation, there should be an ongoing conscious effort to recognize today's means and methods of farming.* Farm Bureau has found it necessary to request legislation to redirect tax-policy interpretations that made an incorrect assumption or exclusion of valid farm practices. One example is that commercial equine operations and maple production had to be defined as legitimate farm practices by specific legislation in order to be recognized by the Department of Taxation and Finance as an eligible farm practice. Farm Bureau thanks Senator Ritchie, Assemblyman Magee, Senator Valesky and Senator Marchione for this legislation. Another example is anaerobic digesters needed to be specifically defined in the statute to be classified as an energy-production facility. Farm Bureau thanks Senator Gallivan and Assemblyman Magee for this legislation. Statutory clarification could have been accomplished quickly and easily through state agency policy guidance.
- *State policy and regulations need to recognize and address the complexities and challenges New York farmers face.* Farmland is diverse, farms are diverse, and the food grown is diverse. The problems are therefore diverse and cannot be managed with a one-size-fits-all solution. For example, labor regulations or statutory mandates that do not recognize the seasonal nature of the business are detrimental to the farming industry.
- *Opposes the Farmworkers' Fair Labor Practices Act.* This is a misguided and outdated proposal that could fundamentally change New York agriculture.
- *Supports S.5929 (Gallivan) - Limits disclosures associated with freedom of information.* The bill will ensure the viability of the New York State Cattle Health Assurance Program (NYSCHAP) by enhancing the ability of the Department of Agriculture and Markets to withhold confidential records otherwise subject to release under the Freedom of Information Law (FOIL).

### **Pat McCormick**

Mr. McCormick is a member of Senator Gallivan's Agricultural Advisory Council and the Vice President of Wyoming County Farm Bureau. Wyoming County Farm Bureau gives farmers and non-farmers alike the opportunity to be part of an organization dedicated to supporting and enriching agriculture. It provides an opportunity for individuals interested in the food system, land issues, and rural living to join together and make their voices heard and believes that a strong, viable agricultural industry is beneficial not only to our economy, but also to our local communities and our consumers.

- *Animal welfare mandates other than the oversight of a state veterinarian are misplaced.* Farmers take pride in the treatment of their animals and work hard to keep up with best-management practices. It also makes economic sense to properly treat animals because a

healthier animal will produce a better product. However, regulations regarding animal care are often burdensome and provide little benefit to the animal.

- *Supports S.5929 (Gallivan) - Limits disclosures associated with freedom of information.*
- *Set a standard annual fee for Limited Liability Companies (LLCs) or modify the annual fee to be calculated using net profits.* Currently, the LLC fee is based on gross profits; a farm can easily gross over a million dollars but earn less than several thousand dollars in profit.
- *Increase in lost-cost filing rates raises the cost to pay into the workers' compensation programs.* Workers' Compensation is an important program to help injured workers, but the costs are increasing at an unmanageable rate. For example, in 2012, the rate for unemployment insurance was \$5,600 a year. In early 2013, there was an incident on the farm, the first in thirteen years, where an employee broke his hand and had to miss work for one week. After the one incident, the rate for unemployment insurance went up to over \$10,000 a year.

### **Faye Beckwith**

Ms. Beckwith is the co-owner and operator of a Christmas tree farm in Oswego County, New York. In 1980, Jack and Faye Beckwith purchased the original homestead on Mill Street, which included about 57 acres, and their 160 year-old red barn. The first Christmas trees were planted in 1985 with the help of their three children. All three children have grown up and live within a mile of the farm, and all help with the farm.

- *Department of Transportation regulations change without adequate notice as it relates to transporting trees and trucking*
- *Modify 20 NYCRR §§ 2396.1-2397.9 which mandate that sales tax be paid online.* This is difficult for many Christmas tree growers who often reside in rural areas.
- *Supports S.155 (Gallivan)/A.531 (Gunther) - Provides that the regulation of pesticides in New York State shall conform to the standards set by the U.S. Environmental Protection Agency.* For Christmas tree growers, it is problematic that they cannot use Valor but can use SureGuard. SureGuard is much more expensive than Valor even though the chemicals used are identical or practically identical.
- *Increased minimum wage has caused the business to hire workers from temporary agencies, especially young workers.*
- *New York City market is closed to New York State Christmas trees and wreaths.* New York City sells Christmas trees and wreaths imported from Canada

- *Fire codes prevent many displays of fresh Christmas trees.* Displaying a fresh Christmas tree is a great marketing technique and if displayed in a proper container has no danger of burning.

**Manufacturing**  
September 20, 2013  
City Hall  
Syracuse, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky  
Senator John A. DeFrancisco

**Speakers:**

Brian Sampson  
*Executive Director of Unshackle Upstate*

Nathan Andrews  
*President of Morse Manufacturing*

Karyn Burns  
*Vice President of Communications and Government Relations for the Manufacturers Association of Central New York*

Deb Warner  
*Vice President of Public Policy and Government Relations for CenterState CEO*

Laura Miller  
*General Manager of Darco Manufacturing*

Kipp Hicks  
*Executive Director of the Madison County Industrial Development Agency*

## Summary of Speaker Testimony:

### **Brian Sampson**

Mr. Sampson is the Executive Director of Unshackle Upstate. Unshackle Upstate represents 48 counties, spanning approximately 40,000 square miles throughout Upstate New York.

Unshackle Upstate is a non-partisan, pro-economic growth education and advocacy organization dedicated to the revitalization of Upstate New York. Unshackle Upstate is a coalition led by an Executive Director who reports to a Managing Board. This Board is made up of statewide and regional business leaders, including the two co-founders of Unshackle Upstate, who have a clear understanding and experience with the unique economic challenges of New York State and Upstate New York in particular.

- *Reduce costs for businesses operating in New York State.* State-imposed mandates on businesses have a deleterious effect upon the upstate economy.
- *Reduce high energy costs.* The Systems Benefit Charge, Regional Greenhouse Gas Initiative, and the 18-A Utility Tax Surcharge make our energy the most costly in the nation.
- *Reduce health insurance costs.* New Yorkers pay more than \$4.2 billion in health insurance taxes.
- *Supports S.111 (Gallivan)/A.3104 (Morelle) which amends the absolute liability standard for worker injuries under Labor Law §§ 240-241 (the Scaffold Law).*
- *Supports S.2313 (DeFrancisco)/A.2482 (Gabryszak) which repeals the Annual Wage Notification provision of the 2010 Annual Wage Theft Prevention Act.* This legislation has created a compliance headache for employers in New York State.
- *Simplify regulatory requirements and provide guidance to affected businesses.* The complexity of New York State’s regulatory environment itself creates challenges for New York’s businesses. There is little or no assistance provided to those who must comply.
- *Supports S.5166 (Marchione)/A.7986 (DiPietro) which seeks to start the process of repealing agency rules and regulations that are an impediment to economic growth and job creation.* Regulations must be aligned with understandable and clearly articulated public policy goals. They must achieve the goals for which they were adopted and should do so in a simple manner which does not create an undue burden for business owners. In an effort to achieve this, New York State should undertake an agency-by-agency review of regulations to identify those that create an unnecessary burden, have outlived their usefulness, or are duplicative of federal requirements.

- *Reform New York State’s Environmental Quality Review (SEQR) program.* SEQR requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision making. While it does make sense to consider the environmental impacts of a particular project to see if adverse impacts can be mitigated, in its current form, SEQR is often a project killer in New York State. Most of the projects which have been funded through the Regional Economic Development Councils are on hold largely due to SEQR. SEQR and other state regulatory requirements create uncertainty for nearly all businesses in New York State. As it currently exists, there is no way to calculate, with any certainty, the time and cost of going through the SEQR process. This uncertainty in the approval process has incentivized businesses to relocate outside of New York State. The SEQR process should be amended by simplifying the draft environmental impact statement process which would provide a clear path to obtain public comment, a key milestone in the approval process. Additionally, the final environmental impact statement should be adopted within six months of the close of the public hearing if further study is warranted, or within two months if no further study is needed.
- *Authorize the use of design build on vertical structures.*
- *Repeal the \$50 penalty to file a late sales tax form when no tax is due.*
- *Allow businesses to “pre-file” Certificates of Authority using information from the previous year and require businesses to only make changes when or if changes occur.*
- *Streamline and modernize Department of Labor paperwork for work share programs.* The Department of Labor could easily accomplish this by creating an online system to populate timesheet information that remains the same each week, or allow photocopying of a time-sheet template that retains basic employee information.
- *Supports S.1195 (Flanagan)/A.6632 (Zebrowski) which streamlines adjudicatory proceedings for small businesses appearing before state agencies.* The costs and burdens of attending an in-person hearing for minor violations can have a disproportionate impact on a small business. New technologies and innovative procedures (i.e. hearings via phone, e-mail or Skype rather than in person) can allow New York State to conduct such deliberations in a way that minimizes these burdens.
- *Use Unemployment Insurance prevailing wage tables to determine regional prevailing wage rates.* Unemployment Insurance prevailing wage rates are updated semi-annually, based on the findings of a Department of Labor employer survey. The information is

provided to help employers and unemployed job seekers understand the job titles and wage rates that will determine prevailing wage rates throughout New York State.

### **Nathan Andrews**

Mr. Andrews is the President of Morse Manufacturing. Morse Manufacturing designs, creates, and assembles an extensive line of 55 gallon drum handling equipment.

- *Supports S.2313 (DeFrancisco)/A.2482 (Gabryszak) which repeals the Annual Wage Notification provision of the 2010 Annual Wage Theft Prevention Act.* Employers are required to annually present their employees with information confirming their title, rate of pay, and other information which is already included on the employee's pay stub.
- *Reform the New York State Unemployment Insurance Program.* Unemployment insurance costs for Morse Manufacturing have increased over 83% in the last five years.
- *Conform the Department of Environmental Conservation's permitting requirements to U.S. Environmental Protection Agency guidelines.* The Department of Environmental Conservation's requirements often far exceed those of the U.S. Environmental Protection Agency. These disparate standards often cause great confusion in the permit application process.
- *Supports S.111 (Gallivan)/A.3104 (Morelle) which amends the absolute liability standard for worker injuries under Labor Law §§ 240-241 (the Scaffold Law).*

### **Karyn Burns**

Ms. Burns is the Vice President of Communications and Government Relations for the Manufacturers Association of Central New York (MACNY). MACNY provides information, consulting, and training on issues critical to the success of businesses. MACNY is an alliance of manufacturing associations and area manufacturing councils partnered to advocate for manufacturing and to provide and share services that help manufacturers in New York State grow.

- *Reform Unemployment Insurance regulations.* New York manufacturers have taken a significant hit from fiscal irresponsibility and lack of oversight under the Unemployment Insurance Program. Most recently, resulting from over-borrowing in 2011, New York State owed the federal government \$3.3 billion for funds the state borrowed to cover unemployment benefits. In 2011, over \$115 million was owed by New York State in interest costs alone. These costs have been passed down to businesses operating in New York State, further hindering their ability to reinvest and grow. The state must reform the Unemployment Insurance Program to make it solvent and affordable for business owners.

- *Reform New York State’s Environmental Quality Review (SEQR) program.* SEQR requirements often result in substantial project delays. Improving SEQR and other permitting programs to give businesses more certainty in terms of requirements and timetables would help many types of industries build or grow their businesses in New York State. SEQR should also be amended to provide an expedited application process for replacement programs and for “green” projects resulting in energy efficiencies and reductions in pollution.
- *Supports S.2313 (DeFrancisco)/A.2482 (Gabryszak) which repeals the Annual Wage Notification provision of the 2010 Annual Wage Theft Prevention Act.* In addition to placing a duplicative burden on employers, the Department of Labor is yet to issue regulations for employers to follow. As a result, employers will be held to a standard retroactively.
- *Supports S.2160 (Valesky)/A.7639 (Brindisi) which provides for public comment during the initial development, preparation, and promulgation of rules.* Agencies should consult with affected parties prior to the issuance of any new regulations.
- *Supports S.5166 (Marchione)/A.7986 (DiPietro) which seeks to start the process of repealing agency rules and regulations that are an impediment to economic growth and job creation.* New York State should undertake efforts to review existing regulations.

### **Deb Warner**

Ms. Warner is the Vice President of Public Policy and Government Relations for CenterState CEO. CenterState CEO is a regional business leadership organization and chamber of commerce and economic development strategist, based in Syracuse, New York. CenterState CEO represents 2,000 members of all sizes and serves as the primary business resource and catalyst for development in a twelve-county area. They advocate for smart business, facilitate regional growth, and promote community prosperity through results-driven partnerships, planning, and problem solving.

- *Exempt manufacturers from the application of sales tax for safety related purchases.* Businesses have reported a significant investment in time and resources in monitoring and complying with tax-exempt and non-tax-exempt purchases. If a specific tool is used for research and development, or in the manufacturing process, it is deemed to be tax-exempt. However, if that same tool is used in the field, it is then classified as an item in which sales tax must be applied. The existing sales tax exemption for items used in research and development and manufacturing should be extended to certain items used to enhance the safety of employees in the manufacturing sector. Accordingly, the Department of Taxation and Finance should modify Tax Law § 1115 and related rules and regulations (20 NYCRR Part 528) to require that any items required by the Department of Labor for the safety of workers are tax exempt.

- *Reform liability insurance requirements.* The burden of proof for some insurance claims, especially as it relates to past incidents, is largely on the insured. Insurance companies keep their policies for a finite period of time before they are destroyed. If an incident occurs, the onus is on the insured to produce an insurance policy proving they actually had coverage. This issue often affects manufacturers as their products can be on the market for years before an issue arises. The establishment of a document retention policy and system would allow manufacturers to do what they do best – manufacture – as opposed to spending time performing forensic research in the event of a lawsuit or claim where prior proof of coverage is required.
- *Reform Department of Environmental Conservation regulations regarding agricultural by-products.* One of the by-products stemming from the burgeoning cheese and yogurt industry is whey. Due to its high protein content, whey can be used as a fertilizer or as feed for cattle. However, the regulations, permitting, and paperwork required have discouraged the reuse of whey for such purposes. The Part 360 permit process should be reviewed and modified to allow for the safe and productive use of food manufacturing by-products. Additionally, New York State should examine and expand opportunities to incentivize the use of such agricultural by-products.
- *Supports S.2160 (Valesky)/A.7639 (Brindisi) which increases agency outreach to affected businesses.* Businesses often expend significant time and resources ensuring compliance with state regulations. Companies often report they are lost in the “auto-attendant” process and they are rarely able to speak with the same person each time they call a state oversight agency, resulting in considerable time wasted when bringing agency employees up to speed on an issue each time they call the agency.
- *Reform the Whistle Blower Program.* Fear of retaliation often discourages business owners and managers from openly discussing and reporting their experiences directly with the agencies which oversee such businesses. The state should implement a confidential “800 number” or website where businesses can report problematic agency practices, burdensome regulations, and potential solutions. Such a whistle blower tool would provide necessary protections without fear of retribution or retaliation.

### **Laura Miller**

Ms. Miller is the General Manager of Darco Manufacturing which was established in 1977. Darco Manufacturing creates customized metal beer trays and is in the Industrial and Commercial Machinery and Equipment, N.E.C. industry in Syracuse, NY. The company currently has approximately 35 employees and annual sales in excess of \$2.5 million.

- *No recommendations.* Ms. Miller spoke highly of the state's existing efforts to ease regulatory burdens on businesses while ensuring that businesses are mindful of the health and safety of their employees.

### **Kipp Hicks**

Mr. Hicks is the Executive Director of the Madison County Industrial Development Agency (IDA). The Madison County IDA's mission is to cultivate development throughout Madison County in order to generate and enhance the livelihood of area businesses, industries, communities, and citizens, and enrich the overall quality of life. This is accomplished by facilitating the financing of construction or rehabilitation of facilities and equipping them to expand job opportunities within the area.

- *Allow the 18-A Utility Tax Surcharge to sunset.* The Madison County IDA is working with an agricultural producer that is looking to establish a presence in upstate New York. The extension of the 18-A tax will result in an additional \$15,000 per month on their utility service bill. This tax has grown from .3 percent to 2 percent of the total electricity bills. The system-benefit charge for this potential prospect exceeds \$40,000. These expenses make New York State less competitive with other states.
- *IDA PILOT agreements lack of impact on the Tax Levy Growth Factor calculations.* Taxing entities are unable to account for new growth or expansions to existing properties. This inequity prohibits local tax levies from rising in response to economic growth.
- *Reform New York State's Environmental Quality Review (SEQR) program.* This is often an open ended component that can delay projects for years. Companies, municipalities, and IDAs need a clear timeline for planning purposes.
- *Provide greater state guidance on projects and the overall role of IDAs.* IDAs need guidance on how state oversight agencies interpret the role of IDAs as local economic development agencies. As IDAs attempt to promote economic development within their communities, they are meeting some opposition from the Authority Budget Office and the Office of State Comptroller, which narrowly view the role and purpose of IDAs.

**Construction**  
September 25, 2013  
Theodore Roosevelt Executive and Legislative Building  
Mineola, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator David J. Valesky  
Senator Phil Boyle  
Senator John J. Flanagan  
Senator Jack M. Martins  
Senator Lee M. Zeldin

**Speakers:**

Mitch Pally  
*Chief Executive Officer of the Long Island Builders Institute*

Matthew Cohen  
*Vice President of Government Affairs for the Long Island Association*

Charles Gardner  
*Director of Government Affairs for the National Electrical Contractors Association, Long Island Chapter*

Artie Cipoletti  
*President of DaVinci Construction*

Wilbur Breslin  
*President and CEO of Breslin Realty Corp.*

Walter Pacholczak  
*Vice President of Government Affairs for the Associated General Contractors of New York State*

Jeff Greenfield & Gene Sandy  
*Vice President and Past President of the Professional Insurance Agents of New York*

Michael Posillico  
*Executive Vice President of Strategic Business Development of Posillico, Inc.*

Stephen Lefebvre  
*President of the Associated Builders and Contractors, Inc., Empire State Chapter*

Scott Hobson  
*Legislative Analyst for the Lawsuit Alliance of New York*

Kevin Schwage  
*Master Electrician, Independent Contractor*

Summary of Speaker Testimony:

**Mitch Pally**

Mr. Pally is the Chief Executive Officer of the Long Island Builders Institute. The Long Island Builders Institute, formed in 1941, is an association of building industry professionals who are dedicated to making Long Island a better place to live and work by creating a balance between the economy, the environment, and development opportunities for the communities of Long Island and its residents.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* The Scaffold Law significantly increases the cost of doing business in New York State.
- *Supports S.985 (Martins)/A.5993 (Hennessey) which amends Article 78 of the Civil Practice Law and Rules (CPLR) to authorize judicial discretion in the posting of security for the issuance a stay of the enforcement of a determination involving a permit or approval in connection with the development or construction of residential housing.* Once development projects receive all of the necessary state and local permits, they are ready to begin construction and potentially create hundreds of jobs only to be halted by lawsuits under Article 78 of the CPLR. These suits often take one year to eighteen months to resolve and can threaten the financing of a project due in part to the uncertainty they create. Even if the municipality wins the case and the development moves forward, there are penalties imposed on the plaintiff.
- *Amend the State Building Code.* All buildings in the state, regardless of location, must conduct seismic evaluations and be built to withstand seismic activity. On Long Island, this can add up to 20 to 25 percent of the cost of the building. The Code also requires that air modifications be continually evaluated and exchanged, even in buildings where few people work, such as warehousing facilities. This too adds significant costs to building projects.
- *Modify the Department of Environmental Conservation storm water runoff requirements.* While the Department has been more flexible in this regard, this remains a significant issue, even in places where runoff issues do not exist. The Department must develop ways to control runoff without significantly increasing the cost of development.
- *Reform New York State's Environmental Quality Review (SEQR) program.* The forms, which must be submitted for projects, contain a number of subjective questions. To

answer these questions, the applicant is required to make assumptions and estimates which could lead to more aggressive litigation based on the answers provided.

- *Include Empire State Development Corporation in negotiations between builders and the Department of Environmental Conservation.* By including both agencies in these discussions, all parties may negotiate a product which takes into account the needs of the community, the environment, and the economy.
- *Incentivize municipalities to allow and facilitate the construction of affordable housing.*

### **Matt Cohen**

Mr. Cohen is the Vice President of Government Affairs for the Long Island Association. The Long Island Association advocates on behalf of, and promotes cooperation among the business, labor, educational, scientific, technology, and not-for profit sectors. The Association seeks to create and retain balanced economic opportunities and jobs in a clean, healthy, and safe environment. As Long Island's Chamber of Commerce, the Association provides valuable services, programs, and representation to its member organizations, particularly among the small business community.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* New York State must impose common sense reforms to antiquated regulations such as the Scaffold Law. The Scaffold Law imposes a standard of absolute liability upon contractors and property owners for all “gravity related” injuries. New York State must move to a “comparative negligence” standard for injuries resulting from a worker’s failure to follow safety training or use available safety devices, intoxication, or commission of a crime. This law results in significantly higher insurance costs for companies operating within New York State. This requirement has the potential to add \$200 to \$400 million to the cost of replacing the Tappan Zee Bridge.
- *Reform the Wicks Law.* By requiring state and local construction projects to issue multiple contracts for plumbing, HVAC (heating, ventilation, and air conditioning), and electrical, municipal projects often cost more to construct. While the program was amended in 2008, the exemption thresholds are far too low to generate significant savings for these municipal projects and create new jobs.
- *Supports S.985 (Martins)/A.5993 (Hennessey) which amends Article 78 of the Civil Practice Law and Rules (CPLR) to authorize judicial discretion in the posting of security for the issuance a stay of the enforcement of a determination involving a permit or approval in connection with the development or construction of residential housing.* Article 78 related delays result in additional costs to the developer and delay construction projects. When a project becomes entangled in an Article 78 proceeding it is often difficult to secure funding and move forward with the project.

- *Reform New York State’s Environmental Quality Review (SEQR) program.* The SEQR program must be streamlined and expedited and statutory timelines and deadlines must be mandatory and enforceable. The imposition of default provisions for non-compliance with timelines would provide private sector leverage to expedite the approval process. Additionally, the state must create a fast track application process for projects that meet certain environmental criteria such as energy efficiency replacement projects or projects that will result in reductions in pollution.
- *Create a self-certification process for certain construction projects.* This would allow a New York State licensed engineer or architect to certify that all of the plans and drawings for a project meet or exceed all building permit requirements and, once filed with a municipality, construction can begin. This would significantly accelerate the construction of single family homes, additions, and certain commercial projects.

### **Charles Gardner**

Mr. Gardner is the Director of Government Affairs for the National Electrical Contractors Association, Long Island Chapter. The Long Island Chapter of the National Electrical Contractors Association provides a collective voice for the electrical industry on Long Island. Their goal is to provide safe, quality, and professionally installed electrical work to both public and private consumers. Through cooperation with their union counterparts, the Association provides training for both new apprentices and continuing education for journeymen. Their member contractors continue to receive updates with the newest methods and means to deliver the highest quality services and products in the most effective manner possible.

- *Supports S.5132 (Zeldin)/A.7298 (Thiele) which empowers Suffolk County to assume all licensing duties for electricians.* Electrical contractors already licensed by Suffolk County must also apply for a license or permit to practice their trade in many of the individual towns and villages within Suffolk County. This unnecessary governmental duplication does not provide any additional consumer protections and appears to be nothing more than an opportunity for each municipality within Suffolk County to generate revenue from electricians. Nassau County has a similar issue whereby electricians are required to have over two dozen such licenses in order to work throughout the county.
- *Maintain existing Wicks Law provisions.* The use of multiple prime contractors will result in increased competition and serves to eliminate third party, or middleman payments, both of which reduce costs associated with any project. In single prime contracts, the sub-contractors are chosen by the general contractor. In most cases, the criteria for being chosen by the general contractor are unknown by the customer. Wicks Law allows municipal projects to choose separate contracts based on quality of work, financial stability, and credibility as opposed to those who submit a “low ball” bid.

### **Artie Cipoletti**

Mr. Cipoletti is the President of DaVinci Construction. DaVinci is one of the largest framing contractors in the construction industry. It completes multiple subdivisions simultaneously throughout the entire northeast. Projects include apartment complexes, senior housing, high-end housing, commercial hotels, and motels to name a few.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* The Scaffold Law has a deleterious impact on contractors operating within New York State. Any fall from any elevation, even if a person was standing on a 2x4 piece of wood on the floor, qualifies as a fall from elevation. In these cases, liability is absolute, regardless of whether the employee was distracted or otherwise partially at fault.

### **Wilbur Breslin**

Mr. Breslin is the President and CEO of Breslin Realty Corp. Since its inception over half a century ago, Breslin Realty has grown from a small retail brokerage office to a multifaceted commercial real estate company with experience in land planning, development, tenant relationships, landlord representation, real estate appraisal, property management, construction, and creative financing. Offering highly specialized retail leasing services, Breslin has been named as a designated developer for a variety of national retailers including Wal-Mart, Lowes Home Improvement, Starbucks, and Wachovia Bank.

- *Simplify regulatory requirements and provide agency guidance.* The complexity of New York State's regulatory environment itself creates challenges for businesses. There is little to no assistance provided to those who must comply. Businesses often expend significant time and resources ensuring compliance with state regulations, resulting in considerable time and money wasted when assessing projects.
- *Supports S.2160 (Valesky)/A.7639 (Brindisi) which requires state agencies to institute outreach efforts to regulated persons who may be adversely affected by any proposed rule.*

### **Walter Pacholczak**

Mr. Pacholczak is the Vice President of Government Affairs for the Associated General Contractors of New York State (AGC). AGC is the leading voice of the building and heavy highway construction industry, representing contractors and related companies dedicated to the ideals of skill, integrity, and responsibility. AGC provides members with opportunities to participate in addressing and learning from all the issues and problems created by the complexity of New York State's current and future political, legal, and regulatory environment.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* The Scaffold Law is a 100-plus-year-old law that is crippling the construction industry, costing taxpayers hundreds of millions of dollars annually and thousands of jobs. The single most important mandate relief for the construction industry is repealing the Scaffold Law. No other state in the nation has an absolute liability

standard like the Scaffold Law. The Scaffold Law is the only area of civil liability in New York State in which comparative negligence does not apply.

- *Repeal the Wicks Law.* The Wicks Law mandates multiple contracts for plumbing and gas fitting; HVAC (heating, ventilation, and air conditioning); and electrical wiring and illuminating fixtures for all public construction projects in New York State involving construction when the entire value of the building work is greater than \$3 million in New York City; \$1.5 million in Nassau, Suffolk and Westchester Counties; and \$500,000 for the rest of the state. Some studies have suggested Wicks Law adds 10 percent or more to the cost of a project.
- *Supports S.2436 (Ranzenhofer) which repeals the Diesel Emissions Retrofit Act.* The Diesel Emissions Retrofit Act was enacted in 2006 to address public health concerns over diesel fuel emissions. Under this Act, diesel-powered heavy-duty vehicles “owned by, operated by or on behalf of, or leased by” state agencies and certain public authorities are required to use ultra low sulfur diesel fuel and the best available retrofit technology in order to reduce the emission of air pollutants. However, beginning with the 2007 model year, the harmful pollution from heavy-duty highway vehicles was reduced by 90 percent and all off-road construction vehicles use ultra-low sulfur diesel. Accordingly, the use of ultra-low sulfur diesel fuel, combined with the 2007 emissions regulations, has made tremendous improvement in promoting clean air. Consequently, the provisions of the Diesel Emissions Retrofit Act are outdated, unnecessary, and should be repealed.
- *Supports S.2546 (Ranzenhofer)/A.1301 (Zebrowski) to require timely notice for prevailing wage violations.* Section 223 of the Labor Law makes prime contractors responsible for the failure of subcontractors to pay a prevailing wage to employees. However, this statute does not contain a requirement to notify the general contractor of such underpayment in a timely manner. A prime contractor may not be notified of the underpayment for years after the completion of the work, at which time the prime contractor has already paid the subcontractor. Accordingly, if the prime contractor is ultimately held responsible for the subcontractor’s failings, the prime contractor must be notified in a timelier manner. This would allow the prime contractor to take the necessary steps to obtain payment from the subcontractor.
- *Provide state agencies with the flexibility to allow state employees to work overtime on construction contracts.* Budget Bulletin B1184 establishes revised guidelines for the implementation of agency contracts, capital, non-personal service, and local assistance spending controls for transactions valued at or above \$500. This cost control measurement can often add weeks or months to starting projects.

### **Jeff Greenfield & Gene Sandy**

Mr. Greenfield and Mr. Sandy testified together. Mr. Greenfield is the Vice President of the Professional Insurance Agents of New York (PIA) and Mr. Sandy is the Past President of the organization. PIA is a voluntary, membership-based trade association representing professional, independent property and casualty insurance agents. PIA is dedicated to building the future for insurance professionals everywhere. They are unrivaled in their ability to meet members' needs, providing a focused legislative voice, information, education, networking opportunities, and tools to help members prosper and grow.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* This costly mandate greatly affects affordability and availability of insurance premiums for the construction industry. The Scaffold Law has increased the cost of general liability and umbrella policies anywhere from 25 to 200 percent. Many contractors are unable to secure coverage if their scope of work involves working from any significant height.
- *Reform the State Insurance Fund.* The Fund operates with seemingly no oversight from the Department of Financial Services. The Fund requires the submission of a Reservation of Rights notice 30 days before you can make changes to, or cancel a policy. This deprives many small contractors and/ or newer contractors entering the market, the ability to switch policies upon finding a better rate. Furthermore, the lack of consistency and transparency in these policies has caused confusion among the insured.

### **Michael Posillico**

Mr. Posillico is the Executive Vice President of Strategic Business Development of Posillico, Inc. Posillico is dedicated to setting the standard for excellence in the construction industry relative to: infrastructure, quality of life, and making a difference through innovation and solid relationships at all levels.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* The Scaffold Law has had a significant negative impact on the construction industry and costs taxpayers millions of dollars annually and thousands of jobs. The requirements of this law have led to higher insurance premiums for all construction projects. The high premiums particularly affect smaller companies who are unable to participate in larger scale projects because they cannot afford the additional liability insurance.
- *Repeal the Wicks Law.* This mandate on municipalities, school districts, and most agencies results in additional time required to complete projects and costs taxpayers an additional 10 percent or more in project costs.
- *Supports S.2436 (Ranzenhofer) which repeals the Diesel Emissions Retrofit Act.* If fully implemented, the Diesel Emissions Retrofit Act would keep less efficient vehicles off the

road and impose a costly mandate on the construction industry. However, the largest single factor in reducing diesel emissions is the use of ultra-low sulfur diesel fuel. As of 2007, all diesel powered vehicles require the use of ultra-low sulfur diesel fuel. This has reduced harmful pollution from heavy duty highway vehicles by 90 percent.

- *Supports S.2546 (Ranzenhofer)/A.1301 (Zebrowski) to require timely notice for prevailing wage violations.* Section 223 of the Labor Law makes prime contractors responsible for the failure of subcontractors to pay a prevailing wage to employees. However, this statute does not contain a requirement to notify the general contractor of such underpayment in a timely manner. A prime contractor may not be notified of the underpayment for years after the completion of the work, at which time the prime contractor has already paid the subcontractor. Accordingly, if the prime contractor is ultimately held responsible for the subcontractor's failings, the prime contractor must be notified in a timelier manner. This would allow the prime contractor to take the necessary steps to obtain payment from the subcontractor.
- *Provide state agencies with the flexibility to allow state employees to work overtime on construction contracts.* Budget Bulletin B1184 establishes revised guidelines for the implementation of agency contracts, capital, non-personal service, and local assistance spending controls for transactions valued at or above \$500. This cost control measurement can often add weeks or months to starting projects.
- *Modify New York City noise pollution requirements.* New York City Local Law 113, under the jurisdiction of the Department of Environmental Protection, restricts construction activity between the hours of 7 am and 6 pm, Monday through Friday. Any work outside of these hours can result in thousands of dollars in fines. Companies can obtain a permit to allow for construction outside of these hours but they are costly and can add tens of thousands of dollars in additional construction costs.
- *Reform the Workers' Compensation program.* Construction companies operating in New York State are at a competitive disadvantage as a result of Workers' Compensation costs which must be factored into the cost of each project. Additionally, loopholes in the statute cost New York businesses hundreds of millions of dollars annually.

### **Stephen Lefebvre**

Mr. Lefebvre is President of the Associated Builders and Contractors, Inc., Empire State Chapter (ABC). ABC is a national trade association representing 22,000 members from more than 19,000 construction and industry-related firms. Founded on the merit shop philosophy, ABC and its 72 chapters help members win work and deliver that work safely, ethically, and profitably for the betterment of the communities in which they work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors of the industry. The Empire State Chapter serves

close to 400 members throughout New York State from their central office in East Syracuse, as well as from branch offices in Albany, Buffalo, Rochester and Long Island/Metro NYC.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* The Scaffold Law has driven up the cost of insurance which has in turn increased construction costs for private and public projects.
- *Supports S.3361 (DeFrancisco)/A.7800 (Brindisi) which standardizes New York State law with the Federal Davis-Bacon Act.* Adopting the federal annualization methodology will help New York State’s construction industry grow and provide employees with the benefits our prevailing wage laws were designed to encourage.
- *Supports S.3484-A (Ranzenhofer)/A.6523 (Schimminger) to halt the mandated use of Project Labor Agreements.* Project Labor Agreements are unfair to merit shop or non-union contractors as they force contractors to use union labor. Many open shop contractors refuse to bid on public projects which results in a lower number of bidders, less competition, and an estimated cost increase of 12 to 20 percent.

### **Scott Hobson**

Mr. Hobson is a legislative analyst for the Lawsuit Reform Alliance of New York (LRANY). LRANY is a non-partisan, non-profit association of large and small businesses, taxpayers, and medical professionals who are committed to changing New York’s burdensome and expensive legal system to help create more jobs and energize our economy.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) to amend Labor Law §§ 240-241 (the Scaffold Law).* The most burdensome and detrimental regulation in the New York Labor Law are Sections 240 and 241, commonly referred to as the “Scaffold Law.” This statute imposes upon contractors and property owners a standard of absolute liability for all elevation related injuries. New York’s construction industry currently employs over 300,000 workers and serves as an engine for economic growth. The costs associated with the Scaffold Law slow the growth of this industry. In recent years, insurance premiums have risen by 20 percent for practice policies. Furthermore, many insurance carriers have left the general liability market entirely, or have begun mandating exclusions for Scaffold Law claims. Rising premiums and higher deductibles mean employers must dedicate additional resources on insurance rather than hiring employees and bidding on jobs.

### **Kevin Schwage**

Mr. Schwage is a master electrician and independent contractor.

- *Supports S.5132 (Zeldin)/A.7298 (Thiele) which empowers Suffolk County to assume all licensing duties for electricians.* Electrical contractors already licensed by Suffolk

County must also apply for a license or permit to practice their trade in many of the individual towns and villages within Suffolk County.

- *Reform the State Insurance Fund.* The Fund requires a 30-day advance notice before you can make changes or cancel a policy.

**Hospitality & Tourism**  
October 2, 2013  
Quad Graphics  
Saratoga Springs, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky

**Speakers:**

Todd Shimkus  
*President of the Saratoga County Chamber of Commerce*

Todd Garofano  
*President of the Saratoga Convention and Tourism Bureau*

Charles “Chick” Wilson  
*Owner of the Willard Mountain Ski Area*

Christine Hoffer  
*Tourism Administrator for the Washington County Tourism Association*

John Lemery  
*Attorney with Lemery-Greisler, Representing Howe Caverns*

Mark Egan  
*President of the Albany-Colonie Regional Chamber of Commerce*

Jan Chesterton  
*President of the New York State Hospitality Association*

Cynthia Hollowood  
*Chairman of the Board for the New York State Hospitality and Tourism Association*

Mike Hoffman  
*President of Turf Hotels*

Scott Wexler  
*Executive Director of the Empire State Restaurant and Tavern Association*

## Summary of Speaker Testimony:

### **Todd Shimkus**

Mr. Shimkus is the President of the Saratoga County Chamber of Commerce. The Chamber of Commerce has 2700-plus members who employ more than 67,000 people predominantly in Saratoga County. The Chamber provides a wide range of member services including but not limited to: Leadership Saratoga, countywide tourism promotion services, health insurance, the Energy Alliance program, free small business counseling, and the best networking events in the Capital Region. The Chamber's mission is to initiate and provide programs and services which will enhance members' ability to successfully conduct their business and to enhance and promote a healthy economy, making Saratoga County an ideal place to work, live, and visit.

- *Modify 6 NYCRR § 617.20, State Environment Quality Review Act (SEQR) Forms.* The Department of Environmental Conservation should further simplify the SEQR short form. The shortened form is still onerous and may even be more difficult than the long SEQR form. Contractors believe that the short form, though shorter than the old form, will add more costs and time to complete projects. Also, local boards are required to review more data as well as hire third-party reviewers to verify that data.
- *The Department of Transportation and Amtrak should work together to find a solution to allow passengers to bring bikes on Amtrak cars.*
- *New York State should not take over the New York Racing Association (NYRA).* NYRA should be kept in private hands.
- *The Department of Transportation and the Department of Environmental Conservation need to work together to find funding for new exits 3 and 4 on I-87.*

### **Todd Garofano**

Mr. Garofano is the President of the Saratoga Convention and Tourism Bureau. Mr. Garofano is a 25-year veteran of the hospitality industry, holding various positions throughout his career, focusing on developing trusting relationships with clients and peers alike, and lending his time and support to many industry and community organizations, all of which have enabled him to grow as an industry expert and leader.

- *The Department of Transportation and Amtrak should work together to find a solution to allow passengers to bring bikes on Amtrak cars.*
- *Create a predictable revenue stream for tourism marketing dollars in New York State over a multi-year period.* Competition for tourism marketing funding will be counter-productive; regions should continue to work together for the best outcome.

### **Charles “Chick” Wilson**

Mr. Wilson is the owner of the Willard Mountain Ski Area. He has been a professional in the ski industry for over 50 years. Willard Mountain is a full service ski area located in Greenwich, New York.

- *Modify 12 NYCRR Parts 300-431, Workers’ Compensation regulations.* New York State’s Workers’ Compensation regulations are always changing in nature and seem to be getting harder to comprehend and manage. In addition, the Workers’ Compensation regulations are very costly to business.
- *Allow flexibility under 12 NYCRR Parts 185, 187- Employment of Minors.* It has become too difficult to hire minors to work in the ski industry. The Department of Labor rules for records postings as it relates to 14 and 15 year olds are too stringent to hire workers from this age group. Willard hires 16 and 17 year olds to work at the ski area but it is difficult to ensure these employees do not work more than 20 hours per week. There should be some flexibility here, maybe a five percent leeway, so that if a 16 or 17 year old works over 20 hours there is no fine or simply a warning. The \$2,000 fine from the Department of Labor is too onerous for a small business owner.
- *Modify 20 NYCRR §§ 2396.1-2397.9 - Sales and use taxes which mandate sales tax be paid online.* The mandate to electronically file sales taxes is onerous. Small business owners should have the option to file quarterly or yearly sales tax documents by either mail or electronically. Small business owners should not be fined up to \$1,000 for filing a sales tax return one day late, especially when there is no tax due. There should be a grace period associated with these types of tax filings.
- *Modify 9 NYCRR Parts 25-80 - Rules of the State Liquor Authority.* The State Liquor Authority’s rules concerning the inventory of alcohol on premises are onerous. It takes significant time for staff to complete this inventory. Further, business owners then have to pay taxes on the alcohol inventoried even if there is only a small quantity left in part of a bottle.
- *Modify 6 NYCRR Parts 601, 621 - Water Withdrawal Regulation.* Currently, business owners must document their water withdrawal levels. While this is not a burdensome task, owners are concerned that authorities may start to charge for this water withdrawal.
- *Mandatory business surveys are too difficult.* Business owners often have to hire an accountant to complete.
- *The competition between private ski areas and state run facilities is unfair.*

### **Christine Hoffer**

Ms. Hoffer is the Tourism Administrator for the Washington County Tourism Association and owner of the Rice Mansion Inn Bed and Breakfast. Within Washington County lies 837 square miles of astounding beauty and a wealth of attractions, both natural and man-made. Bounded on the east by the Green Mountains of Vermont, the north by Lakes Champlain and George, the west by Saratoga Springs, and the South by the Capital District, Washington County is situated at the heart of a region that offers visitors a number of intriguing ways to discover, play, connect, and rejuvenate.

- *Modify 10 NYCRR Part 5 - State Sanitary Code, Drinking Water Supplies.* The Department of Health requires businesses located on a well to connect to village water unless a business conducts a Phase 5 Environmental study at its own expense to establish the safety of the well. If the study returns unfavorable results, the Department of Health can mandate that the business connect to village water. For example, Rice Mansion spent \$5,000 to connect to village water instead of conducting a Phase 5 Environmental study at a cost of \$15,000. There is no exception for businesses with operational wells once there is a change in ownership. This regulation makes it cost prohibitive to use functional wells.
- *Enhance communication between state agencies and local code enforcement officers.* New York State granted Rice Mansion a variance to renovate part of the building to become compliant with the American Disabilities Act. The local code enforcement officer denied the variance because there was no certificate of occupancy in the application even though Rice Mansion had one. Communication would have prevented extended delay.
- *Provide flexibility in regulations requiring three-story wood structures to contain a sprinkler system.* Rice Mansion wanted to open a restaurant within part of the building. Even though the restaurant only occupied about 2,000 square feet, regulations required that a sprinkler system be installed throughout the entire 7,500 square foot building. Because the cost of the sprinkler system was exorbitant, Rice Mansion stopped construction on the restaurant and opened a gift shop instead.
- *Allow flexibility in 10 NYCRR §§ 75.1-75.6 - Standards for Individual Water Supply and Individual Sewage Treatment Systems.* Rice Mansion's septic system was installed in the 1990s and approved by the Department of Environmental Conservation and the Department of Health. However, the paperwork was not on file at either agency. Therefore, Rice Mansion could not serve coffee and Danishes until they tested the system or installed a new one. The cost to comply with either requirement prevented Rice Mansion from moving forward.

- *Modify 9 NYCRR Parts 25-35 to allow for more temporary liquor licenses to be granted.* Rice Mansion used to be able to apply for temporary licenses to serve beer and wine. Now, State Liquor Authority regulations prevent businesses from easily obtaining temporary licenses. Instead, the State Liquor Authority only grants four temporary licenses each year. Rice Mansion applied for a permanent license but was told, after a two year wait, that they did not qualify for any of the 280 different liquor licenses.
- *Increase communication between agencies to reduce conflicting regulatory inspections.* The Department of Health issued a sanction for a fire separation violation although they did not have the authority to do so. Ultimately, the Department of Health admitted that they did not possess this authority. However, Rice Mansion wasted time and resources to respond to this sanction.
- *Small businesses cannot grow under restrictive government regulations and are at risk of closing.*
- *Rice Mansion's property taxes continue to increase.* Property taxes have increased from \$350,000, at the time Ms. Hoffer purchased the Mansion, to \$700,000.

### **John Lemery**

Mr. Lemery is an attorney with Lemery-Greisler representing Howe Caverns. Howe Caverns is the largest show cave in the Northeast and is New York's second most visited natural attraction. Howe Caverns is a living, limestone cave, carved by an underground river over the course of millions of years. The cave was discovered in 1842 by Lester Howe, for whom it is named.

- *The Department of Labor should respond to permit applications under 12 NYCRR Part 45, dealing with amusement devices, in a timely manner.* Howe Caverns wanted to use the first OGO Balls in New York State. OGO Balls are large plastic balls that carry a person inside as they roll down a course. After months of no communication, the Department of Labor denied Howe Caverns' application to use OGO Balls days before the scheduled opening. Before approving the permit, the Department of Labor required a barrier to be constructed at the end of the ride. This barrier was impossible to construct in time for the scheduled opening and determined to be unnecessary by Howe Caverns' engineer. If the Department of Labor had responded to the application in a timely manner, Howe Caverns would have had the time to either comply with the requirement or demonstrate to the Department of Labor that it was unnecessary.
- *Department of Labor inspectors should be available on nights and weekends during the spring and summer seasons.* Currently, staff only works from 9 a.m. to 5 p.m. on weekdays. Increasing staff during these seasons is necessary to accommodate the influx of permit and license applications as a result of New York State's tourist season.

## **Mark Egan**

Mr. Egan is the President of the Albany-Colonie Regional Chamber of Commerce. The Albany-Colonie Regional Chamber aims to be a catalyst for growth and prosperity for its members and the Capital Region by providing leadership, advocacy, and services. The Chamber is made up of 2400 businesses and organizations of all types and sizes and from throughout the region that know they will prosper and grow in a vibrant business environment. Their strength lies in their ability to attract many diverse members and create a valuable pool of resources from which member companies draw ideas and energy to improve their businesses.

- *The “I Love NY” tourism matching fund program is too rigid and needs more flexibility.*  
The program’s guidelines need to be relaxed.
- *Repeal the Annual Wage Notification required by Labor Law § 195(1).* This law requires every New York State employer to provide written notice to employees about the rate of pay, the regular pay cycle, and the rate of overtime pay and to obtain a written acknowledgement from each employee of receipt of notice. The notices must be provided at the time of hiring, upon rehire, when there are changes in pay rate, and every year on or before February 1. This law is a costly administrative burden.
- *Opposed to the Scaffold Law -Labor Law §§ 240-241.* Liability insurance premiums for small businesses are exorbitant due to frivolous lawsuits and the Scaffold Law. The absolute liability standard within the law makes no sense and drives business insurance premiums through the roof.

## **Jan Chesterton, Cynthia Hollowood, & Mike Hoffman**

Ms. Chesterton, Ms. Hollowood, and Mr. Hoffman testified together on behalf of the New York State Hospitality and Tourism Association (NYSHTA). Ms. Chesterton is the President of NYSHTA, Ms. Hollowood is the Chairman of the Board for NYSHTA, and Mr. Hoffman is a member of NYSHTA. NYSHTA is the oldest lodging association in the country, founded in Saratoga Springs in 1887. NYSHTA has nearly 1,400 member businesses and individuals in the lodging and attractions industry all over the State, including 70% of the lodging inventory in the State and all types of attractions from ski areas to amusement parks. Mr. Hoffman is also the President of Turf Hotels. Turf Hotels is an Albany-based hotel management company with four award-winning upstate New York properties: The Holiday Inn Resort/Lake George, the Holiday Inn Express/Western Avenue, the Homewood Suites Hotel/Wolf Road, and the Hampton Inn & Suites Hotel/Saratoga Springs. In addition to operating these hotels, Mr. Hoffman volunteers his time to several industry-specific organizations.

- *Amend Labor Law § 195(1) to repeal the annual notification requirement of the Wage Theft Prevention Act.* The notification requirement imposes a costly and burdensome administrative obligation on employers by mandating that employers send notices to each employee with salary information and then collect the signed notice. Failure to do so results in sanctions to the employer by the Department of Labor.

- *Review 20 NYCRR Subchapter A - Sales and use taxes.* The quarterly sales tax requirements are always changing. There is little help or communication from the Department of Tax and Finance. Because there are often problems with electronic filing, many businesses also mail in a physical copy of the tax form.
- *Modify 12 NYCRR Parts 300-431 - Workers' Compensation regulations.* New York State's Workers' Compensation Regulations are too expensive compared to other states.
- *Amend Labor Law §§ 21, 59, 503 – Unemployment Insurance.* The program needs to be reformed because it is too costly for member businesses.
- *Expedite building code interpretations under 19 NYCRR §§ 1203.1 – 1203.4 - Uniform Code-Minimum Standards for Administration and Enforcement.* The Department of State takes too long for building code interpretations which causes member businesses to miss critical construction cycles.
- *Modify 6 NYCRR § 617.20 - State Environment Quality Review Act (SEQR) Forms.* The Department of Environmental Conservation should further simplify the SEQR short form. The shortened form is still onerous and may even be more difficult than the long SEQR form. Contractors believe that the short form, though shorter than the old form, will add more costs and time to complete projects. Members have spent approximately \$100,000 on pre-construction costs due to this requirement even though they have not begun construction yet.
- *Modify § 10 NYCRR 6-1.23(10)(vii) – Supervision.* The Department of Health's incident reporting rules are too stringent concerning reporting time. Under the rules, if an incident happens at a hotel or motel pool, the operator must report it to the Department of Health within 24 hours or be subject to fines. When a drowning occurred at a member pool and staff mistakenly missed the 24-hour reporting window, the Department of Health imposed a large fine on the business.
- *There is too much paperwork from local, state, and federal governments.* Member businesses find it difficult to keep up with changes in governmental laws and regulations in a timely fashion.
- *Wage regulations need to be more cohesive.* There are too many variables between tipped employees and minimum wage standards. The Department of Labor's hospitality wage orders conflict with federal wage orders. Computing overtime wages is problematic for businesses. For example, a member business went through a federal

Department of Labor audit and was told that they were not computing labor wages correctly; the business was subsequently fined \$14,000.

- *Agencies should work cooperatively with businesses toward compliance rather than immediately impose penalties and fines.* There is no flexibility and large fines are imposed for making small mistakes. A general lack of communication exists with state agencies which are not user friendly regarding reports, permits, or measurements.
- *The Adirondack and Long Island regions highly regulate signage.* Member businesses cannot get signage approvals to promote their businesses.
- *The state should increase regulatory staff during the spring and summer seasons.*
- *New York State taxes are too high on gasoline.* Travelers complain about the state's high gasoline costs compared to neighboring states.

### **Scott Wexler**

Mr. Wexler is the Executive Director of the Empire State Restaurant and Tavern Association. The Empire State Restaurant and Tavern Association is dedicated to promoting the profitability of New York's on-premise alcohol beverage licensees. For more than 70 years, the Empire State Restaurant and Tavern Association has been working to improve conditions for the industry. They are the foremost advocates of the on-premise beverage alcohol industry, involved in advancing the interests, businesses, image, and future of the industry.

- *Revise the Alcoholic Beverage Control Law and corresponding regulations under 9 NYCRR Parts 25-49.* New York State's Alcoholic Beverage Control Laws and corresponding regulations are antiquated. The state legislature needs to develop more coherent Alcohol Beverage Control laws. Businesses need more flexibility with temporary alcohol permits.
- *Modify 9 NYCRR Part 29 to expedite catering permits.* A business must apply for a permit 15 days in advance of an event. This is problematic because many customers may book a party with just 24 hours notice to a bar or restaurant. This results in lost business because the establishment cannot comply with the 15-day waiting period. The State Liquor Authority should offer expedited permits to bars and restaurants for these types of situations.
- *Promulgate laws to allow sports pools in bars and restaurants.* Bars and restaurants already engage in this activity under lax enforcement, creating a competitive disadvantage for establishments that comply with current law.

- *Modify 9 NYCRR Parts 25-35 to clarify that a business shall not be sanctioned for being closed during hours specified on its method of operation as hours of operation.* If a business claims to be open at specific times on its permit and has to close during those hours because of an emergency, the State Liquor Authority should not punish that business.
- *Allow flexibility in enforcing compliance regulations under 9 NYCRR Parts 25-80.* . For example, an establishment was fined \$1,500 for removing partly consumed liquor seven minutes later than required.
- *Inspectors should work cooperatively with bars toward compliance rather than immediately impose penalties and fines.* A lack of communication creates an adversarial environment that hinders an efficient working relationship between government and business.
- *The State Liquor Authority is policing Department of Health requirements and inspections.* The State Liquor Authority should not enforce Department of Health regulations or inspect for health-related violations for which the inspectors are not properly trained.
- *Supports the recently passed law S.352 (Gallivan)/A.7166 (Schimminger) which prohibits the “intentional” alteration or dilution of alcoholic beverages.* Before this change, the State Liquor Authority would impose fines for bottles that contained fruit flies. Such a violation should be addressed by the Department of Health. This provision will now serve its original purpose of deterring bar owners from watering down alcohol or placing low-quality products in brand name bottles.
- *Supports S.351-A (Gallivan) which authorizes the sale of alcoholic beverages on Sundays and on Christmas day.*
- *Supports S.356 (Gallivan) which allows for pooled purchasing by licensed retailers.* This bill provides for cooperative agreements so that liquor stores may agree to jointly purchase larger, more cost effective quantities.
- *Supports S.1440-A (Gallivan) which allows liquor stores to sell wine and liquor to retail establishments for consumption on the premises.*

**Small Business**  
October 7, 2013  
Nanuet Public Library  
Nanuet, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky  
Senator David Carlucci  
Senator William J. Larkin Jr.

**Speakers:**

Scott Wexler  
*Executive Director of the Empire State Restaurant & Tavern Association*

Alex Gromack  
*Supervisor of the Town of Clarkstown*

Lena Bodin  
*President/CEO of People Resource Strategies*

Robert Pitkofsky, Esq.  
*Small Business Attorney for Pitkofsky PLLC*

Steven Porath  
*Executive Director of the Rockland Industrial Development Agency*

Jim Calvin  
*President of the New York Association of Convenience Stores*

David Golub  
*Senior Vice President of Administration for Price Chopper Supermarkets*

Joseph Fitzpatrick, Esq. & Karen White  
*Representatives from the New York State Motor Truck Association*

Chris Theising  
*Adjunct Professor in Communication Media Arts at the SUNY Rockland Small Business Development Center*

Michael & Larry Beckerle  
*Beckerle Lumber Supply Company, Inc.*

Joseph Slimer  
*Owner of Clarksford Corners in Rockland County*

Submitted Testimony:

Gene Tonucci  
*President/CEO of Allen-Bailey Tag & Label, Inc.*

Wendy Ringhiser  
*Senior Human Resources Manager at MITEQ, Inc.*

Will Wadsworth  
*Proprietor of the Wadsworth Homestead*

Katie Domes  
*Owner of Domes Inc., Downtown Domes, Domes Country Market, Domes Tree Farm, and Computer Payroll Service Inc.*

Summary of Speaker Testimony:

**Scott Wexler**

Mr. Wexler is the Executive Director of the Empire State Restaurant and Tavern Association. The Association is dedicated to promoting the profitability of New York's on-premise alcohol beverage licensees. For more than 70 years they have been working to improve conditions for the industry. They are the foremost advocates of the on-premise beverage alcohol industry, involved in advancing the interests, businesses, image, and future of the industry.

- *Modify General Business Law, Article 7-A (the Security Guard Act).* This law mandates the training, approval, and registration of security guards. The Department of State interprets the law to require bouncers to be licensed security guards, mandating that they are trained and licensed as security guards and requiring employers of bouncers to register their business as a security guard company. The law was not designed to apply to bouncers unless their principal duties are to perform security functions. As a result, almost any time a person stands at the door of a bar or tavern they are defined as a security guard and the employer must follow the registration, training, and fees mandated under the law. The law is overly broad and subjects business owners to the costs of compliance and fines for non-compliance, which mostly occurs due to the business owner's ignorance of the law. New York State should modify the law to fix this gross overreach by the Department of State and help benefit thousands of business owners throughout the state.
- *Supports S.2691 (Young)/A.5937 (Schimminger) which adds a new section to Tax Law § 1135 requiring the establishment of a sales tax recordkeeping voluntary compliance program.* The program would provide an incentive for taxpayers to facilitate and

modernize their recordkeeping ability for the purposes of complying with the state sales tax law. Businesses are constantly subject to sales tax audits where their books and records are deemed inadequate for the most technical of reasons. Many taxpayers may not be fully aware of the complexities of New York State's sales tax requirements. This program would increase compliance, helping both New York State and its taxpayers.

- *Supports S.2710 (Young)/A.5936 (Schimminger) which adds a new paragraph to Tax Law § 1138 requiring the Department of Taxation and Finance to use external indices that reflect local economic conditions when using them to estimate sales tax payments.* If an auditor deems the business records inadequate, the assessment of sales tax is made by the auditor based on an external index. This index compares the business with the industry at large and is often not based on local standards. Therefore, the index may reflect higher prices for goods and services than the price actually received by the business and reflected in his records. This would ensure that the indices reflect the wide variation of the costs of goods and services sold within the state. Mr. Wexler supports both of these bills as a way to restore fairness to the tax assessment process.
- *Amend the Department of Labor's independent contractor interpretation for performers.* Professional musicians or persons otherwise engaged in the performing arts who perform services as such for a restaurant, night club, or similar establishment are employees by law even though the circumstances under which they work may not meet the common law tests of an employer-employee relationship. The only exception is if the musicians or persons are stipulated to be employees of another employer by written contract. This interpretation should be modified to reflect the actual employer-employee relationship. Musicians who regularly perform for a specific business, like a house band, are employees and should be treated as such. However, musicians who are part of a band that regularly performs at different businesses, or are self-employed, should be treated as independent contractors. Business owners should not have to bear the costs that come along with classifying them as employees.

### Alex Gromack

Mr. Gromack is the Supervisor of the Town of Clarkstown and a former member of the New York State Assembly where he served for seven consecutive terms.

- *Create a more simplified process for businesses to seek a variance from the New York State Energy Code through the Secretary of State.* Different energy codes apply to different regions throughout the state and sometimes results in differences between bordering counties. Simon Malls almost lost the Apple Store as a major tenant for the Shops at Nanuet because of a difference between Westchester and Rockland counties in New York State Energy Code climate zones. The Apple Store would only agree to tenancy if it could build its vestibule the way it had in other parts of the state. Rockland

County's Energy Code climate zone required establishments, over 3,000 square feet with direct access to the outside, to have a specific vestibule, while the very same business in neighboring Westchester County did not have to meet such requirements. According to these codes, the Apple Store could not build its vestibule in Rockland County but could in Westchester County. With the help of Senator Carlucci, the Apple Store was able to apply for a waiver from the Rockland County code but it required a lot of documentation and was extremely time consuming. In addition, each store that wanted to apply for a waiver had to do so individually instead of applying collectively under Simon Malls. This meant that each store had to get separate engineers, do separate reviews, and complete separate applications, driving up the overall cost for each tenant. A more simplified process should be created for businesses to apply for exemptions from county codes and retail tenants should be able to apply for an exemption under the name of the main business to further simplify the process and decrease costs.

- *Modify Department of Transportation regulations to allow Adopt-A-Spot sponsorship along state roads.* Clarkstown's Adopt-A-Spot program partners with various landscapers as part of an ongoing effort to beautify the area. The town has had difficulty in establishing Adopt-A-Spot locations along state roads within the county and the town due to conflicts with Department of Transportation regulations. Specifically, Clarkstown has been working on new zoning, signage, and branding for its corporate parks. To better identify this area, the town wants to erect three signs along state roads and has found local businesses willing to sponsor the construction and maintenance of these signs through the Adopt-A-Spot program. The Department of Transportation, however, prohibits permit sponsorship attribution on signs located on state roadways. Given the significant investment of time and money the adopting businesses contribute as part of the program, the town wants the business names to be recognized on the signage. The Adopt-A-Spot signage would be similar to Adopt-a-Highway signage, stating who the area is maintained by (e.g. the Rotary Club) and who the area was designed by (e.g. the name of the landscaper). The Department of Transportation has returned the town's application for these sign permits, stating that they should be applied for under the Department of Transportation's Adopt-a-Highway Program and that the sponsoring business must be removed to a separate sign according to the Manual on Uniform Traffic Control Devices. Clarkstown seeks help in getting these signs approved as submitted, with sponsorship attribution placed on the signs and not separated.

### **Lena Bodin**

Ms. Bodin is the President and CEO of People Resource Strategies (PRS), a professional consulting firm which partners with businesses to develop and implement strategies that drive a company's most valuable resource, its human capital. PRS works with companies in the areas of organizational and strategic leadership development and specializes in designing comprehensive

and profitable solutions to enhance organizational effectiveness which ultimately enhances a company's profitability.

- *Repeal the annual wage notification requirement under Labor Law § 195(1).* This law requires that employers provide written notice to all employees regarding their rate of pay, overtime rate, designated pay day, and employer's intent to claim allowances as part of the minimum wage among other information. A signed copy of this notice must be retained by the employer for each employee. The annual notification requires that the notice be reissued to each employee at the beginning of each calendar year and again have signed copies collected from them. While the employer should continue to be required to provide wage information to their employees at the time of hire as well as anytime the employee's rate of pay changes, the annual notification should be repealed. This law has negatively impacted businesses due to the costs associated with complying with the requirement. The hardships that employers face in complying with this law include: the duplicative nature of the information requirement given that employees are provided wage information on each pay stub and annually on their W-2 wage statement for tax purposes; the timing of when the notice must be provided to employees (between January 1 and February 1 of each year) coincides with the busiest time of the year for small employers and particularly human resources staff; the time consuming task of collecting signed copies of the notice from each employee; and the burdensome and costly requirement to collect and store signed copies of the pay notification for each employee for six years. The New York Business Council determined the cost of compliance to be anywhere from \$3 to \$55 per employee, which can be especially cost prohibitive for small businesses. Thus, this law should be amended to repeal the annual notification requirement and relieve businesses from this costly, burdensome regulation.

**Robert Pitkofsky, Esq.**

Mr. Pitkofsky is a small business attorney with Pitkofsky PLCC. With over 10 years of legal experience, Mr. Pitkofsky works to protect businesses and corporations from the traps of legal errors and reap the benefits of legal compliance.

- *Repeal the publication requirements under Limited Liability Company Law § 206.* This law requires a new limited liability company (LLC) to publish, within 120 days of its organization, a copy of its initial articles of organization once a week for six successive weeks in two newspapers, one to be printed daily and one to be printed weekly, in the county in which the office of the LLC is located. The costs of publication are burdensome to small businesses and can reach up to \$2000 per entity depending on which county the LLC is located. Noncompliance with this requirement suspends the LLC's authority to carry on, conduct, or transact business within the state. There is no good public policy rationale behind the publication requirement. Few people read the legal notices in the newspaper since information is readily available on the Internet. The requirement discourages business owners from opening or conducting business within the

state. New York State should look into more effective and less expensive ways to notify the public about the creation of new LLCs and strongly consider repealing the current publication requirement. The elimination of this requirement would encourage new and emerging business owners to do business within the state.

### **Steven Porath**

Mr. Porath is the Executive Director of Rockland Industrial Development Agency (IDA). The Rockland IDA is a public benefit corporation created to actively promote, attract, encourage and develop economically sound commerce and industry within the County of Rockland for the purpose of preventing unemployment and economic deterioration and to further advance the job opportunities, general prosperity, and economic welfare of the people of the County of Rockland.

- *Implement redevelopment zones to provide small businesses with access to tax incentives.* Local municipalities should define redevelopment zones to provide small businesses with access to tax incentives that larger businesses are able to take advantage of through IDAs. If a business, regardless of size, resides within the specified zone and meets certain pre-established criteria in terms of job creation, investment, and other criteria defined locally, it would be able to access certain tax incentives. These tax incentives could be in the form of property tax abatement, sales tax exemption on capital improvements, and exemptions on financing and mortgage recording taxes. While large businesses are familiar with these incentives, small businesses do not have access to them. Rather than having a small business attempt to go through the IDA process, communities should design redevelopment zones so that smaller businesses can take advantage of the same tax incentives. Opening the door to some of these incentives for small businesses is crucial to communities like Rockland County.
- *IDAs should be prohibited from having the ability to impose PILOT agreements on local taxing entities.* In most of New York State, real property tax exemptions granted by an IDA are recaptured via payments-in-lieu-of-taxes (PILOTs) made by recipients of IDA benefits to affected taxing jurisdictions like local governments of towns, villages, counties, and school districts. The majority of county IDAs have the ability to impose PILOT agreements on local taxing entities on their own. Rockland County is one of two IDAs throughout the state that does not have the legal right to impose PILOT agreements on local taxing entities. This unique structure is beneficial to the Rockland County IDA because it is able to work together with all of the local taxing entities to reach deals that make sense for everyone involved. This structure allows continuity and unified agreement instead of the challenges faced by IDAs in other counties due to disputes between IDAs and local governments.

### **Jim Calvin**

Mr. Calvin is the President of the New York Association of Convenience Stores (NYACS). NYACS is a member-driven organization that leads, safeguards, and forges a favorable

environment for New York State's diverse, dynamic community of neighborhood convenience stores. NYACS provides return on membership investment by continuously delivering vital knowledge, a unified voice on legislative and regulatory issues, access to business solutions, and ways for members to share ideas, address common challenges, and build relationships.

- *Create a law that penalizes minors for underage possession of tobacco.* Currently, there are only ramifications for retail stores that sell tobacco to minors. Retailers face fines, license suspension, and jail time for this offense. There should also be a law for minors who possess and use tobacco in New York State.
- *Prohibit local governments from passing tobacco retailing regulations.* Currently, members of county legislatures are proposing local laws that prohibit pharmacies from selling tobacco. These laws define a pharmacy as any retail establishment that sells prescription or over-the-counter drugs. This would include any convenience store that carries Advil. It is problematic that state law permits local governments to pass tobacco regulations that are more restrictive than state regulations.
- *Supports S.3463 (Gallivan)/A.7107 (Crespo) which amends Public Health Law § 1399-cc to require the State Liquor Authority to timely notify an employer of alleged undercover illegal alcohol sales involving their employee.* The State Liquor Authority does not inform employers of alleged undercover illegal alcohol sales involving their employees in a timely fashion. The State Liquor Authority often lets the offending employee stay on the job for months, giving retailers notice of the sale six to ten months after its occurrence. This untimely notice denies business owners the chance to immediately remove the offending employee and knowingly exposes the community to the risk of subsequent underage sales by that same employee during the intervening period. The proposed change in Public Health Law § 1399-cc requires the State Liquor Authority to notify an employer within ten days of the sting operation.
- *Supports S.3493 (Gallivan)/A.7107 (Crespo) to amend Public Health Law § 1399-cc and Alcoholic Beverage Control Law § 65 to require all individuals wishing to purchase alcohol or tobacco at off-premise establishments to present a valid photo ID regardless of age.* New York State law currently requires retailers to ID a tobacco customer who appears to be under the age of twenty five and a beer customer who appears to be under the age of twenty one. This is problematic because it is difficult to discern a customer's age and properly trained cashiers may mistakenly sell to minors. The law jeopardizes public health and safety while subjecting businesses to harsh penalties. This law would eliminate the guesswork and require employees to ID all customers. Businesses that have voluntarily adopted this requirement as store policy have lost business because older customers get annoyed and instead go across the street to a store without a mandatory ID policy. A statewide law that requires the identification of all customers is the solution.

- *Require the Department of Labor to give advanced notice to employers regarding the increase in minimum wage.* The Department of Labor should notify employers of the three-step increase in the state minimum wage in a timely manner. The first increase occurs on January 1, 2014 when the minimum wage increases to \$8.00 an hour. This also increases the uniform allowance, meal allowance, and minimum weekly salary that are statutorily triggered by a minimum wage hike. The Department of Labor should give small businesses advanced notice of these changes so that they can compile their operating budgets for 2014. Last time the minimum wage was increased, the Department of Labor did not issue a notice to employers until the exact day the increase took effect.
  - *Repeal the annual wage notification requirement under Labor Law § 195(1).* Employers are required to annually present their employees with a piece of paper confirming their job title, pay rate, and other pay information that is already furnished on the employee’s weekly or bi-weekly paystub. This requirement is silly, wasteful, and an example of senseless regulation. It should be repealed.
  - *Supports A.1545 (Gunther) which modifies Tax Law § 1607(h) to eliminate the requirement that a retailer’s lottery license be suspended if its tobacco license has been suspended for an underage sale.* This unfairly subjects tobacco retailers that sell lottery tickets to harsher punishments than those retailers that do not sell lottery tickets. Further, this law is based on the unfounded presumption that because a retailer sold tobacco to a minor the store will also sell lottery tickets to a minor. This law is unfair and lottery licensure should be removed from underage tobacco enforcement. The proposed amendment provides the Division of the Lottery with discretion to suspend or revoke the lottery license of a retailer for tobacco violations.
  - *Decrease mandatory retail signage.* New York State law requires that retailers display signs warning of the dangers of tobacco products, stating that no one under the age of twenty one can buy beer, warning pregnant women not to consume alcohol, advising consumers how to redeem deposit containers, advising consumers of the store’s refund policy and policy on bad checks, disclosing the highest and lowest price of each grade of fuel, and displaying the store’s tobacco registration, lottery license, food service license, beer license, and sales tax certificate of authority. It does not make sense to require retailers to display all of these signs and it is burdensome on the business owner.
  - *Hold retailers to the same standards as their Native American competitors.* Despite the fact that Native American retailers sell billions of dollars worth of cigarettes and motor fuel, they are not held to the same standards as New York State retailers. These competitors are not required to obtain licenses, collect and remit state and local taxes, or

undergo audits and inspections. This bestows special privileges and competitive advantages upon Native American competitors and is unfair to state retailers.

- *Opposed to the expansion of the New York State Returnable Container Act.* This Act should not be expanded to apply to juice, iced tea, sports drinks, and flavored water. This would leave retailers with the mess of redemption and the storage of empty containers.
- *Opposed to mandatory paid sick leave on private sector employers who cannot afford it.*
- *Opposed to laws that prohibit retailers from determining whether an applicant for a cashier job has any past criminal convictions until after conditionally offering the applicant a job.*
- *Opposed to laws that would require gas pumps to display the phone number of the Attorney General's office so that frustrated consumers can call and complain about gas prices.*

### **David Golub**

Mr. Golub is the Senior Vice President of Administration for Price Chopper Supermarkets. The Golub Corporation, parent company of Price Chopper Supermarkets, celebrated its 80th anniversary in 2012. The chain's roots date back to 1900, when Lewis Golub arrived at Ellis Island from Russia and settled in Schenectady, New York. With 50 cents in his pocket and a desire for his own piece of the American Dream, Lewis opened a lunch room, dairy store and eventually a wholesale grocery warehouse in 1922.

- *Eliminate the surcharge tax from the Health Care Reform Act (HCRA).* The HCRA requires that certain third-party payors and providers of healthcare services participate in the funding of healthcare initiatives through the submission of surcharges and assessments. As an employer with self-insured medical plans, Price Chopper currently pays approximately \$2 million in surcharges annually under the HCRA. With the implementation of the Affordable Care Act, which requires all U.S. citizens to have healthcare coverage and introduces transitional reinsurance fees, the surcharge tax is no longer necessary. New York State should eliminate the surcharge tax to alleviate this burden on companies and positively impact job creation.
- *Modify the self-insured workers' compensation program.* New York State's self-insured workers' compensation program creates significant costs to businesses. Price Chopper currently pays an extremely high amount in premiums and assessments for its self-insured program. These fees are ten times greater in New York State than in the five other states the company operates in combined. New York State should work to decrease the stifling cost to businesses due to this program.

- *Create uniformity in the food retailer licensing process.* New York State’s licensing process for food retailers is extremely inefficient. Currently, retailers must provide the same basic information to numerous state agencies to apply for the required licenses. There is no uniformity in the application process among state agencies which include the Department of Taxation and Finance, State Liquor Authority, Department of Agriculture and Markets, Department of Health, Division of the Lottery, and the Department of Environmental Conservation. It would be more efficient and cost effective to have a uniform application that could be used statewide for retailers to submit in one place. The implementation of a more uniform and streamlined process would be a win-win for both New York State and food retailers trying to operate within the state.
- *Modify the method by which the state administers sales tax.* New York State is the most difficult state in which to administer sales taxes. Other states have a flat sales tax rate for the entire state whereas New York State’s sales tax rates vary by county. The current system is burdensome for businesses to administer as well as to track and pay. It creates unnecessary competition between neighboring counties. Further, it hinders Price Chopper’s ability to track sales and apply appropriate rates as it expands its Shops4U Program. New York State should include a local component collected uniformly across the state.
- *Modify the process for tax filings and payments.* Currently, New York State has two separate websites for online sales and employment tax filings and payments – New York State Online Services and Promptax. Each site requires its own credentials to sign in. Businesses must file the following tax forms on New York State Online Services: NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return, ST-810 Monthly Sales Tax Report, MTA-305 Metropolitan Commuter Tax, Quarterly Wage Detail File, CT-400 Corporate Estimated Tax, and CT-5.3 Corporate Extension. Businesses must then file the following tax forms on Promptax: NYS-1 Weekly Withholding Payments and ST-810 Monthly Sales Tax Payments and Prepayments. It would be more efficient to have all of these forms filed under one website with one set of credentials.
- *Supplement the processing of the Work Opportunity Tax Credit (WOTC).* The WOTC is a federal tax credit administered by the New York State Department of Labor. The federal government delayed the extension of the credit in 2012-2013, creating a back log in certifications. New York State should supplement the processing of the WOTC credits to make the federal funds available to state businesses immediately. Price Chopper typically generates approximately \$650,000 per year in credits and at the end of FY13 only \$379,000 in credits was processed and available for the company’s use.

### **Joseph Fitzpatrick, Esq. & Karen White**

Mr. Fitzpatrick and Ms. White testified together as representatives from the New York State Motor Truck Association. Mr. Fitzpatrick is the owner of Lightning Express Delivery Service, Inc. and a member of the New York State Motor Truck Association (NYSMTA) Eastern Region Board. NYSMTA is a non-profit trade association representing the interests of the motor truck industry. With over 800 member companies, NYSMTA is one of the top trucking associations in the country, and growing. They are the exclusive New York affiliate of the American Trucking Associations.

- *Supports S.111 (Gallivan)/A.3104 (Morelle) which amends Labor Law §§ 240-241 (the Scaffold Law).* Liability insurance premiums on small businesses are exorbitant due to frivolous lawsuits and the Scaffold Law. The absolute liability standard within the law makes no sense and drives business insurance premiums through the roof. New York State is the only state with such a standard, leaving state trucking businesses at a competitive disadvantage compared to small trucking companies in bordering states that do not have the same financial burden.
- *Supports S.2310 (DeFranciso)/A.474 (Magnarelli) which eliminates the Highway Use Tax.* The highway use tax is imposed on motor carriers operating certain motor vehicles on New York State public highways. New York State is the only state in the northeast, and one of only four states in the nation, that has a highway use tax. This puts the state at a competitive disadvantage and is a primary reason why New York State ranks as the second most expensive state in the nation in which to operate a truck. This tax is an onerous, antiquated tax that discourages businesses from establishing locations here. It is also burdensome to the state, which faces a significant administrative cost to maintain the records required to comply with the tax. Additionally, New York State businesses are disproportionately audited for tax evasion, and therefore disproportionately pay the tax. While the tax generates approximately \$145 million that goes into the Dedicated Highway and Bridge Trust Fund, there are alternatives for the state to collect this revenue that ensures that all commercial users are paying the tax, not just those carriers based in New York State. For example, an increase in registration fees and fuel tax could be used to collect this revenue that ensures fairness among all carriers. Elimination of the highway use tax will help reduce transportation costs, retain business, and encourage new businesses to come to New York State.
- *Repeal the annual wage notification requirement under Labor Law § 195(1).* This law requires that employers provide an annual wage notice to employees which involves a lot of time, effort, and expense on the part of the employer. The annual notification requirement is duplicative as it contains the same information required to be placed on every paystub that employees receive including rate of pay, overtime rate of pay, basis for pay (by hour, week, salary, etc.), allowances, pay day, employer name, DBA used by

employer, physical address, mailing address, employer phone number, and employee name. Further, employers are required to obtain written acknowledgement of the receipt of this notice by every employee and maintain this documentation for six years. This is a time consuming and costly endeavor for employers with no added value. The requirement is better suited as an enforcement tool that is reserved for instances where non-compliance by an employer has been an issue.

- *Supports S.1087 (Maziarz)/A.3673 (Lupardo) which prohibits indemnification clauses that automatically assign liability to the carrier.* In the past decade, it has become common practice for shippers to include indemnification clauses in their contracts with for-hire carriers that shield the shipper against any liability for damage to the goods being shipped. These indemnification clauses make the carrier automatically liable for any damage to the goods, regardless of actual fault or negligence. Due to the number of shippers using this practice in New York State, carriers cannot simply reject these contracts. Currently, thirty eight states have adopted similar legislation aimed at protecting carriers from overreaching indemnification provisions in these contracts. Among these states are Pennsylvania, Connecticut, and Massachusetts; Vermont and New Hampshire are also currently considering similar laws. New York State will put itself at a regional disadvantage if indemnification clauses are not prohibited.

### **Chris Theising**

Mr. Theising is an adjunct professor in Communication Media Arts at the SUNY Rockland Small Business Development Center (SBDC). The SBDC is a small business resource for Rockland County small businesses and entrepreneurs providing specific, individualized management and technical assistance. From access to capital to business plans to market research to contracting to e-business and technology, the SBDC works directly with each small business and their business situation.

- *Simplify the process to qualify for state certification as a minority and/or women-owned business enterprise (MWBE).* The process is duplicative among federal, state, and local levels.
- *Create a list of regulations that small businesses must comply with.* Currently, small businesses in New York State do not know where to go to find the regulations that they must comply with. A list of state regulations for various small businesses should be created to make it easier for businesses to find and comply with them.

### **Michael & Larry Beckerle**

Michael and Larry Beckerle run Beckerle Lumber Supply Company, Inc., a building material supply and full-service hardware store with four locations throughout Rockland County.

- *Fix ambiguities regarding sales tax exempt organizations.* The company has trouble determining who is responsible for keeping track of which organizations are tax exempt. Further, the Department of Taxation has not provided a straight answer regarding whether tax exempt organizations may pay cash and still be tax exempt or whether they must pay by credit card or check from the exempt organization.
- *Level the playing field by mandating that all companies must collect state sales tax on material for an installed sale.* State regulations currently require companies to collect sales tax on the material for an installed sale. For example, if a customer installs a door, they must pay sales tax on the door but not on the labor. The company repeatedly hears that Lowes and Home Depot, two competitors, do not collect sales tax on the product or the labor. If this is true, it is unfair and makes the playing field unlevel for companies engaged in the same business.

**Joseph Slimer**

Mr. Slimer is the owner of Clarksford Corners in Rockland County.

- *Eliminate the Department of Health regulation that prohibits tenants on the third floor of a three-story building if there is no fire system.*

Summary of Submitted Testimony:

**Gene Tonucci**

Mr. Tonucci is the President/CEO of Allen-Bailey Tag & Label, Inc., a manufacturer of custom printed tags and labels used in many different industries.

- *Repeal the annual wage notification requirement under Labor Law § 195(1).* The requirement of notice and acknowledgement regarding employee pay rate and pay day is a complete waste of time. This law is an example of the state penalizing all businesses due to abuse in a particular geographical area or industry.

**Wendy Ringhiser**

Ms. Ringhiser is the Senior Human Resources Manager at MITEQ, Inc.

- *Repeal the annual wage notification requirement under Labor Law § 195(1).* An unbelievable amount of administrative resources are devoted to complying with the annual wage notification requirement. The information requested is already communicated to employees in other ways, whether by pay stub, handbook, or other written means. While some may be in favor of reserving this requirement for employers that have engaged in willful non-compliance, the requirement should be repealed for employers who are not in willful non-compliance with wage-hour laws.

### **Will Wadsworth**

Mr. Wadsworth is the proprietor of the Wadsworth Homestead located in Geneseo, New York.

- *Remove the state regulation that requires small businesses to identify the exact dollar amount they take in by credit card.* New York State should not require small businesses to identify the exact dollar amount they take in by credit card when reporting sales. Small businesses are already required to give access to their business accounts and the state has access to their credit card information from other sources. Mr. Wadsworth worries that a small business owner who makes a mistake in this reporting will trigger an audit. As a result of this regulation, he has stopped taking credit cards at the Wadsworth Homestead, which creates problems for customers.

### **Katie Domes**

Ms. Domes is the owner of several small businesses located in Arcade, New York and Bliss, New York. The businesses include: Domes Inc., Downtown Domes, Domes Country Market, Domes Tree Farm, and Computer Payroll Service Inc.

- *New York State has imposed an assessment fee on businesses in New York for interest paid on a federal loan.* The Department of Labor has sent out letters to businesses stating they are going to raise the current limit of unemployment benefits from paying on the first \$8,500 to paying on the first \$10,300 in 2014 and increasing every subsequent year until 2026. This will hurt all employers.
- *The Wage Theft Prevention Form is burdensome.*
- *Agriculture and Markets required a retail bulk food store to add 2 more sinks in addition to the existing 4 sinks.* Regulations required a hand wash sink near the ice cream scooping section, and the business faced a shut down if it did not immediately install the sink. For this violation, a posting stating the store is in “Critical Compliance” needed to be posted at all public entrances. This posting requirement causes unnecessary concern for the customer while a business and agency work towards compliance.

**Insurance, Banking & Financial Services**

October 8, 2013

New York State Senate Office

Manhattan, New York

**Members Present:**

Senator Patrick M. Gallivan

Senator Kathleen A. Marchione

Senator David J. Valesky

Senator James L. Seward

**Speakers:**

Lou Coletti

*President and CEO of the Building Trades Employers' Association*

Arthur Rubinstein

*Past President of the Subcontractors Trade Association and President of Skyline Steel Corporation*

Chris Jaskiewicz

*Chief Operating Officer of Gotham Organization, Inc.*

Denise M. Richardson

*Managing Director for the General Contractors Association of New York, Inc.*

Marc Craw

*Vice President of the New York Insurance Association*

Dr. Sam Unterricht

*President of the Medical Society of the State of New York*

Paul Macielak

*President and CEO of the New York Health Plan Association*

Thomas Workman

*President and CEO of the Life Insurance Council of New York*

Andrew J. Kaufman

*Chair of the Board for Independent Insurance Agents and Brokers of New York*

Gary Henning

*Regional Vice President of the American Insurance Association*

Alan Plafker

*President of the Professional Insurance Agents*

James Owens  
*President and CEO of CARCO Group, Inc.*

Submitted Testimony:

Michael P. Smith  
*President and CEO of the New York Bankers Association*

JoAnn Peri  
*President of the Professional Insurance Wholesalers Association of New York State, Inc.*

Robert Treuber  
*Executive Director/Executive Vice President of the NYS Land Title Association, Inc.*

John P. Murphy  
*State Affairs Manager of the Northeast Region for the National Association of Mutual Insurance Companies*

James W. Clyne, Jr.  
*President and CEO of Leading Age New York*

Dan Mahar  
*Executive Director of Excess Line Association of New York*

William Y. Crowell, III  
*Attorney representing the Independent Bankers Association*

Kristina Baldwin  
*Vice President of the Property Casualty Insurers Association of America*

Summary of Speaker Testimony:

**Lou Coletti, Arthur Rubinstein, Chris Jaskiewicz & Denise Richardson**  
Mr. Coletti, Mr. Rubinstein, Mr. Jaskiewicz, and Ms. Richardson presented their testimony together.

Mr. Coletti is the President and CEO of the Building Trades Employers' Association. The Building Trades Employers' Association represents the 1,700 construction managers, general contractors, and specialty subcontractor firms in New York City, who employ 120,000 people. Members range in size from multi-billion dollar internationally recognized firms to small and mid-sized specialty trade contracting firms.

Mr. Rubinstein is the Past President of the Subcontractors Trade Association and the owner and President of Skyline Steel Corporation. Skyline Steel Corporation is a privately held company in Brooklyn, New York. It is a mid-sized specialty contractor doing steel stairs, railings, and other metal products on construction sites.

Mr. Jaskiewicz is the Chief Operating Officer of Gotham Organization, Inc. Gotham Organization, Inc. has made a diversified impact on the New York City real estate landscape. As a privately owned, family-run business, Gotham develops, builds, owns, and operates distinctive real estate properties and provides third party development, construction, and consulting real estate services.

Ms. Richardson is the Managing Director for the General Contractors Association of New York, Inc. (GCA). For over 100 years, members of GCA have been building the infrastructure that keeps New York moving. Formed in 1909, when a group of construction companies banded together to help government agencies and private industry in New York City build the world's first genuine modern city, the GCA has remained a powerful advocate for investment to support sustainable growth.

- *Opposed to the Scaffold Law – Labor Law §§ 240-241.* Liability insurance premiums on small businesses are exorbitant due to frivolous lawsuits and the Scaffold Law. The absolute liability standard within the law makes no sense and drives business insurance premiums through the roof. New York is the only state in the country where an employer must pay 100 percent of the damages regardless of fault. New York State is the only state with such a standard, leaving state construction companies at a competitive disadvantage compared to those in bordering states.
- *The market for liability insurance is limited due to the Scaffold Law.* The number of companies that offer insurance for construction projects are decreasing in New York State. Because of this shrinking market, even companies with stellar safety records face drastically increasing premiums. For example, liability insurance for Skyline Steel Corporation rose from \$12,000 in 2011 to \$277,000 in 2013, a 531 percent increase. If this trend continues, it is possible that insurance companies may stop offering coverage altogether. Most construction companies would not be able to do business in New York State because the risk would be too great. In 2013, the Department of Transportation and the Metropolitan Transportation Authority's Capital Program spent 12 percent of its budget on liability insurance. This is triple the amount spent in previous years. New York State agencies and taxpayers would save millions of dollars by amending or repealing the Scaffold Law.

#### **Marc Craw**

Mr. Craw is the Vice President of the New York Insurance Association (NYIA). NYIA's focus is solely in New York, providing members with timely and relevant information on state legislation and regulation. NYIA is the oldest state property/casualty insurance trade association in the nation, tracing its roots back to 1882. The new NYIA was formed in 1997 by the unification of the New York Insurance Alliance and the New York State Insurance Association. As the industry changed, stocks, mutuals, and cooperatives had far more issues in common than they had differences. It became apparent that New York's property/casualty insurance industry would be best served by a single voice for the New York industry.

- *Modify § 202(6)(a) of the State Administrative Procedure Act.* This law should be modified to prevent agencies from abusing the process of promulgating rules during times of emergency. Currently, the law states that if an agency finds that the immediate adoption of a rule is necessary “for the preservation of the public health, safety or general welfare,” the agency may adopt the rule on an emergency basis. This standard is too broad and prone to agency abuse.
- *Eliminate or revise 11 NYCRR Parts 105-109 (Regulation 30).* Regulation 30 governs the uniform classification of expenses for rate making purposes and should be updated, streamlined, or repealed. Department of Financial Services examiners spend a lot of time verifying compliance with Regulation 30. The regulation was first promulgated in 1948 without revision and is accordingly out of date. NYIA would like an organization like the Insurance Services Office to be the entity that determines standards for the uniform classification of expenses.
- *Amend 11 NYCRR § 79.6 - Reinsurance Reporting Requirements.* This regulation presents practical difficulties for property/casualty insurers. It authorizes insurers who cede some of their risks to an unauthorized reinsurer to take credit for such reinsurance if it is collateralized by a letter of credit. NYIA supplied amendment language for this regulation and letters of credit within its testimony.
- *The Department of Financial Services’ financial examination process is burdensome.* NYIA’s members have increasingly identified the financial examination process as onerous and unnecessary. The main complaint with the examination process is that inspectors should focus on financial matters only, such as financial solvency. Factors more appropriate for a market conduct examination, such as board minutes, insurance policies purchased by the company, expense classifications, employee benefits, privacy compliance, disaster preparedness plans, fraud plan compliance, and other non-financial items, should not be part of the financial examination.
- *Amend 15 NYCRR § 82.8(c)(1) - Motor Vehicle Repair Shops/Charges.* Under this regulation, customers may not be charged for storage of their vehicles unless a motor vehicle repair shop provides written notice. However, repair shops rarely provide written notice yet refuse to turn over customers’ vehicles until the storage charge is paid. NYIA supplied proposed language for an amendment that would require strict enforcement of this rule.
- *Repeal 11 NYCRR 67 (Regulation 79) - Mandatory underwriting inspection requirements for private passenger automobiles (mandatory photo inspection).* This regulation no longer serves its purpose and is outdated. Modern technology renders

this regulation irrelevant and the rule should be substantially modified. NYIA supplied proposed language for an amendment.

- *Repeal 17 NYCRR § 182.24 - Insignia and signs on vehicles.* This rule prohibits vehicles decorated with corporate logos from traveling on the parkway system. This rule impedes response times for insurance company adjusters when an emergency has taken place. Adjusters who use company logo vehicles must take alternate routes that may add substantial miles and time when responding to an emergency such as Superstorm Sandy.
- *Withdraw Circular Letter 32 of 2001 - Providing for an annual insurance availability study.* The annual insurance availability survey began in the midst of a liability insurance crisis that occurred during the mid 1980s. The study was intended to be temporary. It has since remained in place and has expanded in scope.

### **Dr. Sam Unterricht**

Dr. Unterricht is the President of the Medical Society of the State of New York (MSSNY). MSSNY is an organization of approximately 30,000 licensed physicians, medical residents, and medical students in New York State. Members participate in both state and local medical societies. MSSNY is a non-profit organization committed to representing the medical profession as a whole and advocating health related rights, responsibilities, and issues. MSSNY strives to promote and maintain high standards in medical education and the practice of medicine in an effort to ensure that quality medical care is available to the public.

- *Reform medical liability insurance.* Many physicians practicing in New York must pay extraordinary medical liability insurance premiums to be able to continue to deliver care to their patients. Other states have been able to reduce the cost of medical liability insurance in recent years. New York State's premiums continue to rise causing physicians to relocate and practice in other states. For example, a neurosurgeon practicing on Long Island must pay \$331,000 for one-year of coverage, an OB-GYN in the Bronx must pay \$192,000, and other high-risk specialty physicians must pay well over \$100,000. A state-by-state comparison of cumulative malpractice payments shows New York at the top with \$763 million and Florida at bottom with \$203 million. On a per capita payout, New York is at the top with \$38.99 per capita versus Texas at the bottom with \$3.03.
- *Amend or Repeal 10 NYCRR §§ 710-717 (Public Health Law, Articles 28, 36, 40, 7) - Certificate of Need (CON).* The State Public Health and Planning Council should not require physicians to undergo prohibitively expensive CON approval if they wish to perform certain medical procedures that are routinely performed in non-hospital settings. New York State should reduce CON requirements to foster more competition in

healthcare. Enacting new requirements restricts physicians from establishing collaborative care ventures or developing new models for delivering quality care.

- *Create uniformity in claim submission forms and health plan care review guidelines.*

**Paul Macielak**

Mr. Macielak is the President/CEO of the New York Health Plan Association (NYHPA). NYHPA is an industry voice for health care plans across the state that provides coverage for nearly seven million New Yorkers. It was established for the purpose of promoting the development of managed health care plans within New York State and is an advocate for quality health care for all New Yorkers.

- *Reform regulatory framework to allow Health Maintenance Organization (HMO) cost sharing.* HMO licensed products are uncompetitive in the small group marketplace compared to insurance licensed products.
- *Phase out Regulation 146, 11 NYCRR Part 361 - Establishment and Operation of Market Stabilization Mechanisms for Individual and Small Health Insurance and Medicare Supplement Insurance.* Over the years, administration of the program has grown increasingly cumbersome, costly, and time consuming. The program is supposed to be phased out as the Affordable Care Act gets implemented.
- *Limit the use of guidance documents, circular letters, and desk drawer rules in the Early Intervention Program, 10 NYCRR Subpart 69-4.* Agencies circumvent the formal rule making process through guidance documents, circular letters, and desk drawer rules. This cuts out all public comment and all advance knowledge that policy changes are being considered or mandated to the general public. In this particular case, NYHPA had no knowledge of the split remittance proposal and no opportunity to advise the Department of Health there was a technical problem with the system.
- *Amend 11 NYCRR § 52.42 – Health Maintenance Organization (HMO) contract forms and premium rates.* Treat commissions for HMO products and insurance products the same. Currently, broker commissions are capped at a maximum of 4 percent for HMO products while there is no cap for commissions on insurance products.
- *Amend 10 NYCRR Part 98 - Managed Care Organizations.* This part should be amended to exclude provider utilization review (UR) functions from requiring state certification as a UR agent. Plan reserves also need to be modernized to reconcile different reserve levels for different government insurance products such as Medicare, Medicaid, Medical Access Program (MAP), and soon the Fully Integrated Duals Advantage (FIDA) program.

### **Thomas Workman**

Mr. Workman is the President and CEO of the Life Insurance Council of New York, Inc. (LICONY). LICONY is the principal voice of the life insurance industry in New York State. LICONY works to create and maintain a legislative, regulatory, and judicial environment that encourages its members to conduct and grow their life insurance businesses here in New York State. LICONY has 50 domestic member companies and 19 non-domestic member companies that provide the vast majority of life, disability, and long-term care insurance and annuity benefits to New Yorkers.

- *Supports S.3065 (Seward)/A.7494 (Steck).* This bill amends Insurance Law §§ 2123 and 4226 to provide that the regulation governing replacements of life insurance products in New York State should be consistent with the National Association of Insurance Commissioners Life Insurance and Annuities Replacements Model Regulation and to remove the requirement that there must be a detailed cost comparison of products before you can replace one life insurance policy or annuity with another.
- *Supports S.2895 (Seward)/A.1983 (Titus).* This bill would make New York State a member of the Interstate Insurance Product Regulation Commission.
- *Supports S.3543 (Seward)/A.6326 (Quart).* This bill would enact the entire National Association of Insurance Commissioners Redomestication Model Law.
- *Reduce assessment fees authorized under Financial Services Law § 206.* Section 206 assessments were more than doubled a few years ago. These are backdoor taxes that should be rolled back.
- *Modify § 202(6)(a) of the State Administrative Procedure Act.* This law should be modified to prevent agencies from abusing the process of promulgating rules during times of emergency. Currently, the law states that if an agency finds that the immediate adoption of a rule is necessary “for the preservation of the public health, safety or general welfare,” the agency may adopt the rule on an emergency basis. This standard is too broad and prone to agency abuse.

### **Andrew J. Kaufman**

Mr. Kaufman is the Chair of the Board for Independent Insurance Agents and Brokers of New York, Inc. (IIABNY). IIABNY exists to fulfill the educational, political, and business interests of its 1,750-plus agencies and 13,000-plus employees. IIABNY’s members are independent insurance agents and brokers that can provide consumers with a choice of products from more than one insurance company and in turn give consumers unrivaled service and the best automobile, homeowner, and business coverage to meet their changing needs.

- *Modify 11 NYCRR §§ 30.1-30.7 (Regulation 194) to no longer require that insurance brokers provide consumers with a notice detailing the insurance broker’s compensation.*

As no other industry requires this notice, the requirement often confuses the customer. Insurance brokers must also keep records of this information for three years. This regulation is burdensome on insurance brokers and provides little benefit to the consumer.

- *Modify rules governing continuing education for insurance brokers.* Insurance brokers must complete continuing education every two years in order to renew their licenses. Brokers can complete their continuing education course through in-person seminars, CDs, or via the Internet. However, regardless of the method in which brokers complete the continuing education course, testing must be conducted in person.
- *Repeal 11 NYCRR Part 67 (Regulation 79) - Mandatory underwriting inspection requirements for private passenger automobiles (mandatory photo inspection).* This regulation no longer serves its purpose and is outdated. Modern technology renders this regulation irrelevant and the rule should be substantially modified.
- *Amend or repeal 15 NYCRR § 32.9 - Prescribed Forms for I.D. Cards.* This rule requires motorists to carry a paper automobile insurance identification card as proof that they have automobile insurance. Technological advances allow for secure and reliable electronic reporting; motorists should be allowed to provide proof of insurance electronically. Twenty eight states have amended their identification card rules to allow proof of insurance to be established electronically.
- *Opposed to the Scaffold Law – Labor Law §§ 240-241.* Liability insurance premiums on small businesses are exorbitant due to frivolous lawsuits and the Scaffold Law. The absolute liability standard within the law makes no sense and drives business insurance premiums through the roof. New York is the only state in the country where an employer must pay 100 percent of the damages regardless of fault. New York State is the only state with such a standard, leaving state construction companies at a competitive disadvantage compared to those in bordering states.
- *Supports S.3064 (Seward) which amends Insurance Law § 2122(b) to remove the requirement for advertisements referring to an insurer to include the insurer's full name and principal office.* This outdated law serves no public policy purpose.

### **Gary Henning**

Mr. Henning is the Regional Vice President of the American Insurance Association (AIA). Since 1866, AIA has served as the leading property-casualty insurance trade organization. Representing more than 300 insurers that write more than \$110 billion in premiums each year, its member companies count themselves among the ranks of the most influential insurance companies in the country.

- *Amend or repeal 15 NYCRR § 32.9 - Prescribed Forms for I.D. Cards.* This rule requires motorists to carry a paper automobile insurance identification card as proof that they have automobile insurance. Technological advances allow for secure and reliable electronic reporting; motorists should be allowed to provide proof of insurance electronically. Twenty eight states have amended their identification card rules to allow proof of insurance to be established electronically.
- *Repeal 11 NYCRR Part 67 (Regulation 79) - Mandatory underwriting inspection requirements for private passenger automobiles (mandatory photo inspection).* This regulation no longer serves its purpose and is outdated. Modern technology renders this regulation irrelevant and the rule should be substantially modified.
- *Amend 11 NYCRR § 65-3.8(c)(1) (Regulation 68) - Regulations implementing the Comprehensive Motor Vehicle Insurance Reparations Act.* This regulation requires that denials of economic loss claims be issued in duplicate. There is no benefit to receiving a denial of claims in duplicate. The absence of proof that they were mailed in duplicate can cause problems in court.
- *Amend 11 NYCRR § 65-3.9(b) - Interest on overdue payments.* This regulation limits an insurer’s ability to negotiate interest payments as part of a settlement. Negotiation of the amount of interest payable should be permitted. The no-fault statutory interest rate is extremely high at 24 percent annually.
- *Amend 11 NYCRR § 65-3.19(f)(2) - Offsets.* This regulation requires that a specific form for benefits be printed on “buff” colored paper. There is no reason why this form cannot be printed on white paper.
- *Amend 11 NYCRR § 65-3.6(a) (Regulation 68).* Currently, insurers are required to mail forms to a claimant or claimant’s representative. The word “mail” should be replaced with the word “send” to allow forms to be sent through a variety of means including FedEx, fax, and UPS.
- *Amend 11 NYCRR Part 71 - Legal Defense Costs in Liability Policies (Regulation 107) and 11 NYCRR § 72 - Indemnification of Directors and Officers (Regulation 110).* For most policies, the insurance company is required to pay for legal defense costs and manage the policyholder’s legal defense strategy. This makes sense for the average policy holder. However, sophisticated policyholders may want to retain outside counsel in addition to the insurance company’s counsel. In 2008, the then-Insurance Department issued a legal opinion stating that insurers could not issue policies where policyholders retained the “duty to defend.” Insurers should be allowed to issue policies to sophisticated policyholders allowing them to retain the “duty to defend.”

- *Amend 11 NYCRR Part 244 (Regulation 168) - Confidentiality for Domestic Violence Victims.* In 2005, legislation was enacted protecting the confidentiality of domestic violence victims. These confidentiality provisions were added to Insurance Law § 2612. While these protocols for domestic violence victims may make sense in a limited number of property-casualty insurance scenarios, they should not have wider applicability to property-casualty insurance. Federal regulations already address this situation and the Department of Financial Services simply adds a layer of state regulations on top of existing federal requirements.

### **Alan Plafker**

Mr. Plafker is the President for Professional Insurance Agents (PIA). PIA is a voluntary, membership-based trade association representing professional, independent property-casualty insurance agents. PIA is dedicated to building the future for insurance professionals everywhere.

- *Opposed to the Scaffold Law – Labor Law §§ 240-241.* Liability insurance premiums on small businesses are exorbitant due to frivolous lawsuits and the Scaffold Law. The absolute liability standard within the law makes no sense and drives business insurance premiums through the roof. New York is the only state in the country where an employer must pay 100 percent of the damages regardless of fault. New York State is the only state with such a standard, leaving state construction companies at a competitive disadvantage compared to those in bordering states.
- *Reform 11 NYCRR Part 74 - Homeowners Insurance Disclosure.* Hurricane deductibles vary widely by company. This lack of standardization will result in inconsistent coverage by different insurance companies.
- *Repeal 11 NYCRR Part 67 (Regulation 79) - Mandatory underwriting inspection requirements for private passenger automobiles (mandatory photo inspection).* This regulation no longer serves its purpose and is outdated. Modern technology renders this regulation irrelevant and the rule should be substantially modified.
- *Preserve the ability of agents and brokers to maintain fiduciary accounts in credit unions.*

### **James Owens**

Mr. Owens is the President and CEO for CARCO Group, Inc. With 35-plus years of insurance industry experience and 50 million inspection reports issued, CARCO is truly a leader in the field providing inexpensive, valuable vehicle industry data from the National Motor Vehicle Title Information System.

- *Reform 11 NYCRR Part 67 (Regulation 79) - Mandatory Underwriting Inspection Requirements for Private Passenger Automobiles (mandatory photo inspection).* The

regulation should be modified to reflect the digital era while maintaining the anti-theft deterrent benefit. Specifically, Mr. Owens recommends increasing the time allowed to inspect as well as permitting the use of electronic devices to transmit the inspection information.

### **Dan Mahar**

Mr. Mahar is the Executive Director for Excess Line Association of New York (ELANY). ELANY was created by statute in 1988 and began business in 1989. It is a non-profit industry advisory association charged with the duty to facilitate and encourage compliance with excess line law.

- *Reform 11 NYCRR Part 27 (Regulation 41) to presume due care when an excess line broker places coverage with any insurer listed by ELANY.* Currently the standard requires the broker to ascertain the insurer’s financial stability as well as the insurer’s capacity to support the business for which it underwrites. The broker must also verify the insurer’s claims practices and vouch for its management practices. This regulation should be reformed to presume that due care has been exercised when it places coverage with any insurer.
- *Modify 11 NYCRR Part 27 (Regulation 41) to allow the “diligent search” requirement to be valid for 36 months.* Currently, excess line brokers must provide 21 data elements in an affidavit as part of a diligent search requirement mandated each year. This amounts to a burdensome, time consuming process. As a substantial percentage of accounts renew each year, the annual “diligent search” only yields a minimal amount of new information. It would be more appropriate to require a “diligent search” every 36 months.
- *Amend the Medical Malpractice Insurance Pool’s Plan of Operation to permit the pool to reject a risk at the request of the insured.*

### Summary of Submitted Testimony:

#### **Michael P. Smith**

Mr. Smith is the President and CEO of the New York Bankers Association (NYBA). For over a century, NYBA has provided advocacy and leadership for New York State’s financial services industry.

- *Supports legislation to expedite the foreclosure process in cases where the action is not contested and the property is vacant.*
- *Supports reinstating the law that allowed non-judicial foreclosure of commercial mortgages.* This provision expired three years ago and should be renewed.

- *Reduce corporate tax rates.* Community banks and thrifts should be able to reduce their taxable income to the extent that their activities support residential and small business lending in New York State.
- *Revise state tax law to be consistent with federal law.* This will avoid possible conflicts and uncertainties especially with regard to the audit process.
- *Eliminate the fiduciary income tax.* This will help address the demise of New York State’s trust industry.

### **Jo Ann Peri**

Ms. Peri is the President of the Professional Insurance Wholesalers Association of New York State, Inc. (PIWA). PIWA is a trade association representing New York State insurance wholesalers who serve retail insurance producers with specialty and excess lines markets. Associate membership is also offered to specialty insurance carriers with which these wholesalers do business. The wholesale brokers and specialty companies are afforded the opportunity to be members of one central organization designed to address many mutual interests and concerns. PIWA provides legislative and regulatory advocacy, networking opportunities, continuing education, industry outreach, and more.

- *Reform 11 NYCRR Part 27 (Regulation 41) to presume due care when an excess line broker places coverage with any insurer listed.* Currently the standard requires the broker to ascertain the insurer’s financial stability as well as the insurer’s capacity to support the business for which it underwrites. The broker must also verify the insurer’s claims practices and vouch for its management practices. This regulation should be reformed to presume that due care has been exercised when it places coverage with any insurer.
- *Modify 11 NYCRR Part 27 (Regulation 41) to allow the “diligent search” requirement to be valid for 36 months.* Currently, excess line brokers must provide 21 data elements in an affidavit as part of a diligent search requirement mandated each year. This amounts to a burdensome, time consuming process. As a substantial percentage of accounts renew each year, the annual “diligent search” only yields a minimal amount of new information. It would be more appropriate to require a “diligent search” every 36 months.
- *Amend the Medical Malpractice Insurance Pool’s Plan of Operation to permit the pool to reject a risk at the request of the insured.*

### **Robert Treuber**

Mr. Treuber is the Executive Director and Executive Vice President of the New York State Land Title Association, Inc. (NYSLTA). NYSLTA is the statewide voice of the Title Insurance Industry. Formed in 1921, NYSLTA offers membership to title insurance companies licensed in

New York State, abstract companies, title insurance agents, law firms, individual attorneys, surveyors, and others actively engaged in real estate.

- *Supports S.3669 (Martins)/A.7193 (Thiele) which would exempt title-related services from sales tax.*

**John P. Murphy**

Mr. Murphy is the State Affairs Manager of the Northeast Region for the National Association of Mutual Insurance Companies (NAMIC). Founded in 1895, NAMIC is the only U.S. trade association representing mutual property-casualty insurance companies. NAMIC is the largest and most diverse property-casualty trade association in the country, with 1,400 regional and local mutual insurance companies serving more than 135 million automobile, home, and business policy holders and writing in excess of \$196 billion in annual premiums.

- *Reform 11 NYCRR 67 (Regulation 79) - Mandatory underwriting inspection requirements for private passenger automobiles (mandatory photo inspection).* This regulation no longer serves its purpose and is outdated. Modern technology renders this regulation irrelevant and the rule should be substantially modified. This regulation should either be repealed or made optional for the insurer.
- *Reform § 202-6(a) of the State Administrative Procedure Act (SAPA) to clarify what constitutes an “emergency” for rulemaking purposes.*
- *Reform SAPA to require input from stakeholders prior to the formal rulemaking process.*
- *Repeal 11 NYCRR § 68.9 (Regulation 83) to eliminate the requirement that insurers file reports with the Department of Health when they detect patterns of improper action by a physician.* In one instance, the Department of Health requested an insurer to stop sending the reports.
- *Amend or repeal 15 NYCRR § 32.9 - Prescribed Forms for I.D. Cards.* This rule requires motorists to carry a paper automobile insurance identification card as proof that they have automobile insurance. Technological advances allow for secure and reliable electronic reporting; motorists should be allowed to provide proof of insurance electronically. Twenty eight states have amended their identification card rules to allow proof of insurance to be established electronically.

**James W. Clyne, Jr.**

Mr. Clyne is the President and CEO of Leading Age New York. Founded in 1961, Leading Age New York is the only statewide organization representing the entire continuum of not-for-profit, mission-driven, and public continuing-care organizations, including home and community-based

services, adult day health care, nursing homes, senior housing, continuing-care retirement communities, adult care facilities, assisted living programs, and managed long-term care plans.

- *Eliminate duplicative regulations.* Currently, the continuing care retirement communities industry is regulated by both the Department of Health and the Department of Financial Services. As a result, there can be delays in building these communities. For example, contracts, resident occupancy, and finances must be approved by both agencies.
- *Reform 11 NYCRR Part 350 (Regulation 140) to allow more flexibility and investment options.* Currently, this regulation imposes certain reserve and investment requirements on continuing care retirement communities (CCRCs) which limit their investment potential. Reform should include allowing CCRCs to invest in mutual funds and exchange traded funds.

### **William Y. Crowell, III**

Mr. Crowell is an attorney representing the Independent Bankers Association. The Independent Bankers Association is an association of community bankers whose business model is making loans in their respective community.

- *Eliminate duplicative examinations of both the Federal Reserve Bank and the New York State Department of Financial Services.*
- *Repeal the mandate that requires community banks to file a quarterly subprime loan foreclosure service report.* Community banks do not participate in the subprime market. Therefore, requiring these banks to file this quarterly report adds no value.

### **Kristina Baldwin**

Ms. Baldwin is the Vice President of the Property Casualty Insurers Association of America (PCI). PCI is a national trade association representing over 1000 property casualty insurance companies. In New York, PCI member companies write 35 percent of New York State's property casualty insurance.

- *Amend or repeal 15 NYCRR § 32.9 - Prescribed Forms for I.D. Cards.* This rule requires motorists to carry a paper automobile insurance identification card as proof that they have automobile insurance. Technological advances allow for secure and reliable electronic reporting; motorists should be allowed to provide proof of insurance electronically. Twenty eight states have amended their identification card rules to allow proof of insurance to be established electronically.
- *Reform 11 NYCRR Part 67 (Regulation 79) - Mandatory underwriting inspection requirements for private passenger automobiles (mandatory photo inspection).* This

regulation no longer serves its purpose and is outdated. Modern technology renders this regulation irrelevant and the rule should be substantially modified.

- *Reform 11 NYCRR Part 71 (Regulation 107) - Legal Defense Costs in Liability Policies.* The current regulation should be amended to allow insureds to have the option to purchase directors' and officers' liability policies. This will allow the insured to bear the duty to defend claims. In the context of directors and officers liability policies, large businesses often prefer to retain control over the defense of such claims.

**Manufacturing**  
October 9, 2013  
Corning Community College  
Corning, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky  
Senator Thomas F. O'Mara

**Speakers:**

G. Thomas Tranter  
*President of Corning Enterprises*

William Wolfram  
*Board Chair for New York State Chemical Alliance*  
*Director of Global and Regulatory Affairs for SI Group*

Margaret Gorman  
*Manager of State Affairs Northeast Region, American Chemistry Council*

Mark Johnson  
*Vice President of the Pepsi Cola and Canada Dry Bottling Companies of New York (PCBCNY)*  
*Member of the New York State Bottlers Association*

Randy Wolken  
*President of the Manufacturing Association of Central New York (MACNY)*

Keith Bowmen  
*Vice President of F.M. Howell & Co.*

Jack Bebernes  
*Human Resources Manager at Dresser-Rand*

George Miner  
*President of Southern Tier Economic Growth*

Jamie Johnson  
*Executive Director of the Steuben County Industrial Development Agency*

John Giavenco  
*Traffic Manager for Nucor Vulcraft*

Submitted Testimony:

The New York State Motor Truck Association

Summary of Speaker Testimony:

**G. Thomas Tranter**

Mr. Thomas is the President of Corning Enterprises. Corning Enterprises is the world leader in specialty glass and ceramics. Drawing on more than 160 years of materials science and process engineering knowledge, Corning Enterprises creates and makes keystone components that enable high-technology systems for consumer electronics, mobile emissions control, telecommunications, and life sciences.

- *Reform the legal standing threshold for challenges under the State Environmental Quality Review Act (SEQRA).* Codify the legal standard set forth by the New York State Court of Appeals in *Society of Plastics Industry v. County of Suffolk*. This standard requires that a plaintiff demonstrate a personal injury-in-fact rather than an injury to the public at large.
- *Streamline Article X of the Public Service Law §§ 160-172.* The state should have an expedited process for applications that meet certain environmental criteria when they also address critical state economic development needs.
- *Reverse the trend of expanding the definition of “public work” for the purpose of prevailing wage mandates.* The state should make an effort to ensure that prevailing wage determinations accurately reflect regional private sector levels.
- *Amend Labor Law § 195(1) to repeal the annual notification requirement of the Wage Theft Prevention Act.* The notification requirement imposes a costly and burdensome administrative obligation on employers by mandating that employers send notices to each employee with salary information and then collect the signed notice. Failure to do so results in sanctions to the employer by the Department of Labor.
- *Repeal the Scaffold Law (Labor Law §§ 240-241).*
- *Revise the administration of real property tax assessments.* In order to ensure fairness of the property assessment process, the state should adopt a set of statewide assessment standards and practices which feature consistent reassessment cycles, fairer timetables, and procedures for appeals that include specialized courts designated to hear challenges as well as county level assessments.

### **William Wolfram**

Mr. Wolfram is the Board Chair for New York State Chemical Alliance and Director of Global and Regulatory Affairs for SI Group, the world's leading developer and manufacturer of chemical intermediates, guided by more than a century of strong values, innovation, and dedication to continuous improvement. SI Group is committed to producing, delivering, and continually improving its products and services to meet or exceed their customers' needs.

- *Expedite the Department of Environmental Conservation's permit approval process.* For example, the Department of Environmental Conservation has still not acted on a particular chemical company's 2012 permit renewal application.
- *Revise the Department of Environmental Conservation's Environmental Self Audit Policy to allow smaller facilities to self-disclose and comply on a proportional scale.* Many smaller companies do not have the resources to implement and administer a pollution prevention program. Additionally, a reciprocal agreement should be in place that states that the U.S. Environmental Protection Agency and the New York State Department of Conservation will defer to each other's resolutions of disclosed violations.

### **Margaret Gorman**

Ms. Gorman is the Manager for State Affairs Northeast Region at the American Chemistry Council. The mission of the American Chemistry Council (ACC) is to deliver business value through exceptional advocacy using best-in-class member performance, political engagement, communications, and scientific research. They are committed to sustainable development by fostering progress in our economy, environment, and society. ACC is America's oldest trade association of its kind, representing companies engaged in the business of chemistry.

- *Avoid duplicative state Department of Environmental Conservation regulations that are addressed by the United States Environmental Protection Agency.*
- *Expedite the Department of Environmental Conservation's Title 5 permit approval process.*

### **Mark Johnson**

Mr. Johnson is the Vice President of Finance for the Pepsi Cola and Canada Dry Bottling Companies of New York (PCBCNY) and a member of the New York State Bottlers Association. PCBCNY bottles and supplies mostly PepsiCo products, including soft drinks and non-carbonated beverages like Gatorade sports drink and Aquafina water, to the five boroughs of New York City as well as Westchester County. PCBCNY operates two bottling plants and a half dozen warehouses.

- *Reform Workers' Compensation Law.* New York State has a systemic problem regarding its indemnification of lost wages under the current law. In effect, it leads to incentives to stay out of work. Weekly rates should be rolled back to 2007 pre-reform

rates of \$400. Wide discrepancies of findings between doctors need to be addressed and eliminated in order to ensure that the most current and evidence-based medical treatment guidelines are used. The current Loss of Use awards structure should eliminate the concept for any no-lost time or little-lost time injuries while leaving exceptions for the severe instances of a lost limb.

### **Randy Wolken**

Mr. Wolken is the President of the Manufacturing Association of Central New York (MACNY). MACNY provides information, consulting, and training on issues critical to the success of businesses.

- *Reform the Unemployment Insurance regulations (12 NYCRR Parts 460-470).* Over 500,000 New York State employers were blindsided with fees as a result of the state borrowing from the federal government. These fees significantly impact a manufacturers' ability to operate a business in New York.
- *Reform the State Environmental Quality Review Act (SEQRA).* Reforms include developing an appropriate standard for adjudicating permit hearing issues, adhering to regulatory timetables for project reviews, and integrating coastal zone reviews with other state environmental review requirements. Additionally, the Department of Environmental Conservation should amend its new source review regulations to eliminate unnecessary restrictions on capital investments and operational changes that are intended to improve efficiency and competitiveness and/or reduce emissions and energy use.
- *Repeal the Wage Theft Prevention Act (Labor Law § 195).* To date, the Commissioner has not issued any regulations for employers to follow. As a result, employers are going to be held to a standard retroactively once they are promulgated.
- *Repeal the energy surcharge under Public Service Law § 18-a.* Compared to other industries, manufacturers are disproportionately impacted by these regressive taxes because they are typically energy intensive.
- *Repeal the Scaffold Law (Labor Law §§ 240-241).*

### **George Miner**

Mr. Miner is the President of the Southern Tier Economic Growth (STEG). As a private, not-for-profit organization, STEG fosters prosperity and vitality in Chemung County through the planning, promotion, and implementation of economic development programs. Their board of directors has over 65 members of which over 75 percent are private business people working side-by-side with chief elected officials and education and community leaders to create and retain jobs, thereby sustaining a strong economy.

- *Repeal the energy surcharge under Public Service Law § 18-a.*
- *Repeal the Wage Theft Prevention Act (Labor Law § 195).*
- *Eliminate the surcharge tax from the New York State Health Care Reform Act (HCRA).* HCRA requires that certain third-party payers and providers of healthcare services participate in the funding of healthcare initiatives through the submission of surcharges and assessments.
- *Repeal Wicks Law.* This law requires layers of public bidding and multiple contracts in each skills trade for public works projects which leads to increases in construction costs.
- *Repeal the intrastate prohibition of liquid natural gas (LNG) hauling.* Currently, it is legal for a tanker to haul LNG from a facility in Connecticut to a receiver in New York but it is illegal for a tanker to haul LNG from a facility in New York to a receiver in New York.

### **John Giavenco**

Mr. Giavenco is the Traffic Manager for NUCOR’s Vulcraft steel fabrication facility in Chemung, New York. NUCOR owns and operates a raw steel manufacturing facility in Auburn, New York, casting over 500,000 tons of rebar and other steel products used in all kinds of infrastructure and industrial applications. In addition, NUCOR owns a steel fabrication facility in Chemung, New York and now operates its Harris Steel rebar fabrication and installation facility in Albany, New York.

- *Amend the Wage Theft Protection Act to repeal the annual notification requirement.* Part of this Act requires that employers provide an annual wage notice to employees, which involves a great deal of time, effort, and expense on the part of the employer. The annual notification requirement is duplicative since it contains the same information already required on every employee’s paystub. Further, employers are required to obtain written acknowledgement of the receipt of this notice by every employee and maintain this documentation for six years. This is a time consuming and costly mandate for employers.
- *Eliminate the Highway Use Tax.* The highway use tax that funds the Dedicated Highway and Bridge Trust Fund is unfair to in-state carriers and puts the state at a competitive disadvantage. Elimination of the highway use tax will help reduce transportation costs.

### **Jamie Johnson**

Mr. Johnson is the Executive Director for the Steuben County Industrial Development Agency (IDA). The Steuben County IDA focuses on retaining and growing Steuben County’s economic base, enhancing the county’s economic infrastructure, managing the development of the natural

gas industry and other energy resources, and attracting and supporting service-based and professional service sector businesses.

- *Opposed to Scaffold Law (Labor Law §§ 240-241).* As a result of the law, high liability insurance premiums on construction companies have driven up the costs of building commercial and residential facilities.
- *Repeal the intrastate prohibition of liquid natural gas (LNG) hauling.*

### **Keith Bowmen**

Mr. Bowmen is the Vice President of F.M. Howell & Co. The mission of F.M. Howell & Co. is to provide packaging products and services. The company specializes in contract packaging, marketing services, package design and engineering, and supply chain management.

- *Repeal the Wage Theft Prevention Act (Labor Law § 195).* These regulations are too burdensome and duplicative of existing wage reporting requirements.
- *Conform the state tax code to the federal code.*
- *Opposed to S.2509 (Robach)/A.7029 (Simotas).* This proposed legislation would require unpaid sick leave for certain employees which would be burdensome on employers.
- *Opposed to S.1491 (Krueger)/A.5958 (Heastie) which would require the Department of Labor to create a single job-evaluation system.* This legislation amounts to the government being too intrusive in the private sector.
- *Opposed to S.2626 (Parker)/A.3894 (Camara) which would require paid sick leave time for employees.* This would be burdensome to employers.
- *Supports S.3473 (O'Mara)/A.5944 (Morelle) in order to allow limited liability companies (LLCs) to get an exemption for fulfillment service operations similar to other corporations.*
- *Amend Labor Law § 652 to reduce the rate of increase of the state's minimum wage.*

### **Jack Bebernes**

Mr. Bebernes is the Human Resources Manager at Dresser-Rand. Dresser-Rand is among the largest suppliers of rotating equipment solutions to the worldwide oil, gas, petrochemical, and process industries. The company operates manufacturing facilities in the United States, France, United Kingdom, Spain, Germany, Norway, and India. The company maintains a network of 49 service and support centers, including six engineering and research and development centers, covering more than 150 countries.

- *Amend Labor Law § 161 to make the process of requesting a work-week variance less burdensome.* Businesses need flexibility in scheduling their employees and requiring certain variances inhibits that flexibility.
- *Repeal intrastate prohibition of liquid natural gas (LNG) hauling.*

Summary of Submitted Testimony:

**New York State Motor Truck Association**

The New York State Motor Truck Association (NYSMTA) is a non-profit trade association representing the interests of the motor truck industry. With over 800 member companies, NYSMTA is one of the top trucking associations in the country. Further, they are the exclusive New York affiliate of the American Trucking Association (ATA).

- *Supports S.2313 (DeFrancisco)/A.2482 (Gabryszak) to repeal the Wage Theft Prevention Act (Labor Law § 195).* These regulations are too burdensome and duplicative of existing wage reporting requirements.
- *Supports S.1119 (Maziarz)/A.4202-A (Camara) to repeal intrastate prohibition of liquid natural gas (LNG) hauling.*
- *Supports S.2310 (DeFrancisco)/A.474 (Magnarelli) to repeal New York State's Highway Use Tax.* New York is the only state in the northeast and one of four states in the nation with a highway use tax.
- *Supports S.1087 (Maziarz)/A.3673 (Lupardo) which prohibits indemnity agreements in motor carrier transportation contracts.* This legislation will help common carriers from being taken advantage of by shippers.
- *Supports S.3298-A (Nozzolio)/A.5425-B (Peoples-Stokes) which allows wide-based single tires on certain vehicles.*

**Biotechnology**  
October 15, 2013  
Monroe County Office Building  
Rochester, New York

**Members Present:**

Senator Patrick M. Gallivan  
Senator Kathleen A. Marchione  
Senator David J. Valesky  
Senator Mark J. Grisanti  
Senator Joseph E. Robach  
Assemblyman Mark Johns

**Speakers:**

Joel Seligman  
*President of the University of Rochester*

Harold C. Smith, PhD.  
*Professor of Biochemistry & Biophysics at the University of Rochester Medical Center*  
*Founder of OyaGen, Inc.*

Joanne Thompson  
*Lead Specialist in Government Affairs at Welch Allyn*

Mel Kurtz  
*President of Quasar Energy Group*

Tom Fitzgerald  
*President of OyaGen, Inc.*

Dr. Larry Buckley  
*Department Head of the School of Life Sciences at the Rochester Institute of Technology*

## Summary of Speaker Testimony:

### **Joel Seligman**

Mr. Seligman is the President of the University of Rochester, which is one of the country's top-tier research universities. Their 158 buildings house more than 200 academic majors, more than 2,000 faculty and instructional staff, and some 10,500 students—approximately half of whom are women. Rochester remains one of the smallest and most collegiate top research universities, with smaller classes, a low 10:1 student to teacher ratio, and increased interactions with faculty.

- *Despite tremendous potential for future growth, New York State continues to lag behind in terms of harnessing research and development for economic growth.* Federal budget sequestration and cuts continue to undermine progress and threaten New York State's scientific leadership.
- *One of the fundamental challenges facing New York State is to ensure that discoveries have and will continue to emerge from our research institutions.* These discoveries are not only accelerated but also stay in New York State to help propel economic growth.
- *New York State policy makers should review the costs and benefits of state regulations, eliminating those that are redundant, ineffective, inappropriately applied to higher education and biotechnology sectors, or that impose costs that outweigh their benefits to the state and society.*
- *Any additions to state-imposed reporting or regulatory requirements of universities should be implemented with a cost-benefit analysis and additional funding to support administrative costs.* Also, regulations and reporting requirements should be more consistent across agencies so that the University can simplify compliance efforts and reduce costs, particularly when dealing with the stringent rules associated with grants and contract management.
- *The newly-established master Contract for Grants and the Grants Gateway has been helpful to the University, but there needs to be greater flexibility to negotiate clauses that do not apply to educational institutions.* This would make the process more user-friendly and help reduce redundancy with the information already required on the New York State Vendor Responsibility Questionnaire. Also, New York State should differentiate the type of contract based on the scope of the project to distinguish between a research, construction, clinical, or fee-for-service-contract.
- *Supports S.2313 (Defrancisco)/A.2482 (Gabryszak) which repeals the annual notification provision of the Wage Theft Prevention Act.* The provision creates a significant

administrative burden for large employers and the University has calculated the cost of compliance to be well over \$25,000 annually.

- *The University encourages continued support for existing programs, including NYSTAR's Centers for Advanced Technology, Regional Technology Development Centers, NYSTEM, the Governor's Regional Economic Development Councils, and the Spinal Cord Injury Research Program.* These programs are having a consequential difference in the University's ability to attract and retain top scientists and impact economic growth.
- *Supports the Innovate NY program, which is administered through Excell Partners.* In discussing New York State's ability to harness new technologies that are emerging from the region's universities and research centers and transform them into commercial opportunities, there was a request for financial capital to launch these new technology companies. The current funding available via angel investors tends to focus on the later stages of investment, and as a result there is an acute demand for seed and venture capital funding.

#### **Harold C. Smith, PhD**

Mr. Smith is a Professor of Biochemistry and Biophysics at the University of Rochester Medical Center. The Department of Biochemistry and Biophysics strives to understand the molecular mechanisms of important biological processes, thereby providing insight into how disruption of these mechanisms causes disease. Departmental research is generously supported by the National Institutes of Health (NIH). NIH instrument funds have contributed to the University's recent \$2 million investment in cutting edge structural biology, biophysical, and mass spectrometry-based equipment. Furthermore, income generated from intellectual property derived from departmental research discoveries continues to be reinvested back into the department and used to stimulate the genesis of private biotechnology companies. Mr. Smith is also the founder of OyaGen Inc., a biotech and drug development company focused on drug development for infectious diseases and cancer.

- *New York State is in a position to amend and possibly create a new legislative vehicle that takes into account the changing investment environments, the needs of innovative biotechnology firms like OyaGen, and its investors present and future.* This will help create a more robust and diverse development platform throughout the research, development, clinical trial and commercialization process.
- *OyaGen would like to propose language that will enhance New York State's ability to work with innovative firms across the state.* This approach would also include hearings with innovative biotechnology companies from across the state to hear about their needs and ideas, as well as create a pathway beyond the initial funding to ensure the future development of innovation in the biotechnology sector in New York State.

- *Supports biotechnology growth in New York State by creating the Biotechnology Industry Revitalization and Development Initiative (BiRDI), to appropriate a \$200 million fund uniquely targeted to Biotech.* Funding would be in the form of grants, based on job creation milestones or as low-interest loans.

### **Joanne Thompson**

Ms. Thompson is the Lead Specialist for Government Affairs at Welch Allyn. Welch Allyn specializes in helping doctors, nurses and other healthcare providers across the globe to provide the best patient care by developing innovative products, breakthrough technologies, and cutting-edge solutions that help them see more patients, detect more conditions, and improve more lives. They have been a leader in the healthcare industry since their start in 1915, set medical industry standards in the 1920s, and were the first to use fiber optics in medical instruments in the 1960s. Their own innovation continues into the 21<sup>st</sup> century.

- *New York State should consider eliminating and/or revising the corporate income tax for manufacturers.* This tax is one of the primary reasons why New York State is consistently ranked as one of the most challenging states for companies to do business.
- *Article 9A of the Corporate Income Tax code should be revised to remove multiple ways to calculate tax.* This requirement is complex and burdensome.
- *The sales and use tax should be revised as it is onerous and overly complicated.* Decreasing this tax could put New York State in a position to have a competitive advantage over other states.
- *Health Technology Assessments should not be part of the Governor's Medicaid Redesign plan.* These assessments are the process whereby the Department of Health reviews certain medical technologies and procedures in order to determine if those technologies and procedures should be covered under the Medicaid Program. Medical technologies reviewed by the Department of Health are already reviewed at the federal level by the U.S. Food and Drug Administration, the Agency for Healthcare Research and Quality, and the Center for Medicare and Medicaid Services. Similar reviews at the state level are unnecessary, burdensome, and duplicative. Additionally, there is no opportunity for public comment or participation in the assessment process.
- *Supports S.4509 (Hannon)/A.7528 (Morelle) which directs the Department of Health to convene a Health Technology Assessment Committee to advise the Commissioner of Health on coverage of health technology under the medical assistance program.*

### **Mel Kurtz**

Mr. Kurtz is the President of the Quasar Energy Group, which is a company that is recycling energy in North America from organic wastes. Based in Cleveland, Ohio, Quasar is a full

service waste-to-energy company with a superior laboratory and engineering facility at the Ohio State University Agricultural Research and Development Center campus located in Wooster, Ohio. Quasar designs, builds, owns, and operates anaerobic digestion facilities using U.S. components to produce renewable energy. Recently, Quasar completed the construction of two new digesters in the Buffalo/Niagara region.

- *New York State can encourage continued job growth and economic development in the biotech industry, as well as the Greek yogurt industry, by extending the interconnection cap and virtual net metering to all digest products.* All same-size generators and digester projects should be charged similar predictable fees to interconnect to the electric utility grid. New York State Public Service Law, Article 4 caps the interconnection fees for customer-generators who own or operate farm waste electric generating equipment at \$5,000. Under this law, electricity generated from biogas is capped at one megawatt and must be derived via anaerobic digestion of agricultural waste that is at least fifty percent animal manure. Interconnection fees for digester project that do not fall under this law are not capped, resulting in a disparity of rates between utilities.
- *New York State can encourage continued job growth and economic development in the biotech industry by expanding the Environmental Investment Program to include waste-to-energy projects with sewage sludge.* The New York State Department of Economic Development’s Environmental Investment Program should be revised to include recycling projects that convert waste to energy and sewage sludge as an approved organic material.

### **Tom Fitzgerald**

Tom Fitzgerald is the President of OyaGen, Inc., which is a biotechnology company formed in 2003 for the purpose of discovering, developing, and commercializing novel pharmaceutical therapies that seek to exploit RNA editing and DNA editing enzymes. OyaGen holds exclusive rights to important technologies originating from the University of Rochester Medical Center, the Thomas Jefferson University, and Oregon Health Sciences Center.

- *New York State government could play a pivotal role in creating a Biotech hub or several hubs which build on the existing, but not coordinated, local efforts and infrastructure.* New York State should implement a coordinated support system for Biotechs, enabling shared access to biotech facilities, equipment, subject experts, and service providers. New York State should encourage collaboration, including cost sharing for employees, management, technical experts, and support services in early development stages.
- *A more stable capital funding stream would enable biotechs to experience a gradual and manageable growth process, versus the current “whims” of venture capital.*

### **Dr. Larry Buckley**

Dr. Buckley is the Department Head for the School of Life Sciences at the Rochester Institute of Technology. The Thomas H. Gosnell School of Life Sciences at RIT offers a rigorous, hands-on education that prepares students for a broad range of career options. Graduates of their programs step directly into well-paying jobs in industry, non-profit organizations, and the government, or continue their education at some of the most selective graduate, professional, and medical schools in the country.

- *Update the 1999 Biotechnology Workforce study to identify items such as workforce progress made since 1999, areas that remain in need of improvement, and new areas of biotech and bioscience that need to be addressed through workforce training.*
- *Support efforts to control costs to students for biotech and bioscience education, including keeping student loan rates low.*
- *Support group-buying power of University, State, and Federal labs to purchase equipment and consumables necessary for lab research, as well as streamline the process of setup and maintenance of animal care facilities that are costly to maintain at most smaller facilities.*
- *Increase state and federal funding levels in order to keep principal investigators and students at work in New York State. Funding for research agencies and summer undergraduate research initiatives should be targeted specifically at biotechnology and bioscience. Also, funding should be increased for graduate student stipends and scholarships.*
- *Increase K-12 science, technology, engineering, and mathematics (STEM) education through summer camps, teacher-led school initiatives with STEM components, and charter schools focused on STEM education.*

## **Additional Submissions**

In the course of conducting our industry-specific hearings, we received additional submissions from groups and individuals around the state who have been negatively impacted by New York State's regulatory climate. We have included these additional submissions under the industry affected when appropriate. Some submissions did not neatly fit under one of the targeted industries, but nonetheless merited mention and consideration.

### **Summary of Submissions:**

#### **Thomas M. Pitegoff**

Mr. Pitegoff is an attorney and an internationally respected authority on franchise law. Mr. Pitegoff is the former Chair of the Franchise Committee of the New York State Bar Association's Business Law Section, and current Chair of the section's Legislation Committee. Mr. Pitegoff submitted a report produced by the Legislation Committee, membership comprising of Thomas M. Pitegoff, Andre R. Jaglom, David J. Kaufmann, Harold L. Kestenbaum, David W. Oppenheim, and Richard L. Rosen.

- *Proposed Changes to the New York Franchise Act (General Business Law Article 33, § 680 et seq.) and corresponding regulations.* In January 2007, after years of study, the Federal Trade Commission issued a thoroughly revised trade regulation rule on franchising (16 CFR Part 436) (the “Amended FTC Rule”), replacing the Commission’s 1978 franchise rule. The Amended FTC Rule, which became mandatory in July 2008, preempts inconsistent state laws except to the extent that the state laws afford prospective franchises protection equal to or greater than the Amended FTC Rule. Since the Amended FTC Rule substantially preempts the New York Franchise Act, the Department of Law no longer accepts franchise disclosure documents for registration that follow the Amended FTC Rule, even though the Rule is not reflected in the state law or regulations. The Subcommittee recommends revisions to the New York Franchise Act to remove and revise the preempted requirements to be consistent with the requirements of the Amended FTC Rule. The Subcommittee also recommends a number of other revisions intended to improve the law and to improve the legal environment for franchising in the state. The Subcommittee also proposes that the Department of Law issue new regulations which would replace 13 NYCRR Part 200, dealing with franchise offerings. The Subcommittee recommends that the Department of Law issue these new regulations to become effective when the changes in the New York Franchise Act become effective.

#### **Timothy Zack**

Mr. Zack is a retired Army Colonel from Cheektowaga, New York.

- *Allow a letter from the Veterans Administration certifying 100 percent service connected disability to substitute for a doctor's certification when applying for a New York State*

*disabled veteran's license plate.* In New York State, a disabled veteran who can produce a letter from the Veterans Administration certifying 100 percent service connected disability must still obtain a doctor's certification. Other states such as Maryland allow such a letter to suffice. Requiring an additional doctor's certification is an excessive requirement and an unnecessary burden on our disabled veterans.

**William Y. Crowell, III**

Mr. Crowell is a partner with Whiteman, Osterman & Hanna LLP. His testimony is submitted on behalf of the members of the Rent Stabilization Association of New York City.

- *Objects to current rent regulations and proposed regulatory amendments by the Division of Housing and Community Renewal (DHCR).* Many current regulations are outdated; for example, rent charged in over 20 percent of rent stabilized apartments is less than the amount allowed by law. Further, the changes proposed by the DHCR expand the already hyper-regulated area of rent control and rent stabilization and negatively impact the economy of New York City. Many of these regulations discourage owners from improving and investing in their buildings and create new burdens for owners in terms of time consuming tasks and unnecessary penalties.

**Joseph M. Condon**

Mr. Condon is counsel at the Community Housing Improvement Program (CHIP). CHIP is a trade association that advocates for owners of rent regulated properties throughout New York City. Its membership is comprised of mostly small to medium sized owners of multifamily properties.

- *Objects to proposed regulatory amendments by the Division of Housing and Community Renewal (DHCR).* Many of the DHCR's proposed amendments add to the administrative burden of owners by imposing additional and unrealistic record keeping requirements, reducing time frames and notice requirements given to owners, and codifying penalties for minor violations. If passed, these amendments would increase administrative costs and potential liabilities to owners. Additionally, CHIP opposes the recent creation of the Tenant Protection Unit as it increases the cost of owning and operating regulated housing. Members of CHIP have reported spending a significant amount of time and resources to generate responses to the Unit's inquiries with no added value.



## **Regulations Identified**

After conducting nine industry-specific hearings across New York State, reviewing surveys, letters, and emails, holding meetings with Chambers of Commerce, individual businesses, business groups, state and local organizations, and constituents, 2,219 regulatory burdens were reported to the Senate Majority Coalition. While these identified regulatory burdens predominantly originated from regulations promulgated by state agencies, other regulatory burdens were also identified. Often times, the difficulty of navigating complex regulations was more burdensome than complying with the regulation itself. This burden was compounded when businesses faced state agencies operating under a culture of fine and penalize rather than cooperating with the business towards compliance.

Another regulatory burden, not generated specifically from regulations, was the reoccurring theme of a lack of timeliness from state agencies. Although businesses are required to strictly comply within mandated timeframes, state agencies are not held accountable to do the same. Businesses did not receive timely notice when a state agency promulgated new regulations or made changes to existing regulations. Also, businesses did not receive timely notice when they had violated a regulation. This could be particularly costly to a business that may be subject to subsequent fines without the opportunity to remedy the problem. The most common complaints were delays in funding disbursement and permit approvals. Delays in funding disbursement put financial stress on awardees. Delays in permit approvals were not only costly, but could disincentivize businesses from starting or expanding operations in New York State.

Below, 2,219 regulatory burdens hindering business have been identified. If not otherwise specified, the regulatory burden should be reviewed to streamline or eliminate if appropriate, to remove unnecessary duplications, and to determine whether the public benefit justifies the cost.

### **Multiple Mentions**

While the fact-finding mission was designed to target regulations that affected specific industries, some regulatory burdens touched multiple industries and were repeatedly mentioned throughout the forums.

- |        |   |
|--------|---|
| 1      | Repeal the Annual Wage Notification provision of the 2010 Annual Wage Theft Prevention Act <sup>3</sup> |
| 2 - 3  | Scaffold Law <sup>4</sup>   |
| 4 - 63 | Workers' Compensation Law <sup>5</sup>  |

## **Mandate Relief**

Regulatory burdens not only affect private business, but also increase the administrative costs for local governments. Improving the following regulatory burdens will provide mandate relief to local governments.

- 64 – 96 Streamline civil service employment regulations<sup>6</sup>
- 97 – 137 Review and streamline Unemployment Insurance<sup>7</sup>
- 138 – 148 Diesel Emissions Retrofit Act<sup>8</sup>
- 149 Local Economic Development Corporations
- 150 Streamline school health insurance
- 151 – 152 Streamline teacher disciplinary hearings<sup>9</sup>
- 153 Simplify and review the Energy Conservation Construction Code for duplication<sup>10</sup>
- 154 – 171 Option for counties to charge a fee for electronic monitoring of parolees, not to exceed the cost of the service<sup>11</sup>
- 172 – 181 Streamline monitoring of DWI offenders<sup>12</sup>
- 182 – 193 Streamline the Pre-Sentence Investigation report process to avoid duplicative investigations when a defendant is to be sentenced to time served, is convicted of a crime that occurred while in a state correctional facility, and where the sole purpose is to determine Youth Offender status<sup>13</sup>
- 194 – 196 Municipal Public Health Services Plan<sup>14</sup>
- 197 – 207 Review regulations that hinder home-care managed care delivery systems<sup>15</sup>
- 208 – 212 Streamline regulations concerning the sale of county nursing homes<sup>16</sup>
- 213 – 233 Streamline the procurement process<sup>17</sup>
- 234 Review Wicks Law for appropriate modifications<sup>18</sup>

## **Agency Communication**

Regulatory requirements are complex, often costing as much in time spent understanding the regulation as it does to comply. While all businesses are affected by this task, small businesses are particularly harmed because of minimal staff, time, and resources. Given the complexity of

compliance, state agencies should work cooperatively with businesses towards compliance instead of automatically penalizing noncompliance. Regulatory requirements should be simplified to the extent possible and be made easily accessible. State agencies should provide guidance to those who must comply. Specific examples are identified below.

- 235 – 245 Businesses fined when minor employees work five minutes over the 20 hours per week<sup>19</sup>
- 246 Retailers face audits when the exact amount of credit card and debit card sales on tax forms have minor mistakes<sup>20</sup>
- 247 The newly established Master Contract for Grants and the Grants Gateway have clauses that do not apply to educational institutions and such institutions are not allowed to negotiate the removal of these provisions<sup>21</sup>
- 248 Large fines imposed for small mistakes<sup>22</sup>
- 249 Temporary alcohol and beverage control permits are difficult to obtain<sup>23</sup>
- 250 Tax exempt rules are unclear<sup>24</sup>
- 251 The process to obtain a variance from the state energy code is overly complex<sup>25</sup>
- 252 Provide for public comment during the initial development, preparation, and promulgation of rules and mandate that state agencies reach out to regulated persons who may be adversely affected by any proposed rule<sup>26</sup>

### **Agency Timeliness**

When a regulation contains a time component, businesses are expected to comply. Failure to adhere to the proscribed timeframe may result in a violation. However, state agencies are not held accountable to timely perform tasks. A delay by a state agency can have serious impacts on a business sometimes resulting in significant costs borne by the business. Specific examples are identified below.

- 253 Funding for farming organizations<sup>27</sup>
- 254 New York State Energy Research and Development Authority (NYSERDA) applications<sup>28</sup>
- 255 Grants for nonprofit organizations<sup>29</sup>
- 256 Winery permits<sup>30</sup>

- 257 Notice for prevailing wage violations<sup>31</sup>
- 258 Permit approval process<sup>32</sup>
- 259 Background checks through the Office of Mental Health<sup>33</sup>
- 260 The foreclosure process in cases where the action is not contested and the property is vacant<sup>34</sup>
- 261 The Department of Transportation should provide adequate notice of regulations regarding transporting trees and trucking<sup>35</sup>
- 262 Provide advanced notice to employers regarding a minimum wage increase<sup>36</sup>

### **Agriculture**

- 263 – 319 Review and streamline Certified Animal Feeding Operations (CAFO)<sup>37</sup>
- 320 – 321 Streamline dairy farm inspection to one day or less<sup>38</sup>
- 322 Review annual reporting of water withdrawals for agricultural facilities<sup>39</sup>
- 323 – 333 Farmers prevented from cleaning ditches at the bottom of streams without agency approval<sup>40</sup>
- 334 Advertising by any means prohibited in the parkway system<sup>41</sup>
- 335 - 343 Sales tax required to be paid on the Internet<sup>42</sup>
- 344 Milk dealer licensing only valid for one year<sup>43</sup>
- 345 Review legislation limiting disclosures associated with freedom of information as it relates to New York State Cattle Health Assurance Program (NYSCHAP) members<sup>44</sup>
- 346 Registration of farm vehicles<sup>45</sup>
- 347 Allow grape price information collected by Agriculture & Markets to be available to farmers anonymously
- 348 Commercial producers are not involved when promulgating laws that define agricultural products
- 349 Fire codes prevent many displays of fresh Christmas trees

- 350      Difficulty obtaining affordable three-phase electrical power
- 351      One-size-fits-all contract format results in extended delays in funding
- 352      New York City market is closed to New York State Christmas trees and wreaths

### **Biotechnology**

- 353      Review regulations currently treating anaerobic generators of the same size differently<sup>46</sup>
- 354      The New York State Economic Development's Environmental Investment Program should be revised to include recycling projects that convert waste to energy and to include sewage sludge as an approved organic material
- 355      Update the 1999 Biotechnology Workforce Study
- 356      Support group buying power of university, state, and federal labs to purchase equipment and consumables necessary for lab research
- 357      Streamline the process of setup and maintenance of animal care facilities

### **Conservation**

- 358 – 367      Review and streamline New Source Review regulations<sup>47</sup>
- 368 – 387      Review and streamline the New York State's Environmental Quality Review (SEQR) program<sup>48</sup>
- 388 – 392      Review regulations governing the taking of deer<sup>49</sup>

### **Construction**

- 393 – 398      Review Article 78 proceedings for simplification<sup>50</sup>
- 399 – 457      Streamline New York State Building Codes<sup>51</sup>
- 458 – 461      Consider adopting the federal annualization methodology of the federal Davis-Bacon Act<sup>52</sup>
- 462      Consider the implications of creating a self-certification process for certain construction projects

- 463 Consider the implications of providing state agencies with greater flexibility to authorize overtime for construction contracts
- 464 Review the New York State Insurance Fund

### **Economic Development**

- 465 – 517 Streamline Empire State Development regulations (EDZs)<sup>53</sup>

### **Energy**

- 518 – 568 New York State Energy Research Development Authority<sup>54</sup>

### **Hospitality and Tourism**

- 569 Review timing of reporting requirements as it relates to pool supervision<sup>55</sup>
- 570 – 628 Review regulations governing game of chance and bingo licensing for out of date provisions<sup>56</sup>
- 629 Review hours of operation for premises that sell liquor<sup>57</sup>
- 630 Small liquor stores are prohibited from making pooled purchases<sup>58</sup>
- 631 Liquor stores cannot sell liquor or wine to retail establishments for consumption on the premises<sup>59</sup>
- 632 Amtrak and the Department of Transportation should work together to allow passengers to bring bicycles on Amtrak trains
- 633 The “I Love NY” tourism matching fund program is too rigid and needs more flexibility
- 634 Clarify compliance regulations for State Liquor Authority licensed premises relating to the Security Guard Act
- 635 The State Liquor Authority should not usurp the Department of Health’s jurisdiction
- 636 Competition between private and state run ski facilities is unfair
- 637 The mandatory business survey is too difficult and many businesses have to hire an accountant to complete it

- 638      The Adirondack and Long Island regions highly regulate signage and member businesses have difficulty getting signage approvals to promote their business
- 639      Funding is needed for Exits 3 and 4 on I-87

### **Financial Services**

- 640      Review health maintenance organizations (HMO) forms and premium rates for consistency<sup>60</sup>
- 641      Denials of economic loss claims must be issued to a claimant's lawyer in duplicate<sup>61</sup>
- 642 – 653      Review investment limitations on Continuing Care Retirement Communities<sup>62</sup>
- 654 – 656      Review rules for the sale of life insurance policies and annuities<sup>63</sup>
- 657 - 667      Review rules and guidelines for valuing reserves for separate account contracts and single premium policies<sup>64</sup>
- 668 – 675      Simplify regulations on the replacement of life insurance policies and annuity contracts with consideration to the National Association of Insurance Carriers (NAIC) model<sup>65</sup>
- 676      Simplify regulations on the redomestication of insurance companies with consideration to the National Association of Insurance Carriers (NAIC) model<sup>66</sup>
- 677 – 684      Review rules governing existing and future ceded reserves as it relates to credit for reinsurance<sup>67</sup>
- 685 – 691      Insurance brokers are required to provide consumers with a notice detailing the insurance broker's compensation<sup>68</sup>
- 692 – 703      Modernize the process of photo inspection for private passenger automobiles<sup>69</sup>
- 704      Insurers must provide applicants with a notice and proof of claim for disability benefits which must be printed on buff-colored paper<sup>70</sup>
- 705      Insurers are unable to negotiate interest payments as part of a personal injury settlement<sup>71</sup>
- 706 – 758      Update the uniform classification of expenses for rate making purposes for fire, marine, casualty, and surety insurers<sup>72</sup>

- 759 – 766 Review impediments to implementing the National Association of Insurance Commissioners Life Insurance and Annuities Replacements Model<sup>73</sup>
- 767 Modernize the process requiring motorists to carry a paper identification card as proof of automobile insurance<sup>74</sup>
- 768 Insurers are required to mail forms to a claimant or claimant's representative but cannot use a variety of means like FedEx, fax, or UPS<sup>75</sup>
- 769 – 781 Insurers cannot issue policies to sophisticated policyholders that allow them to retain the duty to defend<sup>76</sup>
- 782 Review reinsurance reporting requirements regarding the practice of issuing letters of credit<sup>77</sup>
- 783 – 787 Review regulations relating to confidentiality of information as it relates to insurance<sup>78</sup>
- 788 Vehicles with corporate logos prohibited from traveling on the parkway system<sup>79</sup>
- 789 Review Circular Letter 32 of 2001 that provides for annual insurance availability
- 790 Simplification of insurance company administrative transactions
- 791 Consider allowing those insured under Medical Malpractice Insurance Pool's Plan of Operation to reject a risk
- 792 Consider allowing for non-judicial foreclosures of commercial mortgages
- 793 Reform the State Administrative Procedure Act to increase engagement in negotiated rule-making
- 794 Consider establishing the Interstate Insurance Product Regulation Compact to regulate certain insurance products among member states<sup>80</sup>
- 795 Review advertising requirements for insurance agents and brokers<sup>81</sup>
- 796 Consider excluding information services such as abstracts of title, tax searches, searches for municipal records for violations, and certificates of title and lien searches from sales tax<sup>82</sup>
- 797 – 821 Review excess line placements governing standards<sup>83</sup>

## **Labor**

- 822 – 890      Review the regulation of amusement devices, slides, funhouses, viewing stands and tents, and go-karts<sup>84</sup>

## **Manufacturing**

- 891      Streamline Department of Labor paperwork for work share programs by creating an online system that fills in timesheet information that remains the same each week
- 892      Use unemployment insurance prevailing wage tables to determine regional prevailing wage rates
- 893      Clarify the definition of “public work” for the purpose of prevailing wage mandates
- 894      High operating costs for state businesses
- 895      Liability insurance requirements are too complex
- 896      Repeal the intrastate prohibition of Liquid Natural Gas (LNG) hauling<sup>85</sup>
- 897      Review the process of requesting a work week variance<sup>86</sup>
- 898      Consider the implications of allowing small facilities to self-disclose and comply on a proportional scale under the Department of Environmental Conservation’s Self-Audit Policy

## **Medical Technology & Health**

- 899 – 900      Review the process requiring providers to submit outstanding Department of Health statistical reports<sup>87</sup>
- 901 – 902      Review electronic prescribing requirements to strengthen safeguards and ensure effective healthcare<sup>88</sup>
- 903      Phase out requirement for personal care providers to complete annual cost reports<sup>89</sup>
- 904      Review the requirement that Medicaid providers must participate in the Actual Acquisition Cost Survey and report invoice prices for all drug products to avoid duplicative reporting<sup>90</sup>

- 905 All unvaccinated personnel in healthcare/residential facilities must wear surgical masks during times the Department of Health determines influenza is present<sup>91</sup>
- 906 – 911 Limits on executive compensation and administrative expenses for covered provider using state funds for operating expenses<sup>92</sup>
- 912 County restrictions on immunization orders for pharmacists<sup>93</sup>
- 913 – 949 Review Certificate of Need (CON) requirements<sup>94</sup>
- 950 – 951 Streamline doctor office and kidney dialysis center rules<sup>95</sup>
- 952 – 974 Medical malpractice insurance rates<sup>96</sup>
- 975 – 1006 Physicians who provide telemedicine consultations within the state are required to have a patient's health assessed by a hospital near the patient, whereas out-of-state physicians are not required to obtain this assessment<sup>97</sup>
- 1007 Review duplicative state inspections for hospital clinical laboratories by the Department of Health Wadsworth Laboratory and the Joint Commission
- 1008 Review the possibility of a consolidated physician claim submission form for Medicaid, workers' compensation insurance, and no-fault insurance
- 1009 The Medicaid redesign team should obtain public input and consult with medical practitioners
- 1010 Modify the new billing and payment system for the Early Intervention Program to make it easier for healthcare providers to use
- 1011 Streamline medical licensure for verifying the education of foreign-educated practitioners
- 1012 The Triborough Amendment to the Taylor Law impacts collective bargaining agreements for institutions like Roswell Park
- 1013 Some Medicaid managed care plans require cancer patients to obtain specialty medications from Connecticut instead of New York
- 1014 Collaborative agreements between physicians and pharmacists allowed under the collaborative drug therapy management law are problematic when using electronic prescription systems
- 1015 Review regulatory assessment fees charged to providers of healthcare services<sup>98</sup>
- 1016 Review the registration of utilization review agents<sup>99</sup>

- 1017 Utilization review determinations; review the requirement of notification by telephone<sup>100</sup>
- 1018 Clarify definitions for copayment practices<sup>101</sup>
- 1019 Review the mental health reporting requirements of the New York SAFE Act
- 1020 Consider option to amend the definition of “disaster emergency response personnel” to include staff of home health and Hospice agencies<sup>102</sup>
- 1021 Review regulations surrounding pharmacy benefit managers
- 1022 Review current and additional health insurance mandates
- 1023 Review the requirement that HIV testing be offered to every individual between the ages 13-64 that are receiving healthcare services<sup>103</sup>
- 1024 Review legislation that directs the Department of Health to create a health technology assessment committee to advise the Commissioner on coverage of health technology under Medicaid<sup>104</sup>
- 1025 Review legislation that requires the New York State Healthcare Quality and Cost Containment Commission to evaluate mandated insurance benefits<sup>105</sup>

### **Motor Vehicles**

- 1026 – 1053 Review physical inspections of cars and light trucks<sup>106</sup>
- 1054 Modernize regulations relating to car dealerships’ book of registry<sup>107</sup>
- 1055 Consider option of one-time vehicle registration<sup>108</sup>
- 1056 Consider option of one-time ATV registration<sup>109</sup>
- 1057 Consider option of one-time registration for motor vehicle repair shops<sup>110</sup>
- 1058 Review the process of drivers’ license renewals<sup>111</sup>

## **Small Business**

- 1059 Consider the option of a consolidated food retailer licensing application
- 1060 The Department of Labor should review the classification of musicians performing at multiple businesses as employees rather than independent contractors
- 1061 Review public benefit of mandatory retail signage
- 1062 Small businesses are often excluded from existing tax incentives such as those offered by industrial development agencies (IDAs)
- 1063 New York State should supplement the processing of the federal Work Opportunity Tax Credit to make the funds available to state businesses
- 1064 Review retail establishment regulations to ensure consistent application
- 1065 Simplify the process to qualify for certification as a minority and/or women-owned business enterprise (MWBE)
- 1066 Consider requiring state departments to timely notify employers of alleged undercover illegal alcohol sales involving their employees<sup>112</sup>
- 1067 Review legislation that requires all individuals attempting to purchase alcohol or tobacco at off-premise locations to present a valid photo ID regardless of age<sup>113</sup>
- 1068 Consider removing the mandate that a retailer's lottery license must be suspended if its tobacco license is suspended<sup>114</sup>
- 1069 – 1084 Consider excluding bouncers from being classified as security guards for training and registration purposes<sup>115</sup>
- 1085 Review the regulations surrounding underage possession of tobacco
- 1086 Review the New York State Returnable Container Act
- 1087 Review laws that prohibit retailers from determining whether an applicant for a cashier job has past criminal convictions until conditionally offering the employee a job
- 1088 Review publishing requirements for LLCs<sup>116</sup>
- 1089 Review legislation that prohibits indemnification clauses in shipper contracts that automatically assign liability for damaged goods to the carrier regardless of fault<sup>117</sup>

- 1090      Review legislation that establishes a recordkeeping voluntary compliance program for the purposes of sales tax liability<sup>118</sup>
- 1091      Review legislation that requires the Department of Taxation and Finance to use external indices that reflect local economic conditions when estimating sales tax payments<sup>119</sup>
- 1092 – 1103      Review the Franchise Law<sup>120</sup>
- 1104 – 1153      Review regulations governing State Liquor Authority permits and licenses for outdated provisions<sup>121</sup>

### **State Department**

- 1154      Every city, village, town, and county must annually submit a report of its activities relative to administration and enforcement of the Uniform Code to the Secretary of State<sup>122</sup>
- 1155      Manufacturers and installers must file quarterly reports with the Department of State<sup>123</sup>
- 1156 – 1217      Streamline board of real estate appraisals<sup>124</sup>
- 1218 – 1243      Review regulations governing waterfront revitalization of coastal areas and inland waterways<sup>125</sup>

### **Fees**

Fees should be reviewed to ensure a fair and appropriate fee structure as well as remove duplicative fees.

- 1244 – 1246      State Pollutant Discharge Elimination System for wineries<sup>126</sup>
- 1247      Permit fees for highway advertising signs<sup>127</sup>
- 1248      Inspection fee for highway advertising<sup>128</sup>
- 1249      Late payment fee for highway advertising signs<sup>129</sup>
- 1250      Application fee to implement the Workplace Safety and Loss Prevention Incentive Programs<sup>130</sup>

- 1251 Fee for the renewal application for the Workplace Safety and Loss Prevention Incentive Programs<sup>131</sup>
- 1252 Fee to certify as a safety and loss management specialist<sup>132</sup>
- 1253 Fee to certify as a blaster<sup>133</sup>
- 1254 Fee for certificate to keep and store explosives<sup>134</sup>
- 1255 Motor vehicle repair shops<sup>135</sup>
- 1256 Fee for the crane operator exam<sup>136</sup>
- 1257 Fee to operate a mobile laser<sup>137</sup>
- 1258 Registration fee for ski tows and passenger tramways<sup>138</sup>
- 1259 Fee for the review of a quality control system of a boiler manufacturer or repairer<sup>139</sup>
- 1260 Fee for window cleaning scaffold plans<sup>140</sup>
- 1261 Fee for building permits and demolition permits<sup>141</sup>
- 1262 Application fee for routine variances<sup>142</sup>
- 1263 Application fees for home manufacturers<sup>143</sup>
- 1264 Fees for insignia of approval for manufactured homes<sup>144</sup>
- 1265 Administrative fee for fleet vehicles<sup>145</sup>
- 1266 Fees for antennas placed on the Office of General Services facilities<sup>146</sup>
- 1267 Corporations primarily engaged in farming currently use gross income when determining the filing fees for LLCs and S corporations instead of net income<sup>147</sup>
- 1268 Consider allowing registration fees for agricultural plates to be prorated towards fees for farm plates<sup>148</sup>
- 1269 Fees for filing a late sales tax form when no tax is due<sup>149</sup>

## **Certificates and Licenses**

Certificates and Licenses should be reviewed to ensure that the requirements are fair and not overly burdensome.

- 1270 – 1280 Streamline teacher certification rules<sup>150</sup>
- 1281 – 1300 Streamline professional licensing rules<sup>151</sup>
- 1301 – 1314 Insurance broker licensing<sup>152</sup>
- 1315 – 1318 Certification as a manufacturer, retailer, installer, or mechanic of manufactured homes<sup>153</sup>
- 1319 Business entities must obtain separate certifications for each manufacturing plant and retail sales location<sup>154</sup>
- 1320 Certifications issued by the Department of State are valid for a term of two years<sup>155</sup>
- 1321 – 1323 Continuing education requirements for manufacturers, retailers, installers, and mechanics and approval of courses and instructors<sup>156</sup>
- 1324 – 1361 Licensing for hairdressers<sup>157</sup>
- 1362 Licensing for barbers<sup>158</sup>
- 1363 Certificate of registration for hearing aid dispensers<sup>159</sup>
- 1364 – 1365 Licensing for private investigators, watch, guard, or patrol agencies<sup>160</sup>
- 1366 – 1374 Licensing for document destruction contractors<sup>161</sup>
- 1375 Registration of securities broker-dealers, issues, and salespersons<sup>162</sup>
- 1376 Continuing education for insurance brokers should have an online testing mechanism<sup>163</sup>

## **Review State and Federal regulations for possible duplications**

In some cases, the state makes a calculated choice to require more than the federal standard. However, dual reporting and duplicative requirements cost businesses time and resources without providing additional public benefit. Regulations should be reviewed to remove wasteful duplications and maintain consistency with federal requirements to the extent possible.

- 1377 – 1471 Food Safety Rules<sup>164</sup>
- 1472 – 1485 Mercury reduction program<sup>165</sup>
- 1486 – 1559 Acid deposit (NOX/SOX) standards<sup>166</sup>
- 1560 – 1653 Pesticides<sup>167</sup>
- 1654 – 1735 Division of Code Enforcement and Administration<sup>168</sup>
- 1736 Compare state sanitation and shelter regulations for railroad company employees to federal Occupational Safety and Health Administration regulations<sup>169</sup>
- 1737 Compare state regulations regarding construction, maintenance, use, and operation of coin-operated machines to federal Occupational Safety and Health Administration regulations<sup>170</sup>
- 1738 Review Department of Labor hospitality wage orders to ensure that they are not in conflict with federal wage orders<sup>171</sup>
- 1739 Review duplicative regulations between the Department of Financial Services and the Federal Reserve<sup>172</sup>
- 1740 Conform the Department of Environmental Conservation's permitting requirements to U.S. Environmental Protection Agency guidelines<sup>173</sup>
- 1741 Health technology assessments under the Governor's Medicaid Redesign plan are already performed by the United States Food and Drug Administration<sup>174</sup>
- 1742 State tax law should be consistent with federal law<sup>175</sup>

### **Affordable Care Act**

Due to recent changes in healthcare as a result of the Affordable Care Act, regulations should be examined to ensure uniformity.

- 1743 – 1764 Managed care organizations<sup>176</sup>
- 1765 – 1787 Health maintenance organizations<sup>177</sup>
- 1788 – 1795 Market stabilization mechanisms for individual and small group health insurance and Medicare supplement insurance<sup>178</sup>

## **Taxes**

Tax policy has already been addressed by the New York State Republican Conference Tax Policy Review & Reform Initiative. However, when the process of assessing, reporting, and paying taxes is overly complex, it too becomes a regulatory burden. This process should be reviewed to simplify and clarify the administration of the following taxes.

- 1796        Provide for consistency in the application of New York State and New York City tax laws when practicable<sup>179</sup>
- 1797 – 1896   Sales tax<sup>180</sup>
- 1897 – 2141   Personal income tax<sup>181</sup>
- 2142        Alternative minimum tax<sup>182</sup>
- 2143 – 2153   Estate tax<sup>183</sup>
- 2154 – 2161   Combined tax reports<sup>184</sup>
- 2162 – 2206   Highway use tax<sup>185</sup>
- 2207 – 2211   Corporate franchise tax<sup>186</sup>
- 2212        Corporate tax
- 2213        Surcharge tax from the New York State Health Care Reform Act (HCRA)<sup>187</sup>
- 2214        Fiduciary income tax<sup>188</sup>
- 2215        Health insurance taxes<sup>189</sup>
- 2216        The administration of real property tax assessments is too complex<sup>190</sup>
- 2217        Application of sales tax to manufacturers<sup>191</sup>
- 2218        18-A public utility tax<sup>192</sup>
- 2219        Review whether manufacturers should be exempted from sales tax for safety related purposes<sup>193</sup>

## **Proposed Laws and Regulations**

Industry experts also identified proposed laws and regulations that they believe would create additional regulatory burdens if enacted. These proposed laws and regulations were not counted towards the list of regulations identified. However, forum speakers often explained that the fear of future regulation had a real impact on business decisions. Proposed laws and regulations, identified by speaker and written testimony as potentially burdensome to business, are listed below.

- 1 Farmworkers' Fair Labor Practices Act<sup>194</sup>
- 2 Proposed amendments to the Rent Stabilization Code<sup>195</sup>
- 3 Safe Staffing for Quality Care Act<sup>196</sup>
- 4 Safe Patient Handling Act<sup>197</sup>
- 5 Proposed laws that would require physicians to undergo Certificate of Need (CON) approval to perform certain medical procedures<sup>198</sup>
- 6 Legislation that would require physicians to adopt interoperable electronic medical records systems and participate in the SHIN-NY network<sup>199</sup>
- 7 Proposed laws mandating course-specific continuing medical education<sup>200</sup>
- 8 Mandatory paid sick leave on private sector employers who cannot afford it<sup>201</sup>

## **Conclusion**

This report is only the first step in what will be an ongoing effort by the Senate Majority Coalition to minimize the regulatory burden of New York State. It is our goal that each regulation contained herein will be reviewed by the appropriate executive agency in cooperation with the Administrative Regulations Review Commission (ARRC) to streamline or eliminate if appropriate, remove unnecessary duplications, and determine whether the public benefit justifies the cost. These regulations should be reviewed because they were specifically identified as the most costly or burdensome. However, agencies should also be held accountable to regularly review all regulations, an existing duty under the State Administrative Procedure Act.

In some cases, regulatory burdens will require legislative action. In previous legislative sessions, the Senate Majority Coalition introduced and passed legislation addressing some of the regulatory burdens identified in this report. We will continue our work on these existing bills as well as consider legislation that responds to newly identified burdens. Other regulatory burdens cannot simply be addressed by changing the text of a regulation or passing a new law. These burdens may require increased agency communication, timeliness, and flexibility. Agencies should work to improve their own internal regulatory structure to ease these burdens for businesses and create a more common sense, cooperative approach.

As we move forward, we will continue to investigate which regulations increase the cost of doing business in New York State. We hope that through regulatory reform New York State will be able to create new jobs, grow the economy, and be ranked as a top state for doing business.

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## NOTES

<sup>1</sup> CNBC News. "America's Top States for Business 2013: Overall Ranking" [map]. *Infographics: Mapping the States*. July 9, 2013. <http://www.cnbc.com/id/100874459>.

<sup>2</sup> Summarized testimony represents the point of view of a person from a relevant covered industry and not necessarily the views of the Majority Coalition or the panel members.

<sup>3</sup> Labor Law § 195(1); S.2313 (DeFrancisco)/A.2482 (Gabryszak), Passed Senate 2012, 2013; Medical Technology & Health, Biotechnology, Hospitality & Tourism, and Small Business Forums

<sup>4</sup> Labor Law § 240 – 241; S.111 (Gallivan)/A.3104 (Morelle); Manufacturing, Construction, Hospitality, Financial Services, and Small Business Forums

<sup>5</sup> 12 NYCRR Parts 300-440; Workers' Compensation Law Article 2; Medical Technology & Health, Agriculture, Construction, Hospitality & Tourism, and Manufacturing Forums

<sup>6</sup> 4 NYCRR Parts 2-7

<sup>7</sup> 12 NYCRR §§ 460.1 – 465.9, 470.1 – 470.5, Mentioned in Construction

<sup>8</sup> 6 NYCRR §§ 248-1 to 248-11; Environmental Conservation Law Article 19-0323; Mentioned in Construction

<sup>9</sup> 8 NYCRR Part 82

<sup>10</sup> 19 NYCRR § 1240.1

<sup>11</sup> 9 NYCRR Parts 345 - 347

<sup>12</sup> 9 NYCRR Part 358

<sup>13</sup> 9 NYCRR Part 350

<sup>14</sup> 10 NYCRR §§ 40-1.10 – 40-1.13

<sup>15</sup> 10 NYCRR Parts 430-432; 10 NYCRR Parts 760-768

<sup>16</sup> 18 NYCRR Part 485

<sup>17</sup> 9 NYCRR Part 250

<sup>18</sup> Labor Law § 222; Construction Forum

<sup>19</sup> 12 NYCRR §§ 185.1-185.2, 187.1-187.9; Hospitality & Tourism Forum

<sup>20</sup> Small Business Forum

<sup>21</sup> Biotechnology Forum

<sup>22</sup> Hospitality & Tourism Forum

<sup>23</sup> Hospitality & Tourism Forum

<sup>24</sup> Small Business Forum

<sup>25</sup> Small Business Forum

<sup>26</sup> S.2160 (Valesky)/A.7639 (Brindisi), Manufacturing Forum

<sup>27</sup> Agriculture Forum

<sup>28</sup> Agriculture Forum

<sup>29</sup> 9 NYCRR Part 345

<sup>30</sup> Agriculture Forum

<sup>31</sup> Construction Forum

<sup>32</sup> Manufacturing Forum

<sup>33</sup> Medical Technology & Health Forum

<sup>34</sup> Financial Services Forum

<sup>35</sup> Agriculture Forum

<sup>36</sup> Small Business Forum

<sup>37</sup> 6 NYCRR Parts 360,750-58

<sup>38</sup> 1 NYCRR §§ 2.3,2.5

<sup>39</sup> 6 NYCRR § 601.17

<sup>40</sup> 6 NYCRR Part 608

<sup>41</sup> 17 NYCRR § 182.1

<sup>42</sup> 20 NYCRR §§ 2396.1 – 2397.9

<sup>43</sup> Agriculture and Markets Law § 258

<sup>44</sup> S.5929 (Gallivan)

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- <sup>45</sup> Vehicle and Traffic Law § 401(13); S.1951 (Ritchie)/A.169 (Magee), Passed Senate 2011, 2012, 2013
- <sup>46</sup> Public Services Law § 66-j
- <sup>47</sup> 6 NYCRR §§ 231-3.1 to 231-13.9
- <sup>48</sup> 6 NYCRR Part 617, Construction and Hospitality & Tourism Forums
- <sup>49</sup> Environmental Conservation Law §§ 11-0901, 11-0903, 11-0907, 11-0911, 11-0913
- <sup>50</sup> CPLR Article 78
- <sup>51</sup> 19 NYCRR Parts 1201-1206; 19 NYCRR Parts 1219-1228; Simplify building code requirements for farm outbuildings
- <sup>52</sup> Labor Law §§ 220 – 220-b; General Municipal Law § 103; S.3361 (DeFrancisco)/A.7800 (Brindisi)
- <sup>53</sup> 5 NYCRR Parts 10-16
- <sup>54</sup> 21 NYCRR Parts 500 - 506
- <sup>55</sup> 10 NYCRR §6-1.23(10)(vii)
- <sup>56</sup> 9 NYCRR Parts 5600-5627, 5800-5831
- <sup>57</sup> S.351-A (Gallivan)
- <sup>58</sup> S.356 (Gallivan)
- <sup>59</sup> S.1440-A (Gallivan)
- <sup>60</sup> 11 NYCRR § 52.42(e)
- <sup>61</sup> 11 NYCRR § 65-3.8(c)(1)
- <sup>62</sup> 11 NYCRR Part 350
- <sup>63</sup> 11 NYCRR Part 53
- <sup>64</sup> 11 NYCRR Part 99
- <sup>65</sup> 11 NYCRR Part 51
- <sup>66</sup> S.3543 (Seward)/A.1983 (Titus)
- <sup>67</sup> 11 NYCRR Part 125
- <sup>68</sup> 11 NYCRR §§ 30.1-30.7
- <sup>69</sup> 11 NYCRR Part 67
- <sup>70</sup> 11 NYCRR § 65-3.19(f)(2)
- <sup>71</sup> 11 NYCRR § 65-3.9(b)
- <sup>72</sup> 11 NYCRR Parts 105-109
- <sup>73</sup> 11 NYCRR Part 224
- <sup>74</sup> 15 NYCRR § 32.9
- <sup>75</sup> 11 NYCRR § 65-3.6(a)
- <sup>76</sup> 11 NYCRR §§ 71.0-72.4
- <sup>77</sup> 11 NYCRR § 79.6
- <sup>78</sup> 11 NYCRR §§ 244.0-244.4
- <sup>79</sup> 17 NYCRR § 182.24
- <sup>80</sup> S.2895 (Seward)/A.1983 (Titus), passed Senate in 2013
- <sup>81</sup> Insurance Law § 2122(b)
- <sup>82</sup> S.3669 (Martins)/A.7193 (Thiele)
- <sup>83</sup> 11 NYCRR Part 27
- <sup>84</sup> 12 NYCRR Part 45
- <sup>85</sup> S.1119-A (Maziarz)/A.4202-A (Camara), passed Senate in 2013
- <sup>86</sup> Labor Law § 161, Manufacturing Forum
- <sup>87</sup> 10 NYCRR § 766.12(c)(1); 10 NYCRR §763.14(b)(2)
- <sup>88</sup> 10 NYCRR § 80.63(c); 10 NYCRR § 80.64
- <sup>89</sup> 18 NYCRR § 505.14(h)(7)(i)
- <sup>90</sup> 18 NYCRR § 505.3
- <sup>91</sup> 10 NYCRR §2.59
- <sup>92</sup> 10 NYCRR Part 1002
- <sup>93</sup> 8 NYCRR § 63.9(b)(1)(ii)(a)
- <sup>94</sup> 10 NYCRR Parts 710 – 717

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- <sup>95</sup> 10 NYCRR Part 757  
<sup>96</sup> 11 NYCRR §§ 70.0 – 70.22  
<sup>97</sup> 10 NYCRR Part 405  
<sup>98</sup> Public Health Law § 206(12)  
<sup>99</sup> Public Health Law § 4901  
<sup>100</sup> Public Health Law § 4901(2)-(3)  
<sup>101</sup> Public Health Law § 901  
<sup>102</sup> Executive Law Article 2-B § 20(g)  
<sup>103</sup> Public Health Law § 2781-a  
<sup>104</sup> S.4509 (Hannon)/A.7528 (Morelle), passed Senate 2013; Biotechnology Forum  
<sup>105</sup> S.3042 (Gallivan), passed Senate 2013  
<sup>106</sup> 15 NYCRR §§ 79.1 – 79.28  
<sup>107</sup> 15 NYCRR § 78.25(A)(1)  
<sup>108</sup> 15 NYCRR § 20.5  
<sup>109</sup> 15 NYCRR § 103.2  
<sup>110</sup> 15 NYCRR § 82.8(c)(1)  
<sup>111</sup> 15 NYCRR § 3.3  
<sup>112</sup> Public Health Law § 1399-cc  
<sup>113</sup> S.3493 (Gallivan)/A.7107 (Crespo)  
<sup>114</sup> A.1545 (Gunther)  
<sup>115</sup> General Business Law Article 7-A  
<sup>116</sup> Limited Liability Company Law § 206; Agriculture Forum  
<sup>117</sup> S.1087 (Maziarz)/A.3673 (Lupardo)  
<sup>118</sup> S.2691 (Young)/A.5937 (Schimminger)  
<sup>119</sup> S.2710 (Young)/A.5936 (Schimminger)  
<sup>120</sup> General Business Law §§ 680-89, 691, 694  
<sup>121</sup> 9 NYCRR Parts 25-33; 9 NYCRR Parts 45-50  
<sup>122</sup> 19 NYCRR § 1203.4  
<sup>123</sup> 19 NYCRR § 1210.17  
<sup>124</sup> 19 NYCRR Parts 1101-1107  
<sup>125</sup> 19 NYCRR Parts 600 - 603  
<sup>126</sup> 6 NYCRR Part 485  
<sup>127</sup> 17 NYCRR 150.15(11)(b)  
<sup>128</sup> 17 NYCRR § 150.15(4)  
<sup>129</sup> 17 NYCRR § 150.15(c)(2)  
<sup>130</sup> 12 NYCRR § 60-1.6(c)  
<sup>131</sup> 12 NYCRR § 60-1.8(b)  
<sup>132</sup> 12 NYCRR § 60-1.17  
<sup>133</sup> 12 NYCRR § 82.1  
<sup>134</sup> 12 NYCRR § 82.2  
<sup>135</sup> 15 NYCRR § 82.8(c)(1)  
<sup>136</sup> 12 NYCRR § 82.3  
<sup>137</sup> 12 NYCRR § 82.4  
<sup>138</sup> 12 NYCRR § 82.5  
<sup>139</sup> 12 NYCRR § 82.6(a)  
<sup>140</sup> 12 NYCRR § 82.7  
<sup>141</sup> 19 NYCRR § 1202.2  
<sup>142</sup> 19 NYCRR § 1205.7  
<sup>143</sup> 19 NYCRR § 1209.4  
<sup>144</sup> 19 NYCRR § 1209.6  
<sup>145</sup> 15 NYCRR § 30.6
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- <sup>146</sup> 9 NYCRR § 297.3  
<sup>147</sup> S.4260 (Ritchie)/A.6024 (Magee); Agriculture Forum  
<sup>148</sup> Agriculture Forum  
<sup>149</sup> Manufacturing Forum  
<sup>150</sup> 8 NYCRR §§ 80-1.1 to 80-1.11  
<sup>151</sup> 8 NYCRR Parts 59-79  
<sup>152</sup> 11 NYCRR §§ 21.1 – 21.4  
<sup>153</sup> 19 NYCRR §§ 1210.04-1210.07  
<sup>154</sup> 19 NYCRR § 1210.09  
<sup>155</sup> 19 NYCRR § 1210.11  
<sup>156</sup> 19 NYCRR § 1210.13-1210.15  
<sup>157</sup> 19 NYCRR Part 160  
<sup>158</sup> 19 NYCRR § 165.1  
<sup>159</sup> 19 NYCRR § 192.3  
<sup>160</sup> 19 NYCRR §§ 172.1-172.2  
<sup>161</sup> 19 NYCRR Part 198  
<sup>162</sup> 13 NYCRR § 10.1  
<sup>163</sup> Financial Services Forum  
<sup>164</sup> 1 NYCRR Parts 245-340  
<sup>165</sup> 6 NYCRR §§ 246.1 – 246.14  
<sup>166</sup> 6 NYCRR §§ 237-1.1 to 238-8.1  
<sup>167</sup> 6 NYCRR §§ 320.1 – 329.8; S.155 (Gallivan)/A.5318 (Gunther); Agriculture Forum  
<sup>168</sup> 19 NYCRR Parts 1201-1210  
<sup>169</sup> 12 NYCRR § 42  
<sup>170</sup> 12 NYCRR § 43  
<sup>171</sup> Hospitality & Tourism Forum  
<sup>172</sup> Financial Services Forum  
<sup>173</sup> Manufacturing Forum  
<sup>174</sup> Biotechnology Forum  
<sup>175</sup> Financial Services Forum  
<sup>176</sup> 10 NYCRR Part 98; Financial Services Forum  
<sup>177</sup> 10 NYCRR §§ 98-1.1 to 98-1.22; Financial Services Forum  
<sup>178</sup> 11 NYCRR Part 361; Financial Services Forum  
<sup>179</sup> Financial Services Forum  
<sup>180</sup> 20 NYCRR Parts 525-564; Small Business, Hospitality & Tourism, and Manufacturing Forums  
<sup>181</sup> 20 NYCRR Parts 101-201  
<sup>182</sup> 20 NYCRR § 122.1  
<sup>183</sup> 20 NYCRR Parts 360-363  
<sup>184</sup> 20 NYCRR Subpart 6-2  
<sup>185</sup> 20 NYCRR Parts 480-488; S.2310 (DeFrancisco)/A.474 (Magnarelli); Small Business and Manufacturing Forums  
<sup>186</sup> 20 NYCRR Subpart 1-3  
<sup>187</sup> Manufacturing and Small Business Forums  
<sup>188</sup> Financial Services Forum  
<sup>189</sup> Manufacturing Forum  
<sup>190</sup> Manufacturing Forum  
<sup>191</sup> Manufacturing Forum  
<sup>192</sup> Public Service Law § 18-a; Manufacturing Forum  
<sup>193</sup> Tax Law § 1115, Manufacturing Forum  
<sup>194</sup> S.5882 (Savino)/A.1792-A (Nolan); Agriculture Forum  
<sup>195</sup> 9 NYCRR §§ 2520.5, 2521.2(b) – (c), 2522.4(a)(13), 2522.5(c)(1), 2522.6, 2523.4, 2523.5, 2524.3, 2525.5, 2526.1, 2528.3, 2526.1; Additional Submissions
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- <sup>196</sup> S.3691-A (Hannon)/A.6571 (Gottfried); Medical Technology & Health Forum  
<sup>197</sup> S.1123-B (Maziarz)/A.2180-B (Gunther); Medical Technology & Health Forum  
<sup>198</sup> Medical Technology & Health Forum  
<sup>199</sup> Medical Technology & Health Forum  
<sup>200</sup> Medical Technology & Health Forum  
<sup>201</sup> Manufacturing & Small Business Forums