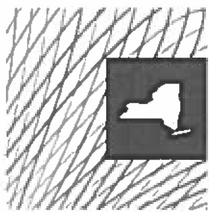

The Business Council

Testimony to

Senate Finance Committee and Assembly Ways and Means Committee

FY 2018 Executive Budget: Taxation, Economic Development and Business Climate Issues

Presented by

Kenneth J. Pokalsky
Vice President

As always, we appreciate this opportunity to address members of the Senate Finance and Assembly Ways and Means Committee on the Executive Budget. In our testimony today, we are focusing on those issues with the greatest potential impact – positive and negative - on the state's business climate. As the budget review process continues over the coming weeks, I and other members of our Government Affairs team will be meeting with legislators on these and other issues related to the FY 2018 state budget.

We recently issued our "Back to Business" advocacy agenda for 2017, with an emphasis on legislation with broad, positive impacts on the state's economic climate, the elimination of barriers to investment and growth, and the promotion of private sector job growth, particularly in regions of upstate New York where post-recession growth has been limited. Our comments today are strongly influenced by that advocacy agenda.

Economic Conditions

The general perception of New York State's economy is that jobs are up and unemployment is down, and that the state's job performance compares very favorable to the United States overall and to many individual states. While accurate, this narrative fails to provide a complete picture of what is happening in the state's regional economies.

As shown in the table below, private sector job growth in New York has outpaced national growth since pre-recession peak employment in 2008. However, when a more detailed, regional evaluation is made, it is clear that for most areas of New York State outside of the New York City metropolitan area, job growth remains flat or in the negative. Many parts of the state have yet to recover jobs lost in the 2009 recession, and have lagged well behind downstate New York, and the U.S. as a whole, in private sector job recovery.

Private Sector Job Growth in 2016

Region	% growth
US	1.9
NYS	1.3
NYC	2.1
Upstate	0.5

Change in private sector jobs
2008 to 2015

	2008 Private Sector Jobs (millions)	2015 Private Sector Jobs (millions)	% Change
US	114.7	119.9	4.47%
NYS	7.261	7.808	7.53%
NYC	3.227	3.673	13.82%
Orange, Rockland Westchester	.566	.590	4.24%
LI	1.060	1.112	4.91%
Upstate	2.408	2.433	1.04%

It is against this backdrop of uneven economic growth that the state legislature needs to assess the Executive Budget, and especially its Article VII proposals. It is essential that the legislature focus on economic climate issues and pro-growth policies as it considers major spending and policy issues for the FY 2018 state budget.

Workers Compensation Reform

We have made adoption of significant workers' compensation reform our top priority issue for 2017. While not a tax *per se*, workers' compensation premiums are state mandated costs imposed on all employers, and result in an increasingly taxing cost burden. We often hear from Business Council members that workers' comp costs are their most significant state-level business climate issue in New York.

In an Executive Budget with numerous major policy initiatives, a glaring omission is meaningful workers' compensation reform. Last year, the Department of Financial Services approved a 9.3 percent loss cost increase, which is the basis for setting comp premiums for 2017. This rate increase reflects the rising costs of the state's workers compensation system. New York's average costs per employee had been 40 percent more than national averages prior to the 2007 legislative reforms. Between 2007 and 2012, average costs in New York had grown to more than double national figures, and by the end of 2016 were projected to be 2.5 times greater. As of October 1, 2016, workers' compensation costs in New York will be almost 25 percent higher than costs prior to the 2007 legislation. When considering the average cost of indemnity and medical benefits, New York ranks as the second most expensive system in the nation.

In response, there are important reforms that need immediate attention.

First, the Administration needs to issue already completed impairment guidelines for scheduled loss of use (SLU) awards, which were developed with input from medical experts recommended by business and labor alike. These guidelines have not been substantially updated in more than two decades. Once modernized, they will more accurately reflect the severity of an injury and its effect on a claimant's ability to perform job duties, recovery time and amount of permanent disability. The Workers' Compensation Board should also reform the way in which the SLU ratings formula applies to awards that are unrelated to any lost time from employment and implement a program through which the determination of impairments in regard to range of motion for SLUs are more objective and consistent. Reducing the rate of compensation for SLUs that result in little or no permanent injury would make the system more equitable while significantly reducing costs. Such reforms would have no effect on severely injured employees or on the amount of compensation employees would receive for lost-time.

Second, the state needs to assure the effective application of permanent partial disability benefit (PPD) duration caps that were adopted as part of the 2007 reform package, adopted with the support of business and organized labor alike. To do this, The Business Council strongly supports adoption of statutory language to provide that any temporary disability duration caps commence with the date of injury. This approach addresses a glaring deficiency of the 2007 reform package, which has resulted in significant delays in the classification of permanent partial disability (PPD)

claims, adding years to PPD duration caps. Delays in classification are not based on medical reality, but rather a desire to prolong temporary benefits before the imposition of duration capped permanent partial disability awards. Reducing these delays would produce substantial savings in the workers' comp system.

We also note that, at a time when the state needs to be adopting reforms to reduce the cost of workers' compensation coverage, it is counterproductive to transfer revenues from the Workers' Compensation Board's assessments on carriers and self-insured employers to the General Fund. First authorized last year, the Executive Budget proposes to sweep up to $250 million in "surplus" employer assessments in FY 2018, rather than use those funds as a credit to reduce future year assessments. We strongly recommend against this assessment sweep.

Tax Policy Recommendations

We would like to offer several tax policy recommendations on policy issues not addressed in the Executive Budget.

Small business income tax reduction – The Business Council recommends that the state take the next step in business tax reform by adopting targeted small business income tax relief.

The 2014 corporate franchise tax reforms, and the 2015 New York City conformance legislation, mostly addressed tax issues affecting publicly traded corporations. Most small businesses are set up as pass-through entities which pay the bulk of their business income tax under the personal income tax.

The state legislature should revisit the issue of targeted small business tax reform. Proposed in last year's Executive Budget, with versions included in both the Senate and Assembly budget resolutions, this approach would increase the business income exclusion under the personal income tax from 5 percent to 15 percent and make the exclusion available for members, partners, and shareholders of LLCs, partnerships and sub-S corps in addition to sole proprietors; and reduce the ENI- (entire net income) based tax rate for small business under the corporate franchise tax from 6.5 to 4 percent.

As proposed, last year's personal income tax reform would have been applicable for taxpayers with net business or farm income under $250,000 and where the income is derived from an entity with gross business income under $1.5 million (or $250,000 for a farm business.) On the corporate franchise tax side, the proposal would have applied to incorporated small businesses with fewer than 100 employees and less than $1 million in capital, and with a business income base under $290,000, with the rate reduction phasing out for taxpayers with a business income base under $390,000. Combined, these two components would provide about $300 million in annual tax relief to small businesses.

We support this general approach, and agree with its basic structure. However, we would recommend increasing the income cap under both proposals, e.g., to $500,000.

Small business tax reform received significant attention during last year's budget negotiations, but was set aside when the focus shifted to middle class tax reform. We strongly recommend that targeted small business income tax relief be added to this year's budget agreement.

Article 9A Technical Amendments - The Business Council was a strong supporter of the corporate franchise tax reform and restructuring legislation adopted in 2014. That legislation, once fully implemented, will streamline compliance obligations for business, and lower business taxes by an estimated $600 million per year. As taxpayers – and the state - gain experience in filing under the new regime, the need for several technical amendments has been identified. Importantly, for most of these, there is minimal revenue loss for the state, because the provisions of concern are having unintended consequences that were never envisioned to generate revenues in the first place.

Specifically, we are recommending the adoption of a "safe harbor" provision for the sourcing receipts from digital products and other business services not subject to specific statutory sourcing language.

The Department of Taxation and Finance has done an excellent job reaching out to taxpayers and other interested members of the public with informal draft implementation rules. Their current proposal for sourcing receipts has raised concerns about excessive, and likely unproductive, taxpayer inquires of customers in order to generate sufficient information to source sales to New York State and other jurisdictions. This would happen in cases where a taxpayer's books and records are insufficient to identify where a taxpayer's customers receive the benefits from a service or business activity purchased from the taxpayer.

Our proposed safe harbor would be based on the customer's billing address – a data point that the taxpayer should have for each and every customer – and apply in cases where a taxpayer has a large number of similar clients, and where no one client represents a significant share of such receipts. For example, imagine a scenario where a taxpayer has more than 250 business customers purchasing substantially similar products or services and no more than 5 percent of receipts from such services or activities are from one such customer.

A similar approach has been adopted in Massachusetts, and has been endorsed by the Multistate Tax Commission, an association of state tax agencies which works to develop uniform approaches to state-level tax laws.

This safe harbor approach will eliminate the need for business taxpayers to make extensive inquiries of large numbers of customers regarding the use of products and services sold. We question both the ability of the taxpayer to actually obtain this information from customers, and whether a large number of diverse customers will apply consistent approaches in determining the location where benefits were received.

When applied to a taxpayer with a significant volume of similar transactions, we expect the use of billing addresses to be an appropriate, reasonable approximation of the actual distribution of "benefits received" by a taxpayer's customers. This approach will also provide for equity among taxpayers, and reduce the Department's administration and audit efforts.

In addition, we reiterate our call from last year for additional technical amendments to Article 9-A, including those related to the definition of "investment income" which limits investment income to eight percent of a taxpayer's entire net income; and the requirement that, to qualify as investment income, an asset must be identified on the day of its purchase as being held for investment purposes consistent with Internal Revenue Code. Both of these statutory provisions have unintended adverse impact on business taxpayers, and should be addressed through technical amendments.

R&D investment credit – The Executive Budget proposes a new, refundable investment tax credit for research and development expenditures in the life sciences sector. The credit applies under both Articles 9A and 22 of the Tax Law, is set at 15 or 20 percent of allowable expenses (for employers of ten or more or less than ten, respectively). A qualifying taxpayer is eligible for the credit for up to five tax years. The credit is based on qualified research expenses as defined in the Internal Revenue Code, excluding wages, and allows for up to $10 million per year in aggregate credits, to count against the credit cap for the Excelsior Jobs program.

While we believe the state should have a more robust R&D credit in its economic development toolbox, the Executive Budget proposal is both too narrow in scope and too limited in its benefits to result in a significant positive impact on the state's R&D sector.

The Business Council supports adoption of a new, refundable, two-part research and development tax credit, open to all sectors making increased R&D investments in the state. It would have a component for capital investments modeled on existing Article 9A investment tax credit language, and a component for non-depreciable expenses based on the federal R&D credit. The program should have its own credit cap, which we would propose in the $50 million range.

"Excelsior Jobs" program – In last year's budget, the legislature approved a reduction in the overall tax credit cap available for the Excelsior program. We felt this was a move in the wrong direction. Excelsior has been plagued by underutilization from its inception, and as a result, the state has missed opportunities to promote new investment and growth.

As an alternative, we offer two Excelsior program amendments. First, we recommend that any unallocated credits in one year become immediately available for allocation in the succeeding and subsequent years. It makes no sense to us to allow projects go unsupported now for lack of additional credit cap room. Second, the state should reduce the job creation and capital investment thresholds for eligibility. As an example, the legislature should lower the thresholds for "regionally significant manufacturing projects" to the creation of 10 jobs and capital investment of $1 million or more, compared to current thresholds of 50 new jobs and a $5 million investment. We will share with legislators and fiscal staffs our overall proposal for adjusting Excelsior eligibility criteria. Importantly, even under these amendments, the allocation of credits remains at the discretion of ESDC. However, these amendments will give additional projects one more opportunity for state support, and more accurately reflect the significant small business presence in many economic sectors.

UI Tax Tables – In 2013, with the national recession having drained the state's unemployment insurance fund, the legislature adopted two major changes to generate additional UI tax revenues. First, the state adopted a thirteen-step increase in the taxable wage base, from a level of $8,500 in 2013, to $10,500 for 2017, and rising further to $13,000 by 2026. Second, it eliminated the six lowest tax brackets in the UI tax table, which applied to the employers with the best experience rating (e.g., those with the most stable employment practices which impose the least costs on the UI system.) Now, with the statewide unemployment rate low, the fund back to solvency, and the taxable wage base nearly 30 percent higher, the legislature should restore the tax table brackets eliminated in 2013. This will reduce taxes on stable employers, and restore a greater degree of experience rating to the UI tax system. We believe that this reform is also consistent with the objective of maintaining a strong UI fund balance as – importantly - the UI tax table has a self-

correcting mechanism which will move all employers to higher rates should the fund balance decline in future years.

Local Gross Receipts Tax – Cities and villages in New York State are authorized to impose a gross receipt tax on energy and telecommunication utilities to the extent they provide services within their jurisdictions. Oddly, this authority is based on the structure of the state gross receipts tax (GRT) as the statute existed in 1960. Each jurisdiction that opts into this tax mechanism is on its own with regard to implementation. We believe this revenue mechanism is in need of significant overhaul. We have one specific recommendation to present today – the prohibition of use of contingency fee contracts by municipalities in securing audit services for these local GRTs. Contingency fee audits are inherently problematic, providing the auditor with an inappropriate financial incentive to determine excessively high tax liability, rather than the precise amount owned. Frankly, if these local gross receipts taxes are to be continued, it would make sense to consider a number of program reforms, including moving to state-level administration and auditing – an approach that would make the system more consistent, with more cost-effective administration. At this point, there may not be broad support for a major overhaul. Eliminating incentives to over assess on audits is a step in the right direction.

False Claims Act – The Business Council supports a repeal of legislation adopted in 2010 which extended the state's "false claims act" to certain tax cases (i.e., when the taxpayer has net income of at least $1 million and the alleged violation is valued at $350,000 or more.) The problem with the false claims act is that it allows a private party to pursue a tax claim even in cases where the Department of Taxation and Finance, and the state Attorney General, have not found a reason to pursue a case on behalf of the state. However, a private party has a significant financial interest (up to 30 percent of any recovery or settlement) in pursuing a claim. Given the Department of Taxation and Finance's extensive legal authority and staff resources to conduct audit and enforcement actions, we see no valid reason for this extension of the false claims act to the Tax law. At minimum, the statute should be amended to require a showing by clear and convincing evidence that the person against whom the action is brought had fraudulently understated their tax liability.

Executive Budget and Related Tax Proposals

Personal Income Tax rate extension – The Executive Budget proposes to extend by three years the temporary top personal income tax rate and brackets, currently 8.82 percent on income over $1 million for single filers and $2 million for joint filers. We believe this is a significant economic climate issue for New York State, and that the temporary top rate should be allowed to sunset on December 31, 2017 as proposed. At 8.82 percent, New York's top PIT rate is exceeded by that of just six other states. When combined with the top rate of 3.876 percent in New York City – where many of the state's highest earners reside - marginal rates are exceeded by only California (at 13.3 percent). Even at the permanent rate of 6.85 percent, New York's top PIT rate exceeds that of the majority of states.

Despite recent progress in making New York's corporate franchise tax more competitive, New York State still ranks 49th among states in the Tax Foundation's 2017 State Business Tax Climate Index. The Foundation cites our 49th rating for personal income tax as a major factor in New York's second to last ranking. In addition to impacting the state's economic climate, the personal income tax directly impacts business income, as businesses increasingly organize as pass-through entities

rather than as C-corporations, meaning that their net earnings are taxed under the personal income tax.

Finally, according to the projections presented in conjunction with the Executive Budget, it is questionable whether an extension of the current temporary PIT rates is needed to produce balanced budgets going forward. The budget's gap-closing plan for fiscal years 2018 through 2021 shows the state experiencing sizable budget surpluses based on the continuation of a two percent cap on spending and the extension of the "millionaire's" tax rates.

For these reasons, The Business Council recommends against the extension proposed in the Executive Budget.

On a related issue, we would point out that the middle class income tax rate reductions adopted as part of the FY 2017 budget are permanent, and do not require reenactment in this year's budget. The Executive budget proposes to tweak, but not fundamentally alter, the permanent tax brackets and rates adopted last March.

Real Property Tax Cap – The real property cap has been a great success, providing more than $7 billion in tax relief to New York property owners, including more than $1 billion to business taxpayers. For many if not most business, the real property tax is the largest category of tax they pay. While there is no proposed change to the real property tax cap in the Executive Budget, proposals to modify the cap, including setting the cap at two percent at times of low inflation, are before the legislature. We strongly recommend against that type of amendment. Instead, The Business Council recommends that the state return to the unfulfilled commitment for major mandate relief as a next step in helping municipalities manage compliance with the real property tax cap.

HCRA Taxes – Without any detailed analysis, the Executive Budget proposes to extend for three years the provisions of the Health Care Reform Act (HCRA) and its nearly $6 billion in taxes, fees and assessments. The extension would be through March 31, 2020. The Business Council has significant concerns that these taxes imposed on the health care system have increasingly become just another source of general fund income, rather than mechanisms to support health programs. A prime example is the component of the HCRA taxes initially intended to support bad debt and charity care provided by hospitals. Given the success of New York's ACA implementation, bringing insurance coverage to about 1.5 million additional New York residents, the bad debt and charity cost burden on hospitals should have been significantly reduced. However, we are unaware of any systemic consideration of the changing cost structure of this or other programs intended to be funded through HCRA assessments. We believe such an assessment should be undertaken before any long term extension of HCRA taxes is approved.

Sales Tax/Related Entities – The Business Council opposes the Executive Budget proposal that would change the sales tax treatment of transactions among certain related entities. We believe this proposal is overbroad and will have unintended adverse impacts on New York businesses. We are issuing a separate legislative memo on this somewhat complex, arcane tax issue. In short, while this proposal (Revenue bill, Part CC) might impede a few abusive transactions, it will unfortunately also prevent businesses from executing many normal, typical purchase transactions that are not abusive.

A prime example is a business that creates a single member limited liability company which serves as central purchasing entity for the overall organization. In tax terms, these companies are typically "disregarded" for income tax purposes—that is, they are treated as branches of their owner. The Executive Budget proposal would make such centralized purchasing, where the LLC is buying material for resale to related entities, subject to state and local sales tax. Ironically, the businesses that would be most affected by this proposal are those which are doing the most selling and purchasing of tangible personal property in New York—that is, those that are investing in their in-state businesses.

This simple structure benefits both vendors and purchasers. For vendors, their multistate tax compliance is greatly simplified. They will not need to collect sales tax from the customers who employ a captive purchasing company and will therefore not need to administer the applicability of exemptions that may be complex and unique to particular industries. For purchasers, similar benefits apply. A purchaser who is eligible for complex or industry-specific exemptions will typically be more familiar with how these exemptions should apply than would a vendor who sells across multiple industries. And the purchaser will have complete control over the process of collecting and remitting sales and use taxes—with complete certainty that the taxes it pays will be done so on time to all appropriate taxing authorities.

We believe than any abusive arrangements can be addressed by the Tax Department without this broad statutory amendment. We recommend that Part CC not be approved.

Marketplace Providers – The Executive Budget proposes to require "marketplace providers," such as entities that provide on-line sales venues for third party sellers, to collect sales taxes on behalf of those third party sellers. The proposal defines a "marketplace provider" as a person who collects the purchase price, as well as provides the forum, physical or virtual, where the transaction occurs, and would impose this sales tax collection mandate on marketplace providers that facilitate more than $100 million in sales in a calendar year. The basic rule of sales taxes is that if a vendor has a physical presence in a state, it is required to collect and remit sales tax on taxable sales in that state. Vendors without a physical presence – including those using the services of a marketplace provider - are not required to collect sales tax, but their consumers are legally liable for use tax on taxable purchases when no sales tax was collected by the vendor. The issue of sales tax collection on internet sales is a national issue, and the correct forum is Congress, which has the authority to address existing limitations and allow states to compel remote vendors to collect and remit sales tax. We do not support this proposal to share a single-state rule for sales tax nexus.

Centralized Hearings – The Executive Budget proposes the creation of a new Division of Central Administrative Hearings, and would – notwithstanding any provision of law to the contrary -allow a newly appointed chief administrative law judge to consolidate any administrative hearing function within any state agency (i.e., "civil department") into the division, requiring only the concurrence of the budget director. While there may be some degree of efficiency to be achieved by centralization of some administrative hearing functions, we are very concerned that this authority would eliminate specialized expertise held by ALJs in key agencies. As example, this broad authority could be used to consolidate the statutorily-created Division of Tax Appeals into the central hearing division. The Tax Tribunal is led by appointed tax experts, and their hearing officers are focused on complex tax issues. Similar expertise exists in the administrative offices of other state agencies. We are not convinced that consolidation of these specialized ALJs into a central hearing office will produce better adjudicatory outcomes. Our inclination is to oppose this proposal; at least, the Administration should propose specific agencies for consolidated hearing processes.

Other Business Climate Issues in the Executive Budget

Expanded Ridesharing – The Business Council has been a strong advocate for the statewide expansion of transportation network, or ridesharing, companies including Uber, Lyft and others. We hear broad support for these alternative transportation services from Business Council members across New York State. Our members have expressed concerns to us about the adequacy, cost, and quality of other local transportation options. Moreover, the lack of statewide ridesharing is another example of New York State failing to update its statutes to accommodate business models and business practices broadly accepted in other jurisdictions. We applaud the Administration for pushing rideshare legislation in their Article VII legislation, and those legislators who have supported these efforts. We urge the legislature to approve ridesharing as part of the final FY 2018 budget, if not before.

Water Infrastructure Funding – As part of the Clean Water Infrastructure Act of 2017, the Executive Budget proposes a $2 billion, multi-year commitment to support capital investments in water and sewer infrastructure. The Business Council believes this is an important, and logical, continuation of the state's focus on infrastructure investments demonstrated last year with the adoption of five-year capital plans for mass transit and statewide transportation systems. Economic growth depends on adequate public infrastructure, including access to water supplies and wastewater treatment capacity. With the last major public infusion of funding into water and sewer nearly two generations ago, we believe the state is correct in addressing this critical funding need. We support this funding proposal

Solid Waste Remediation – As a component of the proposed "Clean Water Infrastructure Act of 2017," the Executive Budget contains a new Title 12 to Article 27 of ECL which would provide DEC the power to coerce the cleanup and abatement of solid waste sites and drinking water contamination. The Business Council is concerned that New York already has a number of remedial programs including the State Superfund Program, and the Oil Spill Program to require the remediation of different types of pollution. Those programs have resulted in thousands of clean ups, but also in the abandonment of thousands of properties throughout the state because of the fear of liability associated with the sites and/or outstanding property liens. This new proposal will result in significant uncertainty in the real estate market as it would allow the DEC to enter any site and conduct remediation efforts, all without a hearing or being subject to judicial review. We recommend against adoption of this solid waste cleanup authority.

PTECH funding – The Business Council is a strong proponent of the "pathway in technology early college high school," or P-TECH, program. Pioneered by long time Business Council member IBM, we now have numerous member companies partnering with the state's PTECH schools, and we host the NYS P-TECH Leadership Council which supports the schools' leadership teams and business partners. We support the Executive Budget proposal to providing funding for an additional ten PTECH schools. However, we are concerned that the program remains less than fully funded, and the legislature has yet to adopt a permanent statutory basis for the PTECH program. To address this, we support full funding of the existing 32 PTECH schools, which would require, by our calculation, an increase in funding from $8 to $13 million. We also support adoption of legislation considered in 2016, to create a permanent statutory basis for PTECH and early college high school programs.

Pharma "Excise Tax" – We have several major concerns regarding the Executive Budget's provisions related to pharmaceutical sales. First, it would require biopharmaceutical manufacturers to reveal a significant amount of proprietary and trade secret information related to specific pricing, sales and marketing costs, and research and development information to the State. In many cases, this information is highly confidential because it helps companies compete, and contracts often prohibit companies from disclosing such information. Neither the U.S. Department of Health and Human Services (HHS) nor the Food and Drug Administration (FDA) is permitted to disclose this type of information, even if requested. While the budget purports that this information will be confidential, the Commissioner is given alarming authority to release manufacturer proprietary and trade secret information as s/he "determines is necessary to carry out this section." Second , the proposal would establish a required supplemental rebate on the sale of these drugs sold to the State's Medicaid program as well as a 60 percent surcharge – in effect an excise tax - on the first sale of such drugs in New York State. Revenue from this surcharge would be placed in a dedicated fund then distributed to the Medicaid program and health insurers in the state. The Business Council recommends against adoption of these proposals.

Campaign Finance "reforms" - The Business Council continues its opposition to the proposal to extend the state's current cap on campaign contributions by incorporated entities to apply to limited liability companies as well. Under the state Election Law, corporations are limited to $5,000 in aggregate annual contributions to political campaigns. This bill also requires that contributions by LLCs be attributed to each member of the LLC in proportion to the member's ownership interest in the LLC. Our concern with this proposal is that it places strict, additional limitations on just one category of participants in the political process instead of taking a holistic view of the entire system to make meaningful and evenhanded reforms. For these reasons, The Business Council continues to oppose this LLC language.

Expanded DFS authority – The Business Council is opposing several of the Executive Budget proposals regarding the financial services industry. The provisions that have raised the most concern including language that would allow the Department of Financial Services to place failing insurer under administrative supervision, and to ban "bad actors" from participating in the financial services sector. In both cases, we see these proposals providing a significant expansion of DFS regulatory authority without clear statutory criteria or limitations.

Made in America – The Business Council membership includes nearly 800 manufacturers from across the state, and our members have raised several significant concerns regarding the "made in America" procurement preference proposed in the Executive Budget. This proposal applies to state contracts spending $100,000 or more on "products," including products used in construction contracts; and to real property leases that provide for construction or renovation. It requires all such contracts to include a "preference" for products "manufactured in America," with manufactured in America meaning final assembly in the US (or products grown or mined in the US); component parts that are of 60% domestic origin; and subcomponents of components also of 60% domestic origin.

Our concerns are several. First, we question whether it makes sense for a state such as New York with significant involvement in international trade to be promoting protectionist-type policies.

Second, the bill proposes a complex test for determining what products would receive the procurement preference, with arbitrary content threshold for product components and

subcomponents. Ironically, under this bill, a product assembled in New York State could be bypassed in the procurement process by an out of state manufactured product with slightly higher domestic content. Third, the bill contains multiple, broad exemptions from the preference standards – for emergency needs; for consideration of relative quality and price in cases where there is a sole US manufacturer; where domestic production is inadequate; where domestic sourcing results in unreasonable cost increase – that would add significant additional uncertainty to the bidding process, further discouraging venders from bidding on state contracts.

<u>"Design build" authority</u> – We support the proposal to make permanent the use of the design-build construction method on public projects, and expands its use to all State agencies and public authorities. We oppose the proposal that, as a condition of use of design build, projects are required to employ a project labor agreement. PLAs are already authorized and used on construction projects in New York State. Authorizing agencies have a deliberative process to determine if a PLA should be used. This proposal would bypass the current process and require PLA use. PLAs require that virtually all workers hired on a project be union members. In contrast, approximately 75 percent of construction workers in New York State are not union members. Mandating PLAs in design-build projects precludes a significant majority of New Yorkers from work on these state-funded projects. Since most Minority and Women owned Business Enterprises (MWBEs) are not unionized, most would be precluded from participation on design-build projects. Not only does this have a direct impact on (mostly small business) MWBEs, but it also makes achievement of the state's MWBE contracting targets more difficult. Moreover, no other state mandates PLAs on design-build projects. We recommend against this extension of the PLA mandate.

<u>Tuition Assistance Programs</u> - We have reviewed the proposed Excelsior Scholarship program, and regardless of its positive intentions, believe it would have unintended adverse impacts. Based on input from membership, we recommend that any enhancement of the state's tuition assistance program should treat both public and private colleges on a roughly equal basis. For example, if the state's tuition assistance increases to a maximum of $6500 for certain students (e.g., the "free" tuition level for SUNY purposes), students at private schools should be eligible for up to the same amount. This approach would likely increase the program cost, but overall costs could be addressed by a modification of the income eligibility levels. This alternative approach, however, will lessen the potential for a significant shift of students from private to public universities that would add costs to the SUNY system, and adversely impact the private schools.

The Executive Budget has a second proposal, that would preclude TAP for students at colleges whose annual tuition and fee increases exceeded either $500 or the three year average of the Higher Education Price Index (HEPI), whichever is greater. We strongly oppose this unprecedented extension of state regulation into tuition setting practices of private colleges.

###