

**MEMORANDUM**

February 2, 2016

**TO:** Senate Finance and Assembly Ways and Means Committees

**FROM:** Brian T. McMahon

**RE:** Comments regarding Governor Cuomo's FY 2016-1027 proposed State Budget

I want to thank the Chairs and members of the Senate and Assembly fiscal and economic development committees for the opportunity to testify this afternoon.

I am Brian McMahon, Executive Director of the New York State Economic Development Council, which is a professional development association representing local, regional, and statewide economic development organizations, as well as private sector firms that support economic development projects.

In a recent survey of NYSEDC members, 69 percent said they were either somewhat or very optimistic about New York's economy. An even higher percentage – 79 percent – said they were somewhat or very optimistic about their region's economy.

Year over year ending December 31, 2015, total private sector employment growth in the state fell just short of the national average (2.1 percent vs 2.2 percent) However, most private sector growth occurred in or near the metropolitan NYC counties. Private job growth in upstate MSAs was significantly below the national average. Binghamton, Ithaca, and Dutchess-Putnam all lost private sector jobs in 2015. Buffalo grew by 1.5 percent; Rochester by 1.2 percent, Albany-Schenectady-Troy by 1 percent, and Syracuse by 1.5 percent. Upstate manufacturing jobs declined by 3,500, however there were significant gains in education and health services.

However, storm clouds may be forming over the horizon. According to the New York Federal Reserve Bank, "[T]he January 2016 *Empire State Manufacturing Survey* indicates that business activity declined for New York manufacturers at the fastest pace since the Great Recession. The headline general business conditions index fell thirteen points to -19.4. The new orders and shipments indexes plummeted, indicating a steep decline in both orders and shipments."

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Brian T. McMahon  
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If the global and U.S. economies are headed toward a significant downturn or even recession, it is important that New York not impose any additional costs or regulatory burdens on employers that would slow the momentum and temper the optimism that many of our regions are experiencing today.

**Part R of the Article VII TED**

Part R of the Article VII TED budget legislation would require projects financed by local Industrial Development Agencies or Local Development Agencies or housing authorities with tax-exempt private activity bonds subject to the bond volume cap to be approved by ESD and the Public Authority Control Board (PACB).

The PACB was created by Chapter 38 of the Laws of 1976 to monitor and approve state public authority debt in response to a growing amount of state public debt issued by state public authorities, which contributed significantly to the New York State/New York City fiscal crisis of the mid-1970s. The law requires eleven statewide public authorities to receive a resolution of approval from the PACB prior to entering into project-related financings.

Tax-exempt private activity bonds issued by Industrial Development Agencies are not debt or obligations of the state, the local government served by the IDA, or the IDA. These bonds are singularly the obligation and liability of the borrower, and such assertions are prominent in the covenants contained in the bond documents.

These bonds can be used to finance very specific types of projects authorized in IRS regulations, including manufacturing, affordable housing, pollution control equipment, and waste disposal facilities, for example.

In 1986, congress and the president enacted comprehensive tax reform which, among other things, limited the amount of tax-exempt private activity bonds that could be issued in a state. The bond volume cap was established as a per capita dollar amount. The law established a 50-50 allocation of tax-exempt private activity bond capacity for statewide and local issuers. However, the law allowed states to establish different allocations that better suited their unique circumstances and conditions. New York responded by creating a law that allocated tax-exempt PABs according to the following formula: one-third for state issuers; one-third for local issuers (IDAs); and one-third for a bond reserve that could be accessed by state or local issuers should they exhaust their local allocation but still have projects to be financed.

Today, the federal formula allocates \$100 times the population of the state. So, New York is awarded just under \$2 Billion in PAB capacity, one third of which is reallocated to local IDAs.

This formula established state control of its allocation and local control of bond capacity allocated to IDAs. The assertion of state control over local allocation contained in the Governor's budget casts aside the principle of local control of the local allocation of the state volume cap.

Because these local projects have no impact on state debt, and because Part R would eliminate the principle of local control provided in the current statute, which has operated effectively for 29 years, the (Your organization) requests your opposition to Part R of the Article VII TED budget legislation, and that it not be included in the final adopted state budget.

**PILOTs and the Real Property Tax Cap**

Part C Section (2)(i) of Chapter 20 of the Laws of 2015 requires the NYS Department of Taxation & Finance to, "...as appropriate, promulgate rules and regulations regarding the calculation of the quantity change factor which may adjust the calculation based on the development on tax-exempt land."

Typically, Industrial Development Agencies take "bare" title to property and extend their tax-exempt status to the beneficial owners of the project property. It then enters into a payment in lieu of tax agreement with the project owner, which generates new revenue for local taxing jurisdictions.

The intent of Part C Section (2)(i) of Chapter 20 of the Laws of 2015 is reflected in legislation – S.1151 (O'Mara)/A.3611 (Morelle) – which was originally introduced three years ago. Importantly, this legislation would not change the front-end calculation for determining a taxing jurisdiction's tax levy. Assessed property under an Industrial Development Agency's Payment in Lieu of Tax (PILOT) agreement, as provided in the legislation enacting the two percent real property tax cap, would still be added for the base year and subtracted for the succeeding tax year. This legislation only changes the calculation for determining quantity change by allowing assessed property under a PILOT to be factored in order to determine the Tax Levy Growth Factor.

NYSEDC supported and supports the two percent Real Property Tax cap enacted four years ago. One of the intentions of the cap, however, was to allow a taxing jurisdiction's tax levy to increase due to "quantity change," or new growth or significant additions to existing properties. The additional new growth is to be factored into the "Tax Levy Growth Factor" to determine the amount of increase from the prior year that taxing jurisdictions can increase their tax levy.

However, new growth that is subject to an IDA Payment In Lieu of Tax agreement is excluded from the calculation for determining a jurisdiction's Tax Levy Growth Factor. As a result, communities that are successful in attracting new economic growth through incentives provided by an IDA are penalized, thereby preventing taxing jurisdictions – especially school districts – from factoring this growth into the calculation for determining the tax levy growth factor. Thus, a community that must pay for new services and infrastructure to support new economic growth cannot grow its tax base proportionately to pay for these additional costs if the property is improved through incentives provided by an IDA.

At the end of last session, the legislature included a requirement for the Department of taxation and finance to, "...as appropriate, promulgate rules and regulations regarding the calculation of the quantity change factor which may adjust the calculation based on the development on tax-exempt land."

NYSEDC believes that when the legislature included this language in legislation last year, it intended for the Department of Taxation and Finance to act. It has not. As a result, NYSEDC is encouraging the

legislature to include in the final state budget the exact language contained in the Morelle/O'Mara legislation.

Action this year is especially important since local tax levies will realize nearly no new growth in their tax levy growth factor. Enactment of this provision would remedy the unfair treatment of assessed property under a PILOT, generate needed revenue for local taxing jurisdictions, and restore the partnership between school districts and economic development agencies that existed prior to enactment of the tax cap.

### **Workforce Development Institute (WDI)**

The Workforce Development Institute is an important partner in economic development. WDI collaborates with local economic development agencies, including IDAs, WIBs, community colleges, BOCES, and MEPs to deliver a range of resources and services to businesses creating good jobs.

WDI supports a wide variety of projects, but most fall into three categories:

- Pre-employment training
- Incumbent worker training
- Businesses processes, such as LEAN, ISO, and equipment and software training.

Many of their resources are targeted at small and mid-size manufacturing operations.

NYSED supports WDI's request for \$3 MM in funding from the legislature. No funding was provided in the Governor's budget. However, we would also support a higher funding level given the demand for their programs and resources and the broad collaboration they promote among key stakeholders in local economic development.

### **Community revitalization initiative**

The Executive budget would appropriate \$100 Million for downtown revitalization. The funds would be awarded on a competitive basis to ten "winners," which would each receive \$10 Million. NYSED supports the intent of these funds and agrees with the Executive on the need and opportunities for cities, towns, and villages throughout the state to revitalize their urban corridors.

There are clear market opportunities that municipalities can leverage to redevelop downtown corridors, including the trend of millennials, entrepreneurs, and seniors choosing to live in vibrant downtowns that offer many cultural and recreational options.

The two most important components for successful urban revitalization are targeted planning and investment. Local governments must develop a vision for their urban centers and design strategies to attract investment to implement that vision. That vision should leverage historic sites and buildings, create walkable and safe downtowns, encourage market rate residential and mixed use development, maximize public transit, and provide fast speed broadband, similar to Google Cities. These factors are important in order to attract millennials and entrepreneurs. However, none of these outcomes will occur without private sector investment.

The RESTORE NY Communities initiative requires planning and directs funding where it is most needed: for projects involving the demolition, deconstruction, rehabilitation and or reconstruction of vacant, abandoned, condemned and surplus properties. There is also a strong emphasis placed on projects from economically distressed communities.

That is why NYSEDC recommends that instead of a competition for these funds, the appropriation be used to fund the RESTORE NY program for the same amount.

RESTORE NY program is universally recognized by applicants to be a highly effective program that is administered well by ESD.

In 2006, the RESTORE NY program received funding for \$300 Million, which was allocated over a three year period.

Requirements of the program include:

1. The area in which the project is to be located is a substandard or unsanitary area, or is in danger of becoming a substandard or Unsanitary area and tends to impair or arrest sound growth and development of the municipality.
2. The project consists of a plan or undertaking for the clearance, re-planning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto.
3. The plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.
4. There are no families or individuals displaced from the Project area

Last year, the legislature added \$25 million to fund the RESTORE NY program. Previous funding rounds had expired, so this funding amount will keep the program alive. Adding \$100 million

in funding, however, would make the program robust and meaningful for municipalities that have significant redevelopment opportunities throughout the state, not just in ten locations.

### **\$15 minimum wage**

Governor Cuomo has proposed raising the minimum wage to \$15 per hour for all occupations. NYSEDC is opposed to this proposal for the following reasons:

**It would be reputational.** An increase in the minimum wage to \$15 would signal global business leaders that “the old New York” is back; the New York Governor Cuomo was referring to when he said, “New York has no future as the highest taxed state in the country.” Increasing the minimum wage to \$15 would represent a large increase in the cost of doing business for thousands of employers across the state. It would make New York an outlier on wage requirements. A \$15 minimum wage would be 67 percent higher than the current wage. It would be nearly double the federal minimum wage. And, it would be the highest state minimum wage in the country.

**It would affect all industry sectors.** Some have argued that a \$15 minimum wage would primarily impact retail and tourism sectors. According to Adam Ozimek of Moody’s as reported in *Forbe’s Magazine*, “[L]eisure/hospitality and retail make up 54% of the workers (nationally) who make less than \$8 an hour, but only 34% of those making less than \$15 an hour. As the minimum wage rises it affects other sectors. For manufacturing, at least, the effect is likely to be greater.” He further notes that, “...5.3 million manufacturing workers across the U.S. made less than \$15 an hour in 2014. This is 35% of all manufacturing workers.” Mandating higher wages for one-third of manufacturing workers in New York would make the state more costly and less competitive.

**It would drive more young people out of the state.** According to Census Bureau statistics, Upstate had nearly 30 percent fewer people age 25-34 in 2010 than in 1990. Part of the decline can be attributable to a shrinking and aging overall population in the region. But it also reflects an exodus of young people leaving for other states to find jobs. A \$15 minimum wage would result in fewer jobs for younger people as businesses reduce employment to manage wage increases, consolidate in more efficient facilities in other states or countries, move faster to automate operations, and reduce hours. A recent report by the Empire Center conservatively estimates that a \$15 minimum wage would result in the loss of 200,000 private sector jobs.

**It would hurt job creators the most.** The Kauffman Foundation, which studies entrepreneurship, says that almost all net new jobs are created by new and young business. Only 60 percent of all start-ups make it past the second year. Whether a bakery, brewery, software company, or a new restaurant, most start-ups struggle in their formative years. Imposing a 67 percent wage hike for entry level employees would make it even harder for start-ups to make it to year three.

**Border counties would be particularly impacted.** Half of the counties in New York State border other states or countries whose minimum wages are lower than New York's. These regions would be especially disadvantaged by a 67 percent increase in the minimum wage. For example:

<b>State or province</b>	<b>2016 Minimum wage</b>
Pennsylvania	\$7.25
New Jersey	\$8.38
Connecticut	\$9.15 (Scheduled to go to \$10.10 in 2018)
Massachusetts	\$9.00 (Scheduled to go to \$11.00 in 2018)
Vermont	\$9.15 (Scheduled to go to \$10.50 in 2018)
Ontario, Canada	\$11.25 (Equivalent to \$7.98 U.S.)
Quesbec, Canada	\$10.55 (Equivalent to \$7.50 U.S.)

Often businesses, such as warehouse and distribution facilities and technology companies, for example, pay an entry wage to employees that escalates after training has been completed. The training wage maybe pegged to the minimum wage or slightly above. If that wage starts at \$15/hour, it will place a cost burden on those businesses that could result in their (re)locating to other states or countries.

A \$4 starting wage differential between a site in Pennsylvania and the Southern Tier in New York for a 300 employee warehouse and distribution facility, for example, would cost minimally an additional \$1.5 million annually in personnel costs. When a business adds this additional cost on top of higher costs for electricity, workers comp, taxes, and healthcare, the New York value proposition becomes less appealing.

**The minimum wage proposal would impact access to capital for small business owners.**

Implementation of this higher minimum wage requirements would cause small business lenders to rethink their underwriting and financial analysis. Lenders have to "stress test" projections to determine if those projections will support a higher wage cost and not adversely impact cash flow.

**Freight rail**

Much of New York's economy runs on rail. New York has 3,447 miles of freight rail track operated by 39 freight railroads that carry more than 27 million tons of cargo that start or end in New York each year. Maintaining, improving, and expanding the freight rail network is an economic development priority.

The Executive Budget proposes to invest \$10 million in freight rail in the next fiscal year, with another \$10 Million allocated for a mix of freight and passenger rail and port infrastructure projects.

NYS DOTs 2009 rail plan estimated there is a need to invest more than \$390 Million per year primarily to maintain the current freight rail infrastructure. Additionally, the members of Railroads of New York (RONY), many of whom are members of NYSEDC, have identified \$360 Million in ready-to-go shovel-ready projects throughout the state.

In light of the importance of New York's freight rail system to economic development and given the identified investment needs of the network, NYSEDC encourages the Senate and Assembly to increase the state's investment in its critical freight rail system to \$50 Million annually over the next five years.

### **Drug price controls**

The Executive Budget allows the Department of Health to collect and analyze proprietary information from biopharma businesses, and, based on a subjective assessment of the "value" of the drug set a ceiling price for those drugs. If drug prices exceeded the ceiling price, the state would collect a rebate from the biopharma business. NYSEDC believes this proposal would hurt New York's ability to attract investment and jobs from pharmaceutical companies in the future, and hinder our ability to keep the businesses we currently have.

The life science industry employs 55,000 direct workers in New York State. New York is home of some of the largest drug manufacturers in the world, but it is also the home for hundreds of start-ups, many of which have been admitted into the Start-Up NY program, as well as mid-size rapidly growing companies, such as Regeneron. Governor Cuomo's budget proposal would seek to impose unique limits on the companies that in many ways drive our economy and their ability to sell their products. Such policies would inhibit innovation and job growth, and should be rejected.

It has been an honor to testify before these committees. I look forward to your questions.