EMPIRE STATE FOREST PRODUCTS ASSOCIATION

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Empire State Forest Products Association
Testimony
on the
FY 2023-24 Executive Budget Proposal
for
Transportation, Economic Development & Environmental Conservation
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Funding for the Environmental Protection Fund (EPF) – SUPPORT

The Governor appropriation request for the Environmental Protection Fund is $400 million, level funding from last year's historic increase. ESFPA is supporting this level of funding but notes that if the EPF is going to help achieve the ambitious goals of the Climate Scoping Plan we must start looking for a pathway to a $500 million EPF. Included in the Governor's appropriation request are:

- $37 million for Open Space/ Land Conservation. ESFPA priority is working forest conservation easements both state and the Land Trust Easement programs funded at $1.5 million.
- $1.975 million for Biodiversity/ Landowner Habitat Conservation. Priority for keeping private forests as forest and maximizing forest biodiversity and habitat on private forest lands.
- $19.500 million for Invasive Species. Priority on forest pests and diseases impacting private forests.
- $3.5 million for Greenhouse Gas Reduction Outside Power Generation. Includes $500,000 for Regenerate NY.
- $7.925 million for Climate Adaptation. Includes $200,000 for the Wood Products Development Council.
- $14 million for Climate Smart Communities Projects.

ESFPA notes that for the past few years the Governor's request has included $500,000 for the Community Forest program which is not included this year. ESFPA is asking for this to be restored by the Legislature.

In addition, last year the Legislature added $500,000 for the Climate and Applied Forestry Research Institute (CAFRI) at SUNY College of Environmental Science and Forestry and we are requesting that this be added back in this year's EPF. CAFRI is advancing above ground carbon monitoring on forests and agricultural lands to estimate carbon storage and annual sequestration rates with an eye toward projecting how these can change over time and under various management strategies. More funding is necessary to calibrate these models and to expand them into below ground carbon storage and to how products such as biochar can store carbon for long-periods and serve as soil amendments as opposed to fossil fuel fertilizers. ESFPA is requesting the Legislature to restore CAFRI at $1 million.

Funding for Easements for Land Trusts, Regenerate NY, the Wood Products Development Council and Community Forest programs have demonstrated the significance of how forests are a driver in natural solutions to climate change. These programs have not, however, been funded to a scale that can generate the climate benefits we need. They also need to be available to all forest landowners regardless of ownership type or size. These programs also need to focus on implementing forest practices that bring additionality to annual carbon sequestration rates.

New York's land acquisition programs over the past several decades have resulted in over a million acres of acquisitions in both fee and easements. The **Environmental Protection Fund** , again, has been an invaluable tool for leveraging acquisitions.   In easements alone, the 1996 Bond Act and the EPF have resulted in over 900,000 acres of working forest conservation easements, also leveraging billions in private sector capital for fee acquisitions under those easements. Increasing the EPF to $400 million in 2022 added more to the land acquisition piece of the EPF and we would support developing a pathway to a $500 million EPF to support our land acquisition and climate goals..

Article VII Bills in TED

Part PP – Waste Reduction and Recycling Infrastructure Act - OPPOSE

The Waste Reduction and Recycling Infrastructure Act is another version of Extended Producer Responsibility (EPR) programs are a fundamental transfer of the responsibility and cost of collection, recovery, recycling, and end-of-life management of covered products from municipalities and taxpayers to producers of covered products. New York has EPR programs for batteries, tires, mercury, etc. but these are point-of-sale EPR programs. This proposal would create an EPR program for packaging and paper products and: define the products and entities covered; provide for establishing producer responsibility organizations; allow for the establishment of minimum recycling rates and post-consumer recycled content rates; and create minimum convenience standards.

We now have three drastically different EPR proposals we are looking at, The Governors Article VII proposal in the budget, S. S. 4246 (Harckham) and S. 1064 (May)which have drastically different EPR proposals. In addition, EPR has never had a proper public hearing to vet ideas and concerns that various impacted stakeholders have.   While ESFPA supports a properly structured EPR mechanism to aid the recovery, recycling and reuse systems, we have concerns with the proposals before us and believe the language must be significantly amended to provide a more practical program to improve the recovery, recycling and reuse system in New York. ESFPA's first request is that the EPR proposal in the Governor's budget be removed from the budget process so we can have more time to properly vet these proposals and seek a solution that benefits all stakeholders.

EPR programs can be an effective policy tool for products that are difficult to process, have low recycling rates, or where healthy end markets do not exist; but none of these issues apply to paper-based packaging. ESFPA opposes the inclusion of paper and paper-based packaging in a broad EPR program for the following reasons:

- Paper and paper-based packaging are highly recovered and recycled with a recovery and recycling rate over 63% since 2009.
- Including paper and paper packaging in a broad EPR could result in cross-subsidization of materials that largely do not share these high recycling characteristics.

- Recycled content mandates are not a one-size-fits-all solution. Content requirements should focus on materials with low utilization rates.
- Legislation should take all fiber sources into consideration. New York has both virgin and recovered fiber available. Our virgin fiber mills support largely unionized family wage jobs within state borders. Virgin pulp supply is needed to sustain or grow recovered fiber.
- In funding mechanisms, some of the current language considers contributions to greenhouse gases. We suggest that it also consider contributions to sequestration of carbon. Paper and Paper packaging is the only covered product that can contribute to carbon sequestration, let alone net co-benefits of water and air quality, wildlife habitat and biodiversity.
- Robust state or regional needs assessment prior to the implementation of any EPR program. There must be a baseline to establish pre-existing collection methods and identify current processing infrastructure, waste management practices, and costs. Also, as drafted, none of the proposals fund the needs assessment in a manner that would ensure it gets done.
- Robust investment in end market use for recovered paper is an essential pillar of the industry's success. Private paper investors have brought more than $5 billion in capital investment to expand or build new recycling capacity for the 2019-2023 period.

ESFPA encourages the Committees to avoid EPR measures that could have a deleterious effect on New York's major vertically integrated paper mills and on the successful market driven recovery and recycling of paper and paper packaging that exists today.

Part RR – Make the Youth Hunting program Permanent – Support

This would make permanent the pilot deer hunting program for mentored youth established in 2021. This allowed kids aged 12-13 to hunt with an experienced licensed hunter. ESFPA supports making permanent this youth hunting program which was established in 2021 as a two-year pilot program. During the two-year piolet program there have been zero safety incidents or hunting violations with young hunters and have increased annual license sales for 12- and 13-year-olds by approximately 30%

Deer are one of the most significant threats to forest regeneration in our state. It is estimated that over 50% of the forest in New York do not have sufficient regeneration to fully recover after disturbance of the forest canopy. The most successful way to decrease the overpopulation of deer is through hunting and this proposal will increase the number of hunters for deer. The proposal also introduces hunting at a lower age which should impact the number of lifetime hunters for years to come. In 2020, in large part due to the COVID-19 pandemic we saw significant increases in hunting as people sought more recreational opportunities that could be done while maintaining social distancing. Hunting is a tremendous sport and introduces youth to the forest and forest wildlife that reside there. It also teaches youth responsible hunting and how hunting is a major tool for wildlife and forest management.

Part WW – Making New York Buildings More Sustainable No Position at This Time

This proposal would prohibit the use of fossil fuel equipment and buildings systems in new construction and phase out the sale and installation of fossil fuel space and water heating equipment in existing buildings beginning in 2030.

- New residential one-family housing/multi-family housing less than 3 stories in 2025.
- New multi-family housing and new commercial buildings in 2028.

- Existing residential one-family housing/multi-family housing less than 3 stories in 2030 .
- Existing multi-family housing and commercial buildings in 2035.
- Opportunity for exemptions through DEC regulatory process

For industrial facilities, we are assuming the code exemptions for commercial and industrial process equipment continue to apply. For those systems related to non-process energy uses, many of the requirements are inconsistent with the energy usage patterns of these sites. We believe the language used in the Scoping Plan regarding the heterogeneous nature of many industrial facilities should be used here as well.

In fact, there may indeed be energy penalties (increased usage) due to direct implementation of some of the prescriptive requirements in the codes. The state should carefully consider the applicability of the codes for industrial sites. In consideration of usage patterns that are not dominated by traditional commercial sector usage, it may be prudent to fully or partially exclude industrial sites or processes from certain code requirements. At the very least, simplified analytical techniques should be allowable for compliance and for demonstrating facility energy performance at a lower usage level than a code-prescriptive approach.

We do believe there has been a missed opportunity for net-negative emissions in building in addressing embodied carbon thorough the use of wood. As we amend our codes and procurement practices there should be an emphasis on reducing embodied carbon in buildings and infrastructure that demonstrates the long-term storage of carbon through the use of wood and cellulosic based materials that can displace otherwise carbon intensive materials.

The bill also would establish a Bench Marking requirements for all buildings. Energy benchmarking with disclosure requirements and building performance standards will encourage efficient operation of buildings and capital investments in high-performance building envelopes and efficient heating, ventilation, and air conditioning (HVAC). In the bill, energy benchmarking would use the Environmental Protection Agency Energy Star Portfolio Manager. Portfolio Manager is an interactive resource management tool that enables building managers to benchmark the energy use of any type of building, all in a secure online environment. Over 800 industry manufacturers have partnered with EPA to date on the Energy Star Portfolio Manager. EPA works with individual manufacturing sectors to improve energy efficiency and sustainability. They have a sector profile for pulp and paper manufacturing.

This bill would commence a statewide energy benchmarking and disclosure program that requires owners of multifamily and commercial properties larger than 10,000 sq. ft. to annually report whole-building energy and water consumption data to NYSERDA for public disclosure. Th benchmarking might also be used to influence energy intensive and trade exposed industries emission reductions and have a role in the Cap and Invest program. To ensure that these sources have a continuing incentive to reduce emissions, they could be allocated emissions on a benchmarking approach that is based on the emission intensity of well-performing sources within the industry. Sources with a higher emission intensity than the benchmark would need to acquire any additional allowances needed in the allowance auction. Over time, the benchmark would be reduced in accordance with the reduction trajectory of the emissions cap.

There is not enough in the proposed legislation to fully understand how benchmarking would work and ESFPA would need to monitor the regulatory process on Cap and Invest to better understand how this could go forward. Benchmarking on the other hand is something that may benefit our sector in terms of overall sustainability.

Part AAA - Cap & Invest – No Position at this Time

This would create the framework for the Department of Environmental Conservation (DEC) and New York State Energy Research and Development Authority (NYSERDA) to establish a cap and invest program to reduce greenhouse gas emissions 40% by 2030 and no less than 85% by 2050 from 1990 levels. The program would set a cap on greenhouses gas emissions and DEC would establish allowances to represent a fixed amount of allowable greenhouses gas emissions and allowances would be made available by NYSERDA for sale at auction. The caps would be applicable to:

- Producers/distributors of transportation fuels.
- Utilities and other distributors of heating fuels.
- Industrial process operations and on-site fuel consumption (not inclusive of biogenic emissions).
- Waste management facilities (e.g., WTE, landfills, wastewater treatment).
- Power generation (need to be coordinated with RGGI).

Based on our understanding from the Scoping Plan, Governor's State of the State, and the budget documents we assume the following:

1. There will be alignment of the Cap & Invest with international, federal, and other state programs that will ensure uniform development of caps and ability to leverage, in particular, federal funds to implement.
2. There will be an allocation of allowances for energy intensive/trade exposed (EITE) industrial emissions. We will work with DEC and NYSERDA on the program rules to ensure that our paper and wood product manufacturers are recognized as EITE.

ESFPA encourages the Committees to include these assumptions in final legislative language to avoid measures that would create a competitive disadvantage for the forest products industry engage in the state's economy and help meet New York's climate goals.

Article VII Bill within Education, Labor, and Family Assistance

Part S – Minimum Wage - Oppose

The Governor is proposing to tie increases in minimum wage going forward to an inflationary index. Specifically, the proposal would:

- NYC: Starting 1/1/24 employers shall pay employees the adjusted minimum wage rate* for that year
- Suffolk, Nassau and Westchester Counties: Starting 1/1/24 employers shall pay employees the adjusted minimum wage rate* for that year
- Upstate: Starting the year after the minimum wage reaches $15 (2025), employers shall pay employees the adjusted minimum wage rate* for that year

**"Such adjusted minimum rate shall be determined by increasing the current year's minimum wage rate by the lesser of three percent and the rate of change in the average of the most recent period between the first of August and the thirty-first of July over the preceding twelve months published by the United States department of labor non-seasonally adjusted consumer price index for northeast region urban* *wage earners and clerical workers or any successor index as calculated by the United States department of labor."*

- Increases will be capped at 3 percent.

There will be no increase to the minimum wage in a year:
- When the CPI-W for the northeast is negative in the preceding 12 months, or
- The rate of unemployment increases by a half percent or more in the preceding months

ESFPA believes there is some merit to indexing minimum wage but that does not recognize the impact this has on New York manufactured products that compete in a national and international market place. If New York is set on a trajectory of increasing minimum wage but global prices are declining, this prices New York manufacturers out of the marketplace. This is particularly evident in our log, paper, and lumber markets where prices are never on a constant upward trajectory (as minimum wage would be). The volatile nature of lumber and paper markets around the globe have swings of ups and downs and we are constantly adapting to support staffing levels to make a profit. Labor cost is one of our highest cost factors and we are constantly adapting to fluctuating markets. Adding staff in good markets, downsizing in very poor markets but ever working for worker predictability in employment. If we are indexing on an annual basis we do not have adaptability and predictability. This will force adaptations elsewhere in our production, such as more automation which results in fewer jobs or just fewer jobs.

Adjustments to minimum wage must take into consideration more than just inflation rates and we must avoid the unintended consequences of job loss as a result of rising labor costs. The market already causes businesses to adjust labor costs to attract and retain workers based on market fluctuations. We also need to consider the consequences of minimum wage on higher waged individuals in the company. As one raises minimum wage the entire wage structure needs to adjust. Higher wages mean higher prices and drives New York manufacturers into a competitive disadvantage and eventually loss of jobs.

Unemployment Insurance Federal Loan Payback – Ask for Action

We would like to strongly urge you to address New York State's outstanding federal Unemployment Insurance fund debt. The Governor did not include this in her Executive Budget proposal and our sector businesses are facing the highest UI taxes, an Interest Assessment Surcharge and increased federal UI taxes as well. In large the issues employers are facing with UI are due to pandemic policy mandates, fraudulent unemployment payments, and a lack of paying down federal debt. We believe it is New York State's responsibility to address them and not employers.

It has now been almost three years since non-essential businesses were forced to shut down due to the COVID-19 Pandemic, resulting in massive layoffs. Wood Product manufacturers and those in the supply chain were not subject to the shutdowns but are still paying the price. This quickly overwhelmed the UI system and extraordinary amounts of money poured out of New York State's UI Trust Fund, depleting it. New York, like other states, was forced to borrow funds from the federal government in order to continue to satisfy claims. However, now New York is only one of four states that still ow money to the federal government and did not use any of the billions received in federal COVID relief to help pay off its federal UI debt. Last July, employers were notified that they would be responsible for the state's interest debt payment in the form of an annual Interest Assessment Surcharge. (IAS). Additionally, in 2023 employers in New York are facing a Federal Unemployment Tax Act (FUTA) offset credit reduction resulting in a FUTA tax increase. For most employers, unemployment insurance costs have increased by thousands and have become unaffordable.

These added costs are being shouldered by wood product manufacturers and businesses in the supply chain that are already struggling even though state public positions and the UI fund mismanagement led to this crisis. In November the New York State Comptroller's office released an audit revealing at least $11 billion in fraudulent unemployment payments made between January 2020 and March 2022. The report claims NYSDOL ignored warnings given in 2010 and 2015, that the system was outdated and lacked proper safeguards against fraud. During the pandemic NYSDOL abandoned controls designed to prevent improper payments, instead using "stop gap measures' to mask issues related to the fast-tracking of UI benefit payments.

ESFPA is strongly urging the State's immediate attention and action. We recommend New York State allocate two to three billion to the UI system to fund employer relief measures that would:

- Pay any interest payments due on New York State's federal UI program advance for calendar years 2023 and 2024.
- Offset any increase in net FUTA taxes applicable to New York employers for calendar years 2023 and 2024.
- Make a substantial down payment towards the state's UI federal advance.
- Recoup fraudulent UI payments and dedicate those funds to paying down New York's debt and providing much-needed UI tax relief to employers.

New York's businesses cannot and should not bear the weight of replenishing the UI trust fund and repaying the federal government alone and the Department of Labor should be held accountable for the negligence in overseeing the state's UI system that resulted in $11 billion of fraudulent payments. Businesses are still recovering, and this is further hindering their ongoing recovery. The state must do more to avoid a further crisis and the potential loss of more businesses.

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