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Assembly Standing Committee on Economic Development, Job Creation, Commerce, and Industry and Assembly Standing Committee on Small Business

Public hearing on the impact and effectiveness of economic development programs funded in the 2024-25 State Budget

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Thank you very much Assemblymember Stirpe and Assemblymember Woerner, members of the Assembly committees, and legislative staff, for allowing NFIB to testify today.

NFIB is a member-driven organization representing more than 11,000 small businesses across New York State.

NFIB members are the businesses that define our neighborhoods and strengthen our communities with character and value: local hardware stores, independent restaurants, florists, barbers, small retailers, dry cleaners, convenience stores, farmers, roofers, landscapers, mechanics, and fitness and retail boutiques. These are a sample of NFIB members.

There are close to 500,000 small businesses with employees in New York. These businesses employ 40 percent of the state's private-sector workforce, over 3 million New Yorkers, and their production accounts for nearly half of the state's GDP. A staggering 98 percent of New York's businesses have fewer than 100 employees. A strong, vibrant small business eco-system supports local tax bases, governments, and schools. Sixtyseven cents of every dollar spent at a local small business is reinvested into the community.

Small businesses are local job creators and the bedrock of the state and regional economies. Neighborhood employers continue to face significant financial challenges, including inflation, escalating utility bills, the highest possible state Unemployment Insurance taxes, an exodus of workers from the labor force, rising insurance premiums, and the threat of costly lawsuits.

In NFIB's latest Small Business Economic Trends report, 24 percent of small business owners report inflation as their single most important problem, and 40 percent of small business owners report job openings that could not be filled. The labor shortage continues to drive wages even higher with 33 percent of small business owners reporting that they raised compensation, and 20 percent plan to raise compensation in the next 3 months. Additionally, 20 percent of small business owners continue to report raising average selling prices[1]. The ongoing pressures of inflation and labor shortages have left small business owners very pessimistic about their future economic prospects and the opportunity for increased sales going forward.

In NFIB's 2024 Problems and Priorities report, New York small business owners ranked 75 potential business problems, with the top ten problems relating to taxes, regulations, economic uncertainty, and the cost of insurance and utility bills. New York's small business owners identified state business income taxes as the third most burdensome problem – six spots higher than the national average.[2] Other critical problems higher than the national average include government regulations (4th), electricity rates (7th), workers' compensation (14th), minimum wage (15th), credit card payment processing costs (20th), and unemployment compensation (21st). The top 20 problems for New York's Main Street illustrate small business owners' struggles with the cost and logistics of running a business in New York State.

Unfortunately, post-pandemic financial challenges and New York's difficult business environment have taken a toll on the small business eco-system and New York's economy at large. According to Empire State Development, since 2019, New York State has seen 2.2 percent growth in small businesses with fewer than 100 employees but a 2.4 percent decline in employment in small businesses[3]. There are nearly 11,000 more small businesses with fewer than 100 employees but 75,000 fewer employees working

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[1] NFIB Research Center, Small Business Economic Trends, Aug. 2024. SBET-August-2024.pdf (strgnfibcom.blob.core.windows.net).

[2] NFIB Research Center, 2020 Small Business Problems & Priorities, https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf

[3] New York State Empire State Development, Annual Report on the State of Small Businesses, 2024. https://esd.ny.gov/sites/default/files/media/document/2024-ESD-ANNUAL-REPORT-ON-SMALL-BUSINESSES.pdf

in those businesses, undoubtedly a reflection of business owners trying to contain costs while also facing a severe labor shortage. New York has an opportunity to help small businesses overcome their challenges, stem the tide of out migration of New Yorkers, and put the state's economy in a more competitive and better position. This begins by rethinking "economic development" and creating an environment where small businesses are not merely keeping their heads above water, but instead are prospering and expanding within New York State.

Reimagining the state's economic development strategy, supporting pro-small business priorities, addressing the state's outstanding Unemployment Insurance debt, and stemming the wave of pay frequency lawsuits is the best way to spur economic growth in communities across our state.

New York must rethink its economic development strategy and acknowledge our questionable track record of picking winners and losers. New York State, county, and local governments spend more than $10 billion each year on economic development that often does not directly benefit Main Street or native businesses. As an example, the film production tax credit is now over $700 million annually, a massive sum, that goes into the pockets of Hollywood film production companies, rather than small businesses right here in our neighborhoods. This program does not have any overall positive impact on the state's economy, yielding only $0.15 in direct tax revenue and $0.31 for all combined state tax revenue for every $1.00 invested.[4] New York has poured billions into certain industries, sectors, or regions with little transparency or oversight. Investigative reporting, research, and audits have shown that projects, such as the $750 million state-built and -equipped factory for SolarCity, the $14 million Central New York Film Hub, and most recently the $100 million microchip factory in a Syracuse suburb, have not generated the jobs or tax revenue promised. The effectiveness of these initiatives has and should continue to be subject to scrutiny and forensic examination.

Moving forward, the State must ensure that some of the state's economic development money is benefiting local, independent businesses. Many existing economic development programs available through New York State are not geared towards the small businesses that already occupy our Main Streets. Tax credits, such as the Life Sciences Research and Development Tax Credit Program, the Commercial Tax Credit Program, or the Excelsior Jobs Program, are specific to life sciences companies, scientific research and development firms, production companies, software development, or businesses with more than 100 employees. Most economic development programs available to small, family-owned, independent businesses are loan programs, which are

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[4] "Economic Impact of Tax Incentive Programs." PFM Group Consulting LLC, December 2023. [Is the NY Tax Incentive Program actually paying off for the state and taxpayers? (wkbw.com)]

sometimes useful to finance growth or expansion, but do not offer the same benefits or advantages as tax credits, grants, or tax-free incentives.

To be clear, NFIB does not suggest the complete elimination of economic development incentive programs, nor does it suggest that state-based incentives be solely judged by job creation. Successful economic development initiatives can also protect existing jobs and businesses, maintain vibrant communities and Main Streets, invest in critical infrastructure such as broadband, and address blight (RESTORE-NY, Brownfield development credits, etc.), but there is no doubt New York State's existing economic development strategy needs significant improvement. There must be a shift in the state's priorities that no longer subsidizes big businesses and industries at the expense of small businesses. Out-of-state transplants should not be the sole focus with taxpayer incentives to compete with homegrown, local employers. Any business owner will tell you it is far more cost-effective to keep an existing customer than it is to attract new ones. New York State's economic development policy should reflect this simple truth: creating an environment that invites investment, growth, and the sustained prosperity of existing employers will always provide more economic and social benefits than spending millions of dollars to attract new ones.

Strategic and smart economic development programs should be part of the economic development incentive portfolio. According to best practices in the "Economic Impact of Tax Incentive Programs" by PFM Group Consulting LLC, "customized assistance for locally owned, small and medium-sized businesses can have significant impact."[5] At this time, existing, locally owned businesses qualify for very few programs while billions in taxpayer dollars are given to certain, often larger, companies. New York should prioritize funding grants and tax credits that are specifically geared toward existing small businesses to help pay for business expansion, capital improvements, new equipment, and infrastructure and technology investments and upgrades. Assisting a small, independent restaurant build a new outdoor seating area, a local retail store upgrade its website to allow purchases online, or a bakery to purchase new energy efficient equipment are important investments to keep small businesses competitive with their larger counterparts while also keeping storefronts occupied, New Yorkers employed, and the state's economy going.

Additionally, New York spends billions in procurement and capital investments which can be used as economic development drivers for local small businesses. Public projects and procurement contracts should be examined and re-envisioned as opportunities to spur economic development locally and government agencies should find ways to use New York small businesses to complete their construction or procurement needs. There are far too many examples of major contracts being awarded to out-of-state businesses

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[5] "Economic Impact of Tax Incentive Programs." PFM Group Consulting LLC, December 2023. Is the NY Tax Incentive Program actually paying off for the state and taxpayers? (wkbw.com)

because of overly stringent requirements written into contracts, project labor agreements, or RFPs. The federal government prefers to contract with small businesses whenever possible and sets small business contracting goals; New York State should do the same.

Most importantly, economic development is more than tax credits, incentives, and grants. A successful economic development strategy should also be focused on reasonable, intelligent, and deliberate public policy decisions. There is a point where direct incentives cannot outweigh the overall tax, regulatory, and anti-business environment created in Albany. Public policy is equally, if not more important for New York to get a good return on investment for public dollars spent on economic development. While the state has attracted some notable companies and industries through direct investment and incentives, there are far more businesses that have left the state, expanded elsewhere, or decreased their workforce and footprint in the state. These decisions by business owners, including small business owners, is based on the cost of doing business in the state, and oftentimes, costs that are unique to the state and easily solvable.

For example, New York continues to ignore the state's $6 billion Unemployment Insurance (UI) debt which is saddling small businesses with unnecessarily high taxes and dragging down the state's economy.

Applications for unemployment benefits surged when non-essential businesses were shut down by New York State due to the pandemic. The UI system quickly became overwhelmed by the unparalleled spike in claims and extraordinary amounts of money poured out of New York's UI Trust Fund, fully depleting it. To continue to satisfy claims, New York borrowed funds from the federal government. New York and California are now the only states with outstanding federal UI advances, but unlike nearly three dozen other states, New York has not used any of the billions in federal COVID relief to help pay off its UI advance. The outstanding pandemic-related federal UI advance has led to the highest possible state UI taxes, an Interest Assessment Surcharge (IAS), and increased federal UI taxes for New York businesses.

In July 2024, businesses were notified that they would, again, take on the state's interest debt payment in the form of an annual IAS of approximately $15 per employee. Businesses will continue to pay the IAS until the interest and the multibillion-dollar debt has been satisfied. Employers in New York also continue to face a Federal Unemployment Tax Act (FUTA) tax offset credit reduction resulting in a FUTA tax increase of $84 per employee. This is in addition to the highest possible UI tax rates, which average an extra $250 per employee per year. For many employers, UI costs have risen by thousands of dollars each year over pre-pandemic levels. These substantial added costs are shouldered solely by businesses across New York, even though state public policy positions led to this crisis.

New York State should finally address the outstanding UI debt in next year's budget. For years, businesses have been repaying the federal government without any assistance from the state, but businesses cannot, and should not, be required to bear the burden alone. Even the state's commissioned "COVID19 After Action Report" recognized New York's failure in addressing UI. According to the report, the state's failure to use federal pandemic relief to pay off the outstanding debt "has a lingering negative impact on the state's businesses as they are left to repay this loan at a time when many businesses are still recovering economically from the pandemic."[6] We must do more as a State to aid in this crisis, our long-term economic recovery depends on bold action and restoring the solvency of the state's UI Trust Fund.

In addition to addressing the state's unique UI tax environment, New York must thwart the surge of devastating lawsuits related to frequency of pay violations, which is putting businesses, large and small, at risk of closure. Hundreds of businesses, including small businesses, have been swept into lawsuits for paying manual workers bi-weekly or semi-monthly instead of weekly. Under Labor Law §191, employers are required to pay "manual" workers on a weekly basis, an archaic statute that ambiguously defines manual worker as a "mechanic, workingman or laborer." The New York State Dept. of Labor interprets this broadly to include "individuals who spend more than 25% of working time engaged in 'physical labor'." These outdated and poorly defined terms have left many employers confused about who qualifies as a manual worker, and thus, the frequency of pay requirements. Nonetheless, when manual employees are not paid weekly, Labor Law §191 expressly holds employers accountable through New York State Dept. of Labor enforcement and the issuance of penalties. Unjustly, this appropriate enforcement mechanism has been overrun by plaintiff's lawyers resulting in more than 500 businesses, including small businesses, being sued for millions of dollars.

These staggering lawsuits are the result of a 2019 court case, *Vega v. CM & Associates Construction Management, LLC*, which held that payment of wages to "manual" workers other than weekly gave rise to an employee private right of action generally equal to 50 percent of manual worker wages for 6 years (the statute of limitation), plus interest and attorneys' fees. These excessive amounts can be claimed even though the employees were paid all of the wages owed to them. Governor Kathy Hochul proposed a reasonable legislative solution during the 2024-2025 budget process, which was rejected by the Legislature. The executive sought to remedy this situation and prevent businesses from further harm by clarifying that the Labor Law does not entitle a plaintiff to liquidated damages if they were paid at least semi-monthly. The proposal did not limit an employee's ability to file private wage claims or frequency of pay complaints with the

[6] "New York State COVID-19 After Action Report." The Olson Group, June 2024. https://www.news10.com/wp-content/uploads/sites/64/2024/06/NYS-COVID-19-After-Action-Report-06142024-FINAL.pdf

Labor Department, it simply stops the multi-million-dollar lawsuits that are putting small businesses out of business and killing jobs.

The Governor's proposal to clarify the language also aligned with a recent decision, *Grant v. Global Aircraft Dispatch*, from the Appellate Division, Second Department. In that case, the court disagreed with the reasoning of *Vega* and sided with employers and NFIB. The decision states that "the plain language of Labor Law § 198(1-a) supports the conclusion that this statute is addressed to nonpayment and underpayment of wages, as distinct from the frequency of payment *(see Gutierrez v Bactolac Pharm., Inc.*, 210 AD3d 746, 747), and we do not agree that payment of full wages on the regular biweekly payday constitutes nonpayment or underpayment." Even with the *Grant* decision, frequency of pay cases continue to be filed and current litigation remains ongoing. Too much time has passed without a resolution and small businesses should not continue to be extorted by plaintiffs' attorneys simply because they paid their manual workers bi-weekly instead of weekly. These damaging lawsuits are overly punitive and unreasonable and must end if the state is serious about creating a robust and thriving economy. Businesses, large and small, are watching these cases and are re-evaluating there positions here in New York State.

Generating a thriving economy does not require billions in subsidies and headline-grabbing projects, but also relies on creating a better business environment with lower taxes, fewer regulations, and more affordable insurance. Addressing the outrageous frequency of pay lawsuits, tackling burdensome UI taxes, reimagining procurement and contracting opportunities, and reforming economic development tax incentives and grants would be a step in the right direction to create an economy that supports small businesses. A prosperous state is only possible if Main Street is alive and well. This will require improving New York's overall business climate, disciplined and deliberate economic policy, transparency, accountability, eliminating waste, and abandoning picking winners and losers.

NFIB thanks you for the time and consideration and looks forward to working together to create an environment that helps small businesses thrive, for the betterment of their employees, local communities, the economy, and all New Yorkers.