Testimony on Economic Development
Joint Legislative Budget Hearing
February 13, 2020

Good afternoon Chairs Krueger and Weinstein, and members of the legislature. My name is Tom Speaker, and I am the Senior Policy Analyst for Reinvent Albany. Reinvent Albany advocates for open and accountable government. Thank you for the opportunity to testify today on economic development issues related to the Fiscal Year 2020-2021 budget and legislative session.

We call on the legislature to sharply reduce business subsidies costing New York State and local governments $10 billion and follow the common sense step of proving that subsidies are a good investment.

The consensus of independent experts across the political spectrum is that business subsidies do not work. Over the last decade, a large body of evidence has been presented showing that subsidies are a poor use of taxpayer funds and are motivated more by politics than demonstrable results. For instance, in 2018 Tim Bartik at the W.E. Upjohn Institute collated 30 studies that collectively business subsidies impact business decisions at best 25 percent of the time.

It will not be easy to cut wasteful business subsidies because nobody wants to give up free government money. But you need to start somewhere, and the following are places to start:

1. **Hold a hearing after the budget on business subsidies, inviting experts from across the nation.**

2. **Eliminate the state and local capital gains tax benefit for the federal Opportunity Zones business subsidy**

3. **Wean Hollywood from NYS taxpayers by reducing the $420 million spent on the Film Tax Credit by at least 5% annually for the next decade, then assess the results (Part M of the Revenue Article VII budget bill)**

4. **End hundreds of millions of subsidies to the oil and gas industry before imposing new assessments on those companies (Part HH of the Transportation and Economic Development Article VII budget bill)**

5. **Reduce the number of Industrial Development Agencies (IDAs) and Local Development Corporations (LDCs) and make them more accountable, including by passing legislation recommended in the State Senate Investigations and Governmental Operations Committee's report on this issue.**

6. **Increase the budget of the Authorities Budget Office (ABO), a crucial subsidy watchdog, to over $3 million.**

7. **Reform the IDA tourism tax credit in NYS General Municipal Law**

8. **Reduce benefits and make changes to the proposal extending the Excelsior Tax Credit Program and enhancing it for Green Projects (Part L of the Revenue Article VII budget bill)**

9. **Reject reauthorization of the Department of Economic Development's (DED) administration of the Empire State Economic Development Fund unless DED promulgates rules required in law and increases transparency of economic development projects (Part EE of the Transportation and Economic Development Article VII budget bill)**

10. **Reject reauthorization of DED's general loan powers unless the Department increases transparency of economic development projects (Part FF of the Transportation and Economic Development Article VII budget bill)**

Reinvent Albany makes these recommendations based on evidence showing that business subsidies are a waste of taxpayer money and are awarded with insufficient transparency and accountability.

Academic studies and reports, in addition to the Bartik study, have reached the same conclusion. For example:

- A 2020 evaluation of $30 billion in discretionary business subsidies across 50 states by Cailin Slattery (Columbia University) and Owen Zidar (Princeton) found that 30% of all firms opening offices in new locations with over 1,000 employees receive firm-specific subsidies while less than 0.2% of firms under 250 employees do.

- A report written for the 2013 Governor's New York State Tax Reform and Fairness Commission by Marilyn M. Rubin (John Jay College) and Donald J. Boyd (Rockefeller Institute of Government) found "no conclusive evidence from research studies conducted since the mid-1950s to show that business tax incentives have an impact on net economic gains. Business tax incentives violate principles of good tax policy and tenets of good budgeting."

Below are our recommendations in detail.

1. Hold a hearing after the budget on business subsidies inviting experts from across the nation.

Reinvent Albany requests that you hold oversight hearings on business subsidies and invite independent experts to testify. The lack of efficacy of business subsidies has been detailed in the many research reports that evaluate subsidies across the country.

New York State has many business subsidies and tax expenditures that are in dire need of review. We believe the legislature should review the NYS Department of Tax and Finance's and the New York City Department of Finance's annual reports on tax expenditures, then hold hearings on tax expenditures they have identified as outdated.

2. Eliminate the state and local capital gains tax benefit for the federal Opportunity Zones business subsidy

The federal Opportunity Zones program established by the Trump Administration has been derided in news coverage in The New York Times and the Wall Street Journal for being a poorly designed program that gives tax breaks for projects already underway in wealthy communities, with favored developers and investors benefiting the most.[1]

The program enables investors to defer capital gains taxes on previous investments for seven years if they invest those proceeds in projects in any of the 8,800 Opportunity Zones across the country. Investors will not have to pay any capital gains taxes on Opportunity Zone profits. The Opportunity Zones boundaries are submitted by the governors in each state to the U.S. Treasury Department. Though intended to target poor communities, they will be ineffective in doing so. As major news outlets have shown, Opportunity Zones are being exploited. New York State should reject this giveaway, as California, Massachusetts, North Carolina and Mississippi already have. The program may cost New York State $63 million and New York City $31 million annually, with the nation as a whole losing $2 billion every year.[2] The people who receive this tax benefit are the 7 percent of taxpayers who pay capital gains taxes, and ⅔ of the income is paid by millionaires.

The legislature should pass S3401 (the original version) sponsored by Senate Deputy Majority Leader Mike Gianaris, which will restrict the subsidy by not providing tax relief for the state capital gains tax. Beneficiaries would still receive the federal capital gains tax relief over which New York State's government has no jurisdiction.

3. Wean Hollywood from NYS taxpayers by reducing the $420 million spent on the Film Tax Credit by at least 5 percent annually for the next decade and assess the results (Part M of the Revenue Article VII budget bill)

Reinvent Albany strongly supports sharply reducing the size of the $420m Film and TV tax credit. We believe the evidence does not support a subsidy this large. Accordingly, we propose that the legislature wean Hollywood off of NYS taxpayers by reducing the amount of the tax credits by at least 5 percent annually for the next decade and then assess the results. Specifically, we suggest reducing the Film Tax Credit to $399 million in Fiscal Year 2021, $360 million in Fiscal Year 2022, and so on.

---

[1] Jesse Drucker and Eric Lipton. How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich, *The New York Times*, August 31, 2019. Available at: https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html.
Tony Mecia. Opportunity Zones Knock Where They're Needed Least, The Wall Street Journal, September 13, 2019. Available at: https://www.wsj.com/articles/opportunity-zones-knock-where-theyre-needed-least-11568412633

[2] Citizens Budget Commission. Opportunity Zones in New York State and City, August 20, 2019. Available at: https://cbcny.org/research/opportunity-zones-new-york-state-and-city

Thirteen states have eliminated the film tax credit altogether since 2009 because it has proven so costly, and generated so little return for the investment.[3] University of Southern California (USC) Professor Michael Thom, who has published several studies of the film tax credit, found the tax credit in New York State had no effect on employment whatsoever.[4]

4. End hundreds of millions of subsidies to the oil and gas industry before imposing new assessments on the those companies (Part HH of the Transportation and Economic Development Article VII budget bill)

Reinvent Albany urges the Governor and legislature to cut subsidies to the oil and gas extraction and distribution industry. The Governor proposes in his Executive Budget enabling NYSERDA to levy an assessment on gas and electric corporations. It will generate up to $22.7 million for NYSERDA's energy research, development and demonstration program and its energy policy and planning program, and climate change-related expenses of the Department of Environmental Conservation (DEC) and the Department of Agriculture and Markets' (AGM) Fuel NY program. It makes no sense for New York to both subsidize and tax the oil and gas industry.

These irrational and environmentally damaging subsidies should be cut. While we have not reviewed all the oil and gas industry subsidies, a few stand out. According to the NYS Department of Tax and Finance's and the New York City Department of Finance's annual reports on tax expenditures, fuel sold to airlines is not subject to the sales and use tax. The tax benefit received by the airlines never expires even while the cost of oil has plummeted in the last 12 years by about 67 percent. This foregone revenue costs the state $118 million annually and New York City an additional $147 million (while only applying to LaGuardia and JFK airports).

According to the same reports, not collecting any state sales and use tax on residential energy – including for fuel oil, propane, natural gas, electricity and steam, and services for gas, electricity and steam – costs New York State a whopping $756 million annually.

---

[3] National Conference on State Legislatures. State Film Production Incentives and Programs. Available at: https://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx

[4] Michael Gormley. Let the credits roll? Cuomo wants to extend film/TV tax breaks, Newsday. Feburary 2, 2020. Available at: https://www.newsday.com/news/region-state/cuomo-tax-credit-film-television-1.41284944

Similarly, the portion of fuel costing more than $2 a gallon is exempt from the 8 cents per gallon tax, costing the state $90 million annually in foregone revenue and encouraging the use of fuel-inefficient vehicles that contribute to global warming.

These three subsidies alone total more than $1 billion in subsidies while encouraging the production and use of fossil fuels, but they are just a few of the tax expenditures related to the energy industry. The Governor and legislature ought to review all the oil and gas subsidies before considering new assessments.

5. Reduce the number of Industrial Development Agencies (IDAs) and Local Development Corporations (LDCs) and make them more accountable, including by passing legislation recommended in the State Senate Investigations and Governmental Operations Committee's report on this issue.

Reinvent Albany believes that the number of IDAs and LDCs should be greatly reduced. We believe IDAs and LDCs are often poorly governed, waste taxpayer money and are a corruption risk. We question the concept of IDAs and LDCs, which are units of government able to make expenditures of public funds outside of the budget process, and often without accountability and transparency.

Senator James Skoufis and the State Senate Investigations and Governmental Operations Committee released an important report in December highlighting the opacity, conflicts of interest, and lack of due diligence at the state's 109 IDAs.[5] The report concludes, "[p]rojects requesting financial assistance are frequently approved with minimal scrutiny and little community input. This system appears to often favor the interests of business without sufficiently examining if the public interest is being met."[6]

Reinvent Albany supported this report and oversight by the State Senate, in addition to the November oversight hearing held by the Assembly.[7] We support 10 of the legislative

---

[5] Senate Investigations and Government Operations Committee Releases Full Report on Public Authorities and IDAs, Finds Urgent Need for Reform. December 16, 2019. Available at: https://www.nysenate.gov/newsroom/articles/2019/james-skoufis/senate-investigations-and-government-operations-committee-0

[6] New York State Senate. Final Investigative Report: Public Authorities in New York State. December 16, 2019, p. 70. Available at: https://www.nysenate.gov/sites/default/files/article/attachment/public_authorities_investigative_eport_0.pdf

[7] Reinvent Albany Supports the State Senate Investigations and Governmental Operations Committee's Report on Public Authorities. December 19, 2019. Available at: New York State Senate. Final Investigative Report: Public Authorities in New York State. December 16, 2019, p. 70. Available

recommendations in the Skoufis report, and urge both houses to act on its recommendations before appropriating or reappropriating more money to localities in the budget. In particular, we think these four recommendations are critical:

- Permit County Comptrollers to audit IDAs located within their municipality (currently only the ABO and the State Comptroller have the authority to examine the operations and finances of IDAs).
- Require public authorities to respond to ABO recommendations, as agencies are required to do for audits by the State Comptroller.
- Prohibit IDAs from issuing financial assistance to projects that have already started development (S4668).
- Require retention applications from companies that threaten relocation to supply incentive offer letters, if any, from other states.

6. Increase the budget of the Authorities Budget Office (ABO), a crucial subsidy watchdog, to over $3 million.

The State Senate Investigations and Governmental Operations committee also called for an increase in the budget for the ABO, recognizing that the Office's skeleton crew of 11 employees can't possibly oversee 583 state and local authorities, collectively spending $51 billion a year and holding $270 billion in public debt.[8]

Reinvent Albany along with fiscal and government watchdogs asked two years ago for an increase in the ABO's budget to $3.105 million.[9]

This request is simply asking the legislature to do what it expressed in the legislative intent of the Act renewing the ABO in 2009. The legislature said of the ABO then, "It can be expected that this new office will require legal and investigatory staff, as well as additional analytical and compliance personnel in order to meet these new duties. It is estimated, based on the provisions of this bill, that these resource needs for the office could total an additional $2.7 million on an annualized basis."[10] That $2.7 million in

---

at:https://reinventalbany.org/2019/12/reinvent-albany-supports-the-state-senate-investigations-and-governmental-operations-committees-report-on-public-authorities/

[8] See Authorities Budget Office, Annual Report on Public Authorities in New York State, July 1, 2017, p. 18. Available at: https://www.abo.ny.gov/reports/annualreports/ABO2017AnnualReport.pdf.
[9] Watchdog and Fiscal Groups Call for Funding Increase for Authorities Budget Office: Boost "Skeleton Crew". February 2, 2018. Available at: https://reinventalbany.org/2018/02/watchdog-and-fiscal-groups-call-for-funding-increase-for-oversight-of-business-subsidies/
[10] Bill memo of Chapter 505 of the Laws of 2009.

2009 dollars was $3.105 after adjusting for inflation in 2018. We note that the ABO is funded by a small portion of the assessment on authorities and so changes to its budget do not impact the General Fund.

7. Reform the IDA tourism tax credit in NYS General Municipal Law

Newsday has written several stories regarding car dealerships, fitness centers and storage facilities receiving tax credits for "tourism destination projects" from the Nassau County IDA because their locations receive visitors from outside the "economic development region."[11] In this case, the "tourists" from outside the region are visitors from the adjacent county of Queens.

The legislature should reform this loophole in state law.[12] The benefit should be changed, at the very least, so companies can't receive financial assistance for establishing tourism destination projects which are actually businesses serving customers from an adjacent "economic development region," as defined in Department of Economic Development rules.[13]

8. Reduce benefits and make changes to the proposal extending the Excelsior Tax Credit Program and enhancing it for Green Projects (Part L of the Revenue Article VII budget bill)

The Governor proposes extending the current Excelsior Tax Credit Program to 2049 while also expanding it to provide more generous benefits for so-called "green projects."

Companies operating predominantly in New York State and "mak[ing] products or develop[ing] technologies that are substantially aimed at reducing greenhouse gas emissions or supporting the use of clean energy would be eligible for green project benefits" aligned with the state energy plan. Ultimately, project eligibility would be determined by the Commissioner of the Department of Economic Development, but specific examples in the definition of a green project include zero or near zero emission vehicles, carbon capture and storage, clean energy storage and heat pumps. Projects with incremental benefits, end users of green products and services, construction projects and retail development would not be eligible for tax credits.

---

[11] Scott Eidler. Laura Curran calls for end to IDA tourism loophole, Newsday, March 27, 2018. Available at: https://www.newsday.com/long-island/nassau/laura-curran-nassau-ida-1.17705114
[12] NYS General Municipal Law. Article 18-A, Title 1, section 862(2)(a) and (b).
[13] Title 5, Chapter II, Part 10 in Department of Economic Development Rules and Regulations of the State of New York and Empire Zone Map applicable to Article 18-A, Title 1, section 862(2)(a) and (b).

Credits include a 7.5 percent credit for jobs, a 5 percent credit for investments, and 8 percent for research and development for activities conducted in New York State, which are all higher than the traditional credits for Excelsior program of 6.85 percent for jobs, 2 percent for investments and 6 percent for research and development.

The bill also imposes a cap of $200 million for benefits for the program between 2025 through 2039 (more than the current cap is $183 million) with 2040-2049 covered with carryover credits.

Reinvent Albany opposes this expansion of the Excelsior Tax Credit Program without amendments. As we pointed out in the previous section of this testimony, New York State should evaluate the subsidies it is already giving out to encourage the use of fossil fuels in addition to considering how to incentivize green energy.

We also believe the Commissioner of the Department of Economic Development should not determine what a green project is. This should be instead done by the Commissioner of the Department of Environmental Conservation (DEC), who is more informed to make a scientific judgment on whether a project is a green benefit.

Lastly, we do not know the rationale for providing benefits that exceed those for all other industries that receive Excelsior benefits. It is not clear to us why this level of credits is needed to encourage green projects.

DED or DEC should also be required to promulgate rules establishing criteria for evaluating green projects and a methodology for scoring all Excelsior project applications. Rules should be required in law to include disclosure online of applications and project scoring.

9. Reject reauthorization of the Department of Economic Development's (DED) administration of the Empire State Economic Development Fund unless DED promulgates rules required in law and increases transparency of economic development projects (Part EE of the Transportation and Economic Development Article VII budget bill)

The Governor's Executive budget extends until June 2021 the authority of the Urban Development Corporation (UDC) to administer the Empire State Economic Development Fund to provide a vast array of benefits for countless economic development initiatives enumerated under section 16-m of the Urban Development Corporation Act 174/68. A few examples are:

- Loans, loan guarantees, and grants to manufacturing and non-retail service firms, for headquarters facilities in retail industries, for retail firms in distressed areas, for businesses developing historical, recreational or cultural facilities increasing visitors.
- Loans, loan guarantees, and grants to IDAs, LDCs, municipalities and nonprofits for industrial parks and sites, and incubator buildings.
- Loans, loan guarantees, grants and interest subsidies to businesses, IDAs, municipalities, and REDCs for the expansion of industrial, manufacturing, commercial, research and development, high technology, tourism, agricultural or non-retail service businesses and not-for-profit organizations for systems and properties including roads, sidewalks, sewer systems, water supply, demolition, site clearance, and planning for these purposes.
- Loans, loan guarantees, grants and interest subsidies to commercial businesses for studies, surveys, designs and reports for improvements to commercial buildings, districts, downtowns and strips.

For the distribution of funds for these many projects, Empire State Development Corporation (ESDC) was supposed to have promulgated rules and regulations establishing criteria to evaluate applications submitted for benefits under this section of law. Criteria were to include whether the project would occur in NYS without assistance and whether the benefits exceed the costs. It does not appear ESDC has promulgated these rules as required by this section of law. All projects are also supposed to be subject to an MOU meeting the requirements of this section.

Reinvent Albany does not support renewal of UDC's authority to administer the Empire State Economic Development Fund unless the following is done:

- DED promulgates rules pursuant to this section establishing criteria for evaluating benefit applications if it has not already done so, which appears to be the case.
- DED makes all applications for benefits available online on its website.
- DED makes all MOUs subject to this section for approved benefits available on its website.
- DED provides a simple online listing of all benefit recipients under this section on its website and corresponding applications and MOUs.

10. Reject reauthorization of DED's general loan powers unless the Department increases transparency of economic development projects

(Part FF of the Transportation and Economic Development Article VII budget bill)

The Governor's Executive Budget extends to June 2021 Urban Development Corporation (UDC)'s authority to make secured and unsecured loans to any person or entity in connection with private or public projects, and to establish commitments related to those loans. Loans must be made in accordance with guidelines established by the ESDC board.

Reinvent Albany opposes this renewal unless DED is required in law to promulgate rules indicating its guidelines for making loans and job and investment commitments related to those loans.

Thank you for the opportunity to testify today. I welcome any questions you may have.