



# **REBUILD** **NEW YORK**

**30 Steps the  
New Governor  
Can Immediately Take  
to Rebuild  
Confidence in Albany**

**NEW YORK PUBLIC INTEREST RESEARCH GROUP  
DECEMBER, 2010**





# Rebuild New York

## 30 Steps the New Governor Can Immediately Take to Rebuild Confidence in Albany

RECOMMENDATIONS TO THE GOVERNOR-ELECT

New York Public Interest Research Group, Inc.  
December, 2010

# ACKNOWLEDGEMENTS

Established in 1973, the New York Public Interest Research Group (NYPIRG) is the state's largest student-directed consumer, environmental and government reform organization. NYPIRG is a nonpartisan, not-for-profit group whose mission is to affect policy reforms while training New Yorkers to be citizen advocates.

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**NOTE: NYPIRG supports all of the report's recommendations. In addition, other organizations are listed as having endorsed recommendations within the report. These groups are only endorsing the specific item for which they are listed.**

# REBUILD NEW YORK

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# Rebuilding Confidence In Albany

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## Introduction

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State government must be improved in three key areas: solving problems that New Yorkers face, restoring confidence in government, and opening up decision-making. What follows is a plan of action that focuses on the powers of the governor and can be implemented within the first one hundred days of the new administration.

### **Actions to Improve the Quality of Life and Protect New Yorkers**

Ultimately, it is the job of government to offer solutions to serious problems facing society. Of course, no government can solve every problem, but the public rightly expects government to tackle the most important ones – if not to solve them, at least to try to minimize the size of the problem.

No report could possibly cover all of the important issues facing the state. This report offers recommendations for many of the problems facing the state that the new governor has the institutional powers to tackle. In many cases, problems can only be solved through executive and legislative agreement. However, in order to create momentum for change, the new governor must use his vast executive powers to begin to address key problems, problems that haven't been adequately addressed by the current political leadership or have been allowed to fester unattended.

This report identifies actions that the new governor can take in important areas: consumer protection, energy and the environment, health, higher education, and state government.

The new governor must act, not only to improve the process of how governing is conducted, but to improve the “products” of governing – a cleaner environment, a fairer marketplace, an educated citizenry and a well-functioning democracy.

## **Actions to Boost Government Ethics**

Given the mind-boggling number of scandals, controversies and investigations that have plagued Albany in just the past few years, it is critical that the new governor take clear steps to begin to restore public confidence in state government. Mechanisms must be put in place to ensure that government acts in a transparent manner and that it can be held to account for its actions.

One point can't be stressed enough: It will take the cooperation of the legislative branch to fully attack the problems of state government. To confront the problems that beset Albany, the legislature will have to be a partner with the governor if we are to address the failure to resolve the problems, the gridlock, the cronyism, and the secrecy that have become the hallmarks of doing business in the State Capitol

However, the new governor can create a new atmosphere in Albany – one in which the government is responsible to the public, not the political parties, political leadership or special interests of the state. The ultimate goal is the restoration of a state government that meets the highest standards.

In the same way that Governor Theodore Roosevelt championed the civil service system as a way to reduce cronyism in government, so should the new governor champion measures to reduce political interference and bolster oversight.<sup>1</sup>

## Actions to Open Up Policymaking

The cornerstone of a representative democracy is the ability of citizens to choose their representatives. In order for a democracy to work best, it is important that voters are educated on the options facing government policymakers. Without easy access to governmental information, the public cannot be adequately educated on those issues and therefore cannot knowledgeably vote for candidates or grant informed consent to the policy decisions of its representatives.

Moreover, citizens cannot hold their representatives accountable for policy successes or failures in the absence of the information necessary for them to make such an evaluation. Similarly, taxpayers should be able to see that their money is being spent wisely. Yet ensuring that the public has adequate access to governmental information has been an ongoing struggle. Despite some progress, much more needs to be done.

The epidemic of mistrust and cynicism on the part of New York's electorate is both frightening and dangerous. The abysmal voter turnout in recent elections highlights the public's lack of faith in the political system, and is symptomatic of a sense of powerlessness. Public awareness of political corruption and widespread cronyism, fueled by the increasing power of special interest groups, serves to further demoralize New Yorkers, breed suspicion and cynicism, and decrease citizen participation. Diminishing voter turnout prompts officials to rely more and more on powerful special interests, those with the cash and organizing clout to ensure electoral success, resulting in a legislative agenda responsive to those special interest groups. This, in turn, further alienates the public from the political process. Thus, the cycle continues.

It is a cycle that must be broken by the executive actions of the new governor and, ultimately, by actions taken in concert with the new legislature.



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**REBUILDING CONFIDENCE IN ALBANY**  
*Consumer Protection*

New Yorkers are facing difficult economic times – for most the toughest they’ve seen in their lives. State government should take steps to help lower the cost of living in New York. The first step in restoring confidence in Albany is to help consumers use their market power to lower the cost of their essential expenses, help them organize to combat sharp business practices, and to curb unfair business ones.

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# Protecting New York’s Banking Consumers

## SUMMARY

A consumer’s choice in credit cards and bank accounts can make a huge difference to their bottom line: smart choices can result in savings of hundreds – if not thousands – of dollars each year. The state can help New Yorkers save money by helping consumers “shop smart” for bank products and services, promoting low-cost checking accounts and updating their features. These actions will make the financial services marketplace in New York more fair and competitive.

Unlike other financial services companies, banks are federally insured depository institutions backed by the full faith and credit of the United States Government and in some cases have access to the “lender of last resort” credit services of the Federal Reserve System at favorable rates and terms.<sup>2</sup> And as the nation has painfully learned, taxpayer funds can be called upon to make sure that banks don’t fail.

The special relationship the banking system has to American citizens comes with certain obligations. Banks are obligated to meet the credit needs of the communities in which they operate and are required to assure the availability of all financial services to all people in that community, especially low- and moderate-income residents.<sup>3</sup> When institutions charge high maintenance or service fees on banking accounts, they undermine the special mission that federal deposit insurance implies, since most banks charge no fees on accounts with high balance requirements. Banks are different from other financial industries, a difference underscored now that the public has bailed out many of these institutions.

To help consumers in these lean financial times, the new governor should direct the New York State Banking Department to do a better job of promoting the information it collects on credit cards, loan interest rates and consumer banking account features and fees; promote low cost “basic banking” checking accounts to help low- and moderate-income consumers save money and encourage the “unbanked” to join in the mainstream banking system; and collect data on how many basic banking accounts are in use in the state to evaluate the state’s progress in encouraging use of these accounts. Basic banking account features should be updated to cover more monthly withdrawal transactions to keep pace with the proliferation of bills that typical consumers have.

## SOLUTIONS:

USE EXECUTIVE POWERS TO ENSURE THAT BANKING CONSUMERS KNOW ABOUT NEW YORK STATE’S WEBSITE COMPARING BANK FEES AND CREDIT COSTS.



PROMOTE LOW-COST “BASIC BANKING” CHECKING ACCOUNTS FOR LOW- AND MODERATE-INCOME NEW YORKERS.



PROVIDE DATA ON THE NUMBER OF “BASIC BANKING” ACCOUNTS IN THE STATE; AND INCREASE THE MINIMUM NUMBER OF TRANSACTIONS REQUIRED TO BE PROVIDED FOR THESE ACCOUNTS.

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## PROBLEM

*New Yorkers aren't aware of the state's bank account and fee information website.* If you go to the New York State Banking Department website, you will see information on “fees and interest rates.”<sup>4</sup> The Department offers information on mortgage rates, and credit card fees and interest rates.<sup>5</sup>

The website also offers information on checking and savings account fees, and fees on debit cards and ATMs. The range on fees charged can be significant. For example, in the Albany area, a basic checking account that requires a \$25 minimum deposit carries no monthly fees at some banks, but \$8.95 at others, according to the state website.<sup>6</sup> According to the state website, in the Capital Region, fees banks charge their own customers for using another institution's ATM range from \$0 to \$3.<sup>7</sup>

If consumers aren't aware of the information, they won't use it to save money and make the marketplace more responsive to their needs.

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## PROBLEM

*State mandated “basic banking” low-cost checking accounts are not promoted to save consumers money and to bring “unbanked” New Yorkers into the mainstream financial system; the state doesn't consistently track the number of basic banking accounts in use. The number of withdrawal transactions covered under these accounts has not kept pace with changes in consumer banking behavior over the past two decades.*

According to Federal Deposit Insurance Corporation data, millions of New Yorkers do not have traditional bank accounts.<sup>8</sup> This means these consumers are not fully participating in the mainstream financial services marketplace, putting them at the mercy of illegal and predatory lenders and check cashing outlets and depriving them of the safety and other benefits of banking. These consumers pay more for financial services than mainstream banking consumers and lose opportunities to develop a strong credit history.

A recent AARP profile of “unbanked” and “underbanked” older consumers across the country found that erroneous, long-held assumptions by these consumers may be part of the reason they don't have checking or savings accounts.<sup>9</sup> This may help explain the behavior of other consumers who do not open bank accounts – seemingly against their best interests.

As technology and the economics of banking edges us closer to a “cashless” society in the 21st century, many consumers have yet to participate in the banking system enjoyed by the middle class for the past 100 years. In fact, rapidly expanding new technologies are targeting the unbanked. For example, new bill payment ATMs are being deployed in convenience stores, charging consumers several dollars to pay a single bill at an ATM kiosk in a gas station or convenience store.<sup>10</sup>

In 1994, as part of its deregulation of the banking industry, New York required banks in the state that serve consumers to offer low-cost “basic banking” accounts. The goal was to provide affordable banking for low- and moderate-income New Yorkers and reduce the ranks of the “un-banked,” those consumers who do not have savings or checking accounts and rely on check cashing outlets and the unregulated economy.

The New York State Banking Department then enacted regulations that set guidelines for banks required to offer basic banking accounts. The elements include: (a) an opening deposit of no more than \$25; (b) a minimum balance of no more than one penny; (c) a monthly maintenance charge of no more than \$3; (d) eight free withdrawal transactions per month, including checks, bank withdrawals and withdrawals from a bank’s own ATMs; and (e) unlimited deposits at no charge.

The new governor should use his powers to ensure that the Banking Department aggressively markets these low-cost checking accounts.

Unfortunately the state has not consistently released data on the number of “basic banking” accounts opened in the state. Data collection and publication will be critical to measuring the success of outreach efforts.

And while ATM withdrawals have become a staple of modern life and the number of bills paid each month has increased, the number of minimum transactions under the “basic banking” law has stayed at eight.

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## SOLUTIONS

***The governor should direct the Banking Department to take steps to alert the public to its website and the low-cost “basic banking” accounts.*** The state should require that banks promote the site in their account statements, as well as posting information conspicuously in each branch. The state should also aggressively promote the availability of low cost “basic banking” checking accounts as a way for consumers to meet their banking needs.

***The new governor should order the Banking Department to aggressively market low-cost checking accounts, develop baseline data on their use, and report on its progress.*** While the Department did add the provision of basic banking services as a positive factor for consideration under the state’s Community Reinvestment Act (“CRA”), it is difficult to get a firm grasp on whether the legislature’s goals have been accomplished and whether the ranks of consumers using these low-cost checking accounts has increased. What is clear is that there is little promotion of basic banking accounts.

The Banking Department should report annually on the number of “basic banking” accounts (or superior accounts) in use and the banks offering them, creating a baseline for

future reports. In its reports the Banking Department should include maps of the locations of these accounts to help the Department, financial institutions and community organizations develop outreach programs to increase utilization of these accounts.

The Department should use the data to partner with banks, credit unions and community organizations to create an aggressive, ongoing public education and outreach program. The Banking Department should work to ensure that consumers receiving state benefit checks, to the fullest extent possible, have bank accounts. Moreover, the Banking Department should partner with other agencies to ensure that public education is delivered through multiple channels.

*The Banking Department should increase the minimum number of withdrawal transactions covered under the “basic banking” law.* In light of the proliferation of ATM banking – something undeveloped in 1995 when the basic banking regulations were promulgated – as well as the increase in the number of monthly bills many consumers must pay, such as cable television, cell phone and Internet provider bills, the number of minimum withdrawals should be increased from eight to twelve.

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## ENDORSED BY

Consumers Union, Empire Justice Center, NEDAP (Neighborhood Economic Development Advocacy Project)

# Financial Consumers' Association

## SUMMARY

The governor has an opportunity to reshape financial services consumer protection by facilitating the organization of an independent consumer watchdog that is voluntarily funded by New Yorkers. The governor should promote the existence of a Financial Consumers' Association (FCA), a voluntarily funded, non-profit, non-partisan independent consumer organization committed to representing the interests of consumers on banking, insurance and other financial services issues.

A Financial Consumers' Association would represent consumers before regulators and the legislature, and provide an independent and complementary voice for consumers on issues related to financial products and services. A Financial Consumers' Association would:

1. Represent consumer interests before regulatory agencies, such as the Banking Department and State Insurance Department; both houses of the legislature and, where appropriate, the courts. It also could directly enter into negotiations on behalf of consumers with financial service providers;
2. Advocate policies before regulatory bodies that will ensure reasonable access to credit for all consumers;
3. Evaluate the performance of products and services, such as those offered by mortgage lenders, and monitor the availability of financial services to less affluent and minority consumers; and
4. Provide policymakers, consumers, workers, shareholders, taxpayers and the news media with timely information on the effects of financial industry practices and government initiatives.

The FCA would supplement and be complementary to federal and state regulators, including the soon-to-be-launched federal Consumer Financial Protection Bureau.

## SOLUTIONS:

ORDER THE NEW YORK STATE INSURANCE SUPERINTENDENT AND BANKING BOARD TO INCLUDE INSERTS IN STATE MAILINGS THAT NOTIFY CONSUMERS OF THE EXISTENCE OF A FINANCIAL CONSUMERS' ASSOCIATION (FCA). FCA WOULD BE A VOLUNTARILY FUNDED, NOT-FOR-PROFIT, NONPARTISAN CONSUMER ORGANIZATION DESIGNED TO REPRESENT THE INTERESTS OF CONSUMERS.

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## PROBLEM

*New York's financial services consumers don't have an unconflicted state agency looking after their interests and dedicated solely to protecting them.* The recent economic meltdown was a disturbing wake-up call for consumers, policymakers and regulators. Consumers have been forewarned that they

can no longer trust market competition or regulators to fully protect them. Consumers must organize themselves to pool their resources to create an independent voice to represent their interests and make the marketplace not only fair and transparent, but responsive to their needs.

Taxpayers fronted some \$700 billion to prop up failing banks and continue to subsidize them and fill their reserves through the government's rock-bottom loan interest rates. Insurance giant AIG received some \$185 billion in taxpayer funds to stabilize the company and prevent a cascade of defaults from its contractual partners.

Despite being at the center of the global financial chaos, Wall Street still doesn't get it. According to The Wall Street Journal, Wall Street firms are on track to have a record-breaking year in terms of employee compensation. While Main Street suffers, Wall Street luxuriates.

The financial collapse highlighted the huge power and knowledge gaps between average consumers and the financial services industry. These disparities are evident at the policymaking and regulatory levels, and most fundamentally when consumers go to the marketplace for banking services, to get insurance coverage, or to obtain other financial products.

In addition, there is an inherent conflict for federal and state regulators of the financial services industry. For example, New York's Banking and Insurance Departments are responsible not only for looking after consumers' interests, but with ensuring the "safety and soundness" (read profitability) of these pillars of the financial services industry. In the case of banks, New York may be fearful of banks and credit unions "flipping their charters" and seeking regulation by federal agencies, thus depriving the state of resources derived from regulated entities and resulting in diminished Department prestige.

The conflict is chiseled into New York State Banking Law, which establishes the State Banking Department, and makes it clear that the agency's priorities lie in protecting the industry:

Declaration of policy. It is hereby declared to be the policy of the state of New York that the business of all banking organizations shall be supervised and regulated through the banking department in such manner as to insure the safe and sound conduct of such business, to conserve their assets, to prevent hoarding of money, to eliminate unsound and destructive competition among such banking organizations and thus to maintain public confidence in such business and protect the public interest and the interests of depositors, creditors, shareholders and stockholders.<sup>11</sup>

The Insurance Department similarly has twin and potentially conflicting missions, of promoting a financially healthy insurance industry in the state and protecting consumers. The Insurance Department describes its role as follows:

- Ensure the continued sound and prudent conduct of insurers' financial operations;
- Provide fair, timely and equitable fulfillment of insurer obligations;
- Protect policyholders from financially impaired or insolvent insurers;
- Eliminate fraud, other criminal abuse and unethical conduct in the industry; and
- Foster growth of the insurance industry in the state.<sup>12</sup>

For consumers, the power and information gap becomes most clear when they shop for financial services. By default, many consumers rely on financial services representatives and sales people because they often have nowhere to turn for reliable information and assistance. This puts consumers at a distinct disadvantage in the marketplace. With the industry's highly-incentivized employees and a huge advertising and marketing budget, it's little surprise so many consumers ended up with predatory loans, high-fee bank accounts, and unnecessary and overpriced financial products.

These problems are magnified for low-income New Yorkers and others acting under economic duress: it's hard to make good financial decisions when you're under pressure due to an unforeseen illness, unexpected home or car repair, or job loss, for example.

Consumers need help understanding the increasingly complex financial products they're offered – typically on a “take it or leave it basis.” And regulators need help spotting problems and trends before they swell to epidemic proportions. A well resourced and independent counterweight to the industry is needed in the halls of the legislature, before state agencies, and to help arm consumers with useful information before they choose a financial services product.

This is true not only for complex mortgage and insurance coverage decisions, but consumers also need help understanding more mundane banking products, such as checking and savings accounts, debit card fees, credit card debt and auto insurance policies. Even experienced attorneys and financial experts would be hard pressed to decipher the multi-page contracts for these everyday products.

Clearly the dual agency missions of focusing on industry “safety and soundness” (read “profitability”) of banks and insurers on the one hand, and the interests of consumers on the other, creates a tension that calls out for the creation of an independent consumer voice. On a national level, the parallel tension that existed with respect to federal regulators was addressed to some extent in the recent financial overhaul legislation by authorizing the creation of an independent federal consumer agency.

Time will tell whether the promise of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>13</sup> which will establish for the first time ever a national consumer financial protection bureau, will protect consumers from the types of predatory practices that were at the root of the financial crisis and restore public confidence in the nation's banking system.

While consumer advocates hold high hope for the Consumer Financial Protection Bureau, the public cannot rely on the support of a one-legged stool. It's critically important that consumers create a sustaining vehicle to represent their interests, one that is accountable solely to consumers.

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## SOLUTION

***Establish a statewide financial consumers' association (FCA).*** The FCA would be a statewide, citizen-run, membership association of financial consumers. It would serve as an independent watchdog for the financial industry. In addition to keeping an eye on the financial industry, the FCA's full-time staff of economists, accountants, auditors, attorneys and policy experts would monitor legislative and regulatory activities, and lobby for pro-consumer reforms. It would also represent financial consumers before regulatory agencies, the legislature and, when appropriate, the courts. The FCA would monitor and report on how New York's unique marketplace was functioning. The FCA would also educate and advise consumers on financial services. In these ways the FCA would serve as an important countervailing force to the power and influence of the financial industry.

The power of the financial industry to push for legislation and regulations that serve its own interests far outweighs that of existing consumer groups. Financial consumers currently lack the resources necessary to advocate their interests before regulatory and legislative bodies. The FCA would serve as a mechanism by which consumers could pool their resources, and would bring about a balance of advocacy before legislative and regulatory bodies and make information and analysis available to consumers.

The FCA would have protecting financial consumers as its only purpose and, as a member-funded organization, would be immune to outside financial and political pressures. It would respond only to its consumer members, who would have a direct voice in the FCA's policies and leadership. The FCA would complement the work of government regulatory bodies by educating the public about financial products and the actions of the financial industry. The FCA would also help consumers effectively monitor the performance of the state and federal regulators and participate in policy debates regarding the financial industry. Establishing an FCA is particularly important in light of the inherent tensions that exist in the missions of regulators, as described earlier.

The state can play a critical role in the success of the FCA by promoting it through inserts in state mailings and through the placement of information on state websites. The state also can require banks and insurers to provide state information about FCA in their customer contacts. These materials would describe the purpose and democratic structure of the FCA, membership fees and eligibility requirements, and the independence of the FCA from government bodies and financial industry groups. Financial consumers could join the FCA by mailing their membership fee and application to the FCA.

The insert mechanism would, at no additional cost to the state and at minimal cost to the FCA, allow the FCA to solicit members and gather the critical mass of resources needed to hire economists, policy experts, researchers and attorneys. Therefore, the bulk of the money collected by the FCA could go to research, analysis and advocacy purposes, rather than to the FCA's own fundraising and administrative costs. This would also foster low FCA membership fees.

The FCA's mandate would be crystal clear: represent the views of the financial consumer. The interests of financial consumers and financial institutions are rarely the same. The financial industry has the resources and mechanisms to very effectively look after its own interests in regulatory proceedings. Financial consumers, however, are a diverse group without any means to effectively organize and pool their resources. The FCA would give them the means to band together and make their viewpoint known.

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## **ENDORSED BY**

**Consumers Union, Empire Justice Center, NEDAP (Neighborhood Economic Development Advocacy Project)**

# Regulate Non-Bank ATMs

## SUMMARY

Due to a loophole in federal and state law, there is no regulation of ATMs unless they are owned by banks or credit unions. Neither the New York State Banking Department, nor state consumer agencies, or federal banking regulators know who owns the ATM that you just used to withdraw \$100 at your local market, gas station or convenience store. In fact, state and federal regulators don't even know this stand-alone ATM exists and is wired into our national banking network; they have no idea how many non-bank ATMs are operating in New York and they don't know the background of the person or company that is profiting from its operation.

This loophole means that consumers may be left with little recourse if their transactions aren't fairly and properly processed by these off-brand banking devices. Even more troubling is the potential for identity theft, tax evasion, money laundering and even using ATMs to fund illegal activities and groups, such as terrorists.<sup>14</sup> Neither federal nor state regulators even conduct background checks on persons who want to set up private ATMs – which are linked to our national electronic banking system.

Several states – Illinois, Maine, New Hampshire, Vermont, Wyoming, Massachusetts – and the District of Columbia, Westchester County,<sup>15</sup> Rockland County<sup>16</sup> and Nassau County<sup>17</sup> regulate non-bank ATMs. New York State must close this gaping loophole in the banking system and license and regulate non-bank ATMs.

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## PROBLEM

*ATMs have proliferated in the past decade – many owned and operated by private businesses, which are neither banks nor credit unions and therefore unregulated.* Nevertheless, these non-bank ATMs transact business by connecting to our electronic banking networks and receiving and transmitting funds to and from banks and credit unions. For as little as a few hundred dollars and the cost of a dial-up connection, virtually anyone can set up an ATM and tap into our electronic banking system. Not surprisingly, criminals have taken notice of the new opportunities.<sup>18</sup>

In fact, a Dateline NBC investigation aired in December 2003 showed how a convicted felon working as a consultant to the show was able to buy, install and hook up an ATM to the financial net-

## SOLUTIONS:

DIRECT THE NEW YORK STATE BANKING DEPARTMENT TO LICENSE AND REGULATE NON-BANK ATMs TO PROTECT CONSUMERS, CONDUCT BACKGROUND CHECKS ON THEIR OPERATORS AND ENSURE TAXES ARE PROPERLY COLLECTED.

work without so much as a background check by anyone, including the bank that enabled him to connect the ATM to the network.<sup>19</sup>

As would be expected, these unregulated ATMs are more vulnerable to consumer rip-offs, identity theft, tax evasion and money laundering.<sup>20</sup>

Moreover, as convenience stores and other retailers expand the ranks of non-bank ATM services into bill payments and money transfers, the need to regulate these ATMs grows.<sup>21</sup>

This glaring loophole is a function of the history of the development of ATMs. Until April 1, 1995, ATM networks restricted the ability to participate in the networks and banned imposing surcharges on ATM users who were not customers of the ATM owner. When the contractual surcharge ban ended, it opened the door to banks beginning to surcharge for using their ATMs and created a financial incentive for non-banks to enter the marketplace. As a direct consequence, since 1995, non-bank ATMs have proliferated. However, the federal, state and local regulatory structure for ATMs, for the most part, has not caught up.

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## SOLUTION

***New York should close this non-bank ATM loophole by requiring that all businesses that participate in electronic funds transfers and are not otherwise regulated by federal or state banking agencies be licensed by the state. Licensure should require full criminal background checks.*** Non-bank ATM licensees should be required to post information about resolving complaints and the ATMs should be subject to audits, like other devices commonly used in commerce. The New York State Department of Taxation and Finance should be alerted to the existence of the ATMs and no new ATM should be installed or begin operating until it has been registered with the state.

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## ENDORSED BY

Consumers Union, Empire Justice Center, NEDAP (Neighborhood Economic Development Advocacy Project)

# Cell Phone Consumer Protection

## SUMMARY

With most of the public using a cell phone, what was once a gadget for high-tech geeks and the wealthy is now an essential communication and security device for well over 10 million New Yorkers.<sup>22</sup> The New York cell phone market alone likely exceeds \$9 billion annually.<sup>23</sup> The introduction of “smart phones” with the ability to text, send and receive video, and surf the Internet has made cell phones an indispensable – and increasingly expensive – product. Yet, in 1997, the legislature suspended regulation of the cell phone industry.

## SOLUTION

INITIATE THE PROCESS FOR THE NEW YORK STATE PUBLIC SERVICE COMMISSION TO REGULATE THE TERMS AND CONDITIONS OF CELL PHONE SERVICE TO PROTECT CONSUMERS.

The governor should initiate the process for the New York State Public Service Commission to reassert authority over the terms and conditions of cell phone service in the state as permitted under federal law and pursuant to state Public Service Law section 5(6) as warranted “to protect the public interest.”

For example, the state could regulate the terms and conditions of service to require the following: standardized marketing of services to help consumers comparison shop; detailed and updated service maps, including “dead zones” so that consumers can know if their primary use locations will be well served by a particular carrier; and an opportunity for consumers to cancel contracts after a trial period and receipt of their first bill if they find the service inadequate or the charges higher than represented.

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## PROBLEM

***Consumers are confronted with a confusing cell phone marketplace, with too few protections.*** In 1997 when the New York legislature and governor agreed to deregulate cell phone service in New York, the Senate sponsor’s memo justified the hands-off approach at that time, finding that “[c]ellular service is predominantly a non-essential, discretionary service, provided in a dynamic and rapidly evolving market structure.”<sup>24</sup>

But the choices are baffling and consumers can easily get locked into long-term contracts with no ability to extricate themselves – even if the plans prove far more expensive than marketed or if the service is weak or non-existent in the locations where they typically use their phones. Early termination fees charged to consumers who need or want to get out of a contract early have skyrocketed, beyond \$300 in many cases.<sup>25</sup> This is true as the average monthly cell bill is now \$78 per month, according to a 2010 consumer survey by JD Power.<sup>26</sup>

Moreover, since phones are network-specific, they often cannot be used with different providers. And anti-consumer “mandatory arbitration clauses” make it difficult for consumers to challenge plans they believe do not provide adequate service or are unfair. The one-two punch of “early termination fees” and arbitration clauses render consumers powerless once they’ve locked into a plan.

The cell phone industry’s attempt at self-regulation is a failure. The “Consumer Code for Wireless Service,” a ten point “code of conduct,” is a vague, weak document that has been rejected by consumer advocates, including then-New York Attorney General Eliot Spitzer, has no sanctions and is unenforceable by consumers.<sup>27</sup>

The recent enforcement action by the Federal Communications Commission (FCC) against Verizon, which resulted in a \$25 million penalty payment and some \$52 million in consumer refunds for unauthorized charges for data usage, underscores the problems when regulators abdicate oversight of an industry.<sup>28</sup> FCC also is advancing regulations to prevent cell phone customer “bill shock” by providing alerts when consumers are reaching monthly limits or about to incur extra charges.<sup>29</sup>

While the FCC’s actions are welcome, they will not fill the gap in consumer protection in the cell phone marketplace.

Cell phones are more than a convenience. Parents of New York City school children decried the ban on bringing cell phones to public schools because they have come to rely on them to know where their children are and that they are safe, underscoring that cell phones are now viewed as indispensable for safety.<sup>30</sup> The ability to communicate with loved ones during a crisis was never clearer than on 9/11. That experience clearly left its mark on many cell phone users.

The most recent survey by Pew Research shows that cell phone use is near ubiquitous in the U.S., with 85% of Americans over 18 owning a mobile phone and an astounding 96% of Americans ages 18-29 having one.<sup>31</sup>

At the same time that cell phones have become a fixture of modern life and relied upon for personal safety and keeping tabs on family members, the competition has dramatically contracted. In 2010, with four national carriers dominating the New York market and cell phones carried for security and necessity, as well as convenience, it is time for New York to step in and protect consumers.<sup>32</sup>

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## SOLUTION

*The new governor should initiate the process for the New York State Public Service Commission (PSC) to regulate the terms and conditions of cell phone service to protect consumers.* In addi-

tion, the PSC should create an interactive website for consumers to compare cell phone plans based on their needs and usage patterns. The PSC should collect complaints and produce annual reports to help consumers select a provider.

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**ENDORSED BY**

Consumers Union, Empire Justice Center

# Making the Insurance Marketplace More Competitive and Transparent

## SUMMARY

Most New Yorkers don't have a choice about whether or not to have insurance: they must purchase insurance to drive a car and it's a necessity for homeowners. Still others must privately purchase their health insurance. Yet New Yorkers have no idea how insurance rates are set or how insurance is regulated in the state; they don't have a seat at the table when it comes to insurance rate hikes or changes to policies. The new governor should establish an independent insurance consumer advocate office – as several other states have done – to represent insurance consumers before the state Insurance Department. The new governor also should boost insurance industry transparency and accountability by directing the New York State Insurance Department to require carriers to provide detailed data on insurance company marketing, policy writing and claims handling. This data should be collected and published so that residents and advocates, particularly those living in and serving low- and moderate-income communities, as well as regulators, can assess the performance of companies in meeting the insurance needs of neighborhoods across the state.

## SOLUTION:

ESTABLISH AN OFFICE OF  
PUBLIC INSURANCE  
CONSUMER ADVOCATE  
WITHIN THE STATE  
INSURANCE DEPARTMENT  
TO REPRESENT NEW YORK'S  
CONSUMERS IN RATE HIKE  
AND OTHER REGULATORY  
MATTERS.



ORDER THE INSURANCE  
DEPARTMENT TO GREATLY  
ENHANCE INSURANCE  
TRANSPARENCY AND  
ACCOUNTABILITY.

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## PROBLEM

*New Yorkers don't have an independent voice making the case for them when it comes to setting insurance rates and overseeing the state's powerful insurance industry.* In many cases insurance companies have a captive audience, with some insurance mandatory and others required by the marketplace or dictated by necessity. For example, New York's Vehicle and Traffic Law requires that the state's more than eight million drivers have at least minimum insurance to operate a car.<sup>33</sup> No bank, credit union or mortgage company will provide a mortgage unless the borrower maintains homeowner insurance; and in any event, insurance is a necessary hedge against loss of what is typically a consumer's biggest investment. And millions of New Yorkers whose health care coverage is not provided through their jobs, or public benefits, or – if the coverage they have is inadequate – attempt to purchase private healthcare insurance.

No process is more arcane and opaque than the setting of insurance rates and the regulation of the insurance industry. Insurance companies are regulated purely by the states – there is no federal insurance regulator. Unfortunately the average New Yorker has no idea how the process works or how her interests are represented. Insurers, on the other hand, have tremendous resources to lobby the legislature, the governor and the State Insurance Department. For New Yorkers the predictable result is that historically they pay among the highest insurance rates in the nation,<sup>34</sup> don't feel they have a seat at the rate-setting table, and are not on a level playing field when it comes to picking insurance, filing claims or attempting to collect on a policy.

A prime example of how the insurance industry and the State Insurance Department have done a disservice to policyholders is in the area of no-fault auto insurance fraud. Despite evidence from across the country in the late 1980s and high profile cases brought by the Justice Department showing that organized crime rings in New York were involved in staging accidents and fleecing the no-fault insurance system, the state and most insurance companies did little to address this problem until it careened out of control in the late 1990s. By that time the industry was claiming that the “new” epidemic of no-fault fraud was adding one billion dollars to New Yorkers’ auto insurance premiums.

Consumer groups and the Chair of the Assembly Insurance Committee called for beefed up fraud-fighting units several years before it became the industry’s battle cry. A public insurance advocate would have had the resources and ability to raise the issue forcefully years earlier and inject it into the process of rate setting in the state.

Fast forward to 2010 and it’s *déjà vu* all over again: the state’s auto insurers continue to cry poverty and push for favorable treatment and rate hikes, claiming they are not profitable enough or at all in the New York market. Once again the insurance industry is claiming that no-fault insurance fraud is making it impossible for them to make money in the New York marketplace.

The data, however, tell a different story about the fortunes of auto insurers in New York’s \$10 billion per year captive market.

According to the most recently available data from the National Association of Insurance Commissioners (NAIC), for 2008 New York auto insurance was overall about as profitable as the national average.<sup>35</sup>

The NAIC 2008 profitability report states that \$9.8 billion in New York auto premiums were collected in 2008. Losses incurred were at 63.5 cents per premium dollar. The national average was 63.6. The return on net worth for New York for auto insurance was 4.4%; nationally it was 4.5%. Nationally the profit on insurance transactions average was 2.0%; in New York it was 2.1%.

New York’s percent of net premiums earned and losses incurred was at 63.5% in 2008 – up over the past several years but still lower than 1999 (67.5), 2000 (78.3), 2001 (74.1), and 2002 (71.4).

Note that the recently enacted state HMO reforms require health insurers to pay out 82 cents of every premium dollar collected – a bar auto insurers have never been required to meet, and are not remotely close to.

While in 2010 the legislature and governor agreed to reinstate a “prior approval” process for private health care insurance regulated by the state, in 2008 the state enacted a “file and use” process for auto insurance rates – thereby allowing most rate hikes to go into effect without review by the State Insurance Department.

Another example of the types of problems that escaped the attention of the State Insurance Department over the years is the setting of physician out-of-network reimbursement rates. An investigation by the New York Attorney General found that for ordinary doctor’s office visits, the widely used Ingenix database understated the relevant market rate by up to 28 per cent.<sup>36</sup> The Attorney General’s investigation led to the health-care industry paying hundreds of millions of dollars in penalties and compensation. United Health also agreed to dismantle the Ingenix database and insurers committed to underwriting the creation of a non-profit organization that would independently compile data on physician charges to be used to set out-of-network reimbursement rates.<sup>37</sup>

Homeowners in New York also have reasons to gripe about how much they pay, the coverage they get and the treatment they receive when it comes to insuring their homes. A 2008 analysis of insurance across the nation by the Consumer Federation of America found a sharp drop in the value of property-casualty insurance products over two decades.<sup>38</sup> While insurance underwriting profits soared, the study found that consumers are getting less back as a percentage of premium dollars paid.

In February 2008, NYPIRG, Consumers Union, and NEDAP joined Consumer Federation of America in calling on the State Insurance Department to take immediate action to rein in the excessive premium rates charged by carriers for insurance in New York, citing the “startling data” for home and auto insurance rates in New York.<sup>39</sup> The Department did not respond to the results of the study or the groups’ letter.

At its heart, New York’s regulatory system creates a clear conflict of interest for the State Insurance Department. The Department is charged with ensuring the safety and soundness of insurers and the insurance marketplace in New York. On the other hand, it must represent the interests of the state’s insurance consumers. In other contexts, such as utility rate setting, the Department of Public Service staff, state Consumer Protection Board and the Attorney General frequently weigh in on behalf of consumers.

Simply stated, the interests of New York’s consumers are not adequately represented before the State Insurance Department. New York’s Insurance Department is charged with representing the interests of both consumer-policyholders and insurance companies. Too often this conflict of interest seems to be resolved on behalf of insurance companies. Insurance continues to be a big

business in New York and is home to some of the largest insurance companies in the nation, generating billions of dollars for insurance companies in premiums each year.

Policyholders – drivers, homeowners, shopkeepers – have no idea how the insurance industry is regulated, how their rates are set and whether their interests are represented at all in the regulatory process. Without a transparent process and in the absence of the belief that their interests are adequately represented, New Yorkers are left to complain about how much they pay for insurance and question whether the “system is fair.”

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## PROBLEM

***Too little is done to ensure that the insurance needs of low-income communities are met.*** This is true despite the fact that insurance companies play a vital role in protecting communities and neighborhoods by ensuring that homeowners have affordable coverage to meet their needs in the event of fire, negligence, vandalism, injury, act of god or some other insurable event.

Unlike banks, which provide detailed information about their lending practices under federal and state laws, insurance companies in New York do not provide data about which communities they are serving and the resources they use to generate new business and serve areas across the state. Residents and advocates for New York’s minority and low-income communities in particular have long suspected that some companies do a poor job of providing coverage in these typically underserved areas.

Communities that do not have full competition for their premium dollars end up paying higher premiums while being underinsured. This exacerbates the problems besetting lower-income communities and their residents. The impacts of unexpected bills and insurance coverage shortfalls are magnified for these New Yorkers.

The settlement by insurance giant Allstate of a civil rights lawsuit claiming that it used insurance credit scores in a way that discriminated against African American and Hispanic consumers by charging them higher premiums for auto and home insurance highlights the concerns about the conduct of insurers.<sup>40</sup> Without adequate data, there is no way to assess whether insurers are serving the needs of all of New York’s communities. New York’s consumers deserve better.

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## SOLUTION

***New York should follow the lead of other states – such as Texas, Florida and Michigan – and create an Office of Public Insurance Consumer Advocate to represent their interests before***

*the Insurance Department, similar to the way that the Department of Public Service staff operates with regard to utility rate requests and other regulatory matters.* An Office of Public Insurance Consumer Advocate could save New York policyholders hundreds of millions of dollars annually. The new governor should use his executive power to create an Office of Public Insurance Consumer Advocate to represent solely the interests of consumer and small business policyholders in insurance matters before the State Insurance Department and to provide consumers with information and assistance in selecting and interacting with insurers.

The state of Texas has created a counterweight to the insurance industry by establishing an independent insurance advocate to represent average policyholders in insurance matters before their state regulators.<sup>41</sup> This state agency has saved consumers in Texas billions of dollars over the years.<sup>42</sup>

In Florida, the Office of Public Insurance Consumer Advocate has acted to protect Florida's drivers, homeowners and small businesses since 1990.<sup>43</sup> In Michigan, the Office of Automobile and Home Insurance Consumer Advocate was created by executive order by governor Granholm in 2008 to focus on affordability and quality of service for auto and homeowners' insurance.<sup>44</sup> Several other states have public insurance consumer advocates, including Iowa<sup>45</sup> and West Virginia.<sup>46</sup>

Based on the experience of other states, NYPIRG and Consumers Union have estimated that an independent insurance consumer advocate representing policyholders would save New York's consumers \$650 million each year.<sup>47</sup>

The public insurance advocate would represent solely average policyholders and small businesses, including in proceedings before the State Insurance Department. With a staff of economists, insurance experts and attorneys, the public insurance advocate could provide information and analysis from the policyholders' perspective to more fairly balance out the information presented to the Department by industry.

Moreover, the public insurance advocate would be able to educate the public about insurance matters so that consumers make the best choices possible for their insurance needs.

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## SOLUTION

*To boost transparency and confidence in the practices of the insurance industry, the new governor should order a review of insurance practices and direct the State Insurance Department to use its existing authority under the Insurance Law to require more detailed reporting.* The Insurance Department should require carriers to furnish geo-coded statistical data from insurance carriers, including the number of policies in effect; the applications received and denied;

policies cancelled or terminated; claims filed; claims approved; claims denied; and claims paid in dollar amounts.

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**ENDORSED BY**

Consumers Union, Empire Justice Center, NEDAP (Neighborhood Economic Development Advocacy Project)

# Comparison Shopping for Auto Insurance Premiums

## SUMMARY

New Yorkers pay among the highest auto insurance rates in the nation – collectively some \$10 billion each year. Over the past two decades through industry rate hikes and practices, and changes made through regulation and statute, New York’s beleaguered drivers have paid more despite driving less. The state can make New York’s auto insurance marketplace more competitive by helping its drivers comparison shop for auto insurance by creating an interactive website.

## SOLUTION:

REQUIRE THE NEW YORK STATE INSURANCE DEPARTMENT TO ESTABLISH A TRULY INTERACTIVE WEBSITE, USING AUTO INSURANCE PREMIUM DATA, SO DRIVERS CAN COMPARISON SHOP FOR COVERAGE ONLINE.

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## PROBLEM

*From shopping for auto insurance, to filing and settling claims, New York’s drivers have trouble catching a break.* For New York’s drivers, auto insurance is mandatory – you cannot register and operate a car lawfully without having your car insured. The result is a \$10 billion captive market for insurers.

What’s worse, there is evidence New Yorkers may be grossly overpaying for auto insurance. According to the state’s most recent auto insurance consumer guide, drivers in Brooklyn with a clean record can pay from \$8,526 to \$900 – a difference of \$7,626! – for the exact same coverage.<sup>48</sup>

New York’s high auto insurance rates mean that many drivers forgo coverage, driving illegally and costing insured drivers more to cover the costs of accidents involving uninsured drivers.

Despite insurers’ perpetual complaints, according to data from the National Association of Insurance Commissioners (NAIC), New York’s auto insurers’ profits are in line with the national average. Moreover, in 2008, insurers were paying out a paltry 63 cents of every premium dollar for claims – far below the 82 cents-per-dollar standard that the legislature just established for health care insurer payouts in the state.<sup>49</sup>

Making matters worse, New York’s auto insurers operate under some of the most anti-consumer, pro-industry laws and rules in the nation. For example, two years ago insurers won the right to

raise premiums for New York drivers without having the State Insurance Department conduct a review. (When it comes to health care, in 2010 the legislature repealed so-called “file and use” for health insurance.<sup>50</sup> And, New York has the shortest amount of time of any state for injured drivers, passengers and pedestrians to file a no-fault claim for benefits because of a radical change to the no-fault insurance regulations (“Reg 68”) pushed through in 2002 by Governor Pataki over the protests of consumer groups, lawyers associations and the Medical Society.

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## SOLUTION

***The governor should direct the State Insurance Department to establish a truly interactive website that will allow drivers from Buffalo to Bridgehampton to plug in their driving profile information and get projected premium quotes for auto insurers actually providing that coverage in their area and a link to the customer complaint and financial ratings for each carrier.***

Insurance is regulated at the state level and, in its role as insurance regulator; the New York State Insurance Department has data on the underwriting practices and premium rates that are filed by every insurance company providing coverage for drivers in the state.

One thing the state can do to help drivers save money is make the auto insurance marketplace in New York more competitive. Drivers should not be paying hundreds of dollars – if not thousands of dollars – more for their insurance coverage when they easily could be comparison shopping on their computer or smart phone.

For almost two decades, New York State Insurance Law has required the State Insurance Department to produce an annual guide to passenger auto insurance premiums in the state.<sup>51</sup> The State Insurance Department also provides sample auto insurance premium information by carrier with information on consumer complaints against the insurer in the previous year.<sup>52</sup>

New York already provides consumer auto premium information by geographical insurance “rating territories” based on theoretical drivers classified by gender and age, having a clean driving record and driving a standard midsize car. The state can and must provide more useful data, based on the actual driver’s profile information rather than a generic theoretical driver to help New Yorkers keep down their costs of insurance.

There is no technological barrier to furnishing personalized auto insurance rate quotes to help consumers comparison shop. The state of California provides rate quotes through the Internet.<sup>53</sup> Consumers Union, the non-profit publisher of Consumer Reports Magazine, offered a service that allowed subscribers to get auto insurance price quotes. Thus, the obstacles are purely political.

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**ENDORSED BY**

Consumers Union, Empire Justice Center, NEDAP (Neighborhood Economic Development Advocacy Project)

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## **REBUILDING CONFIDENCE IN ALBANY** *Energy & the Environment*

Despite the economic crisis, New York’s environment faces serious threats – some global, like climate change, others local, like the threat to drinking water posed by toxic waste sites. The new governor can play an important role in combating these environmental and public health threats and steering New York toward a more sustainable future.

The new governor will be inheriting a dangerously weakened New York State Department of Environmental Conservation (DEC), one whose ability to respond to spills, monitor and enforce safety regulations, perform site inspections, and oversee cleanups is already perilously compromised. Although most of the DEC’s funding comes from the federal government and outside sources, this agency has experienced disproportionately steep cuts to its budget and its workforce. A recent memo outlining the impacts of further staff reductions stated that “DEC is in the weakest position that it has been since it was created 40 years ago... Many of our programs are hanging by a thread. The public would be shocked to learn how thin we are in many areas.”<sup>54</sup>

The first step in restoring confidence in Albany will be to ensure that the DEC has sufficient resources to carry out its critical responsibilities to protect human health and preserve the state’s environment.

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# Climate Change

## SUMMARY

Climate change is widely considered the greatest environmental threat facing our planet. The accumulation of carbon dioxide and other greenhouse gases in the atmosphere is predicted to cause climate instability, warmer temperatures, and rising sea-levels. If left unabated, this will likely have devastating impacts on New York's economy, infrastructure, public health, coastal areas and natural ecosystems.

The United Nations' Intergovernmental Panel on Climate Change (IPCC) has projected that the impacts of climate change will become more severe unless much more aggressive steps are taken to reduce greenhouse gas emissions. Significantly scaling back these emissions could reduce, delay, or possibly avoid many of the projected impacts of global warming. The general consensus among scientists is that in industrialized nations, emissions must be reduced about 25-40% below 1990 levels by 2020 to put the planet on track to keep temperature rise to a minimum and avoid catastrophic climate change, and achieve reductions of at least 80% by 2050.

New York has already demonstrated leadership in combating climate change through a number of policy goals and initiatives. The new governor must build on the groundwork that has been laid, and focus the state's attention and resources on achieving early and steep emissions reductions of at least 25% below 1990 levels by 2030 through energy efficiency and clean renewable technologies.

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## PROBLEM

*Climate change is a threat to the environment, public health and economy of New York State.* The projected impacts of climate change in New York are far-reaching. The average temperature in New York increased by two degrees Fahrenheit in the past century.<sup>55</sup> Left unabated, cli-

## SOLUTIONS:

RENEW EXECUTIVE ORDER 24  
AND ADOPT AN INTERIM  
TARGET OF AT LEAST 25%  
REDUCTION OF GREENHOUSE  
GAS EMISSIONS BY 2030.



FOCUS THE CLIMATE ACTION  
PLAN ON ENERGY EFFICIENCY  
AND CLEAN RENEWABLE  
ENERGY TO MEET THE 2020  
TARGET.



IMPLEMENT  
RECOMMENDATIONS OF THE  
STATE SOLID WASTE  
MANAGEMENT PLAN TO  
REDUCE GREENHOUSE GAS  
EMISSIONS FROM LANDFILLS  
AND INCINERATORS.



EXPAND THE REGIONAL  
GREENHOUSE GAS INITIATIVE  
(RGGI) TO COVER  
ADDITIONAL SOURCES

mate change will take a serious toll on New York's public health, natural ecosystems, coastal areas, agriculture, transportation infrastructure, water supplies, and economy.<sup>56</sup> While New York cannot solve the climate problem alone, it has a practical and moral obligation to address this challenge.

New York has taken a number of steps to reduce greenhouse gas emissions and advance energy efficiency and clean renewable energy. These measures include: establishing the state's "45 by 15" initiative, which sets a goal of meeting 45% of New York's energy needs by 2015 through a combination of renewable energy (30%) and reduced energy demand (15%); participating in the Regional Greenhouse Gas Initiative (RGGI); expansion of the state's net metering laws; passage of the Green Jobs-Green New York Act, providing funding for home weatherization programs; commencement of PSC proceedings to develop Energy Efficiency Portfolio Standards (EEPS); and the adoption of California's vehicle emission standards.

In recognition of the scientific consensus on the hazards of climate change, and the importance of New York's leadership role, Governor Paterson issued Executive Order 24 in 2009, establishing a statewide goal of reducing greenhouse gas emissions by at least 80% below 1990 emissions levels by 2050, as recommended by the IPCC. EO 24 created a Climate Action Council, comprised of over a dozen state agencies and authorities, to develop a Climate Action Plan to meet this goal. The Council, with the assistance of an advisory panel and numerous technical work groups, met throughout 2010 and issued an interim report on the Climate Action Plan in November.<sup>57</sup> The Plan itself will not be finalized until 2011, which means that the incoming administration will have a significant opportunity to place its own stamp on the final Climate Action Plan.

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## SOLUTION

***The new governor should renew EO 24 and amend it to include interim reduction goals, starting with at least a 25% reduction in greenhouse gas emissions below 1990 levels by 2030.***

Executive Order 24 is commendable for its goal of reducing emissions 80% by 2050 and for commencing an ambitious planning process for transitioning to a carbon-free economy by 2050. The scale of the challenge is daunting, in large part because of the uncertainty about which technologies will be available and feasible in the future.

However, the faster the state can make deep reductions in greenhouse gas emissions, the greater the long-term benefit both environmentally and economically. California and other states have adopted policies to reduce emissions 20% by 2020. While long-term planning is necessary and prudent, the greatest investment and focus must be on near-term strategies to achieve early reduction of emissions. The costs of early and aggressive action are far less than the economic costs of inaction.<sup>58</sup> Setting measurable benchmarks and achieving them will ensure that we are well on our way toward achieving the 80 by 2050 long-term goal.

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## SOLUTION

***The Climate Action Plan must ensure that New York achieves these reductions by 2020 through a combination of energy efficiency and clean renewable energy.*** Meeting the climate change objectives of EO 24 will require more investment in energy efficiency and clean renewables, as we discuss in our recommendations on Clean Energy. Unfortunately, some industry groups have attempted to use the Climate Action Plan as a Trojan horse to advance controversial energy sources such as carbon capture and sequestration (CCS), nuclear power, and waste-to-energy (WTE) incinerators. These approaches are expensive, environmentally hazardous, and, at least in the case of CCS, unproven.

There are cleaner, safer, less expensive and more environmentally sustainable options that can be implemented far more quickly. These are the approaches the state should rely on to reach its 2020 emissions reduction target, and maximize in its long range plan. A recent study by Synapse Energy Economics shows that the U.S. can achieve 80% emissions reductions in the electric power sector by 2050 by closing all coal fired power plants and without building any new nuclear plants.<sup>59</sup> This study also retires all nuclear plants in the Northeast, while energy efficiency and expanded renewable energy meet electric needs. The overall plan saves consumers money and reduces pollution and accident risks.

According to another study published this year, the cost of solar photovoltaics has declined to the point where the cost of electricity from new solar installations is cheaper than power from new nuclear plants.<sup>60</sup> At the same time, many proposals for new nuclear plants in the U.S. have been shelved in recent months because they are not economically viable, including one that is identical to the new nuclear plant proposed for Oswego.<sup>61</sup> As for coal, CCS remains a concept, not a viable technology.<sup>62</sup> Waste-to-energy incinerators, as discussed below, are not the answer either.

The new governor should avoid these distractions, and focus the state's attention and resources on achieving early and steep reduction in emissions through energy efficiency and clean renewable technologies.

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## SOLUTION

***The Climate Action Plan should embrace a solid waste minimization strategy to significantly reduce greenhouse gas emissions.*** The state's 2010 Draft Solid Waste Management Plan<sup>63</sup> emphasizes the greenhouse gas benefits of waste prevention, reuse, recycling and composting. These are the state's preferred approaches to solid waste management, and if the recommendations of the Draft SWMP are implemented, as much as 90% of the solid waste generated in New York can be reduced, composted or recycled.

Reducing the amount of waste going into our landfills and incinerators is “one of the fastest, cheapest, and most effective strategies to protecting the climate.”<sup>64</sup> According to a recent report, significantly decreasing disposal in landfills and incinerators can reduce greenhouse gas emissions equivalent to the closing of 21% of all U.S. coal-fired power plants.<sup>65</sup> Because methane gas is 72 times more potent a greenhouse gas than carbon dioxide, composting food scraps and yard waste rather than landfilling these materials will have enormous climate benefits. In addition, waste prevention initiatives, especially packaging reduction, will have huge “upstream” benefits, since enormous amounts of energy are used in the production and transport of goods and materials.

Burning garbage (known as “waste-to-energy”) is not a viable solution to global warming. The state’s policy goal is to minimize solid waste; in contrast, garbage incinerators require a steady supply of “fuel.” Recycling and composting generate four to five times the energy that waste-to-energy incineration produces, and create ten times as many jobs.<sup>66</sup> In addition, mixed municipal solid waste is a very dirty fuel source: Burning garbage releases more carbon dioxide than burning coal.<sup>67</sup>

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## SOLUTION

***The new governor should expand the Regional Greenhouse Gas Initiative to include additional sources.*** The Regional Greenhouse Gas Initiative (RGGI) is based on a successful model for using market forces to drive down carbon dioxide emissions. However, it currently only applies to the power sector. The new governor should direct the Department of Environmental Conservation to amend the RGGI regulations (6 NYCRR Part 242) to require all facilities that emit more than 25,000 metric tons of CO<sub>2</sub> per year to comply with the program’s requirements. This would both reduce emissions in New York and generate additional funding to expand investments in clean energy programs. New York should work with the other participating RGGI states to expand the program to new sources in each of the states.

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## ENDORSED BY

**Alliance for Clean Energy New York, Citizens’ Environmental Coalition, Environmental Advocates of New York, League of Women Voters of New York State**

# Clean Energy

## SUMMARY

Energy efficiency is the most cost-effective and environmentally benign means of meeting New York's energy needs. However, the state retires older and dirtier sources of power, New York will need to develop new sources of energy to replace them. The state has adopted a "45 by 15" goal of reducing electricity consumption 15% below projected levels by 2015, and generating 30% of New York's energy through renewable sources by 2015. Investments in energy efficiency and clean renewable technologies will save consumers money, improve air quality, protect New Yorkers' health, create new jobs and spur economic development. If the state is to achieve its Executive Order 24 goal of reducing greenhouse gas emissions by 80% by 2050, there is no time to waste in reaching and surpassing the state's clean energy goals.

## PROBLEM

*New York is not where it needs to be to meet its goals of "45 by 15." New York's past three governors have each made bold policy statements supporting renewable energy and energy efficiency.* Governor Pataki started the ball rolling in 2003 by proposing the state's Renewable Portfolio Standard (RPS). In 2004, the Public Service Commission (PSC) approved the state's RPS, requiring 25% of the electricity consumed in New York to be generated through renewable energy by 2013. In 2007, Governor Spitzer announced the "15 by 15" initiative, with the goal of reducing electricity use in New York 15% below projected levels by 2015. In June 2008, the PSC launched proceedings to establish an Energy Efficiency Portfolio Standard (EEPS) for New York to achieve this goal. In January 2009, Governor Paterson proposed expanding the state's RPS from 25% to 30% and extending the deadline for attaining this goal to 2015 which, combined with the 15% reduction in electricity use, would call for the state to meet 45% of its energy needs by 2015 through energy efficiency and renewable energy: hence the shorthand, "45 by 15." The PSC approved this new RPS goal last December.

## SOLUTIONS:

ENSURE THAT THE STATE MEETS OR EXCEEDS ITS "45 BY 15" CLEAN ENERGY GOALS.



ASK THE NEW YORK STATE PUBLIC SERVICE COMMISSION TO ADD TWO MEMBERS WITH BACKGROUNDS IN CLEAN ENERGY AND CONSUMER PROTECTION.



DIRECT ALL OF THE STATE'S ENERGY FUNDS TOWARD ENERGY EFFICIENCY AND CLEAN RENEWABLE ENERGY.



ASK THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (NYSERDA) TO WORK WITH COMMUNITY-BASED ORGANIZATIONS, SMALL BUSINESSES AND CONSUMERS TO IMPROVE PROGRAM DELIVERY.

While these policy goals are laudable, New York is not on track to meet them.

In 2004, when the RPS was adopted, the state was already at a baseline of obtaining 19.3% of its electricity from renewable sources<sup>68</sup> – primarily from the Niagara Falls and Massena hydroelectric facilities. As of 2009, the proportion of renewable energy had increased to just 22% – only 3% higher than when the state started.<sup>69</sup> According to NYSERDA, the state will have met 42% of its 2015 renewable energy target of 10 million megawatt hours (MWh) by the end of 2010.<sup>70</sup> However, according to the PSC, if the state fails to meet its 2015 energy efficiency goals, achieving the renewable energy goal of 30% by 2015 would require a “substantially higher and more costly 17.0 million MWh target.”<sup>71</sup>

Advocates have been concerned by the PSC’s slow progress in the EEPS proceedings. In one example of early start-up delays, the PSC initially prohibited the use of compact fluorescent lighting fixtures (CFLs) in multi-family housing energy efficiency programs, in favor of more energy-efficient LEDs. The PSC subsequently modified its order, allowing NYSERDA and Niagara Mohawk to use CFLs in their EEPS programs in addition to LEDs (requiring two separate PSC proceedings), and finally lifted the prohibition altogether in June 2010. Although the pace has picked up significantly this year, as of June 2010, New York was still only 24.1% of the way toward its 2015 energy efficiency goals.<sup>72</sup> Meanwhile, energy demand is projected to increase by nearly 1% annually.<sup>73</sup>

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## SOLUTION

***The governor needs to deliver on the clean energy promise to New York. The new governor needs to ensure that the state meets its “45 by 15” clean energy goals.*** Prioritizing energy efficiency and clean renewable energy will benefit consumers, public health and the environment in New York, and is essential for reaching the state’s greenhouse gas emissions reduction goals set forth in Executive Order 24 (see section on Climate Change). Clean technology also offers economic development opportunities for New York. It is estimated that 150,000 green jobs have already been created in New York’s clean energy programs,<sup>74</sup> and implementing the state’s renewable energy policies will generate 50,000 new jobs.<sup>75</sup>

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## SOLUTION

***The governor should call on the Chairman of the Public Service Commission to request the addition of two new members with backgrounds in energy efficiency and/or renewable energy and consumer protection in order to expedite the energy efficiency proceedings.*** The Public Service Commission makes key decisions on implementing the state’s energy policy. Delays at the PSC have slowed down the implementation of energy efficiency programs in New York unnecessarily.

There needs to be a top-to-bottom commitment to clean energy within the Department of Public Service in order to meet the “45 by 15” goals and push for further reductions in energy consumption. Adding two new members to the PSC with the needed expertise would greatly enhance the PSC’s capacity to move forward aggressively on the state’s clean energy commitment. Currently, the commission consists of five members; however, the governor can appoint two additional commissioners “whenever the commission shall certify to the governor that additional commissioners are needed for the proper disposition of the business before it.”<sup>76</sup>

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## SOLUTION

***The governor should ensure that the state’s energy funds are directed toward energy efficiency and clean renewable energy. Most of the major funding streams for clean energy programs in New York are administered by NYSERDA, and therefore not directly under the governor or legislature’s control.*** These include roughly \$175 million per year from the Systems Benefit Charge for energy efficiency and \$100 million per year from the RPS surcharge for renewable energy, both of which are surcharges on utility bills.<sup>77</sup>

Proceeds from the auction of CO<sub>2</sub> allowances through the Regional Greenhouse Gas Initiative (RGGI) are another critical source of funding for clean energy programs. Unfortunately, this revenue source has already proven vulnerable to diversion from its intended purpose. In 2009, Governor Paterson broke his promise not to raid the RGGI funds, and proposed using \$90 million to plug the state’s budget gap. This figure might have been higher, were it not for the fact that \$112 million in RGGI funds had already been dedicated to implementing the newly-enacted Green Jobs-Green New York energy retrofit program.<sup>78</sup> Despite opposition from clean energy advocates, the legislature approved the budget amendment. The new governor should ensure that RGGI funds are used for their intended purpose.

In addition, Governor Paterson pledged \$6 million in state funds to support a proposed carbon capture and sequestration (CCS) demonstration project in Jamestown, New York that is opposed by dozens of clean energy, health, consumer and environmental groups due to its speculative technology, excessive costs, and potential health and environmental risks. This money could be far better spent on investments in solar or wind development.

Finally, the governor should weigh in with the PSC to oppose any petitions to classify “waste-to-energy” (garbage incineration) as a renewable energy source under the RPS. Separate and apart from concerns about the environmental impacts of burning garbage, discussed elsewhere in this document, this action could potentially drain substantial resources away from solar, wind and other clean renewable energy projects. Including waste-to-energy in the RPS would allow the state’s existing garbage incinerators, many of which are failing financially, to petition the PSC for funding under the RPS “maintenance” category if they can demonstrate financial hardship. This would drain significant resources away from clean and renewable technologies.

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## SOLUTION

*The governor should ensure that NYSERDA works with community-based organizations, small businesses, and consumers to improve program delivery.* As the agency that administers most of New York’s energy efficiency and renewable programs, NYSERDA gives out millions of dollars each year in residential and commercial assistance. It is incumbent upon NYSERDA to work closely with the intended program recipients to ensure that its programs are properly designed to meet their needs. For instance, NYSERDA should work with community-based organizations to ensure that the Green Jobs-Green New York program is properly designed to deliver retrofits to low- and moderate-income households. NYSERDA should also work with small businesses to identify and remove barriers that keep small businesses from participating in energy efficiency programs. Of particular interest to both constituencies will be the development of guidelines and underwriting criteria for on-bill financing, a way for utility customers to amortize the costs of energy efficiency measures on their bills over time.<sup>79</sup> It’s critical that NYSERDA’s programs effectively reach and serve the people that need them.

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## ENDORSED BY

**Alliance for Clean Energy New York, Citizens’ Environmental Coalition, Environmental Advocates of New York, League of Women Voters of New York State**

# Natural Gas Drilling

## SUMMARY

Natural gas drilling in New York State is not new; however, technological advancements in the gas extraction process – high-volume horizontal drilling and high volume hydraulic fracturing or “hydrofracking” – make it possible and economically viable to extract gas from otherwise hard-to-access shale formations. Some sectors are hoping this will produce a much-needed economic boon for New Yorkers, especially in economically hard-hit areas of the state; however, as we have come to learn, there are significant environmental concerns that need to be addressed.

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## PROBLEM

*The recent interest in natural gas drilling in the Marcellus and Utica Shale formations is a cause for concern, not only in the Catskill and Delaware Watersheds within the Catskill Mountains, but throughout most of Central and Western New York.*

High-volume hydraulic fracturing carries a potentially huge environmental price tag. Using hydraulic pressure to fracture the shale layer so trapped gas can escape, the process involves high-pressure injection of millions of gallons of water, sand and toxic chemicals into horizontal wells. Of concern is where that water comes from and what the drilling companies do with it after it is recovered – now loaded with chemicals and other contaminants. This intense industrial activity and the potential negative impacts to the environment, especially to local waterways and groundwater, require a better assessment than the DEC has conducted in its draft Supplemental Generic Environmental Impact Statement (dSGEIS) and stronger regulations. However, the New York State Department of Environmental Conservation (DEC) is simply unprepared to handle the potentially massive scale of drilling activities, lacking the personnel and technical resources necessary for proper oversight and enforcement.

## SOLUTIONS:

WITHDRAW THE INADEQUATE DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT FOR SHALE DRILLING AND DIRECT DEC TO START ANEW.



ENSURE THAT NO PERMITS ARE ISSUED FOR HYDRAULIC FRACTURING FOR NATURAL GAS DRILLING UNLESS AND UNTIL REGULATIONS ARE IN PLACE THAT PROTECT ALL NEW YORKERS.



PROHIBIT DRILLING IN THE UNFILTERED NYC AND SKANEATELES WATERSHEDS AND OTHER CRITICAL ENVIRONMENT AREAS.



ENSURE THAT DEC HAS ADEQUATE PERSONNEL AND TECHNICAL RESOURCES NECESSARY FOR PROPER OVERSIGHT AND ENFORCEMENT.

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## SOLUTION

*With so many problems reported in other states and so much still left unknown about the consequences of drilling, promises of cleaning up after the fact don't make sense: economic, environmental or common sense.* Policymakers must prevent a disaster from happening in New York: DEC should scrap the dSGEIS and take a critical look at not only this troubling drilling practice but its entire drilling program. Rather than putting so much at risk, the state must ensure that its water and land are preserved so that generations ahead may use them.

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## BACKGROUND

Marcellus Shale, a natural subterranean shale formation that extends through New York, Ohio, Pennsylvania, and West Virginia, and the Utica Shale formation, which overlaps a portion of the Marcellus Shale formation and runs from Quebec, Canada through New York to the middle of Pennsylvania, are rich in natural gas. Geologists have known about these natural gas deposits for some time; however, once deemed impractical for gas extraction, these plays are now seen as viable thanks in part to advancements in technology. The process known as high-volume, hydraulic fracturing or hydrofracking requires injecting large quantities of water, sand and chemicals into drilled natural gas wells. The intense pressure from the fracking solution cracks the shale thousands of feet underground and results in the increased flow of gas. However, this new extraction method, which requires deeper, more complex drilling and substantially more water than conventional drilling, may come at a steep environmental price.

In 1992, the DEC created a Generic Environmental Impact Statement (GEIS) to govern oil and gas drilling in New York. In response to the threats of horizontal drilling and high-volume hydraulic fracturing, DEC drafted a Supplemental GEIS (dSGEIS) that outlined proposals for woefully inadequate safety measures, substandard protections, and insufficient mitigation strategies.

The dSGEIS is severely lacking, it:

- did not propose any new regulations and did not acknowledge that DEC does not have the staff to adequately oversee drilling;
- did not meet the requirements of State Environmental Quality Review Act (SEQRA) and falls short of safeguarding the environment;
- did not adequately analyze and address the source of the large quantities of water needed;
- did not require the use of non-toxic chemicals wherever possible; needs a more complete listing of the use rates of the chemicals, as well the quantities of chemicals that will be used;
- did not adequately analyze and address the ability to handle and dispose of flow-back water containing toxics, including naturally occurring radioactive materials (NORMs);

- did not fully address the potential cumulative impacts associated with spills of brine, spent fracturing fluids, chemical additives and petroleum products;
- did not adequately analyze and address increased stormwater pollution from wastewater transport or stormwater runoff on the highly erodible soils found within the shale areas;
- failed to re-analyze the potential impacts on air quality, and propose detailed mitigation measures, such as diesel particulate filters and other emissions controls;
- did not provide a comprehensive analysis of all potential cumulative impacts to wildlife associated with noise and habitat destruction;
- did not adequately analyze and address the economic costs associated with cleaning up environmental contamination; and
- did not adequately consider alternatives.

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## **ENDORSED BY**

**Environmental Advocates of New York, League of Women Voters of New York State, Riverkeeper, Inc.**

# Diesel Emissions

## SUMMARY

Diesel emissions pose a unique and significant threat to public health and our environment. While New York and the nation have taken some significant steps to help reduce harmful diesel emissions, such as the New York State Diesel Emissions Reduction Act of 2006 (DERA), more must be done.

The new governor should build on these efforts by issuing an executive order mandating that all construction projects carried out by the state or using state funds be done using clean construction equipment, as well as working with the legislature to create a fund to help retrofit existing diesel vehicles and equipment in New York using the best available retrofit technology.

## SOLUTIONS:

REQUIRE THAT ALL CONSTRUCTION PROJECTS INVOLVING STATE FUNDS BE CARRIED OUT USING CLEAN DIESEL VEHICLES AND EQUIPMENT.



SUPPORT THE CREATION OF A DIESEL RETROFIT FUND TO HELP CLEAN UP DIRTY DIESEL VEHICLES AND EQUIPMENT IN NEW YORK.

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## PROBLEM

*Diesel emissions are a serious threat to public health and the environment.* As the workhorse of the economy, diesel engines, especially construction equipment, will play a major role in building the next generation of infrastructure projects in New York communities. However, pollution from heavy diesel vehicles and construction equipment poses a serious threat to communities and project workers alike. Diesel pollution is associated with numerous adverse health effects including lung cancer, asthma attacks, heart attacks, and premature death.<sup>80</sup> Heavy construction equipment operators face an increased risk of lung disease from their exposure to diesel exhaust.<sup>81</sup>

More than 88 million Americans live in counties that violate federal health standards for particulate pollution,<sup>82</sup> with New York State ranking among the worst states in the nation for this deadly form of pollution.<sup>83</sup> Each year in New York, diesel emissions are responsible for thousands of non-fatal heart attacks, nearly 40,000 asthma attacks and more than 1,000 preventable premature deaths.<sup>84</sup> Diesel exhaust includes nitrogen oxides and sulfur dioxide, and the black carbon soot in diesel exhaust is recognized as a potent climate-warming agent.<sup>85</sup>

According to the U.S. Environmental Protection Agency, over 37 percent of land-based particulate matter (PM<sub>10</sub>) comes from construction equipment. Nationwide, there are over 2 million diesel engines used in construction equipment; most lack modern particulate pollution controls,<sup>86</sup> and many of those are right here in New York.

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## SOLUTION

***New York needs clean construction requirements.*** State-funded construction projects should minimize any adverse impact on air quality in our communities by requiring that clean equipment be used to carry out such projects. The next governor should make sure that happens by issuing an executive order requiring that all state-funded construction projects be done utilizing clean equipment, guided by the model clean construction language outlined by the regional Northeast Diesel Collaborative (final guidelines expected to be released this year). The state should prioritize the funding of projects being carried out in areas of PM2.5 non-attainment.

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## SOLUTION

***Create a Diesel Retrofit Fund.*** Technology exists to clean up dirty diesel vehicles and equipment, and much of it is made right here in New York. For example, diesel particulate filters (DPFs) can eliminate 90 percent of the dangerous particulate emissions from diesel engines.<sup>87</sup> In addition to the economic benefits that come with supporting New York's manufacturers of emissions-reduction technology, estimates show that for every dollar spent on reducing particulate matter pollution from diesel engines, \$12 would be avoided in health damages.<sup>88</sup> Investing in diesel retrofits makes economic sense for New York, and would create a financial incentive for vehicle and equipment owners who may not be compelled to clean up their equipment under the current regulations, as well as to help speed up compliance with the DERA requirements that are currently being phased-in.

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## BACKGROUND

In 2006, New York took a significant step by passing DERA, requiring that state owned, leased, or contracted vehicles and equipment use ultra-low sulfur diesel (ULSD) fuel, and the best available retrofit technology (BART) by the end of 2010, or be taken out of use by the end of 2013 if granted a waiver. However, DERA came with a long list of exemptions, including virtually all construction equipment, and did nothing to reduce emissions from privately owned vehicles and equipment not under state contract. Instituting clean construction requirements via executive order and creating a dedicated fund to help diesel vehicle and equipment owners fund the cleanup of their dirty diesels are the logical next steps for New York to take in reducing diesel emissions.

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## ENDORSED BY

**American Lung Association in NY, Clean New York, Citizens' Environmental Coalition, Environmental Advocates of New York, League of Women Voters of New York State**

# Protecting Utility Consumers: Create a Citizens Utility Board

## SUMMARY

In 1991, Governor Mario Cuomo issued Executive Order No. 141, establishing a Citizens Utility Board (CUB). CUB's purpose was to provide a voice for ratepayers in the regulatory process. Through CUB, consumers and small businesses had a representative before the New York State Public Service Commission (PSC), ensuring that their viewpoint was heard when decisions impacting millions of consumers were being made.

## SOLUTION:

GIVE UTILITY RATEPAYERS A VOICE BY REVIVING A CITIZENS UTILITY BOARD (CUB).

As an independent entity entirely reliant upon voluntary contributions, the key section of Executive Order 141 gave CUB access to state agency mailings to recruit supporters. However, in 1995, Governor Pataki revoked this privilege. He claimed that since the goal of the Public Service Commission was to protect consumers, allowing CUB even this minimal privilege was unnecessary. However, the PSC's fixation on deregulation in recent years has made it increasingly apparent that its members care more about the partisan ideology of their appointer than what is best for the nineteen million other people who they supposedly represent. The apparent demise of the Public Utility Law Project (PULP) leaves a huge void for utility consumers, particularly low income ratepayers, and underscores the need for CUB.<sup>89</sup> The new governor should re-establish CUB in order to give typical rate-paying New Yorkers a voice.

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## PROBLEM

*New York's system of monitoring and regulating electric and telecommunications utilities is poorly understood by the public and meaningful participation in the decision-making process is virtually impossible.* The promises of deregulation of the electricity marketplace have not resulted in significant consumer choice, lower costs for residential consumers, or better service. Landline phone service and broadband Internet service are spotty or non-existent in some areas of the state and the specter of phone company buyouts could leave consumers upstate – particularly seniors and low-income residents – without affordable phone service. The public needs to better understand how New York's utility marketplace works, what the state's Public Service Commission and the Department of Public Service staff are doing to protect consumers and how to participate in decisions that affect the public's interest.

Moreover, controversies centering on the state's utility regulator raise concerns that industry lobbyists wield too much influence at the commission and that there have been instances when pre-

vious administration's may have improperly interfered with the commission's decision making on behalf of the industry.<sup>90</sup>

Proponents of deregulation promised that the free market would bring lower rates to consumers. An analysis of the non-profit Independent Service Operator ("ISO"), which oversees the phenomenally complex structure and process established for setting the prices paid to wholesale electric producers, estimated that New Yorkers have overpaid for electricity some \$2 billion due to the way rates are set under the current system.<sup>91</sup>

Utility watchdogs believe that New York's deregulated marketplace is rife with abuses. A recent example is the price-fixing case brought by the U.S. Justice Department against KeySpan Energy for overcharging New York utility customers some \$300 million.<sup>92</sup> Another recent example is the padding by National Grid of its \$361 million rate hike request, which included \$26 million dollars in inappropriate expenditures, including shipping of an expensive wine collection.<sup>93</sup>

Finally, it is incredibly difficult for typical New Yorkers to remain on top of the highly technical goings-on at the PSC. And due to their usual meeting time, 10:30 AM,<sup>94</sup> the average citizen has no way to testify in front of them. The only people who can attend on a regular basis are most likely those whose job depends on it, i.e. industry lobbyists. They probably are not the best representatives of utility customers.

Citizens Utility Boards ("CUBs") in other states have saved consumers and small businesses billions of dollars since their advent in the early 1980s. For example, the Oregon Citizens Utility Board has saved that state's ratepayers \$3.9 billion since 1984.<sup>95</sup>

The Wisconsin CUB has also saved that state's residential, farm and small business ratepayers millions of dollars. In 2009 alone, Wisconsin CUB's intervention before the state's Public Service Commission reduced electric and gas rate hikes by \$38 million.<sup>96</sup>

The Illinois CUB helped save that state's consumers millions of dollars on their phone bills and energy costs, including leading the fight to knock down a gas utility rate hike by about \$60 million.<sup>97</sup>

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## SOLUTION

***New York needs a re-energized CUB – a nonprofit, nonpartisan, ratepayer-directed organization with a clear mission: to represent the interests of residential utility customers across the state.*** CUBs empower utility ratepayers by organizing them into democratically governed advocacy groups. They give consumers an effective voice in regulatory proceedings concerning utilities by arming them with the kind of expertise normally afforded only by the utilities, state regulatory commissions and special interest intervenors. CUBs afford consumers the opportunity to make an impact on utility rate proceedings and policy debates. They also provide a forum for residen-

tial ratepayers to coordinate their efforts, control rates and establish policies that benefit consumers.

The most essential part in re-energizing CUB will be to once again grant it access to state agency mailings. The state should also publicize CUB's existence through its websites and other means to maximize public awareness of CUB's mission and work. This will provide an inexpensive medium for reaching out to millions of New York households.

The successes of CUBs in other states – saving billions of dollars for residential and small business consumers – is the clearest evidence that independent, voluntarily funded ratepayer organizations are an incredibly effective way to reduce consumer utility costs, reduce energy use, make the marketplace more competitive and supplement state agency utility oversight. The new governor should use his existing authority to reinvigorate CUB in New York.

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## **ENDORSED BY**

**Consumers Union**

# Solid Waste Reduction

## SUMMARY

New York is not doing enough to encourage recycling, composting, reuse and waste prevention and has failed to meet the goals established under the State Solid Waste Management Act. Instead, most of the waste generated in New York is buried, burned or shipped out of state for disposal. New York State remains the biggest exporter of solid waste in the United States.<sup>98</sup> In recent years, the state has made some notable efforts to reverse this trend. Legislation was adopted to expand New York's bottle deposit program, create a new e-waste collection system, and require retailers to collect and recycle plastic bags. In addition, the New York State Department of Environmental Conservation (DEC) issued a draft solid waste management plan in 2010 that set ambitious new goals for materials recovery in New York.<sup>99</sup> It is incumbent on the next administration to keep this momentum moving forward.

### SOLUTIONS:

BAN THE DISPOSAL OF RECYCLABLE MATERIALS AND YARD WASTE IN LANDFILLS OR INCINERATORS.



ESTABLISH A MORATORIUM ON NEW INCINERATORS AND EXPANSIONS, AS WELL AS EXPANSIONS OF MAJOR LANDFILLS.



INCREASE FUNDING TO LOCAL GOVERNMENTS TO EXPAND THEIR WASTE PREVENTION, REUSE, RECYCLING AND COMPOSTING CAPABILITY.

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## PROBLEM

***Only 20% of household waste in New York is recycled, far below the rate the state should be achieving.*** After the Solid Waste Management Act of 1987, the state set a goal of 50% reduction and recycling of its waste stream by 1997. But, according to the DEC, only about 20% of household waste in New York is currently being recycled.<sup>100</sup> The rest is disposed of at landfills and incinerators, or shipped out of state for disposal.

Reducing waste and recovering materials from the waste stream for reuse and recycling, rather than burying or burning them, offers the greatest environmental and economic benefits. Recycling not only conserves natural resources and extends the life of landfills, it also reduces energy use and greenhouse gas emissions. Recycling conserves four to five times the amount of energy that incinerating materials generates<sup>101</sup> and is considered one of the least expensive abatement options available for reducing greenhouse gas emissions.<sup>102</sup> In addition, recycling creates ten times the number of jobs, per ton, than landfilling or incineration.<sup>103</sup>

By some estimates, more than 90% of what is in the household waste stream is recyclable or compostable.<sup>104</sup> While most New Yorkers now have access to some form of recycling option, there clearly needs to be substantially more investment in collection infrastructure, an ongoing commitment to public education and stronger enforcement measures in order to improve the state's recycling rate. In particular, the state needs to develop composting and anaerobic digestion facilities for processing organic materials, such as food scraps and yard waste. Diverting organics from the waste stream will significantly reduce methane emissions from landfills. Composting also generates valuable soil amendments and anaerobic digestion produces both energy and usable compost.

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## SOLUTION

***Ban the disposal of recyclable materials and yard waste in landfills or incinerators.*** The new governor should direct the DEC to update the state's regulations for solid waste management facilities (6 NYCRR Part 360) to restrict the disposal of yard trimmings and source-separated recyclables in solid waste management facilities, and to restrict other recyclable and organic materials as recycling infrastructure is developed or product stewardship programs are established.

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## SOLUTION

***Establish a moratorium on new incinerators and expansions, as well as on expansions of major landfills, until the state reaches reduces its waste generation by 85% from current levels through waste prevention, recycling and composting.*** The new governor should establish a moratorium on the processing of permit applications or other approvals for new incinerators or expansions, including newer, commercially unproven thermal technologies such as gasification, pyrolysis and plasma arc, until the state reaches its recycling goals. The moratorium should also extend to the expansion in capacity of the state's major landfills exceeding one million tons per year disposal.

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## SOLUTION

***Increase funding to local governments to expand their waste reduction, reuse, recycling and composting capability.*** In FY 2010-11, the state appropriated \$6.64 million in the Environmental Protection Fund (EPF) for municipal recycling, a 39% decrease from the preceding year. The new governor should dedicate additional resources for these efforts through the EPF

and other avenues. Other potential funding sources for recycling efforts include unclaimed deposits from the bottle bill, new packaging taxes, an environmental bond act, and working with the Regional Greenhouse Gas Initiative (RGGI) to include composting as an eligible carbon offset category.

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## **ENDORSED BY**

**Citizens' Environmental Coalition, Environmental Advocates of New York, League of Women Voters of New York State**

# Toxic Waste Cleanups

## SUMMARY:

The new governor will inherit a toxic legacy passed down over many generations: tens of thousands of contaminated sites across the state, blighting communities and endangering health and drinking water supplies. The challenge for the new governor will be to rebuild the New York State Department of Environmental Conservation's (DEC) capacity to enforce and monitor the state's environmental cleanup and spill prevention programs, and to put in place safe and protective cleanup standards for contaminated sites. These standards are up for review in 2011 and should be updated to reflect the most current scientific information about the health hazards of exposures to toxic chemicals. In addition, the costs of the Brownfield Cleanup Program do not appear to be justified by the small number of cleanups occurring. New York's taxpayers deserve more for their money than what this program is delivering. More needs to be done to control how much money is spent on redevelopment tax credits and which projects they go to fund; at the same time, DEC must be provided adequate resources to oversee and monitor site cleanups.

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## PROBLEM

*Governor Paterson has proposed to eliminate the state's participation in the federal Superfund as a means of reducing the DEC workforce.* The DEC plays a significant role at many federal Superfund sites. DEC staff collects field data, conduct biological and chemical monitoring, review proposed site remediation plans and agreements, and conduct oversight activities to ensure that site cleanups meet all requirements and that local communities are protected. When there is a responsible party (RP) for that site, as in the case of General Electric and the Hudson River PCB Superfund Site, for example, the RP typically reimburses both the state and federal government for all of their expenses related to the cleanup. In other words, the state would not be saving any money by pulling back on its participation, it would only be achieving staff reductions. In fact, the state stands to lose a lot more than it gains from this move. The state is relying on data col-

## SOLUTIONS:

MAINTAIN THE NEW YORK'S  
ROLE IN STATE AND FEDERAL  
SUPERFUND PROGRAMS.



DIRECT THE NEW YORK STATE  
DEPARTMENT OF  
ENVIRONMENTAL  
CONSERVATION (DEC) AND  
THE DEPARTMENT OF HEALTH  
(DOH) TO UPDATE THE SOIL  
CLEANUP STANDARDS TO BE  
PROTECTIVE OF PUBLIC  
HEALTH AND THE  
ENVIRONMENT.



PROPOSE REFORMS TO THE  
BROWNFIELD CLEANUP  
PROGRAM IN THE 2011-12  
EXECUTIVE BUDGET,  
INCLUDING CAPPING THE  
TOTAL ANNUAL  
REDEVELOPMENT TAX CREDITS,  
AND PROVIDING ADEQUATE  
FUNDING FOR THE DEC TO  
OVERSEE CLEANUP PROGRAMS.

lected by DEC field staff to support its Natural Resource Damages (NRD) claims against major polluters like GE. Hundreds of millions of dollars are at stake in the Hudson River NRD alone. From an environmental and public health perspective, the impacts of this move are serious: sites will take longer to clean up, remediation will be more costly, and there will be greater risk of contaminated plumes affecting communities and drinking water supplies. This is a losing proposition, both environmentally and fiscally.

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## PROBLEM

***The state's cleanup standards do not adequately protect public health and the environment. In 2003, the Legislature and Governor Pataki created the state's Brownfield Cleanup Program (BCP) and refinanced the existing State Superfund.*** The BCP provides tax credits and other incentives to clean up and redevelop contaminated properties known as brownfields. The level of cleanup is based on the anticipated future use of the site (e.g., residential, commercial or industrial).

Unfortunately, the regulations, which were finalized in December 2006 just weeks before Governor Pataki left office, disregard the clear directive of the law, which requires contaminant-specific Soil Cleanup Objectives (SCOs) that protect people, especially children, as well as drinking water, rivers and streams, and fish and wildlife. Instead, the cleanup standards that were adopted allow unsafe levels of toxic chemicals to remain at sites, putting future users of these sites and surrounding properties at risk. The industrial cleanup standards for some pollutants, such as lead and cyanide, allow so much contamination to remain on site that in years past they would have triggered a cleanup.<sup>105</sup>

NYPIRG and other organizations submitted extensive technical documents during the rule-making process critiquing the proposed soil cleanup standards, and subsequently went to court challenging them. While the lawsuit was partially successful in challenging the remedial program requirements, the soil cleanup standards remained in place and are now used not only for all of the state's remedial programs, including the State Superfund program, but also by New York City's brownfield cleanup program.

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## PROBLEM

***The state is not getting its money's worth from this program.*** Hundreds of millions of dollars in tax credits have been awarded, with very few cleanups to show for it. According to reports by the New York State Department of Tax and Finance, developers claimed nearly \$365 million in brownfield tax credits in 2008 and 2009 alone.<sup>106</sup> Yet, while there are an estimated 10,000-30,000 brownfields in New York, in total only 68 brownfield cleanups have been completed through the Brownfield Cleanup Program.<sup>107</sup>

Reforms were made to the brownfield tax credit structure in 2008 to establish caps on the size of the redevelopment tax credits and to provide greater incentives for more stringent cleanups. However, it is hard to justify the price tag for this program at a time when the DEC lacks adequate resources to oversee the cleanups. Further steps should be taken to remove barriers to participation in the program, get more sites cleaned up, and contain costs. Many groups have advocated delinking the tax credits from eligibility to participate in the BCP.

Finally, the ability of the DEC to adequately monitor this program is being crippled by budget cuts. According to an internal DEC memo this spring, budget cuts could force the Division of Environmental Remediation to discontinue all field inspections and testing at brownfield sites, as well as at many other contaminated sites. Lack of state oversight would undermine compliance with the state's remedial programs, and would likely result in more contamination being left behind at many sites, including BCP sites that receive liability releases and generous tax credits.

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## SOLUTION

***Maintain the state's role in state and federal Superfund programs.*** For the entire history of the DEC, the state has been involved in identifying contaminated sites and remediating those that pose a significant threat to public health and the environment. The federal Superfund program was created in response to the public outcry over the Love Canal toxic waste site in Niagara Falls, and the State Superfund was created shortly thereafter to include sites that were not covered under the federal program. There is no justification for the state pulling out of this program. The DEC is reimbursed by responsible parties for many of its activities at federal Superfund sites. The DEC should apply for annual management assistance grants from the EPA to support its additional oversight activities at federal Superfund sites.

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## SOLUTION

***Direct the DEC and the New York State Department of Health (DOH) to review and update the soil cleanup standards for the state's Brownfield Cleanup Program.*** The state law requires the Department of Environmental Conservation to update the soil cleanup objectives every five years following at least one public hearing and a minimum 90-day public comment period.<sup>108</sup> The governor should direct the DEC and the DOH to conduct the public review process in 2011, as required by law, and update the soil cleanup standards to be protective of human health and the environment.

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## SOLUTION

***Place an annual cap on the brownfield redevelopment tax credits and make other program reforms in the 2011-12 Executive Budget.*** Provide adequate funding for the DEC to oversee cleanup

programs. The brownfield redevelopment tax credits should be capped at no more than \$100 million per year in order to reduce the state's financial exposure, and criteria should be developed for prioritizing which projects receive these tax credits. The DEC must be provided sufficient resources to monitor cleanups and perform site inspections, in order to ensure that developers are complying with the brownfield site cleanup agreements and that public health and the environment are protected. Another program reform that would result in more sites being cleaned up at less cost to the state would be to allow sites to enter the program to receive the technical and legal benefits provided through the BCP, such as the certificate of completion, liability release and agency oversight, without the tax credits.

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## **ENDORSED BY**

**Center for Health, Environment and Justice, Citizens' Environmental Coalition, Clean New York, Environmental Advocates of New York, League of Women Voters of New York State**

# Pollution Prevention

## SUMMARY

A great deal of progress has been made in developing guidelines for environmentally sustainable practices and “green” procurement policies for state agencies and authorities. These policies have had the multiple benefits of reducing pollution, saving the state money, and using New York’s purchasing power to promote environmentally beneficial products, services and technologies. The new governor should renew these policies and build on the groundwork that has been laid by previous administrations. In addition, the governor should continue to fund the New York State Pollution Prevention Institute, which helps businesses be greener and more efficient by promoting cost-effective methods to reduce waste and toxic chemical use, conserve energy, and improve performance.

**SOLUTIONS:**  
CONTINUE THE STATE’S  
ENVIRONMENTAL  
SUSTAINABILITY POLICIES AND  
PRACTICES.  
∞  
RENEW SUPPORT FOR THE  
NEW YORK STATE POLLUTION  
PREVENTION INSTITUTE.

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## PROBLEM

*New York should lead by example in its agency operations and purchasing decisions.* The state has launched a number of sustainability initiatives to encourage energy efficiency, pollution prevention and waste reduction. Several of these have been done through executive order. These include Executive Order 4; establishing a state green procurement and agency sustainability program, Executive Order 18; restricting the use of bottled water at state facilities, and Governor Pataki’s Executive Order 111; directing state agencies to be more energy efficient. Some have been required as a result of enacted legislation, such as the 2005 Green Cleaning Law. Others have been initiated at the agency level, such as the Office of General Services’ food waste composting program for cafeterias in the Empire State Plaza. In its first year of operations, this program diverted more than 43 tons of cafeteria waste from landfills, and the finished compost has been used for enriching the lawns and landscaped areas around the State Capitol and Empire State Plaza.<sup>109</sup>

Perhaps the most ambitious of these initiatives has been Executive Order 4, one of the earliest executive orders issued by Governor Paterson when he assumed office in 2008. EO4 established an Interagency Committee on Sustainability and Green Procurement, comprised of the New York State Office of General Services (OGS), New York State Department of Environmental Conservation (DEC), New York State Department of Health (DOH) and other agencies to select priority purchasing categories, develop procurement specifications, and use 100% post-consumer recycled content paper to the extent practicable. The EO also requires state agencies and au-

thorities to reduce the use of toxic chemicals, reduce waste, recycle, and conserve energy and natural resources. To help with the process, the OGS established a Sustainability and Green Procurement Advisory Council, with representatives from health, labor and environmental groups, academia, and the chemical industry. The comptroller has particularly singled out the EO 4 program for recognition because of its attention to measurable and quantifiable progress.

The Interagency Committee, which is co-chaired by the OGS and DEC, has already developed nearly two dozen specifications for electronics and appliances, transportation, and building and grounds maintenance, to serve as guidance for state agencies in their purchasing decisions and operating practices.<sup>110</sup> A particular challenge has been developing a list of priority toxic chemicals that state agencies should avoid purchasing due to their hazards to human health and the environment. Although there have been delays in the process, a great deal of work has been done and the committee is expected to adopt a priority list of toxic chemicals by the end of 2010.

In addition, Governor Spitzer launched the New York State Pollution Prevention Institute (NYSP2I) with the appropriation of \$2 million from the State Environmental Protection Fund (EPF) in the 2007-2008 state budget. The Pollution Prevention Institute, which is housed at the Rochester Institute of Technology and is a collaborative effort with SUNY Buffalo, Clarkson University, Rensselaer Polytechnic Institute, and the ten Regional Technology Development Centers located across the state, promotes cost-effective methods for businesses to conserve energy, reduce waste, find alternatives to toxic chemical use and improve performance.<sup>111</sup> The Pollution Prevention Institute helps to create and retain jobs by making small businesses more competitive and efficient while protecting the health of workers, the public, and the environment. Over the last two years, these efforts have resulted in the reduction of more than 740,000 pounds of hazardous waste and materials, and saved approximately 540,000 KWh of energy. In addition, the work has saved companies more than \$370,000 annually.<sup>112</sup>

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## SOLUTION

***The new governor should renew the existing executive orders related to green procurement and environmentally sustainable practices, direct the OGS to continue its other environmental and sustainability programs and continue to support the New York State Pollution Prevention Institute and its programs, including the Interstate Chemicals Clearinghouse.***

A great deal of progress has been made in recent years to improve the efficiency and sustainability of New York's government. These efforts should continue, and the recommendations of the Interagency Committee should remain in effect. Executive Order 4 could be strengthened by including the list of toxic chemicals that the Interagency Committee and the Green Procurement Advisory Council have identified as a priority to avoid when making purchasing decisions. The priority list provides guidance to the Committee in the development of green specifications (it is not a ban). The responsibilities of the Interagency Committee established through EO 4 could

be expanded to include oversight of EO 18, EO 111, and all other state sustainability initiatives.

In addition, the governor should include an appropriation of at least \$2 million for the NYS Pollution Prevention Institute in the 2011-12 Executive Budget and funding to participate in the Interstate Chemicals Clearinghouse to promote safer chemicals. The Clearinghouse is supported by ten states across the country, including New York, and hosted by the Northeast Waste Management Officials' Association (NEWMOA).

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## **ENDORSED BY**

**Citizens' Environmental Coalition, Clean New York, Empire State Consumer Project, Environmental Advocates of New York, Great Neck Breast Cancer Coalition, League of Women Voters of New York State.**

# Protecting New York City Watershed

## SUMMARY

The New York City watershed provides high-quality drinking water to more than nine million New York residents – nearly half the population of the state. Protecting this unfiltered water supply is an ongoing effort that requires participation from all levels of government. In terms of human benefits, one would be hard-pressed to name a more critical natural habitat anywhere on the globe. The failure to protect this essential resource would have catastrophic economic and environmental consequences for the state.

It is essential that New York continue to demonstrate its fitness to protect the watershed to qualify for a filtration waiver. Otherwise, the U.S. Environmental Protection Agency (EPA) will order that a multi-billion dollar water filtration system be built to safeguard New York City's potable water supply.<sup>113</sup>

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## PROBLEM

***Continued compliance with the Memorandum of Agreement (MOA) regarding protection of the New York City water supply.*** The 1997 Watershed Memorandum of Agreement (MOA)<sup>114</sup> represented a comprehensive effort to protect and preserve New York City's high-quality drinking water supply while preserving and enhancing the economic vitality and social character of the communities within the watershed. The MOA settled litigation brought by upstate communities, and allowed New York City to promulgate regulations and proceed with land acquisition to safeguard the watershed and protect the purity of the source of its drinking water. The likely alternative to the MOA would have been no progress on regulations or land acquisition and a filtration order from the EPA. The goal of the MOA includes supporting a watershed approach to better address water quality problems and building the capacity to develop and implement effective, comprehensive programs for watershed protection, restoration and management. Of particular concern and central to achieving this goal are: land acquisition; point and non-point source pollution control; monitor-

## SOLUTIONS:

PLEDGE THAT ALL RELEVANT STATE AGENCIES LIVE UP TO THEIR RESPONSIBILITIES IN THE LANDMARK 1997 WATERSHED MOA TO PROTECT THE DRINKING WATER SUPPLY FOR SOME 9 MILLION NEW YORKERS, NEARLY HALF OF THE STATE'S POPULATION.



ENSURE THAT DOH AND DEC HAVE ADEQUATE FUNDING AND STAFFING TO ALLOW FOR INCREASED OVERSIGHT.



ENSURE THAT THE NYC WATERSHED INSPECTOR GENERAL AND THE WATERSHED PROTECTION AND PARTNERSHIP COUNCIL ARE CONTINUED.



COMMIT THE STATE TO INCREASE LAND ACQUISITION EFFORTS IN THE WATERSHED.

ing and assessment; watershed planning, including development and implementation of TMDLs (total maximum daily loads) for phosphorus; streambank restoration; and voluntary monitoring and coordination among agencies with watershed or watershed-related programs.

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## PROBLEM

**Enforcement.** In New York State, the U.S. EPA delegated primary enforcement responsibility (primacy) of the Safe Drinking Water Act to the New York State Department of Health (DOH). Under this delegation, the DOH is chiefly responsible for implementation and enforcement of the drinking water regulations. The New York State Department of Environmental Conservation (DEC) also plays an integral role in keeping New York City on track with protecting this invaluable water supply. Unfortunately, as a result of DOH and DEC's diminished funding and staffing, the watershed is at risk.

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## PROBLEM

**Land Acquisition.** The best way to prevent development is to purchase the land; however, many environmentalists believe the present acquisition program is not aggressively pursued and does not include new land areas that are sensitive. Acquisition efforts must be increased in the Catskills, as well as the Kensico basin in Westchester County.

While New York City is primarily responsible for land acquisition in the watershed, the state can increase its own program by committing to adequately fund and vigorously pursue its acquisition program – either through fee simple or conservation easements – to ensure it succeeds.

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## PROBLEM

**Stormwater Pollution.** According to the EPA, stormwater runoff – generated by rain and snow melt flowing over impervious or non-porous surfaces – is one of the leading sources of water quality degradation in surface waters and is responsible for the impairment of more than 40% of the nation's waterways. In the New York City Watershed, it is a major threat to the drinking water supply. Stormwater runoff includes sediment and other pollutants, such as road salt, heavy met-

ENSURE COMPLIANCE WITH  
PHASE II STORMWATER  
REGULATIONS TO REDUCE  
PHOSPHORUS LEVELS IN OUR  
WATERS.



PROTECT WETLANDS BY  
LOWERING THE PROTECTION  
SIZE THRESHOLD FROM 12.4  
ACRES TO 1 ACRE.



INSTRUCT STATE AGENCIES TO  
ESTABLISH AND COORDINATE  
PHARMACEUTICAL TAKE-BACK  
PROGRAMS.



PROHIBIT NATURAL GAS  
DRILLING WITHIN THE NEW  
YORK CITY WATERSHED AND  
NEAR ITS DISTRIBUTION  
SYSTEM

als, gasoline, nutrients and antifreeze that are transported and ultimately discharged into local rivers and streams without treatment. When left uncontrolled these discharges can result in fish kills, the destruction of spawning and wildlife habitats, a loss in aesthetic value and contamination of drinking water supplies and recreational waterways that threaten public health.

The state has been attempting to address this threat to drinking water supplies under the Phase II stormwater program. Under Phase II, communities are required to develop and implement a comprehensive stormwater management program that includes six minimum measures: public education and outreach, public participation/involvement, illicit discharge detection and elimination, construction site runoff control, post-construction runoff control, and pollution prevention/good housekeeping.

With adequate funding, state expertise and vigilant oversight, the Phase II stormwater program will offer substantial protections for critical drinking water sources in the watershed.

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## PROBLEM

***Sprawl.*** Sprawl is one of the gravest threats to the water supply and to watershed communities, especially east of the Hudson River. The New York City water supply is increasingly endangered by development around reservoirs. Among other things, sprawl causes the destruction of open space, adds impervious surfaces (roads, parking lots, etc.) leading to the toxic runoff of pollutants into water bodies, and erodes the sense of community in upstate towns. New growth and development bring pollution impacts that may not be able to be mitigated. City and state officials will be risking critical and irreplaceable resources in the watershed if they continue in the present course and sprawl-style development is not curtailed.

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## PROBLEM

***Protecting Wetlands.*** A damaging consequence of over-saturation of developments and sprawl is the destruction of local wetlands. Wetlands naturally purify water by filtering out sediments, detoxifying harmful chemicals and weakening nutrients that can cause algae blooms in reservoirs. Even the smallest marsh or bog has a beneficial impact on the water supply. Safeguarding wetlands is a key element of watershed protection and to persuading the EPA that filtration is not necessary to protect the watershed.

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## PROBLEM

***Pharmaceutical Disposal.*** Proper disposal of unused pharmaceuticals is critical to protecting our waterways. Rather than just being flushed away or poured down the drain, these unused chemicals must be collected and properly disposed of so that they do not end up in our drinking water.

## PROBLEM

***Threat of natural gas drilling in or near the New York City Watershed.*** As a surface drinking water supply for half the state's population under a federal filtration waiver, the risks from natural gas drilling are too high.

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## SOLUTION

***In order to protect the drinking water supply for half the state's residents and avoid some \$10 billion in capital costs to build filtration facilities with annual operating costs estimated to be approximately \$100 million, the governor must recommit the state and its agencies to the obligations laid out in the landmark 1997 Watershed MOA, including ensuring the continuation of the NYC Watershed Inspector General and the Watershed Protection Partnership Council by renewing existing executive orders.***

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## SOLUTION

***The governor must strengthen the state's regulatory agencies by increasing financial and staffing commitments to watershed protection programs, especially in the DOH and the DEC.*** Monitoring of the enforcement and implementation role of the DOH will be critical for the new governor.

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## SOLUTION

***There must be an increased level of land acquisition by the state in the New York City Watershed.*** Given the sensitivity of this water supply and the large population that it serves, the state must step up its efforts to permanently protect buffer areas around our drinking water reservoirs. This effort can be done in coordination with New York City and local municipalities to allow for greater leverage of funding. Otherwise, as long as land remains on the market, it is a prime target for development.

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## SOLUTION

***The state must also ensure that it reacts to the threats from stormwater runoff through implementation of the Phase II program.*** Implementation of the myriad and complex Phase II stormwater requirements presents a daunting task for many in the watershed. Thus the state should commit to finding funding sources for municipalities and bringing state agencies' expertise to the aid of all the stakeholders.

New York State agencies must be compelled to employ the State Environmental Quality Review Act (SEQRA) in a far more comprehensive and consistent fashion to abide by MOA programs to more effectively address sprawl-style development and reduce impervious surface levels.

Wetlands play an important role in water quality protection, especially in an unfiltered water supply. New York State must protect these vital areas by lowering the size threshold for protection from 12.4 acres to 1 acre.

DOH and DEC must work together to ensure that pharmaceuticals do not make their way to our water supplies through enhanced coordination and by establishing pharmaceutical take-back programs.

Natural gas drilling should be banned in the New York City Watershed and near its distribution system.

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## BACKGROUND

The New York City Watershed, extending 125 miles north and west of the city, is comprised of two distinct sections: West of Hudson (WOH) and East of Hudson (EOH). The WOH Catskill/Delaware Watershed covers about 1,900 square miles and consists of the Askokan, Schoharie, Rondout, Neversink, Pepacton and Cannonsville reservoirs, which supply approximately 90% of the city's potable water to more than nine million consumers in New York City and parts of Westchester, Putnam, Orange and Ulster counties. By contrast, EOH, or the Croton Watershed located entirely east of the Hudson River, covers an area of about 375 square miles and consists of 10 smaller reservoirs and three controlled lakes that supply 10% of the city's water supply. The combined systems have a delivery capacity of 1.3 billion gallons of water daily.

Under the Surface Water Treatment Rule of the Safe Drinking Water Act (SDWA), drinking water taken from surface water sources must be filtered to remove microbial contaminants. The law allows the EPA to grant a waiver from this requirement, a Filtration Avoidance Determination (FAD), if water suppliers demonstrate that they have an effective watershed control program and that their water meets strict quality standards.

In 1996, the EPA decided not to re-issue a filtration waiver due to concern over New York City's failure to meet several conditions of the earlier 1993 program. Specifically, the city was unable to obtain a land acquisition permit or approval of revised watershed regulations from New York State. The city was also unable to upgrade wastewater treatment plants located in the water supply area that were necessary to ensure watershed protection from point-source discharges of contaminants and excess nutrients.

It became clear to city officials that if they were not able to devise a plan to protect its water supply, then they could not obtain a filtration waiver and would be forced to build a costly water filtration

plant estimated to cost \$10 billion, with an annual operating cost of approximately \$100 million.

After intense negotiations, representatives from federal, state and county governments, New York City, upstate communities and environmentalists finally joined together in 1997 to sign the Watershed Memorandum of Agreement (MOA) to protect our unfiltered drinking Catskill/Delaware water supply. The city agreed to meet the requirements spelled out in the MOA in order to satisfy the federal water quality standards and, as a result, the EPA continued to waive, with numerous conditions, the requirement that New York City filter Catskill/Delaware water. It was thought that water filtration not only would be costly to the water consumers, but also would not help preserve the bucolic character of the Catskills. Instead, the Watershed Agreement, bringing with it open space conservation and stronger land use controls, was viewed as both cost-effective and environmentally protective.

In 2007, EPA granted another filtration waiver to New York City; however, if the city fails to demonstrate that it is successfully protecting the system, regulators can order city officials to build the filtration plant. The practical consequences of that decision would be that water rates would rise and threaten tens of thousands of housing units in the city's poorest neighborhoods. Badly needed funds would be drained from police, infrastructure, health care, culture, transportation, fire, sewage and other city services. And, worst of all, there is no guarantee that a filtration plant would protect public health.

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## **ENDORSED BY**

**Catskill Center for Conservation and Development (fellow MOA signatory), The Catskill Center for Conservation and Development, League of Women Voters of New York State, Riverkeeper, Inc.**

# Pesticide Reduction

## SUMMARY

Pesticides are poisons, designed to kill or repel living things. A tremendous amount of hazardous pesticides are used in New York on a daily basis, particularly in urban and suburban communities. Much of this use is for cosmetic purposes such as lawn care. Pesticides can contaminate air and water, and can cause a wide range of acute and chronic human health problems. The good news is that safer alternatives exist for virtually all common pest problems. It is incumbent on the new governor to protect the public's health and the environment by promoting safer pest control alternatives and by aggressively using the state's existing power through the pesticide registration process to restrict or ban the use of pesticides that can cause cancer, birth defects, and other serious health problems.

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## PROBLEM

***Pesticide use is endangering the health of New Yorkers and the environment.*** New York is awash in pesticides. According to the state's pesticide reporting data, more than 3.5 million gallons and 23.7 million pounds of pesticides were reported used by commercial applicators or sold to farmers in 2005.<sup>115</sup> These totals don't reflect all pesticide use in New York, since residential pesticide use and sales are not reported.

Moreover, most of the pesticide use in New York (roughly 80%) is for non-agricultural purposes. Pesticide totals are the highest in urban and suburban counties, where pesticide use is predominantly for lawn care and indoor pest control.<sup>116</sup> This means that a great deal of pesticide use is occurring in residential settings where sensitive populations such as pregnant women, children, and the elderly can be exposed.

People can be exposed to pesticides through multiple pathways – in food, in water, in the air, and through contact with treated surfaces, both indoors and outside. People and pets can track pesticides indoors, where they can linger on surfaces for extended periods of time (sometimes months or even years). Children are at greater risk from pesticide exposures than adults due to growth, behavioral and developmental factors.

## SOLUTIONS:

BAN THE SALE OF LAWN CARE PESTICIDES THAT ARE KNOWN OR SUSPECTED TO CAUSE CANCER OR BIRTH DEFECTS.



REQUIRE THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) TO RESTRICT THE USE OF INDOOR PESTICIDE FOGGERS.



DIRECT THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS TO PROVIDE INFORMATION AND SUPPORT FOR ORGANIC FARMING.

Pesticides can cause a wide range of serious human health and environmental problems. A mounting body of medical research shows links between pesticide exposure and asthma and respiratory distress, neurological impairment and learning disabilities, immune system damage, many types of cancer (including non-Hodgkin's lymphoma, childhood leukemia, childhood brain tumors, and breast, prostate, ovarian and pancreatic cancer), hormone disruption, liver damage and birth defects.<sup>117</sup>

Health experts in New York and around the country have expressed increasing concern about the routine use of chemical pesticides, both in rural areas, where farmers, farm workers, and their families are exposed to very high levels of agricultural pesticides; suburban areas, where there is heavy lawn-care pesticide use; and urban areas, where children are regularly exposed to pesticides in high-risk indoor settings, such as inside their homes, schools, and day care centers.

In addition to their human health effects, pesticides can contaminate water supplies and harm fish and wildlife. The U.S. Geological Survey has documented pervasive pesticide contamination in both surface and groundwater in New York.<sup>118</sup> In eastern Suffolk County, pesticides were found in more than half of the 834 private wells tested, with 54 exceeding the maximum contaminant levels allowed in drinking water.<sup>119</sup> Many commonly used pesticides are toxic to fish, birds, beneficial insects, and other wildlife. For instance, the DEC's Wildlife Pathology Unit found that pesticides and other toxic substances killed more birds in 2000 than the West Nile virus did.<sup>120</sup>

Thousands of pesticide products that are on the market today have never been adequately tested for their hazards to human health and safety. As a result of the federal government's failure to adequately test and label pesticides, it is incumbent on the states to step up their regulation of these toxic chemicals.

Fortunately, there are safe and effective alternatives for virtually all pest control problems. New York has taken several steps recently to support these alternatives. In 2010, legislation was enacted restricting the use of toxic chemicals for lawn and grounds maintenance at schools and day care centers.<sup>121</sup> In addition, pursuant to Executive Order 4, the state adopted recommendations for non-toxic turf and ornamental management at state-owned properties.<sup>122</sup> However, progress by the agencies to restrict the use of hazardous pesticides, such as total release foggers has been disappointingly slow.

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## SOLUTION

***The new governor should direct the DEC to ban the sale of lawn care pesticides that are known or suspected to cause cancer or birth defects.*** The DEC has the authority to remove pesticides from the market when they pose unreasonable risks. There is no justification for using pesticides for purely cosmetic purposes such as lawn care when they contain known or suspected cancer-

causing chemicals. New York State should follow the example of Canadian provinces such as Quebec,<sup>123</sup> which in 2002 banned 28 lawn-care pesticides that have been linked to cancer and other diseases affecting children, and Ontario, which instituted an even broader ban in 2009 on the sale of 250 chemicals.<sup>124</sup> Any pesticide sold or used in New York must be registered with the DEC. Although the EPA also registers these pesticides, the DEC can impose more stringent use restrictions on products or prohibit their sale in New York altogether.<sup>125</sup>

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## SOLUTION

***The governor should direct the DEC to immediately restrict the use of pesticide foggers.*** In October 2008, the DEC announced that it intended to restrict the use of indoor total release foggers, also known as “bug bombs,” following a federal report detailing the hazards and injuries related to their use.<sup>126</sup> There were 123 reported cases of fogger injuries in New York between 2001 and 2006, nearly half of which were in New York City. The use of bug bombs has sickened not only the occupants of treated residences, but also of neighboring apartments. In addition to their chemical hazards, foggers contain flammable materials that have caused fires and explosions when used improperly, such as in residences where a pilot light is on. The New York City Department of Health and Mental Hygiene has petitioned both the DEC and the Environmental Protection Agency to restrict the use of total release foggers, so that only licensed professionals can obtain them. Unfortunately, the DEC has still not followed through on its announcement. In the meantime, the list of casualties has grown: last year a 10-month old baby in South Carolina died after his mother repeatedly used bug bombs in their home.<sup>127</sup>

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## SOLUTION

***The governor should direct the state Department of Agriculture and Markets to provide information and support for organic farming in New York.*** Organic farming is the fastest growing agricultural sector, but still represents a small portion of New York’s farming industry. According to a recent survey, 40% of conventional farmers in New York expressed some level of interest in transitioning to organic production; however, they identified a number of barriers to entry, including the need for information and technical support on organic production, local and regional organic market development, and university research on organic challenges.<sup>128</sup> In addition, the majority of organic and transitioning farmers surveyed indicated that consumer education programs and directories of organic product buyers would be very useful. Supporting sustainable and organic agricultural processes preserves working farmland, protects ecosystems and water supplies, and produces safe and healthy food.

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## BACKGROUND

New York has been at the forefront of innovative pesticide policymaking and regulation in the United States. New York took action years before the federal government to ban certain pesticides, such as chlordane, dieldrin and aldrin.<sup>129</sup> In 1996, New York became the second state in the country, after California, to adopt a pesticide reporting law requiring companies to report their use and sales of commercial and agricultural pesticides. In 2000, New York passed the first law in the nation requiring universal notification of commercial lawn pesticide applications, albeit only in counties that “opt in” to the program. Many schools and communities in New York have adopted policies and laws to reduce or phase out the use of pesticides on municipal property; however, state law preempts local governments from regulating pesticide use on private property.

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## ENDORSED BY

**Citizens’ Environmental Coalition, Clean New York, Empire State Consumer Project, Environmental Advocates of New York, Great Neck Breast Cancer Coalition, League of Women Voters of New York State**

# Environmental Justice

## SUMMARY

New York State has frequently located hazardous and heavily polluting facilities in low-income communities and communities of color. These communities have endured far too many of the state's environmental burdens, with at best limited access to the benefits. In addition, the state has not made adequate progress to create and implement enforceable policies to correct this very serious systemic problem.

While few industrial facilities come without health concerns, such hazards increase dramatically when the number of facilities increases, such as through clustering. This is further compounded when the communities are not meaningfully engaged in the decision-making process and its members deal with other problems, such as inadequate access to affordable health care. The density or clustering of hazardous or heavily polluting facilities in low-income communities and communities of color multiplies the negative health effects such as increased disease and lost work days.

The environmental justice community, particularly in New York City, has been actively engaged on energy, solid waste, brownfield and transportation policies to combat the disproportionate allocation of environmental burdens and benefits. More must be done to enhance their role in decision-making processes.

The new governor should create an enforceable statewide environmental justice policy, developed in coordination with the environmental justice community, which would review all state, agency and authority environmental siting decisions to ensure that there is an equitable distribution of such facilities.

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## PROBLEM

*For far too long, New York's laws have lacked sensitivity for the cumulative effects of placing hazardous and heavily polluting facilities in low-income communities and communities of color.* As a result, a few communities have been overburdened by a clustering of industrial hazards. There may be many economic factors that create incentives for certain neighborhoods,

## SOLUTIONS:

ISSUE AN EXECUTIVE ORDER  
REQUIRING STATE AGENCIES  
TO INTEGRATE  
ENVIRONMENTAL JUSTICE  
PLANNING IN ALL DECISION-  
MAKING PROCESSES, PERMITS,  
POLICIES AND RULES.



DIRECT THE NEW YORK  
STATE DEPARTMENT OF  
ENVIRONMENTAL  
CONSERVATION (DEC) TO  
STRENGTHEN THE  
ENVIRONMENTAL REVIEW  
PROCESS.

but the health and welfare of vulnerable communities and the input from members of these communities must be given more weight in the review process. For example, the review process for building power plants ignores the cumulative impacts of multiple power plant proposals clustered in one area, often in low-income communities or low-income communities of color. The outcome of this failure has been that these neighborhoods often shoulder more than their fair share of environmental and public health burdens that result from the power plants. These same neighborhoods often have many other major polluters located within their community, such as major roadways and garbage transfer stations. This clustering effect magnifies the impacts on the community.

For instance, studies link asthma rates and exposure to major pollution sources, such as roadways, bus depots, land-based waste transfer stations, power plants and major industrial facilities. The term “asthma alley” in New York City was first associated with a particular part of Brooklyn in the 1970s<sup>130</sup> and has expanded to a continuous corridor through parts of Brooklyn, Queens, upper Manhattan and the south Bronx, particularly along the East River. While asthma alley is one example of the linking between these problems, there are other overburdened communities and other serious problems. Indeed, there are too many communities facing serious environmental justice issues to list here.

The DEC has convened various environmental justice advisory groups over the years and has adopted an internal policy (CP-29) requiring “enhanced public participation” for permitting processes in environmental justice communities. However, this policy only applies to projects for which the DEC is the permitting agency, and its scope is very limited. Without an enforceable statewide policy in place, environmental justice groups continue to have serious concerns about the disproportionate impacts of pollution sources in their communities. More can and must be done and members of the environmental justice community must be integral to developing the answers that correct it.

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## SOLUTION

***The new governor should issue an executive order establishing a comprehensive environmental justice policy for New York State government, which is developed in coordination with the environmental justice community.*** Any environmental justice policy must substantively incorporate environmental justice principles in all decision-making processes, and mitigate the hazards in already overburdened communities.

A strong policy would require that environmental justice principles be incorporated into the planning and decision-making processes of all state agencies, authorities, public benefit corporations, etc., including but not limited to permits, rules and policies. In order to effectuate this policy, such an entity must carefully examine the potential clustering of heavily polluting industrial projects in an area and the proposed facility’s impact on the host community in the permit-

ting and planning processes. An examination of the health problems of that community, the ambient air quality, existing sources of pollution, health problems, proposed sources of pollution, access to green space, etc. prior to any decision making is vital. In addition, communities with environmental justice concerns need to be given tools to adequately and meaningfully participate in the decision-making process.

No community that already bears disproportionate environmental burdens should have to face another environmental burden. The state must implement environmental and health standards that prevent the cumulative negative impact of clustering facilities in low-income communities. Such policies should be applied to every state action that could result in adverse environmental impacts, from transportation planning to power plant siting. It should not be a piecemeal approach.

It is equally vital that the new governor develops an impacts reduction strategy to relieve overburdened areas. The new governor should order agencies, such as the DEC, to work with community and environmental justice groups to design and implement programs that mitigate the clustering of hazardous facilities in certain communities. For instance, the state could implement programs that reduce air pollution and clean up brownfields in targeted communities across the state, to name two key areas. Just as it is important to not perpetuate the mistakes of the past by setting up a new decision-making process, it is vital that past decisions leading to clustering also be corrected in order to achieve fairness for all communities in New York.

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## SOLUTION

***The governor should direct the DEC to strengthen the State Environmental Quality Review Act (SEQRA) regulations to ensure that cumulative impacts of proposed actions are fully taken into account and mitigated.*** Although SEQRA currently requires that the cumulative impacts of proposed actions be considered, in practice, according to the New York City Environmental Justice Alliance, “this requirement has been interpreted so narrowly as to render it of extremely limited utility.” Rather than consider the cumulative impacts of all actions that are being proposed in a given community, the SEQRA regulations (6 NYCRR Part 617) only require the consideration of any other related actions being undertaken by the same agency or applicant. Legislation has been introduced since 2001 (A.840/S.843 of 2010) that specifies that “Cumulative environmental impacts shall be considered without regard to whether the action or actions are proposed by the same individual, person, or agency, or whether the action is pending for approval by one or more agencies.” However, this regulatory change does not require, nor should it wait for, legislative action – the DEC has the authority to amend the SEQRA regulations to require comprehensive and meaningful cumulative impact analysis.

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**ENDORSED BY**

Citizens' Environmental Coalition, Environmental Advocates of New York, League of Women Voters of New York State, New York City Environmental Justice Alliance, United Puerto Rican Organization of Sunset Park (UPROSE)



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## REBUILDING CONFIDENCE IN ALBANY

# *Health*

Health care costs consume a significant portion of both the national and state domestic product. For nearly a quarter of a century, health care cost inflation has outpaced inflation in other sectors of the economy – sometimes several fold. Surprisingly, rising costs have not meant a corresponding rise in the quality of the care delivered. The Patient Protection and Affordable Care Act (PPACA) presents the state with both a daunting challenge to expand health care coverage for its residents and an extraordinary opportunity to rethink its health care payment and delivery system.<sup>131</sup>

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# Health Care Quality, Coverage & Costs

## SUMMARY

The past decade has seen a sea change in how experts view the U.S. health care system. In 1999, the Institute of Medicine (IOM) issued its alarming report, “To Err is Human,” which estimated that medical mistakes claimed between 44,000 and 98,000 lives each year in hospitals alone. The authors stated that the goal of the report was to break what was perceived as a cycle of inaction. “The status quo is not acceptable and cannot be tolerated any longer,” was their dramatic call to arms. And they claimed the ethical high ground by declaring that, “... it is simply not acceptable for patients to be harmed by the same health care system that is supposed to offer healing and comfort.”<sup>132</sup>

In 2001 the same IOM committee issued what was perhaps its most important report on U.S. health care, “Crossing the Quality Chasm.” That report began with these words: “The American health care delivery system is in need of fundamental change. Health care today harms too frequently and routinely fails to deliver its potential benefits.” They recommended six aims for a 21st Century high-quality health care system. The system should be *safe, effective, patient-centered, efficient, timely and equitable*.<sup>133</sup>

Fast forward to Fall 2010. In November, a report from the Inspector General of the United States Department of Health and Human Services estimated that “An estimated 1.5 percent of Medicare beneficiaries experienced an event that contributed to their deaths, which projects to 15,000 patients in a single month.”<sup>134</sup> Those statistics translate to least \$4.4 billion a year to government health costs and contributed to the deaths of about 180,000 Medicare patients a year. Whatever the number, the costs of medical mistakes – both human and economic – are staggering.

In addition, historic health care reform (PPACA) has been enacted by the U.S. Congress and signed into law by the President.<sup>135</sup> The PPACA could expand health care coverage for an estimated 1.2 million people in New York.

It will require an overhaul of the state’s existing regulatory and delivery infrastructure. Some of New York’s existing regulations will have to be repealed; new health and insurance guidelines will

## SOLUTIONS:

APPOINT A NEW YORK STATE COMMISSIONER OF HEALTH WITH A PROVEN TRACK RECORD IN HEALTH CARE REFORM AND IN BENDING THE CURVE ON COST AND QUALITY.



IMPLEMENT A “PRUDENT PURCHASER” AGENDA.



FOCUS ON A FEW IMPORTANT, FEASIBLE AND FISCALLY PROMISING IMPROVEMENTS IN AREAS WHERE THE QUALITY OF NEW YORK CARE RANKS NEAR THE BOTTOM OF THE NATION.

have to be drawn up and issued; and significant new infrastructure and administrative systems will have to be created.

In addition, federal stimulus dollars (ARRA) and HITECH legislation also support programs focused on improving health care quality and checking inflation in costs.<sup>136</sup> While the final PPACA reform legislation is primarily focused on insurance reform, it also provides considerable incentives intended to improve safety and quality, and to reward efficiency. For several years, Medicare has been moving towards a reimbursement system tied to the quality of services in an attempt to drive improvements in safety and quality. That effort will likely accelerate under the new leadership at the Centers for Medicare and Medicaid. Both the ARRA and HITECH legislation create federal programs to drive adoption of electronic medical records (EMR) and information exchange as a means of improving safety and quality and improving efficiency.<sup>137</sup> In addition, New York has invested several hundred million dollars of the state's Health Care Efficiency and Affordability Law (HEAL) funds towards health information technology with the goal of making care safer and improving outcomes for patients.<sup>138</sup>

### **New York Faces Important Opportunities and Critical Challenges:**

For all of these reasons, 2011 is both a time of great opportunity and great challenge. Programs that rely on the states for implementation will provide New York's leadership with an opportunity to derive benefits for the state. At the same time, New York State faces unprecedented budget shortfalls, predicted to grow exponentially over the next few years, and the political viability of aspects of the federal health care reform legislation is up in the air.

The next governor of New York will have to make "wise choices" in an effort to "bend the curve" of health care cost inflation. That bend is critical for the state's economic viability and competitiveness' as well as for maintaining a health care system that meets the needs of the state's residents.

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## **PROBLEM**

***Health care is an enormous cost to the state, and the quality is uneven.*** New York State is the single biggest non-federal "purchaser" of health care through its Medicaid program (approximately \$50 billion dollars), Child Health Plus program (\$176 million, state share)<sup>139</sup> and its funding of the state employee health insurance programs, Empire Plan and NYSHIP. Yet the state does little to ensure that the quality and value of the health care services paid for with taxpayer money meets the highest standards.

We believe that the state has a fiduciary responsibility to the taxpayers to leverage its buying power in ways that reward safety, quality and efficiency, and penalize those who fail to meet standards of high-value, high-quality health care. It is time for New York State to accelerate its fledgling "prudent purchaser" programs.

The New York State Health Foundation estimates that total spending on health care in New York (government and private sector combined) will grow from \$189 billion in 2011 to \$318.8 billion in 2020.<sup>140</sup> That is, unless immediate policies are put in place to begin the Sisyphean task of reducing cost inflation while improving patient experience. We believe that state policy-makers must be held accountable as fiduciaries; hundreds of billions of dollars of taxpayer dollars spent without prudence is toxic to the physical, mental and economic health of all New Yorkers.

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## SOLUTION

***Quality and cost reforms should build on existing efforts. First, wherever possible and appropriate, the state should harmonize its efforts with federal programs with similar objectives.*** The current administrator of the Centers for Medicare and Medicaid Services (CMS), Donald Berwick MD, has defined the three critical objectives for transforming the health care system:

- Improving the health of the population;
- Enhancing patient experience (including quality, access, and reliability); and
- Reducing, or at least controlling, the per capita cost of care.<sup>141</sup>

These so-called “triple aims” encompass the IOM six aims, and should be the focus of New York State health care policy perspectives for the foreseeable future. They call for improved population health and access to higher-quality care, better patient outcomes and bending the cost curve.

Given the state’s fiscal problems, it is likely that solutions costing money up front will be questioned as to their feasibility. While we recognize the budget reality, it should be recognized that there is no such thing as a free lunch, even in health care reform. In order to collect and analyze data, a prerequisite to the state having the ability to link reimbursement to safety, quality and cost objectives, a certain amount of new resources must be dedicated to the task. Policy objectives, no matter how reasonable, are only successful when there is meaningful support for effective implementation.

Fortunately, there is no shortage of carefully thought out and well-supported suggestions for how the state should proceed on this difficult but necessary journey of reform. Two well recognized nonprofit health care policy foundations have already opined on how New York could “bend the curve.”

Over the past several years, the Commonwealth Fund has issued health care system scorecards showing how the U.S. ranks compared to the United Kingdom and a number of European countries.<sup>142</sup> Sadly, on almost every dimension of care and cost compared, the U.S. ranks near or at bottom.<sup>143</sup>

More to the point, the Commonwealth Fund has released a report “Aiming Higher: Results from a State Scorecard on Health System Performance, 2009.” This report compares all fifty states’ performance towards attaining “achievable benchmarks” for 38 indicators across five dimensions: access, prevention and treatment, avoidable hospital use and costs, healthy lives and equity. **In overall rankings, New York is 21st out of 50 states. In addition, New York ranks among the top five states on only one performance measure, while among the bottom five states on six performance measures.**<sup>144</sup>

In addition to the Commonwealth Fund, the New York State Health Foundation (NYSHF) issued a report in July 2010 entitled, “Bending the Health Care Cost Curve in New York State: Options for Saving Money and Improving Care.” This report was modeled after the Commonwealth Funds’ 2007 Report “Bending the Curve: Options for Achieving Savings and Improving Value in U.S. Health Spending.” The NYSHF focuses on ten scenarios, which it suggests could, if appropriately implemented, “contain escalating health care costs in New York State over the next decade while also improving health care quality.”<sup>145</sup>

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## SOLUTION

### *The new governor should take the following steps:*

Appoint a Commissioner of Health with a proven track record in implementing health care reform in large provider systems and/or in leveraging large purchaser clout to bend the curve on cost and quality.

Issue contracts with expert consultants to do the data collection and analytics necessary for implementation of a “prudent purchaser” agenda. The New York State Department of Health (DOH) does not presently have the required capacity.

Harmonize all state health reform activities with those of the federal government wherever possible and appropriate.

Put a strategic team in place that can optimize the state’s share of available federal dollars to support reforms aimed at bending the cost and quality curve.

Select wisely from among the recommendations of the Commonwealth Fund and the New York State Health Foundation. Focus on a few important, feasible and fiscally promising scenarios. Those indicators where New York ranks near the bottom may offer the most promise in potential improvement and cost savings. For example, concentrate on reducing avoidable hospital use and costs – a quality and cost dimension where New York ranks last of all states.

Initiate review and reform of all aspects of health care coverage in New York State, including:

1. Review and reform of benefits under various publicly-funded insurance; and
2. Review and reform of the payment delivery system to minimize input of special interests, and to better achieve quality of patient outcomes, customer satisfaction, and cost control.

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**ENDORSED BY**

**Center for Medical Consumers, League of Women Voters of New York State**

# Reducing the Cost of Prescription Drugs

## SUMMARY

The rising cost of prescription drugs is not only felt by those consumers who lack health insurance coverage. Businesses that provide insurance for their workers must either absorb drug price hikes, shift the cost to employees through higher deductibles or co-pays, or drop coverage altogether. Taxpayers also feel the impact as higher prescription drug costs drive up payments to government-provided insurance programs such as Medicaid, Family Health Plus, Child Health Plus, EPIC, as well as costs for public employees' coverage.

**SOLUTIONS:**  
USE EXECUTIVE POWERS TO  
ALLOW NEW YORK TO  
NEGOTIATE LOWER DRUG  
COSTS FOR THE STATE.

New York government should use its clout as the state's biggest purchaser of health care to negotiate with the drug companies for lower prices, which would help secure lower costs for taxpayers and allow those without coverage to obtain needed medicine. A well-designed program would allow businesses to opt-in and benefit from these lower prices.

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## PROBLEMS

***The rising cost of prescription drugs.*** The rising costs of health care, and prescription drugs in particular, have a significant impact on the state's economic health. Getting these costs under control would represent an important step towards easing New York's fiscal crisis.

Escalating drug prices have led both small and large businesses to reduce or eliminate health care for employees. Drug costs continue to eat up more and more of New Yorkers' budgets – in 2009, it was estimated that New York spent nearly \$18 billion on prescription drugs.<sup>146</sup>

Today, millions of New Yorkers lack any drug coverage, and many more lack insurance coverage for prescription drugs, meaning that those who can least afford prescriptions, pay the most.<sup>147</sup>

**New York State spends more than it should, and uninsured New Yorkers pay the full freight for the costs of their medications.** Millions of uninsured and underinsured New Yorkers struggle to afford the medicines they need, even forgoing medically necessary drugs when prices are prohibitive. Meanwhile, the federal government uses its buying power to negotiate fairer prices for the drugs it purchases on behalf of populations for which it is responsible, such as veterans, government employees and retirees. Other nations use their purchasing power to negotiate prices as well. Canada's health care system is organized as a "single-payer" system, administered by provin-

cial governments. The provincial government, analogous to the U.S. state, negotiates with pharmaceutical companies on behalf of its citizens. While Canadian retailers fill the prescriptions, they pass on the savings negotiated by the provinces to consumers. Unfortunately, New Yorkers who don't have drug coverage have no one doing the same on their behalf. It is a well-known fact that buying in bulk saves consumers money. Governments have tremendous leverage to negotiate favorable prices for prescription drugs; individuals and small groups do not.

Below is a recent price comparison showing how much more uninsured New Yorkers may be paying for medications compared to prices paid by the Veterans Administration.

PRICES FOR COMMONLY USED MEDICATIONS <sup>148</sup>		
MEDICATION	NEW YORK RETAIL PRICE	VETERANS AFFAIRS PRICE
Aciphex (20 mg)	\$155.87	\$77.89
Nexil (40 mg)	\$152.36	\$88.14
Wellbutrin (150 mg)	\$147.25	\$81.25

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## SOLUTION

***Use the state's purchasing power to reduce drug costs.*** The new governor should support creating a prescription drug-buying pool to negotiate lower prices with drug companies. This could allow businesses, the state and local governments, and individuals of all ages to benefit by using their combined buying power to lower the costs of medications, similar to what the federal government and big HMOs do. In this way, New York can harness the purchasing power of millions of its residents.

Lower drug prices will slow escalating health insurance premiums, allow the state to restore insurance for those without coverage and save consumers and taxpayers big bucks each year. Surely, looking to extract more negotiated savings from pharmaceutical companies is preferable to cuts for the poor or others in need of state help.

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## ENDORSED BY

**Center for Medical Consumers, League of Women Voters of New York State**

# Comparison Shopping for Drug Prices

## SUMMARY

New York should use existing authority under state law to help consumers – particularly those without prescription drug coverage – to comparison shop and save money on medications.

In 2005, New York created additional ways for consumers to comparison shop for prescription drugs. Surveys show, however, that the old and new provisions of the law aren't helping consumers to effectively shop for medications.<sup>149</sup>

Before 2005, New York pharmacies were only required to post information that a “Drug Retail Price List” was available upon request. Updated annually by the state and distributed to every New York registered pharmacy, the list consisted of the 150 most frequently prescribed drugs, in the most common dosages and quantities.<sup>150</sup>

In addition, pharmacies were required to display a sign in bold, block letters at least one inch in height stating, “Drug Retail Price List Available Upon Request,” a requirement that continues under the current, improved law. Consumers also may request a computer-generated list to take with them when they leave the pharmacy. Under current law, pharmacies are required to update the list with the latest prices at least weekly. Pharmacies are not required, but are encouraged to provide prescription prices to consumers over the phone upon request.<sup>151</sup>

Under the 2005 amendments to the drug price disclosure law, every pharmacy must continue to make the Drug Retail Price List available. In addition, the New York State Department of Health (DOH) was required to develop a website allowing the public to access retail drug pricing information, which it already collects under the Medicaid program.<sup>152</sup>

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## PROBLEMS

*The state's prescription drug price disclosure law is being poorly administered and rarely enforced, depriving uninsured New Yorkers of the information they need to spend their limited dollars wisely for medications.* Serious problems have been identified in the DOH prescription drug database. The state's database reveals an enormous range of prices across the state. A re-

### SOLUTIONS:

ORDER THE NEW YORK STATE DEPARTMENT OF HEALTH (DOH) TO IMPROVE ITS DRUG PRICING WEBSITE.



URGE THE NEW YORK STATE DEPARTMENT OF EDUCATION (SED) TO BOOST ENFORCEMENT OF THE STATE'S PRESCRIPTION DRUG RETAIL PRICE LIST LAW.

cent NYPIRG report documented the price differences for the ten most widely available brand-name drugs found in the DOH database.<sup>153</sup>

According to the report, in New York City, the drug Plavix had the greatest range in price, from a high of \$681 to a low of \$25.<sup>154</sup> Significant price ranges were found in every region of the state.

These wide price variations underscore, at the very least, the need for better compliance with existing law. At most, they highlight the need for a stronger law altogether.

It's only when consumers are knowledgeable about price differences that they can effectively use the market to save money. Currently, New York State's disclosure requirements, while laudable, fail to accomplish that goal.

The report identified serious deficiencies:

- **Many of the drug prices in the database appear to be out-of date.** While the majority of the costs appeared to reflect recent prices, a significant number had not been updated in nearly three years.
- **Drug prices appear to have risen dramatically over the past few years.** Over the past two years, the price of the most widely prescribed drugs has risen precipitously. Every single one of our top ten has seen a significant increase in average cost. For example, in the report the average price of the drug Ambien increased by more than \$36. This underscores the need for comparison shopping by consumers.
- **None of the pharmacies in the DOH database provide prices for all of the medications that are required to be available on the website.** This omission makes it harder for New Yorkers to use the DOH's data to comparison shop.
- **There appear to be errors in the prices reported in the Department's database.** While it was impossible to confirm that there are pricing inaccuracies in the database, the report was skeptical that there were generic drugs that were priced in the thousands of dollars.
- **Many pharmacies fail to display the drug price website address, as required by law.** To test compliance with the law, NYPIRG conducted a spot check of 256 pharmacies across New York State, including the regions of Albany, Buffalo, Cortland, Long Island, New Paltz, New York City, Syracuse and Westchester. Surveyors were only able to identify required signage displaying information about the state's drug price website in 46 of the 256 pharmacies. Furthermore, 89 pharmacies appeared to lack signage informing consumers of the availability of the retail price list.

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## SOLUTION

While the intent of New York State's drug pricing disclosure law is laudable, it is clear that the law is not working well, and that enforcement is inadequate.

*New York should require pharmacies to electronically report to the state all drug prices currently listed on the “Drug Retail Price List.”* New York State should require not only that pharmacies maintain the current list of drug prices, but also that pharmacies send these prices electronically to the DOH. The state should post a compendium of individual pharmacy pricing information on its website in a user-friendly format, searchable by community and region. The website should be easy to find on the DOH website. Currently, it is not.

*The New York State Department of Education should enforce regulations requiring that pharmacies display the information on the availability of the DOH prescription drug price website and its internet address.* The current law requires that pharmacies alert consumers to the availability of the state’s prescription drug price website address. However, we have found that pharmacies often do not display the required sign, leaving many consumers unaware of its existence. Internet posting of comparative prescription drug pricing information can help consumers save money quickly and easily.

The DOH must annually audit and monitor the quality of the data provided, and annually report on the program’s performance to the public. DOH must establish enforcement regulations and a compliance check regime to ensure the promise of the law is realized.

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## **ENDORSED BY**

**Center for Medical Consumers, League of Women Voters of New York State**

# Eliminating Childhood Lead Poisoning

## SUMMARY

Each year some 3,000 New York children are newly identified as being lead poisoned – consigning them to a life of diminished potential. The overwhelming source of lead poisoning is New York’s older housing stock – the homes most likely to contain lead paint.

New York’s childhood lead poisoning laws and regulations are not designed to prevent children from getting lead poisoned; they focus on treating children and cleaning up their homes only after tests confirm they have tremendous amounts of lead in their blood.

Using existing statutory authority – at the urging of groups like NYPIRG over the past four years – the state has made significant strides in its approach and programs for eliminating childhood lead poisoning. Without additional legislative authority, the incoming governor can take several additional steps to *dramatically reduce childhood lead poisoning in New York State* and put the state firmly on the path to meeting the U.S. Centers for Disease Control and Prevention’s goal of eliminating lead poisoning by 2010.

The governor should lower the intervention level from the current twenty micrograms per deciliter of blood to five; require better reporting of children’s blood lead test screenings; assume responsibility for training and oversight of the new US Environmental Protection Agency home residential, repair and remodeling regulations for lead paint; work to implement proactive local plans to inspect homes and require housing clean ups; and extend governor Paterson’s Executive Order 21, which created a state multi-agency task force to ensure a coordinated state response to this multi-faceted process.

## SOLUTIONS:

CHILDHOOD LEAD POISONING REMAINS A PERSISTENT PROBLEM 40 YEARS AFTER THE STATE BANNED THE SALE OF LEAD IN PAINT. THE NEW GOVERNOR SHOULD.

DIRECT THE DOH TO ASSUME RESPONSIBILITY FOR TRAINING AND OVERSIGHT UNDER THE NEW EPA HOME CONTRACTOR LEAD SAFE WORK PRACTICES RULE.



PROMOTE WINDOW REPLACEMENT THROUGH ENERGY EFFICIENCY MEASURES AS A WAY OF ELIMINATING A SOURCE OF LEAD IN OLDER HOMES.



UPDATE THE THRESHOLD FOR TAKING ACTION WHEN A CHILD HAS BEEN EXPOSED TO LEAD HAZARDS; BOOST CHILDREN’S BLOOD LEAD SCREENING NUMBERS AND IMPROVE DATA REPORTING.



CONTINUE THE STATE AGENCY TASK FORCE ON CHILDHOOD LEAD POISONING PREVENTION.

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## PROBLEM

***Childhood lead poisoning continues to be a significant problem in New York.*** Since 1992, when New York’s childhood blood lead screening law was passed, according to state data some 200,000 New York children have been identified as lead poisoned.<sup>155</sup>

Because New York has the greatest number (3.3 million) and the highest percentage (43%) of older housing of any state in the nation, lead poisoning persists four decades after the state banned the sale of lead paint in 1970. (New York City banned lead paint in 1960; the U.S. banned its sale in 1978; and the use of lead as a gasoline additive was phased out in the U.S. in the early 1970s.)<sup>156</sup>

Lead poisoned children cost the state more for education, special education, health care and, potentially, criminal justice costs as lead poisoned children and the adults they become demand additional resources to confront their learning and behavioral issues.

Unfortunately lead that is not properly removed, safely encapsulated or if walls, windows and other surfaces containing old lead paint are not well-maintained, the paint will degrade and damage children. Children will ingest the lead through normal mouthing behavior while exploring their worlds, while crawling, toddling and walking. Even in microscopic, invisible amounts without obvious chipping, lead dust poisons children. Children between six months and three years of age are particularly at risk because they efficiently uptake lead into their brains, which are developing at a tremendous pace.

There is no “safe” level of lead exposure for children – all lead exposure causes irreversible damage. Severe cases can result in organ damage, coma or even death. There is no effective treatment to reverse the damage done by lead to children.

It is now accepted that even at levels once thought “safe,” lead causes permanently reduced intelligence, health and social problems. During the past decade, medical science has demonstrated that lead damages children at levels much lower than previously believed – robbing children of 7.4 IQ points before their blood levels meet the federal “level of concern,” *which is well below the Department of Health’s level requiring intervention and a clean up of the child’s home.*<sup>157</sup>

Childhood lead poisoning is overwhelmingly caused by peeling, chipping and flaking lead paint in older, poorly maintained buildings in urban areas. As a result, the vast majority of lead poisoned children are from low-income minority households. The State Department of Health (DOH) has mapped the areas with the greatest number of lead poisoned children and a clear picture has emerged of the problem in New York. There is agreement among researchers, doctors, children’s and public health advocates that preventing lead poisoning by ensuring that housing does not poison children is the most effective and least expensive approach to the problem.

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## SOLUTION

*While New York's Public Health Law could be considerably improved to provide more proactive measures to prevent childhood lead poisoning and a stronger emphasis on enforcement, current law provides ample authority for the state to take steps that will have a significant effect on the problem.* As a result of the universal children's blood lead screening law adopted in 1992, the DOH has more than a decade of data and has mapped the incidences of childhood lead poisoning in the state. Not surprisingly, the deep pockets of lead poisoning are concentrated in low-income communities with old housing stock in urban areas.<sup>158</sup>

There are five things the governor can do to aggressively move to prevent childhood lead poisoning:

**1. New York should assume responsibility for certifying home contractors under the EPA "renovation, repair and painting" regulation.** This federal law now requires that all residential home contractors follow detailed regulations to ensure that they don't disturb paint and create lead hazards when they repair, renovate, remodel and repaint older homes that are likely to contain lead paint.<sup>159</sup> Lead paint poisoning has increased as a result of do-it-yourselfers and contractors sanding and stripping old lead paint; replacing sheetrock, plaster and moldings; and making repairs to old homes. Effective April 22, 2010, contractors doing renovations and repairs on older homes must be EPA or state certified and use lead safe work practices.

By operating the certification program, New York could help ensure that contractors are properly trained. Administration of the program would generate revenue for the state through running training programs and worker certifications. The state could use this as an opportunity to cultivate the state-local partnerships to better monitor lead paint hazards at the community level. Ultimately childhood lead poisoning is a problem that must be solved locally by improving the condition of housing and the state has a crucial role to play in this "primary prevention" approach. And as more contractors become familiar with the new federal guidelines, the costs for doing work in a way that protects children through the use of lead safe work practices will be reduced and public health increased.

**2. The governor should direct his agencies to permit an adjustment in the "savings to investment ratio" used to justify window replacements based on energy savings to factor in the public health benefits of reduced lead paint poisoning risks for children.** Low income New Yorkers may be eligible for subsidies for window replacements as a part of programs to increase energy efficiency and reduce heating and cooling bills. Everyone knows that old windows are energy sieves, leaking heat and letting in cold during the winter; and doing the reverse during the summer. But more ominously old windows can be a prime contributor to invisible lead paint dust, which results from the friction of opening and closing windows and that children can pick up on their fingers and hands when they touch window sills, troughs, moldings, sides and glass.

Studies show that removing old windows, tracks and sills can reduce lead exposure for children. Unfortunately, despite the important health benefits of window replacement, lead poisoning prevention currently is not considered under the state’s “savings-to-investment” formula, which requires that window replacements be justified under a rigid dollar-savings formula. Application of the SIR formula often means that only multi-family housing can qualify for state energy efficiency credits. Permitting otherwise qualified homeowners to have lead poisoning prevention benefits considered as a factor in their application for energy conservation assistance will allow these homes to get both the energy and lead-poisoning prevention benefits of window replacement.

- 3. The governor should use existing authority to reduce the blood lead level that triggers intervention from the current 15 ug/dL to 5 ug/dL.** The Legislature in Public Health Law § 1370(6) established “elevated lead levels” at 10 ug/dL (micrograms per deciliter) of blood and authorized the Department of Health to establish a lower level by regulation. By regulation, the state established that the child’s confirmed blood lead level must be at 15 ug/dL before an investigation is made of the source of the lead poisoning and a clean up order may be issued to eliminate the lead poisoning hazard in the child’s home. The research makes it clear that children suffer irreversible IQ loss well below the state’s current intervention level – and in fact that damage is proportionally greater below 10 ug/dL.<sup>161</sup>

As noted above, the scientific evidence that lead damages children’s intellectual development far below the New York State intervention level of 15 ug/dL is beyond dispute. Other jurisdictions have acted upon the latest science by lowering their “trigger” to blood lead tests that exceed 5 ug/dL and taking action without waiting for children’s blood levels to exceed the level at which New York considers a child lead poisoned (10 ug/dL). New York should join Chicago<sup>161</sup> and Vermont<sup>162</sup> by acting when young children’s blood tests are more than 5 ug/dL.

- 4. The governor should boost blood lead testing rates and require better data reporting.** The state’s “universal” blood lead testing law requires that all children in the state be tested for lead in their blood at least twice by age three and more frequently if circumstances warrant. These tests are important – particularly in children’s second year when they are mobile – to monitor whether children are exposed to lead paint chips and dust, which are invisible to the naked eye. Moreover, the aggregate data collected centrally by the DOH provides critically important information on where to target precious public resources to prevent childhood lead poisoning.

The governor should use existing authority in Public Health Law and the state’s oversight of physicians, public health clinics, managed care companies and public assistance programs to raise childhood lead poisoning screening rates among providers and state contractors, enhance promotion of lead screening through public benefit programs and produce annual reports on screening and incidence rates and community-level maps to educate the public and track the problem. Data reporting should break out lead tests by five microgram per deciliter of blood increments, location(s) of child, age, race and ethnicity.

5. The new governor should reauthorize Governor Paterson’s Executive Order 21, which created the Governor’s Task Force on the Prevention of Childhood Lead Poisoning (the “Lead Poisoning Prevention Task Force”), to ensure a coordinated state agency response to the childhood lead poisoning epidemic.<sup>163</sup> Childhood lead poisoning does not fall neatly into one public policy area, but rather cuts across the lines of many state agencies, including those concerned with housing, public health, the environment, children and families. The Lead Poisoning Prevention Task Force directs the various relevant state agencies and departments to come together to ensure that they communicate, coordinate and create synergies and created a unified state response to children’s lead poisoning prevention. In this way, the famous “silos” that exist within government will be knocked down and replaced by a coordinated response.

Executive Order 21 directed the Lead Poisoning Prevention Task Force to issue a preliminary report by November 30, 2009 and final report by November 30, 2010. The first report provided an excellent start and demonstrates that the executive order is meeting its intended goals.<sup>164</sup> The final report contains many worthwhile recommendations and catalogues some of the steps that resulted from the creation of the Task Force.<sup>165</sup> The Task Force’s recommendations, some of which are reflected in our recommendations, best realized through a coordinated state response, counsels for the reauthorization of the Task Force.

The new governor should reauthorize Executive Order 21 and make state agency coordination of lead poisoning prevention efforts an administration priority.

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## **ENDORSED BY**

**Empire Justice Center, League of Women Voters of New York State, Learning Disabilities Association of New York State, Northern Manhattan Improvement Corporation**

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**REBUILDING CONFIDENCE IN ALBANY**

*Higher Education*

No one disputes the importance of higher education in an advanced 21st century economy. Without a skilled workforce, New York cannot compete in the global economy. Moreover, without an educated citizenry, democracy suffers. One century ago, the United States established the basic premise that universal education was critical to the success of the nation. In the 21st century, advanced education is even more important.

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# Keep College Affordable Restore Financial Aid

## SUMMARY

A weak job market and an influx of students who in better times might have enrolled in private colleges have led to big enrollment gains at the State University of New York (SUNY) and City University of New York (CUNY).<sup>166</sup> Sadly, New York's decades-long habit of underinvesting in higher education and the deep cuts of the last several years have left SUNY and CUNY scrambling to serve their growing student bodies.

Instead of championing public investment in SUNY and CUNY – a strategy that all agree would pay dividends – too many lawmakers have supported annual and differential tuition hikes that could accelerate the diversion of public funding away from SUNY and CUNY, drive up student loan debt and undermine access.<sup>167</sup>

New York's next governor should eschew tuition hikes, make public higher education a true budget priority and take the lead in improving students' access to courses and on-time graduation.

## SOLUTIONS:

OFFER A BUDGET THAT  
HOLDS THE LINE ON PUBLIC  
COLLEGE TUITION.



RESTORE CUTS TO THE  
TUITION ASSISTANCE  
PROGRAM AND EXPAND  
FINANCIAL ASSISTANCE.



EXPAND SUPPORT FOR THE  
PUBLIC UNIVERSITY SYSTEMS.

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## PROBLEM

***State support for higher education has declined.*** Over the last three years state funding for SUNY and CUNY has shrunk by \$634 million and \$205 million, respectively.<sup>168</sup> Before that, the state's public university systems were already underfunded: From 1991-1992 to 2008-2009, per-student state funding declined by almost 5% at SUNY state operated colleges and 14% at CUNY senior colleges.<sup>169</sup>

Community college funding is also woefully inadequate. In fact, the state has reduced funding for community colleges by \$415 per full time equivalent (FTE) in the last two years. At SUNY and CUNY, those cuts amounted to \$69.6 million and \$26.3 million, respectively.<sup>170</sup> Just like the senior colleges, the state has given community colleges short shrift for a long time. From 1991-1992 to 2008-2009, per-student state funding for community colleges declined by 12% for SUNY and 26% for CUNY.<sup>171</sup> These reductions came despite a law requiring the state to cover 40% of community colleges' operating costs.<sup>172</sup>

Inadequate state funding is hurting students. Tuition has increased to offset the cuts. Overcrowded classes, higher faculty-to-student ratios and dwindling course offerings are undermining learning outcomes and delaying students' graduation dates.<sup>173</sup> Library, computer lab and tutoring center hours have been cut, and critical maintenance needs have been ignored.<sup>174</sup> Whole programs or satellite campuses have even been shut down.<sup>175</sup> Worst of all, students are being shut out of our public colleges and universities, and even our community colleges.<sup>176</sup>

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## PROBLEM

***College is too expensive.*** In-state undergraduate tuition at the SUNY state operated colleges and CUNY senior colleges increased by \$620 and \$600, respectively, from 2008-2009 to 2009-2010. Over the same period, average fees went up \$98 at SUNY's university centers and \$10 at CUNY senior colleges.<sup>177</sup>

Two semesters at a typical four-year SUNY school, costs \$20,050 for a student living on campus and \$13,990 for a student that commutes.<sup>178</sup> At that rate, a four-year degree at a SUNY school would cost \$80,200 for a student who dorms and \$55,960 for a student who commutes.

At a CUNY Senior College, two semesters can cost \$21,309 for a student living away from home and \$11,646 for a student living with family.<sup>179</sup> As a result, four years at a CUNY school can cost \$85,236 for a student who lives away from home and \$46,584 for a student who lives with family. These costs include textbooks and supplies, transportation, room and board. The state's premiere financial aid program – the Tuition Assistance Program (TAP) – only helps with tuition.<sup>180</sup>

New York's community colleges are among the most expensive in the nation. In fact, only six states – Vermont, New Hampshire, Minnesota, South Dakota, Massachusetts and New Jersey – have more expensive community colleges than New York.<sup>181</sup> Between 2009-2010 and 2010-2011, average tuition and fees at the state's community colleges increased by \$94 (2.4%).<sup>182</sup> In 2010-2011, the average cost of tuition plus fees at public two-year institutions was \$2,713 nationally.<sup>183</sup> It is \$3,965 in New York.<sup>184</sup>

High college costs burden students and families with excessive student loan debt, and have a chilling effect on many poor students' decisions to attend college.<sup>185</sup> Even with state and federal financial aid, many students have insufficient access to public higher education (e.g., part time, independent and middle income students).

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## PROBLEM

***The Tuition Assistance Program has been cut.*** The Tuition Assistance Program (TAP) provides financial aid, based on sliding income scales, to in-state students who attend New York's public

and private colleges. Since TAP's inception, more than four million students have received over \$15 billion towards their college education.<sup>186</sup> In 2008-2009, the Higher Education Services Corporation (HESC – the state agency that runs TAP) awarded \$813 million to 375,000 students (average award in 2008-2009: \$2,694).<sup>187</sup>

Unfortunately, all 375,000 TAP recipients will have their awards cut by \$75 this year. Also, rule changes built into the 2010-2011 state budget will reduce or eliminate TAP awards for graduate students, dependents of retired workers, and students who are struggling with grades or federal student loans.

TAP cuts fall hard on poor students. About 87,000 students receive maximum TAP awards because they have very low family incomes.<sup>188</sup> Hundreds of thousands more have incomes low enough to depend on the maximum or substantial TAP awards.<sup>189</sup> These students can't afford to lose any of their financial aid.

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## PROBLEM

***Students are drowning in debt.*** About sixty-three percent of New York's four-year college students graduate with student loans, and too many of those students are carrying burdensome amounts of debt.<sup>190</sup> On average, students from New York who take out student loans to pay for four-year public and private colleges graduate with \$24,715 in debt.<sup>191</sup> The problem isn't confined to private college students. In fact, fairly similar proportions of students at private and public college use loans to help pay for school. Surprisingly, students at some of New York's public universities actually graduate owing more than graduates of comparable private institutions.<sup>192</sup> For example, the average debt of University at Albany 2008 graduate borrowers was \$22,092, SUNY Fredonia graduates averaged \$25,101 in debt, and SUNY Brockport graduates averaged \$26,095 in debt. Those SUNY graduates averaged more debt than graduates of Barnard (\$14,706), Hamilton College (\$19,466), or Sarah Lawrence (\$17,246).<sup>193</sup> The cost of attendance at Sarah Lawrence exceeds \$60,000 per year.<sup>194</sup>

Exorbitant student debt limits graduates' employment choices and puts them at greater risk for financial hardship and loan default. Student borrowers who fail to complete their studies are even worse off, as they are more likely to be burdened by debts they can't repay. Low-income students are put at greater risk by student loans because they are more likely to borrow and they borrow more than other students.<sup>195</sup> African American students are also at greater risk; they are more likely than members of other racial/ethnic groups to graduate with debt levels greater than \$30,500.<sup>196</sup>

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## SOLUTIONS

***The new governor will be responsible for setting higher education policy and proposing the state budget for at least the next four years.*** The governor should recognize higher education as a

smart place to invest public dollars, especially now, when the state's limited resources must be weighted toward investments that spur economic growth and New Yorkers have a greater need for quality, affordable public higher education. To that end, we recommend that the following actions be included in the governor's Executive Budgets:

Instead of substituting tuition for state funding, the new governor should make paradigm-shattering public investments in SUNY and CUNY to restore the cuts of the last three years and protect the missions of the city and state university systems. The new governor should:

- Hold the line on tuition.
- Restore funding for community colleges, and then enforce education law to ensure that the state is funding 40% of their total operating costs.
- Provide additional rental aid and funding to help expand capacity at over-crowded community colleges.
- Restore this year's cuts to TAP.

In addition, the new governor should update TAP in the following ways:

- Give part-time students immediate access to TAP aid.
- Allow mid-semester adjustments to TAP awards for all students subjected to abrupt financial crises.
- Increase TAP awards for independent students 22 years and older and lift the income thresholds that determine their aid.
- End the practice of reducing students' TAP awards by \$100 per year after their second year of college.
- Allow TAP to be used to help pay mandatory fees.

Lastly, the new governor should increase funding for opportunity programs to enroll more at-risk students and strengthen the support structures created by the programs.

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## **ENDORSED BY**

**University Student Senate**



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## REBUILDING CONFIDENCE IN ALBANY

# *State Government*

There has been widespread disgust with the actions – and inactions – of the state’s elected officials. Controversies, scandals, gridlock, and dysfunction are just some of the descriptions that New Yorkers associate with their state government. The new governor can take steps to respond to this growing public cynicism. In addition, meaningful actions that build public confidence will create momentum that is critical to any needed legislative changes.

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# Strengthening Ethics

## SUMMARY

Nowhere is the public’s trust more susceptible to harm than when lawmakers act in ways that skirt not only the letter, but also the spirit, of ethical considerations. New York has seen its share of ethical lapses, yet little has been done. Prison sentences, convictions, plea deals, scandals and other allegations of ethical misconduct have been on the front pages of the state’s newspapers. As a result, the ways in which the state regulates political ethics is a front-burner issue. Unfortunately, little is clear when it comes to New York State’s ethics laws. The laws are loophole-riddled and poorly – if at all – enforced.

Statutory changes are needed to comprehensively reform the state’s ethics laws. However, the new governor can take steps to bolster the ethics of the executive branch,<sup>197</sup> and in doing so, can set an example of integrity in state government as well as help build momentum for additional changes.

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## PROBLEM

***Lax limits on the political activities of policymakers.*** While previous governors have restricted the political activities of members of the executive branch,<sup>198</sup> members of the governor’s cabinet have continued to maintain political committees. In addition, there have been news revelations that members of the Commission on Public Integrity (the state’s ethics watchdog, “CPI”) have been involved in campaign fundraising activities for sitting legislators. Similarly, some members of that commission have been recipients of government contracts.

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## PROBLEM

***Inadequate understanding of the state’s ethical standards.*** Recently, high-ranking members of the executive branch have been found to have violated the state’s ethics law. The former

## SOLUTIONS:

AS PART OF THE STATE’S PROCUREMENT STANDARDS, PLACE RESTRICTIONS ON “PAY-TO-PLAY” CAMPAIGN CONTRIBUTIONS FOR THOSE SEEKING STATE GOVERNMENT CONTRACTS.



SET NEW ETHICAL STANDARDS FOR THE EXECUTIVE BRANCH, INCLUDING: RESTRICTIONS ON POLITICAL ACTIVITIES BY MEMBERS OF COMMISSIONS AND FULL DISCLOSURE OF ETHICS FILINGS.



REQUIRE REGULAR ETHICS TRAININGS FOR MEMBERS OF THE EXECUTIVE BRANCH.



FUND THE AUTHORITY BUDGET OFFICE AT THE LEVEL WHERE IT CAN EFFECTIVELY OVERSEE THE STATE’S HUNDREDS OF PUBLIC AUTHORITIES.

state comptroller was involved in misuse of state resources (among other violations), the former Health Commissioner also misused state resources, the former executive director of the CPI was found to have violated ethical standards, and Governor Paterson violated the state's gift ban by soliciting free tickets to the first game of the 2009 World Series. At that time, the governor argued that he attended in an official capacity – an argument rejected by the CPI.

While there is no way to know if at least some of these violations were based on ignorance of the law, it seems clear that New York must do more to ensure that public officials are well aware of the state's ethic standards.

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## PROBLEM

***Powerful interests use campaign cash and special connections to influence the awarding of government contracts.*** The infusion of large sums of money into the campaign coffers of elected officials by businesses and unions vying for public contracts has generated a widespread public belief that contributors are “paying” those officials for the opportunity to “play” in the state contracting process. The most egregious example is the recent scandal in the state comptroller's office. Under that scheme, the comptroller awarded pension fund business to businesses that donated to his campaign committee, political consultant and paid for trips abroad. The former state comptroller and his top staff and political advisors have pled guilty.<sup>199</sup>

In addition, the state's process for awarding a multi-billion dollar “racino” contract at Aqueduct Raceway has been criticized by the Inspector General. The Inspector General concluded, “that the chaotic process resulting in AEG's [Aqueduct Entertainment Group, a bidder] multi-billion dollar award was a ‘political free-for-all’” marked by unfair advantages and more than \$100,000 in campaign donations.”<sup>199</sup>

Unlike many states, New York does not limit the size of contributions from state or local contractors to the very officials responsible for awarding the contracts. While the two controversies mentioned above occurred outside of the normal agency procurement process, the tales of “pay to play” abuses in state government are numerous:

In 2003, Bronx Assemblywoman Gloria Davis was forced to resign after she was allegedly caught taking \$24,000 as part of a deal to fix a nearly \$900,000 contract in her district. Davis also allegedly accepted free rides between Albany and New York City from Correctional Services Corp., a Florida company that operates two New York City halfway houses and has received millions of dollars in state contracts in recent years.<sup>200</sup>

In 1997, the Silverite Construction Company was on the verge of losing in a competitive bid for a \$100 million government contract to repair a tunnel in New York City. Silverite was able to revamp its bid and win the contract after it made campaign donations to key Republican campaign committees.<sup>201</sup>

The Vanderbilt Group won a state contract to build dormitories on SUNY's Old Westbury campus. As the result of a *Newsday* report and follow-up investigation that revealed the Vanderbilt Group had allegedly misled the state about its qualifications and had delivered poor quality work, the Dormitory Authority cancelled that \$27.9 million contract. *Newsday* reported that the group's owners, Frank and Kenneth Stubbolo, had funneled hundreds of thousands of dollars in campaign contributions to important Republican political committees.<sup>202</sup>

Without rules prohibiting such “pay to play” arrangements, the risks of actual or apparent corruption in the process of choosing contractors are obvious. Assemblyman William Parment, a Democrat from Jamestown, has concluded publicly that “[t]he procurement process is entirely too open to manipulation.”<sup>203</sup>

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## SOLUTION

***Establish new ethical standards for the executive branch.*** Make it clear that members of the executive branch must not be involved in campaign activities, including maintenance of political committees. In addition, commission members must not be involved in campaign fundraising or be permitted to receive government contracts, particularly from the areas in which they regulate. In order to ensure that such trainings are conducted thoroughly, each agency should have a trained ethics integrity officer. Lastly, the governor should require that his top appointees disclose their ethics filings, including the ranges in value of their income and investments.

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## SOLUTION

***Require regular ethical trainings.*** Once good laws are on the books, the best way to prevent ethics violations is through education. In at least 22 states, commissions are statutorily required to conduct ethics training though, by tradition, others also do so.<sup>204</sup> In New York, the CPI offers ethics trainings, but agencies are not required to use them. In New York City, the voters recently approved by referendum a measure to require such trainings for city employees, which can be administered by the city agencies themselves in coordination with the ethics body to save money. The new governor should expressly require training for all state officials covered by the ethics law, as well as continuing education in these areas provided by the CPI.

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## SOLUTION

***End Albany’s “pay to play” culture.*** New York should join a growing number of states and localities with “pay to play” restrictions on public contractors. These states include Colorado, Connecticut, Hawaii, Illinois, Kentucky, New Jersey, Ohio, South Carolina, and West Virginia.<sup>205</sup> The reform should:

- Set reasonable limits on contributions from public contractors as part of contracting specifications.<sup>206</sup> In New York City, limits range from \$250-\$400 based on the office for which the contribution is made by those “doing business” with the City.
- Prohibit contractors from serving as officers of political committees that work with candidates.
- Prohibit the state from entering into contracts with entities that have made political contributions that exceed the state’s legal limits.

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## SOLUTION

In December 2009, Governor Paterson signed into law the strongest measures in decades to establish transparency and accountability for the state’s hundreds of public authorities. The office has great potential, but has been undermined by grossly inadequate funding. The new governor should adequately fund the new Authority Budget Office to enable it to meet its mandate.

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## ENDORSED BY

**Citizens Union of the City of New York, Common Cause/NY, League of Women Voters of New York State**

# Redistricting Reform

## SUMMARY

At the heart of the public's discontent is a feeling that state lawmakers rig the system for their own political gain. Nowhere is this more apparent than in the way legislative district lines are drawn.

Every ten years, political boundaries are drawn to reflect population changes identified in the U.S. Census. In New York, the majorities in both the Senate and Assembly draw the new district lines for their respective houses. There is only one check on this system: whether the governor chooses to allow this practice to continue or use his veto powers to force changes. To date, no governor has shown leadership on this important issue.

American representative democracy is based on a system of "one person, one vote." However, New York State's redistricting system undermines that concept.

It is a system that cries out for change.

The creation of an independent redistricting commission must be a top priority for the new governor. He should support legislation that removes control over the redistricting process from legislators and places it in the hands of independent experts. An independent redistricting commission would help ensure that district lines are drawn to protect the best interests of the public, not to further the political interests of lawmakers and the political parties.

## SOLUTIONS:

THE GOVERNOR SHOULD FORCE A DEBATE OVER THE CREATION OF AN INDEPENDENT REDISTRICTING COMMISSION BY ENSURING THAT THE LEGISLATURE'S REDISTRICTING COMMISSION IS NOT FUNDED THROUGH THE STATE BUDGET.

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## PROBLEM

*The New York State legislative majorities draw district lines to maximize their incumbency protection and majority party control.*

Thanks to the lines drawn in 2002, of the 62 Senate districts, 27 were drawn to cram in as many registered Democrats as possible into districts with a Democratic enrollment advantage of 40,000 or more; 15 granted an enrollment edge of between 20,000 and 40,000 (10 with Republican advantages).<sup>207</sup> Only 13 Senate districts were "competitive districts," meaning that the enrollment differences between the major parties was 13,000 or fewer.

In the Senate, Republicans – who controlled redistricting in that house – “packed” as many Democrats in as few districts as possible. Republicans then drew as many districts as possible with Republican majorities.

Of the 150 Assembly districts, each with roughly 125,000 constituents, 72 grant an enrollment edge of 20,000 or more – of which 68 were Democratic-advantage districts; 38 granted an enrollment edge of between 10,000 and 20,000, of which 26 were Republican-advantage districts. Only 12 were “competitive districts,” meaning those with enrollment differences of 5,000 or fewer.

In the Assembly, Democrats – who drew districts in that house – limited the size of majorities in “Republican” districts. Thus, Democrats were able to use their sizable campaign financing edge to keep the pressure on the Republican minority, making it difficult for them to mount serious challenges to Democratic “marginals.”

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## PROBLEM

**Large population differences.** U.S. Supreme Court rulings have made it clear that legislative districts should be of comparable size. In one case, the Court ruled that “the achieving of fair and effective representation for all citizens is ... the basic aim of legislative apportionment” and it was for that reason that the decision insisted on substantial equality of population among districts.<sup>208</sup> Essentially, mapmakers’ goals are to keep Congressional districts at exactly the same population and within a ten percent range for state legislative districts.

While not illegal, New York has legislative district lines that can be dramatically different in size. An analysis of district populations created in 2002 found that Assembly districts ranged in size from 121,111 people to 133,038 people, and Senate districts ranged in size from 290,925 people to 320,851 people.<sup>209</sup>

Variation in district population size serves a clear political goal. The evidence shows that the majorities in both houses used the redistricting process to give themselves a political edge. In the Senate, districts based in heavily Democratic New York City are districts with the largest populations. It is likely that this was an effort by the Senate Republican majority to have as few districts in New York City as possible. The strategy of having the smallest population districts in upstate New York allowed mapmakers to increase the number of upstate Senate districts – which are more likely to contain Republican majorities.

In the Assembly, the trend was the opposite. Upstate districts had the largest populations, while New York City-based Assembly districts had the smallest. Long Island districts contained large populations as well.

In the Assembly, the district lines appear to be drawn with the goal of packing as many New Yorkers as possible in the smallest possible number of districts in areas with traditionally high Republican enrollments.

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## RESULT

One of the remarkable political trends in New York has been the difficulty political challengers have had in taking on state legislative incumbents. During the past 20 years, few incumbents have been beaten in the state legislature's general elections.

Even though in some cases there were no incumbents on the ballot, and in some cases challengers were able to unseat incumbents in party primaries, very few incumbents were beat in elections open to all New Yorkers. During the period from 1982 through 2008, nearly 3,000 state legislative general elections were held, yet in only a tiny fraction of those races (39) were challengers successful in knocking out incumbents.

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## SOLUTION

***The governor should force a debate over the creation of an independent redistricting commission.***

It is clear that New Yorkers want a change in who draws district lines. In a recent poll, by a 3 to 1 margin, likely voters stated that they wanted an independent redistricting commission to make these decisions.<sup>210</sup> And there is growing national support for this reform. In the recent election, voters in three states overwhelming supported redistricting reform measures. In California, voters were decisive about who they wanted in charge of redistricting by approving a proposition (20) that transferred the responsibility for Congressional redistricting to the independent commission approved by voters in 2008. Californians also rejected a proposition (27), which would have dissolved that commission. Florida voters approved measures that outline standards the legislature must follow in conducting legislative and congressional redistricting. In Oklahoma, voters agreed to change the name and composition of their state's apportionment commission.<sup>211</sup>

Moreover, there is growing political support in New York as well. The new governor has repeatedly – and in writing – promised to veto district lines that are drawn in the typical manner.

In order to force a debate on the issue this year, the governor must fight to eliminate funding of the existing legislative-controlled redistricting commission. Unless lawmakers agree with reforms, such as the establishment of an independent redistricting commission, the governor must firmly oppose the funding.

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## ENDORSED BY

**Citizens Union of the City of New York, Common Cause/NY, League of Women Voters of New York State**

# Campaign Finance

## SUMMARY

Independent researchers and the public at large have long criticized New York State’s disgraceful campaign finance system. Indefensibly high contribution “limits,” coupled with disgracefully inadequate disclosure requirements and nonexistent enforcement, create a system that cries out for change.

There can be no doubt that fundamental reforms can only result from legislative action. However, the governor-elect can use his “bully pulpit” to advance the issue and focus on one key issue that can be resolved through administrative changes.

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## PROBLEM

*While there is overwhelming need for fundamental changes in New York’s system of campaign finance, the new governor can do little to change it on his own. He can, however, push in one key area: elimination of the limited liability corporation loophole.*

In 1994 the legislature enacted the “New York Limited Liability Company Law, effective October 24, 1994 (the “LLC Law”).<sup>212</sup> The LLC Law allows the formation of a limited liability company to conduct any lawful business and LLCs may be organized with as few as one person, person being defined to include a natural person, corporation, business trust or other limited liability company.<sup>213</sup>

Since enactment of the LLC Law, LLCs have become the state’s most popular form of limited liability business entity and are favored by small business owners because it affords them the “managerial flexibility and favorable tax benefits of the partnership [no “double taxation” of both the entity and member], while also providing the conventional limited liability protection of the corporation.”<sup>214</sup> LLCs are also quick, relatively simple and inexpensive to form, with “do-it-yourself” kits touting that organization papers may be drafted in a few hours.

New York’s Election Law was not amended to specifically cover political donations contributed by this new form of business entity.

## SOLUTIONS:

FORMALLY PETITION THE NEW YORK STATE BOARD OF ELECTIONS TO REVISIT ITS DECISION TO ALLOW LIMITED LIABILITY CORPORATIONS (LLCs) TO BE CONSIDERED AS “INDIVIDUALS” AND MAKE CAMPAIGN CONTRIBUTIONS OF THE SIZE PERMITTED FOR INDIVIDUALS, INSTEAD OF CORPORATIONS.



EXAMINE ALTERNATIVE REVENUE STREAMS TO FUND PUBLIC FINANCING OF ELECTIONS.

On January 30, 1996, the New York State Board of Elections (SBOE) issued 1996 Opinion # 1 (January 30, 1996), holding that as defined in the LLC Law, LLCs are not corporations, partnerships or trusts and are not subject to the corporate contribution limits pursuant to Election Law Article 14.

Having determined that LLCs were not corporations, partnerships or trusts for purposes of the Election Law, the Board sought guidance from Federal Election Commission Advisory Opinion 1995-11. In that opinion, the Federal Election Commission (“FEC”) addressed whether under federal campaign finance laws LLCs should be treated like corporations and therefore banned from making contributions to federal candidates and committees.<sup>215</sup>

The FEC found that since Virginia law stated that LLCs were not corporations, the FEC would not hold them to the federal ban on corporate political donations.<sup>216</sup> The FEC went on to find that the Virginia LLC was not a partnership and therefore would be subject to the individual limits under federal law.

In 1999, the FEC reversed its position on LLC treatment under federal election law and adopted final regulations (the “FEC LLC Regulation”).<sup>217</sup> The FEC LLC Regulation adopted a “check the box” rule. The “check the box” rule treats LLCs for federal election purposes as the LLC has chosen to be treated under the Internal Revenue Code. By default, an LLC that does not check the corporate-status box on its IRS form is treated as a partnership for purposes of both taxation and federal campaign contribution limits,

The FEC LLC Regulation rejected the FEC’s prior reasoning for treatment of LLCs as persons, noting that members of LLCs that adopt (or default into) partnership status would be able to contribute up to the statutory limits through each separate LLC. The FEC stated that allowing each LLC to have separate partnership contribution limits “could lead to proliferation problems, since a person who was a member of numerous LLCs could contribute up to the statutory limits through them” and that some members of LLCs that were otherwise barred from making contributions, such as foreign nationals and federal contractors, could evade the law.

This functional approach based upon federal tax status, the FEC said, “accurately describes whether an LLC’s structure and function are more akin to a ‘corporation’ or a ‘partnership.’”

Importantly, the FEC LLC Regulation requires that contributions made by single-member LLCs be attributed to that individual and attach to the individual for purposes of federal election law. The FEC LLC Regulation also requires LLCs to affirm in connection with any contribution that it is eligible to make the contribution and provide information to the recipient committee on how the contribution is to be attributed.

In 2001, the New York City Campaign Finance Board (“NYCCFB”) addressed the issue of whether to apply its “single source” rule to LLCs with a common managing member or sep-

arate limited partnerships controlled by a common general partner. In Advisory Opinion 2001-6, issued June 14, 2001, the NYCCFB found that under its rules and under common management practices for LLCs, a single individual typically “not only makes decisions and establishes policies for the [LLC] it manages, but also controls all non-material transactions conducted by such [LLC]. Contributions to political candidates would generally be considered non-material transactions.”

Accordingly, the NYCCFB found that in the absence of some agreement to the contrary, LLCs, together with the common managing member or general partner that controls it, would be considered a single source for purposes of the contribution limits applicable under the New York City Administrative Code.

In addition to creating a loophole in the limits for political donations that apply to very similar business entities, the state’s current treatment of LLC contributions frustrates the disclosure requirements of the Election Law, making it difficult if not impossible for the public and candidates to identify the actual donor. In particular, section 14-120 of the Election Law requires that contributions be made “under the true name of the contributor.” As a practical matter this section is rendered virtually meaningless by the LLC loophole.

There is ample basis for revisiting the Board’s position adopted in 1995: LLCs have become the fastest growing type of new business organization formed in New York, that LLCs are a huge source of campaign contributions to state candidates and parties; that the FEC, which has changed its position on treatment of LLC contributions under federal election law, that New York had relied on the FEC’s abandoned position, and that New York City has adopted a “single source” rule for LLC contributions applicable to all donations made for New York City races.<sup>218</sup>

In bizarre response to a complaint by NYPIRG and other groups, the State Board of Elections decided that only a statutory change could reverse its earlier administrative decision to treat LLCs as individuals for the purposes of campaign contribution limits.

This indefensible decision must be challenged by the new governor.

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## SOLUTION

***The new governor must force the BOE to take up their erroneous, earlier LLC decision.*** The legal fiction that LLCs are individuals for the purposes of contribution limits under State Election Law can no longer stand. The new governor must urge the SBOE to revisit this issue and adopt the FEC and NYCCF positions regarding LLCs, namely, that LLCs should be treated as corporations or partnerships based on their IRS tax status. In addition, the ability of LLCs to make contributions should be affirmed by the BOE with information

provided on how to attribute such contributions. Finally, the new governor should direct the SBOE to apply the “single source rule” to LLC contributions which attributes contributes from the LLC to the common managing member or general partner who controls it.

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**ENDORSED BY**

**Brennan Center for Justice, Citizens Union of the City of New York, Common Cause/NY, League of Women Voters of New York State**

# Election Reform

## SUMMARY

New York is in the midst of a crisis in electoral democracy. Public participation in elections continues its downward trend and patronage-driven boards of elections across the state have little incentive to advocate or ensure that meaningful changes to the administration of elections are made. Indeed, in the 2010 general election, New York finished last in the nation in voter turnout.<sup>219</sup>

The governor can play a key role in monitoring the performance of the state's voter registration process as well as its administration of elections. Both have been persistent problems. The new governor must use his powers to ensure that New York's registrations and elections process are the best in the nation.

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## PROBLEM

*The vast majority of new voters are registered through the Department of Motor Vehicles (DMV), not other state agencies covered by the National Voter Registration Act (NVRA).* The NVRA passed Congress in 1993 and went into effect on January 1, 1995. NVRA was passed to help citizens to register to vote. NVRA focuses on voter registration at motor vehicle offices and at designated state agencies including state public assistance offices and offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, as well as efforts to register voters by mail. It also requires each state to designate additional offices as voter registration agencies.

The New York State Board of Elections (SBOE) is responsible for the administration of NVRA. The SBOE coordinates and monitors the distribution of voter registration forms, promotional materials, and other public information, as well as training agency employees. The Board is also responsible for adopting rules and regulations, assisting designated agencies, and compiling statistics from agencies and county election boards, as required by the Federal Election Commission (FEC). Its statistics are also reported in the SBOE's Annual Reports (referred to in charts below).

## SOLUTIONS:

ORDER STATE AGENCIES TO MODERNIZE THEIR PROCEDURES FOR REGISTERING VOTERS AND STRENGTHEN THEIR VOTER REGISTRATION EFFORTS AS REQUIRED BY THE NATIONAL VOTER REGISTRATION ACT ("MOTOR VOTER").



REQUEST THAT THE COMPTROLLER AUDIT THE STATE'S COMPLIANCE WITH NVRA.



EXAMINE THE PERFORMANCE OF THE BOARDS OF ELECTIONS AND THE NEW TECHNOLOGIES USED IN THE 2010 ELECTIONS.

As seen in the following charts, an overwhelming percentage of new voters registered in the state under NVRA procedures are registered by the state’s DMV.

**Number of Agency-Based Voter Registrants by Source, 2001 through 2009<sup>220</sup>**

Source of Voter Reg	2009	2008	2007	2006	2005	2004	2003	2002	2001
Motor Vehicles	298,191 (77.5%)	289,261 (68.6%)	243,419 (68.4%)	245,167 (73.9%)	278,052 (75.7%)	420,914 (79.1%)	377,586 (80.5%)	371,205 (78.5%)	368,532 (75.8%)
Public Assistance Agencies	76,987	119,218	102,121	76,255	77,251	90,876	75,310	76,130	86,552
Disability Agencies	7,661	8,930	8,049	8,139	9,251	8,968	7,984	11,345	11,886
State Designated Agencies	1,150	2,097	1,236	1,176	1,314	8,903	6,635	11,681	16,966
By Mail	926	2,008	998	949	1,291	2,478	1,594	2,462	2,173
Armed Forces <sup>221</sup>	0	0	0	0	1	341	N/A	N/A	N/A
<b>Total</b>	<b>384,915</b>	<b>421,514</b>	<b>355,823</b>	<b>331,686</b>	<b>367,159</b>	<b>532,480</b>	<b>469,109</b>	<b>472,823</b>	<b>486,109</b>

The SBOE also listed sources in previous years, but aggregated them together.<sup>222</sup> However, the major source of new registrants is still the DMV.

Source of Voter Reg	1999-2000 (2001 AR)	1995-1998 (2001 AR)
DMV	823,125 (71.9%)	1,215,886 (64.1%)
Public Assistance Agencies	225,723	461,899
Disability Agencies	40,307	48,738
State Designated Agencies	46,074	133,885
By Mail	9,371	35,281
Armed Forces	N/A	N/A
<b>Total</b>	<b>1,144,600</b>	<b>1,895,669</b>

These data show that there has been little change in the emphasis of the state agencies’ registrations efforts. The program has been criticized in two previous state comptroller audits.

In 1995, the comptroller stated, “We examined New York’s compliance with the National Voter Registration Act and found that the State Board of Elections has made a good effort to coordinate voter registration efforts. However, while some State agencies (such as the Department of Motor Vehicles) have been effective in registering voters, other State agencies (such as the Department of Labor) have not been effective. Like many other states, New York has not been effective in registering eligible public assistance recipients. We conclude that New York could more effectively monitor its voter registration efforts.”<sup>223</sup> [Emphasis added]

In 2001, the comptroller released similar findings, “We found that the Department of Motor Vehicles (DMV) was in compliance with the NVRA; but that the Department of Labor (DOL), the Division of Veterans’ Affairs (VA), and the Workers’ Compensation Board (WCB) were *not* in compliance with all of the provisions we reviewed. For example, two of the DOL sites lacked evidence that all customers were being given the opportunity to register.”<sup>224</sup> [Emphasis added]

Problems in New York’s NVRA program even led to litigation with the U.S. Justice Department. The lawsuit was filed in 2004. The Justice Department alleged that the state was not offering voter registration services to students with disabilities at public colleges. In 2010, the Court ruled in favor of the Justice Department (DOJ) and DOJ entered into a court-approved agreement with New York this past summer.<sup>225</sup>

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## PROBLEM

***On Primary Day 2010, reports from across the state identified serious shortcomings including late poll openings, poorly-trained and recruited polling clerks, missing poll books, a lack of privacy and problems with the new optical scan voting system.*** These contributed to needless voter confusion and stress – and in some cases disenfranchisement. These were the observations of the media, advocates and voters on Primary Election Day, 2010. Those observations were validated by a state comptroller report which found that “Boards of Elections in 44 counties in New York State reported voting problems on primary day that ranged from privacy issues to polls opening late.” The comptroller’s report of 57 county boards of elections found reported problems in 44 counties that included a lack of privacy in the voting process, confusing or hard to read layouts of ballots, malfunctioning voting machines and delayed opening of the polls.<sup>226</sup> Similar problems were identified in New York City.<sup>227</sup> While some of the problems may have been precipitated by the move to a new voting technology, many are annual occurrences and point to a failure of the patronage controlled boards of election across the state. A serious review of the state’s system of election administration is required.

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## SOLUTION

The new governor must order state agencies charged with NVRA participation to boost and modernize registration efforts. One of the primary reasons that DMV registers so many more voters is that it has integrated the voter registration form into the application process for a drivers’ license and electronically transmits completed voter registration information to Boards of Elections. Every other NVRA agency in the state relies on distributing paper registration forms to clients. The new governor should direct state NVRA designated agencies to mirror the DMV’s actions through electronic transmission of completed voter registration forms within the intake process.

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## SOLUTION

*The new governor should request that the state comptroller conduct an audit of the state's NVRA effort.* Given that there appears to be little difference in the registration results of state agencies, the comptroller should audit these efforts.

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## SOLUTION

*The new governor should examine the state's election process.* The failures identified in the comptroller's reports must be thoroughly examined. The governor should examine the root causes of election failures.

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## ENDORSED BY

**Brennan Center for Justice, Citizens Union of the City of New York, Common Cause/NY, Demos, League of Women Voters of New York State**

# Agency Openness

## SUMMARY

The critical tool for holding policymakers accountable, as well as ensuring that the public is educated on policy-making, is the Freedom of Information Law. Without a strong public access statute, it is virtually impossible for the public to adequately participate in, and monitor, governmental decision making. Given the culture of secrecy in Albany and growing public cynicism with state government, it is clear that providing adequate government openness will be a key test for the new administration whose electoral support stems in large measure from a pledge to reform.

In addition, state agencies should ensure that policymakers and the public can easily monitor their activities. The cornerstone of the democratic process is accountability and agencies should be required to produce regular, detailed reporting on their activities.

## SOLUTIONS:

ISSUE AN EXECUTIVE ORDER REQUIRING THAT AGENCIES ADHERE TO THE “SPIRIT” OF THE FREEDOM OF INFORMATION LAW (FOIL).



USE NEW TECHNOLOGIES TO ALLOW THE PUBLIC TO GAIN ACCESS TO FOIL-ABLE DOCUMENTS THROUGH THE INTERNET.



EXTEND THE EXECUTIVE ORDER REQUIRING “WEBCASTING” OF AGENCY MEETINGS.

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## SOLUTIONS

***Require that agencies follow the “spirit” of the FOIL and allow electronic access to records. FOIL should allow the public easy access – via the Internet – to virtually all FOIL-able documents.*** Not only would such an order positively impact on the public’s right to know, it would also help reduce the cost of state government.

New York State’s FOIL watchdog, the Committee on Open Government has stated,

“In the past three reports, we referred to situations in which the use of FOIL resulted in disclosures that saved the taxpayers millions. For instance, articles published in the New York Times in 2005 reported that billions of dollars were misspent in the Medicaid program due to waste, fraud and profiteering. The Times noted that those findings were the result of disclosures made under FOIL. The disclosures led to the recovery of millions of dollars, and to actions to uncover and deter fraud.

“Other disclosures continue to prove the point. Many New Yorkers have learned that attorneys retained by school districts improperly received

pensions or health insurance benefits. The disclosures emanated from a single request by a *Newsday* reporter, which with the assistance of Committee staff, led to many more. The result is that millions of taxpayer dollars have been recouped or prohibited from being spent in the future. The disclosures also led to passage of legislation barring the practices that permitted the improper payments and expenditures to be made.”<sup>228</sup>

***Ensure that state agencies fulfill current public reporting requirements.*** Reporting requirements can be the legislature’s most effective tools for monitoring agency operations. Comprehensive and transparent reporting standards are critical to monitoring and assessing the performance of state government. Legislators must be kept abreast of all of the most current reports flowing from agencies. The public must also be able to access this information if it is to be expected to make performance-based assessments of public policies and understand how tax dollars are spent.

***Create a “clearinghouse” website for all public reports.*** A website would serve as a one-stop-shopping public access point or portal for all reports issued by state agencies. The website would be modeled after the audit section of the state comptroller.<sup>229</sup>

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## ENDORSED BY

**Brennan Center for Justice, Citizens Union of the City of New York, Common Cause/NY, League of Women Voters of New York State**

# Budgetary Openness

## SUMMARY

Arguably, setting the state’s priorities by adopting its \$135 billion plus budget is the most important thing the legislature and governor do. Despite the importance and size of the task, New York’s budget process has been described as “dysfunctional” by the state’s top elected officials. For too long, the process has been marked by excessive secrecy, a lack of accountability, and a fiscal uncertainty that comes from chronically late budgets.

The substance of the budget has also been controversial. The comptroller issued a blistering analysis of the state’s fiscal condition. According to the comptroller, “New York State will face a cumulative spending gap that could exceed \$37 billion through State Fiscal Year (SFY) 2013-14 largely because policymakers depended on temporary and non-recurring resources in the near term without a permanent long-term solution.”<sup>230</sup>

What is clear from this criticism is that there needs to be much greater public scrutiny of the state budget process. Reforms are desperately needed.

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## PROBLEM

*New York State’s budget process is too secretive.* New York’s budget process is too secretive, and citizens wishing to have input in budget debates are further hampered by a too short timetable for action. When the governor develops his proposed executive budget, the recommendations made by state agencies are shielded from public view. In addition, New York state’s fiscal year begins on April 1 – the earliest in the nation.

## SOLUTIONS:

POST ON THE INTERNET THE UNDERLYING BUDGETARY INFORMATION USED BY THE DIVISION OF THE BUDGET (DOB) IN DEVELOPING NEXT YEAR’S EXECUTIVE BUDGET.



REQUIRE THE DOB TO RELEASE EASY-TO-READ COMPARATIVE BUDGET INFORMATION SO THAT THE PUBLIC (AND RANK-AND-FILE LEGISLATORS) CAN EASILY COMPARE PREVIOUS BUDGETS, WITH THE CURRENT YEAR’S BUDGET, A “CURRENT SERVICES” BUDGET FOR THE UPCOMING FISCAL YEAR, AND CHANGES PROPOSED IN THE EXECUTIVE BUDGET.



REQUIRE THE DOB TO REPORT WITHIN 72 HOURS ANY SIGNIFICANT CHANGES TO THE BUDGETARY ASSUMPTIONS, INCLUDING LEGISLATIVE PROPOSALS.



COMMIT TO NOT USE “MESSAGES OF NECESSITY” FOR PASSAGE OF THE BUDGET.

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## PROBLEM

*Too frequently, budget numbers are “spun.”* Sadly, the mind-boggling range of revenue estimates in recent years’ budget making has been the rule, not the exception.

For example in 2002, a gubernatorial election year, the former state comptroller warned that New York’s revenues were falling behind and that a deficit was looming for that fiscal year (2002). But the state’s then-budget director countered that the state’s financial plan “remains in balance, with no significant or budgetary risks having emerged.”<sup>231</sup> Later that year, the Senate majority leader warned that the state was facing a budget deficit that could be as much as \$10 billion. In rejecting the senator’s claim, the governor’s Division of the Budget estimated that the projected gap would be a more manageable \$2.8 billion.<sup>232</sup>

However, after winning reelection in November, Governor Pataki admitted that the state was facing a huge budget deficit, one that was estimated to be as high as \$12 billion, with a deficit of \$2 to \$2.5 billion for the 2002 fiscal year and another \$10 billion for the 2003 fiscal year.<sup>233</sup>

Unless the public has access to unbiased, timely and accurate budget information, it will be forever at the mercy of dueling budget forecasts and will have no way of determining which interpretation is correct, nor be able to influence budget action in a meaningful way.

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## SOLUTIONS

*Greater openness in budget making.* While the new governor cannot unilaterally change the state budget process, he can use his “bully pulpit,” redesign budget documents, boost budget making transparency and require greater independent budgetary analyses to drive changes.

*Post on the Internet the underlying budgetary information used by the Division of the Budget in developing next year’s executive budget.* All underlying data used in the development of the executive budget should be made publicly available, in a usable, downloadable, format.

*Make the budget easily understandable.* Require the DOB to release easy-to-read comparative budget information so that the public (and rank-and-file legislators) can easily compare previous budgets, with the current year’s budget, a “current services” budget for the upcoming fiscal year, and changes proposed in the executive budget.

*“Package” the budget in a manner that facilitates legislative analyses.* The governor should offer his executive budget in a manner that tracks the legislature’s conference committee structure.

*Require the DOB to report within 72 hours any significant changes to the budgetary assumptions, including legislative proposals.* The new governor should require that the DOB act as an

independent budget analyst and regularly review the impact of significant potential changes in the state finances – including “scoring” the legislature’s budget proposals.

***Promise not to use “messages of necessity” for passage of the budget.*** The long-criticized practice of passing budget bills with “messages of necessity,” which suspends the normal three day “aging” requirement, should be formally abolished. Such messages should only be used for real times of necessity, not as a normal course of action.

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## **ENDORSED BY**

**Brennan Center for Justice, Citizens Union of the City of New York, Common Cause/NY, League of Women Voters of New York State**

# Regulatory Reform

## SUMMARY

Efforts by previous governors to conduct “regulatory reform” in New York have been biased and unproductive, resulting in extensive delays in rulemaking and siphoning off limited staff resources. While regulatory review, *per se*, is not a bad thing, it can be used as a tool to weaken or delay regulations that are needed to protect the environment, public health, consumers, and workers, to name a few, especially when it is conducted without transparency. Rather than continue with the failed efforts of the past, the new governor should revoke the previous Executive Orders concerning regulatory reform and overhaul or dismantle the Governor’s Office of Regulatory Reform, which was established by Governor Pataki in 1995.

## SOLUTIONS:

OVERHAUL OR ELIMINATE THE GOVERNOR’S OFFICE OF REGULATORY REFORM.



DO NOT EXTEND EXECUTIVE ORDERS 17 AND 25 OF THE PATERSON ADMINISTRATION.

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## PROBLEM

***Regulatory review has run amok in New York. Multiple executive orders requiring regulatory review layered upon the state’s existing regulatory review requirements are interfering with agencies’ ability to perform their jobs.***

New York already has a law in place requiring regulatory review. Under the State Administrative Procedures Act (SAPA), agencies are required to conduct a comprehensive public review process for all agency rule-making. SAPA requires agencies to evaluate a range of potential impacts when developing regulations, and to consider approaches designed to avoid adverse economic impacts or overly burdensome impacts on individuals, businesses, the economy, and local government agencies. In addition, SAPA requires state agencies to review existing rules every five years and invite public comment on the continuation or modification of the rule.

But starting with Governor Pataki, a series of executive orders have been issued to review the regulations all over again, only without the public’s participation. Governor Pataki established the Governor’s Office of Regulatory Reform (GORR) in 1995 through Executive Order 20. Any new rule that is issued by a state agency must go through GORR for review before it is released for public review and again before it can be finalized. GORR has often been considered a “black hole” for state regulations, which can languish there for years after being submitted.

Critics have charged that GORR has unnecessarily delayed or blocked the implementation of rules and has been used by the executive office to do an “end run” around the public process.<sup>234</sup>Al-

though there was widespread dissatisfaction with Pataki's GORR, Governor Spitzer reinstated EO 20 when he came into office, and Governor Paterson did the same.

Despite the extensive authority already provided to GORR, in August 2009 Governor Paterson issued Executive Order 25 on regulatory reform, establishing a process that is fundamentally anti-regulatory in its bias.<sup>235</sup> Despite repeated requests from good government groups and other advocates, including several FOIL requests for information, Governor Paterson's administration was never able to advance a rationale for why EO 25 was needed.

Paterson's EO 25 sets up an inherently biased review process in which agencies must identify which regulations are viewed as "unnecessary, unbalanced, unwise, duplicative or unduly burdensome." In a nutshell, this sets up an "unpopularity contest" for reviewing regulations. Simply because a regulation is unpopular with a regulated entity does not mean it is unnecessary or unlawful. Nor does its unpopularity with businesses mean it lacks public support, something not taken into account in the EO 25 review process. Furthermore, there is no provision to look at whether there are regulations that should be strengthened or updated, or whether there are gaps in government oversight.

EO 25 creates a back-room review process by which a small panel of political appointees in the governor's office can overturn rules and regulations that were formulated by agency issue specialists and adopted after a formal review and public comment process with broad public input. The result is that powerful, well-connected industry lobbyists with access to the governor's office can get a second chance at weakening regulations that they were unable to stop at the agency level. This undermines the public process and puts the integrity of agency decision-making at risk.

More than forty good government, health, environmental, and labor groups called on Governor Paterson to rescind EO 25 because of its potential far-reaching and deleterious consequences on critical health, labor and environmental protections that were developed with broad public input, including from the business community, both through the legislative and the rule-making process.<sup>236</sup> While it is unclear what effect EO 25 has actually had on state government, one thing that is known is that it has taken up a tremendous amount of agency staff time when agency budgets are stretched past their limit, taking them away from their other responsibilities and slowing down the development of new rules.

Agencies were similarly bogged down carrying out the requirements of Governor Paterson's Executive Order 17, issued in April 2009, which required them to evaluate all of their regulations to identify ways to reduce the impact of existing mandates on local government. The process set forth in EO 17 was entirely duplicative and unnecessary, since, under SAPA, impacts on local governments would have been considered and to the extent possible mitigated when the rules were developed in the first place.

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## **SOLUTION**

*The new governor should allow Executive Orders 17 and 25 to expire and overhaul or dismantle the Governor's Office of Regulatory Reform.* A great deal of time and effort has gone into reviewing and re-reviewing the state's regulations to identify impacts that are overly burdensome to businesses and local governments. This effort has been duplicative and entirely unnecessary because these impacts already must be considered under SAPA during the rule-making process and every five years thereafter. With state agencies stretched to the breaking point due to budget cuts, staff reductions, and increased mandates, these layers of additional reviews serve only to interfere with their ability to perform their core responsibilities. Most importantly, the new governor should not sanction any form of regulatory review that undermines the public process and puts the integrity of agency decision-making at risk.

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## **ENDORSED BY**

**Citizens' Environmental Coalition, Citizens Union of the City of New York, Common Cause/NY, Environmental Advocates of New York, League of Women Voters of New York State**

# Endnotes

- <sup>1</sup> “The spoils system was more fruitful of degradation in our political life than any other that could have possibly been invented. The spoils monger, the man who peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office.” – Theodore Roosevelt, U.S. Civil Service Commissioner, in a letter dated February 8, 1895.
- <sup>2</sup> Congress Joint Economic Committee, “The Importance of the Federal Reserve,” accessed 11/9/10, [www.house.gov/jec/fed/fed/fed-impt.htm](http://www.house.gov/jec/fed/fed/fed-impt.htm).
- <sup>3</sup> Community Reinvestment Act, 12 USC 2901; Title VII of Pub. L. 95-128, 91 Stat. 1147 (October 12, 1977), section 802(a).
- <sup>4</sup> New York State Banking Department, “Fees and Interest Rates,” accessed 11/9/10, [www.banking.state.ny.us/intrate.htm](http://www.banking.state.ny.us/intrate.htm).
- <sup>5</sup> Id., “New York’s Regions and Counties,” accessed 11/9/10, [www.money-rates.com/bank\\_fee\\_survey](http://www.money-rates.com/bank_fee_survey).
- <sup>6</sup> Id., “Capital Region,” accessed 11/9/10, [http://www.money-rates.com/bank\\_fee\\_survey/capitalregionchecking.html](http://www.money-rates.com/bank_fee_survey/capitalregionchecking.html).
- <sup>7</sup> Ibid
- <sup>8</sup> Federal Deposit Insurance Corporation, “National Survey of Unbanked and Underbanked Households,” (last modified 5/3/10), accessed 11/9/10, [www.fdic.gov/HOUSEHOLDSURVEY/](http://www.fdic.gov/HOUSEHOLDSURVEY/). The FDIC estimated in 2009 that 7.7% of U.S. households are “unbanked,” i.e., they do not have a checking or savings account; 17.9% of U.S. households are “underbanked,” meaning they resort to predatory and fringe lenders and payment methods.
- <sup>9</sup> AARP Public Policy Institute, “A Portrait of Older Underbanked and Unbanked Consumers,” (September 2010), accessed 11/9/10, [www.aarp.org/money/credit-loans-debt/info-09-2010/D19394.html](http://www.aarp.org/money/credit-loans-debt/info-09-2010/D19394.html).
- <sup>10</sup> Kingson, Jennifer, A., “The Convenience of an A.T.M., But So Much More,” *The New York Times*, 4/1/06. As one hardware supplier to gas stations and convenience stores says in the article “The convenience retailers want to become a bank for the unbanked.”
- <sup>11</sup> New York State Banking Law § 10.
- <sup>12</sup> “New York State Insurance Department, “Welcome To The New York State Insurance Department’s Information Center,” accessed 11/9/10, [www.ins.state.ny.us/hp97wel.htm](http://www.ins.state.ny.us/hp97wel.htm).
- <sup>13</sup> Public Law No: 111-203, enacted 7/21/10.
- <sup>14</sup> For a discussion of the potential for money laundering using non-bank ATMs, see: Sullivan, Kevin, “A Review and Analysis of the Privately Owned ATM Industry” (March 2004), accessed 11/9/10, <http://www.amltrainer.com/wp-content/uploads/KS-ATM-White-Paper.pdf>.
- <sup>15</sup> “Law to Register Non-Bank ATMs” (last modified 5/24/10), accessed 11/9/10, [http://consumer.westchester.gov.com/index.php?option=com\\_content&view=article&id=2567&Itemid=100073](http://consumer.westchester.gov.com/index.php?option=com_content&view=article&id=2567&Itemid=100073).
- <sup>16</sup> See County of Rockland, “Local Law No. 10 of 2005,” accessed 11/9/10, [www.co.rockland.ny.us/cpl/Laws/ATM\\_local\\_law.pdf](http://www.co.rockland.ny.us/cpl/Laws/ATM_local_law.pdf).
- <sup>17</sup> Nassau County Office of Consumer Affairs, “Automated Teller Machines,” accessed 11/9/10, [www.nassaucountyny.gov/agencies/oca/ATM.html](http://www.nassaucountyny.gov/agencies/oca/ATM.html). New York City has considered requiring the registration of non-bank or credit union ATMs:”Int. 0306-2010,” accessed 11/9/10, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=718903&GUID=AF35829D-9B7A-441F-B5EF-A77E6B03B9AF&Options=&Search=>  
<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=718903&GUID=AF35829D-9B7A-441F-B5EF-A77E6B03B9AF&Options=&Search=>.
- <sup>18</sup> Bogdanich, Walt, and Jenny Nordberg, “Con Men and Cash Machines; Criminals Focus on Weak Link

- in Banking: A.T.M. Network,' *The New York Times*, 8/3/03.
- <sup>19</sup> *NBC News*, "ATM Fraud: Banking on Your Money," Dateline, 12/11/03, accessed 11/9/10, <http://msnbc.msn.com/id/3607110/>).
- <sup>20</sup> Some ATM fraud schemes are not "inside jobs," but involve rigging ATMs to trap consumer information in various ways, called "skimming," and using the data to create a duplicate card to empty a consumer's bank account. See *Three Arrested in Connection With ATM Fraud Ring*, Nat Levy, *Seattle Post Intelligencer*, 11/10/10, accessed 11/15/10, [www.seattlepi.com/sound/429927\\_sound106994193.html](http://www.seattlepi.com/sound/429927_sound106994193.html).
- <sup>21</sup> Convenience stores are aggressively moving to install ATMs that allow bill paying, money transfers, check cashing – in addition to cash dispensing. As one ATM supplier said "The convenience retailers want to become the bank for the unbanked." Kingson, Jennifer A., "The Convenience of an A.T.M., But So Much More," *The New York Times*, 4/1/06.
- <sup>22</sup> According to the cell phone industry trade association, there were 276,610,580 cell subscribers in 2009 (CTIA-The Wireless Association, Background on CTIA's Semi-Annual Wireless Industry Survey, accessed 11/9/10, [http://files.ctia.org/pdf/CTIA\\_Survey\\_Midyear\\_2009\\_Graphics.pdf](http://files.ctia.org/pdf/CTIA_Survey_Midyear_2009_Graphics.pdf)), when the U.S. population was 305 million (U.S. News Staff, "U.S. Population 2009: 305 Million and Counting," U.S. News & World Report, 12/31/08, accessed 11/9/10, <http://politics.usnews.com/opinion/articles/2008/12/31/us-population-2009-305-million-and-counting.html>). In 2006, it was estimated that cell phone use in New York exceeded 10 million. See, e.g., Austria, Sasha, "AARP Wants Cell Phone Industry to Be More User-Friendly," *The Legislative Gazette*, 3/20/06. The penetration rate for cell phone use is estimated at above 50% for New York consumers. See *The Need for Wireless Telephone Consumer Protections: A Survey of New York Residents*, Alan Newman Research for AARP, 2004, accessed 11/15/10, [http://assets.aarp.org/rgcenter/consume/ny\\_wireless.pdf](http://assets.aarp.org/rgcenter/consume/ny_wireless.pdf).
- <sup>23</sup> New York is approximately six percent of national population; national annual charges for 2009 were \$151 billion; \$151 billion x .06 = \$9.06 billion.
- <sup>24</sup> Memorandum of New York Senate Sponsor James Seward in support of Senate Bill number 5483 (1997), submitted in accordance with Senate Rule VI, Sec 1, purpose of bill "[t]o suspend the requirements of the Public Service Law (PSL) applicable to cellular telephone service" (available through NYS Legislative Retrieval Service).
- <sup>25</sup> Federal Communications Commission, "Early Termination Fees," accessed 11/9/10, <http://www.fcc.gov/cgb/etf/>.
- <sup>26</sup> J.D. Power and Associates, "Average Length of Time Wireless Customers Keep Their Mobile Phones Increases Nationally," 9/23/10, accessed 11/9/10, <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010185>.
- <sup>27</sup> CTIA-The Wireless Association, "Consumer Code for Wireless Service," accessed 11/9/10, [http://files.ctia.org/pdf/The\\_Code.pdf](http://files.ctia.org/pdf/The_Code.pdf).
- <sup>28</sup> Wyatt, Edward, "Verizon Deal Ends Inquiry Over Fees," *The New York Times*, 10/28/10, accessed 11/9/10, [www.nytimes.com/2010/10/29/technology/29fcc.html?partner=rss&emc=rss](http://www.nytimes.com/2010/10/29/technology/29fcc.html?partner=rss&emc=rss).
- <sup>29</sup> Id., "F.C.C. Wants to Stop Cellphone 'Bill Shock,'" *The New York Times*, 10/13/10, accessed 11/9/10, [www.nytimes.com/2010/10/13/technology/13shock.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2010/10/13/technology/13shock.html?_r=1&pagewanted=print).
- <sup>30</sup> Gootman, Elissa, and Kate Hammer, "City Schools Cut Parents' Lifeline (The Cellphone)," *The New York Times*, 4/27/06, accessed 11/9/10, <http://select.nytimes.com/search/restricted/article?res=F00717FA385B0C748EDDAD0894DE404482>.
- <sup>31</sup> Bilton, Nick, "It's a Mobile Nation as Cellphones and Tablets Take Hold," *The New York Times*, 10/18/10, accessed 11/9/10, <http://bits.blogs.nytimes.com/2010/10/18/its-a-mobile-nation-as-cellphones-and-tablets-take-hold/?scp=17&sq=bilton%20cell%20phone%20use&st=cse>.
- <sup>32</sup> National providers Verizon, Cingular, Sprint/Nextel and T-Mobile dominate the New York State cell phone market.
- <sup>33</sup> New York State Vehicle and Traffic Law section 312 requires proof of liability insurance to register and

operate an automobile in the state. A summary of the state's insurance requirements for operating a motor vehicle may be found at the State Insurance Department's website at [www.ins.state.ny.us/autocg02.htm](http://www.ins.state.ny.us/autocg02.htm).

- <sup>34</sup> For example, New York was ranked the third highest state for auto insurance premiums in 2007, closely following after New Jersey and Louisiana, accessed 11/17/10, [www.iii.org/media/facts/statsbyissue/auto/](http://www.iii.org/media/facts/statsbyissue/auto/).
- <sup>35</sup> National Association of Insurance Commissioners ("NAIC") *Report on Profitability By Line By State in 2008*.
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- <sup>166</sup> Schuster, Karla and Sinco Kelleher, Jennifer, “Recession Changing College Plans,” *Newsday*, 3/28/09.
- <sup>167</sup> The tuition policy changes and other changes to higher education law that would, generally speaking, reduce regulation and oversight of the state’s public universities were included in the Public Higher Education Empowerment and Innovation Act (PHEEIA), a bill woven into the Executive Budget by Governor Paterson.
- <sup>168</sup> State University of New York figure: Applebome, Peter, “The Accidental Giant of Higher Education,” *The New York Times*, July 23, 2010. City University of New York Figure: CUNY Board of Trustees Calendar, for November 22, 2010, item number 3-C.
- <sup>169</sup> Fiscal Policy Institute, New York State’s Underinvestment in Public Higher Education, 1/15/09, accessed 11/9/10, [http://www.fiscalpolicy.org/FPI\\_News\\_UnderinvestmentPublicHigherEd.pdf](http://www.fiscalpolicy.org/FPI_News_UnderinvestmentPublicHigherEd.pdf)
- <sup>170</sup> State funding for community colleges was cut by \$130 per FTE in the December 2009 Deficit Reduction Plan and by \$285 per FTE in the 2010-2011 budget.

- <sup>171</sup> Fiscal Policy Institute, 1/15/2009.
- <sup>172</sup> New York State Education Law §6304 mandates that the state fund one-third of public community college budget, the local municipality fund one-third of the budget, and that tuition cover the remaining one-third portion. The law also mandates that the state portion equal 40% of the total budget if the college is a full-opportunity college. New York has not been meeting its state-mandated funding requirements for the community colleges by “notwithstanding” this requirement each year in the enacted state budget.
- <sup>173</sup> John Marcus, “Overcrowded and Underfunded: New York’s Public University Systems, and Beleaguered Students, are an Extreme Example of National Trends,” *National CrossTalk*, December 2009.
- <sup>174</sup> Jacobs, Alex, “SUNY Potsdam Set to Trim 59 Jobs,” *Watertown Daily Times*, 12/16/09.
- <sup>175</sup> Wind, Kyle, “SUNY New Paltz Cutting Academic Programs, 70 Jobs,” *Daily Freeman*, April 15, 2009. See also: Waldman, Scott, “SUNY campus victim of cuts,” *Times Union*, 8/1/10.
- <sup>176</sup> Waldman, Scott, “Shutouts on State Campuses,” *Times Union*, April 22, 2009. See also: Lisberg, Adam and Kolodner, Meredith, “CUNY to put applicants on waiting lists for the first time,” *Daily News*, 3/6/10.
- <sup>177</sup> Annual fee amount per campus was determined by subtracting tuition from the fall 2008 and 2009 Tuition and Fees figures provided for each college by College Board’s “Annual Survey of Colleges.” (Accessed via the database on the Chronicle of Higher Education website, see: <http://chronicle.com/section/Student-Data/134/>.) Enrollment numbers were multiplied by the fee amount required by each campus to yield the total amount of fees collected by each individual campus. The total amount of fees collected by all schools under each category (SUNY or CUNY) was then divided by the total enrollment under each category, to yield the average fee per full-time undergraduate student.
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- <sup>179</sup> Estimated cost of attendance assumes that student pays \$124 per semester Activity Fee. See: The City University of New York, “Tuition and Fees,” accessed 11/9/10, [www.cuny.edu/admissions/financial-aid/estimating-costs/tuition-fees.html](http://www.cuny.edu/admissions/financial-aid/estimating-costs/tuition-fees.html).
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- <sup>188</sup> HESC, TAP 2007-2008 Schedule E TAP recipients with FTE at Max Award, provided to NYPIRG July 6, 2009.
- <sup>189</sup> NYS Commission on Higher Education reported HESC figures that indicated that nearly a quarter of a million students, or 68.4% of all recipients, had incomes of \$30,000 or less in 2006.
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- <sup>212</sup> Laws of 1994, Chapter 576.
- <sup>213</sup> New York Limited Liability Company Law sections 102 (m) and 102 (w).
- <sup>214</sup> Fletcher, A., “Publish or Perish: The New York Limited Liability Company Law Publication Requirement: The Fundamental Flaw Of An Otherwise Flawless Law,” 1 *N.Y.U. Journal of Law & Business* 139 (2004).
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- <sup>216</sup> It’s worth noting that New York’s campaign contribution limits are significantly more generous than under federal law. Thus in 1999, treating an LLC like an individual under federal law at the time of the FEC’s decision meant that an LLC could only give \$1,000 per year per candidate per election; \$20,000 to in a calendar year aggregate to national committees; and not aggregate more than \$25,000 in any calendar year. See Federal Register, Vol. 64, No. 132, 7/12/99 (p. 37398).
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