



Independent Democratic Conference

Easing New York's Regulatory Burden
Promoting Business, Protecting the Public

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I. Introduction

Promulgating and enforcing necessary regulations is one of our government's most important functions. From ensuring the safety of our drinking water, to protecting consumer rights, well-tailored regulations cannot only protect citizens, but can enhance private sector competition and level the playing field. However, hastily promulgated rules fail to accomplish either goal.

As legislators, it is incumbent upon us to do two things: (1) identify why some regulations are hastily or improperly implemented, and (2) revise those regulations so that safety and competition are enhanced. In an increasingly reactionary policy making environment, it is crucial that we undertake these tasks as soon as possible.

New York State has accumulated many obsolete, redundant, or overly burdensome regulations. This situation has become counterproductive, increasing the cost of private enterprise while at the same time failing to adequately protect the public from negative consequences. Various bodies have been formed in order to try to slow the accumulation of these rules and regulations and to try to ensure that we maximize the benefits while limiting the costs as much as possible. The New York State Legislature responded by creating its own Administrative Regulations Review Commission (ARRC).

ARRC began as a joint Senate-Assembly committee, created in 1977 by concurrent resolution of the Legislature. The following year it became a permanent Commission, with the Legislature stating that "Rulemaking power is delegated by the Legislature and the review of such power is an integral part of the legislative function." Its delegated responsibilities are to (1) review the rule's compliance with the underlying statutory authority and legislative intent, (2) assess the fiscal impact on state and local governments charged with enforcement, and (3) determine the economic impact on regulated parties. The ARRC works closely with state agencies in regard to issues and questions which arise with respect to agency rules. Often, the Commission acts as a facilitator to bring together agencies, regulated parties and concerned legislators to discuss particular rules and to develop responsible alternatives when conflicts arise. Chapter laws which contain rulemaking grants of authority are also monitored to insure the timely adoption of mandated rules. The drive to lower the burden that unnecessary or ineffective rules and regulations cast upon businesses continues today.

In 2011, Sen. David Carlucci was named the Senate Co-Chair of ARRC. Under his leadership, ARRC has been reenergized in carrying out its mission. In the past year, ARRC has held public hearings and initiated vital new legislation intended to streamline ARRC's reviewing and monitoring process and to increase public participation in the rulemaking process. In addition, ARRC initiated a review of regulations dating back to the year 2000. Staff contacted various small business, healthcare and agricultural organizations. The respondents included the National Federation of Independent Business, the Business Council of New York State, the Hospital Association of New York State, the Greater New York Hospital Association, the New York State Farm Bureau and others. These organizations were asked questions concerning burdensome regulations and the overall cost of New York State regulations to small businesses.

With the assistance of his colleagues in the Independent Democratic Conference (IDC) and his other Senate colleagues, Senator Carlucci has been able to move the regulatory debate into the spotlight and to pass notable regulatory reform legislation through the Senate Chamber and onto Governor Andrew Cuomo's desk for signature into law. Governor Andrew Cuomo has now signed into law two regulatory reform measures Senator Carlucci championed through the New York State Legislature.

The legislative changes championed by ARRC, the IDC and the State Senate are only a beginning, and more needs to be done. This IDC report builds on the work conducted by ARRC, including its surveys of regulations from the past several years, and seeks to highlight some of the ways that the process could be improved even more. It showcases some regulations that may do more harm than good and should be reconsidered. One of the most important changes needs to be the creation of a front-end process. This process would require agencies to make a good faith effort to put a real price tag on the costs and benefits of new regulations and for the Legislature to consider the regulatory impact their legislation may have on a particular industry before it is enacted into law.

II. The Regulatory Burden

A. Number of Regulations

The rules and regulations of New York State can be found in the NYCRR (New York Codes, Rules and Regulations). According to the Division of Administrative Rules, which is part of the NY Department of State, the NYCRR runs for at least 76 volumes, though the number of volumes for certain sections of the law are not numbered¹. The scale of the NYCRR is just the simplest reminder of the number of rules and regulations that govern the lives of each individual and business here in New York. Any new proposed rules are posted in the New York Register.

It is important to recognize that regulations emerge from the actions of not only state lawmakers, but also from lawmakers on the federal and local level. These rules and regulations can lay out whether information needs to be gathered or not, how necessary information is to be collected and distributed, it sets the schedules for inspections, the standards to be used in audits, and all the other specifics that enable individuals to enforce a law. Many laws passed required some level of administrative rule making to occur, since legislators benefit from external expertise when turning broad legislative frameworks into real world policy.

Many of the rules in the NYCRR are state versions of federal rules and regulations created to administer national laws, particularly for those areas in which vast federal regulation exists, such as environmental, labor, health or safety laws. State regulatory agencies share in the responsibility of enforcing these national rules, and thus need to create the rules and regulations they will need to enforce them. There are some areas in which states have more control, for example in insurance or education regulations. States might chose to regulate things more tightly than the federal government has, but lack the ability to regulate less stringently than what has been mandated by federal laws. In this sense, federal regulations form the floor of the regulatory burden.

¹ Data available at: <http://www.dos.ny.gov/info/nycrr.html> (Last accessed 12/28/11)

Under Sen. Carlucci’s leadership, ARRC undertook a review of the various new rules and regulations implemented in 2009, 2010, and 2011. ARRC reviewed 794 new rules and regulations that various State agencies and authorities proposed during those three years, and the 745 new rules and regulations that were adopted in those three years. Over 10% of these new rules and regulations, 77 of them, were judged by ARRC to have some form of impact on small business by increasing their costs.

ARRC also classified the possible impacts to business on a scale of small to severe impact. A majority of the rules that affected small business were judged to have a small impact on the regulated businesses, but 16 of these rules implemented in the three year period examined were judged to possibly impose a severe economic impact on small businesses. Most of the rules that ARRC found might have a severe impact on small businesses were environmental regulations that the state is planning to implement to comply with new federal rules regarding clear air standards.

1. Figure 1: Top Ten State Agencies by Number of New Regulations Adopted 2009-2011²

| Agency | Proposed | Adopted |
|--|-----------------|----------------|
| Education Department | 91 | 78 |
| Environmental Conservation, Dept. | 71 | 72 |
| Health, Department | 69 | 67 |
| Insurance Department | 42 | 44 |
| People w/Developmental Dis., Office | 39 | 40 |
| Taxation & Finance, Department | 37 | 36 |
| Mental Health, Office | 31 | 33 |
| Workers’ Compensation Board | 12 | 24 |
| Motor Vehicles, Department | 27 | 23 |
| Correctional Services, Dept. | 22 | 23 |

² Data through July 2011. If the number of regulations adopted in the time period exceed the number proposed, this indicates that rules were adopted in this time period that had been proposed previous to this period.

2. Figure 2: Agencies that in 2009-2011 Adopted regulations with a Small Business Impact

| Agency | SBI |
|--|-----------|
| Environmental Conservation, Dept. | 27 |
| Health, Department | 7 |
| Banking Dept. | 7 |
| Education Department | 6 |
| State, Department | 6 |
| Labor, Department | 6 |
| Agriculture & Markets, Dept. | 6 |
| Economic Development, Dept. | 4 |
| Taxation & Finance, Department | 3 |
| Motor Vehicles, Department | 1 |
| Children & Family Services, Office | 1 |
| Criminal Justice Services, Division | 1 |
| Transportation, Department | 1 |
| Energy Research & Develop, Authority, NYS | 1 |
| Insurance, Dept. | 1 |

3. Figure 3: Breakdown of Small Business Impact Level of New Regulations

| Small Impact | Small-Moderate Impact | Moderate Impact | Moderate-Severe Impact | Severe Impact | Other ³ |
|--------------|-----------------------|-----------------|------------------------|---------------|--------------------|
| 44 | 5 | 9 | 14 | 2 | 1 |

B. Cost of Regulations

There are no definitive estimates of the cost or benefits of federal regulations in existence. This lack of any definitive estimate is a significant problem and one that is addressed further below. The estimates that do exist are contentious, emerging from competing vested interests. Because of this, we need to view the estimates with a level of skepticism and view these numbers more likely as indications of maximum or minimum estimates.

One of the most cited estimates of the cost of the federal regulatory burden on businesses have been a series of reports created by the Small Business Administration's Office of Advocacy, the last of which was released in September of 2010⁴. This report estimated that in 2008 the total costs of all federal regulations cost businesses in the United States \$1.75 trillion annually, which is around 12% of the United States' 2008 annual Gross Domestic Product (GDP) of around \$14.3

³ This rule was found to have an impact that could vary from small to severe depending on the business.

⁴ Report available at: <http://archive.sba.gov/advo/research/rs371tot.pdf> (Last accessed 12/29/11).

trillion. The methodology that led to the issuance of this report has been criticized⁵ and discussed. The bulk of the estimate of that immense number is based on a questionable assessment of the costs of what are labeled “economic regulations” which include matters such as trade policy and tariffs, immigration policy and labor policies such as a minimum wage or prohibitions against child labor. These kinds of legislative decisions don’t figure into what this report labels as rules and regulations, as these are mainly policy decisions based on the values we decide to enforce and espouse. Without these “economic regulations” the estimated cost of federal regulations declines to \$516 billion. Of that amount, \$160 billion is the estimated cost for businesses in complying with the complex federal tax code. The report includes all the costs of administering the federal tax code and does not differentiate between those costs that are the unavoidable fact of a tax system in the first place and those costs that might be associated with duplicative or unnecessary paperwork requirements that should be changed to make administration more rational. This lack of a breakdown does not allow us to know what costs come from burdensome regulations and which come from the basic administration of a tax system, which is something outside of the purview of this report. This leaves us then with an estimated cost to businesses for complying with the rules and regulations needed to implement various rules regarding the environment, labor laws, and health and safety at \$365 billion.

The estimate of \$365 billion was derived from a variety of sources, including reports issued by the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA), which issued its first reports in 1997⁶. In its annual report to Congress estimating the costs of federal regulations on business, it stated that between 2001 and 2010 federal regulatory agencies added more than 38,000 rules to the Federal Register, OIRA reviewed just 3,325 of these during that period, including 540 rules that were considered major rules because their estimated cost and/or benefit exceeded \$100 million. In its reports, OIRA creates a high and low cost estimate, as well as a high and low estimate of the benefits. The estimate in the SBA report used the high-end cost estimates published in these OIRA reports as well as previous academic estimates of the costs of certain labor and safety regulations where cost estimates by OIRA did not exist, which was the case for those rules and regulations put in place prior to 2001. The choice by the SBA report to pick the highest possible estimates for the costs of these regulations was, as with the other findings of the report, controversial. That said, the report does give us at least what we can term a worst-case scenario estimates of the costs for businesses from federal regulations, which, as we noted earlier, form a sort of floor for regulatory costs. In 2008, New York State had a GDP of \$1.1 trillion⁷, which accounted for 7.7% of the full U.S. GDP. Assuming the proportion of the costs of federal regulations was proportional by State, by this estimate federal regulations for health, safety, and environmental rules cost New York \$28.1 billion a year.

⁵ Criticism of this report can be found in this Center For Progressive reform white paper: http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf, and the Economic Policy Institute: http://www.epi.org/page/-/EPI_IssueBrief308.pdf and a response from the authors of the SBA report can be seen here: <http://policystudies.lafayette.edu/files/2011/03/Response-to-CRS.pdf> The Congressional Research Center conducted its own review of existing literature and discussed the controversy in its April 2011 report: http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf (all sites last accessed 12/29/11)

⁶ All OIRA reports available at: http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress (Last accessed 12/29/11)

⁷ Data available at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=70&step=1&isuri=1&acrdn=1> (Last Accessed 12/29/11)

4. Figure 4: Estimated Cost of Federal Regulations by Firm Size⁸

| Type of Regulation | Average Cost per employee | Firm with less than 20 employees | Firm with 20-499 Employees | Firm with 500+ Employees |
|--------------------------------------|---------------------------|----------------------------------|----------------------------|--------------------------|
| Environmental | \$1,523 | \$4,101 | \$1,294 | \$883 |
| Health and Safety⁹ | \$610 | \$781 | \$650 | \$520 |
| Totals | \$2,133 | \$4,882 | \$1,944 | \$1,403 |

As can be seen from the figure above, regulations tend to cost small businesses more than for larger firms on a per employee basis. The main driver of this difference lies in the issue of economies of scale. As enterprises become larger, the relative cost of doing business per unit of production declines. An example in the regulatory realm would be compiling a report on your business’ compliance with a rule. If there is a uniform report, the cost of compliance for all firms will be relatively equal – a larger firm might need to put in more data, but the additional time and expense of doing so will not grow at the same rate as the size of the firm. If it costs 20 man-hours for a ten person firm to fill out a report and fifty man-hours for a hundred person firm to fill in the same report, then the per man-hour costs to the small firm is 2 man-hours per employee while for the larger firm it is half a man-hour per employee. According to the SBA report, this proportional decline in costs due to the economy of scale is much more pronounced for issues of environmental regulations than for health and safety regulations. This finding supports the data from ARRC’s review of new regulations that highlighted that environmental rules were the most likely to pose a possibly severe impact to small businesses.

New York State’s Regulatory Environment

These costs of complying with federal regulations form the floor of the cost of regulations that businesses in New York must comply with, and this is because state and local authorities can impose their own additional rules and regulations on businesses. Unfortunately for the businesses of New York, this is something that New York State does often.

Certificate of Need (CON) Program

One industry that is covered by a significant additional layer of state regulations that fall on top of any federal rules is the healthcare industry. A hospital has to deal with as many as 15 different State agencies annually within its mission of providing health care¹⁰. The Greater New York Hospital Association (GNYHA) has commented that it believes strongly that the current regulatory environment, many aspects which are of course essential, adds greatly and often unnecessarily to the costs of and the inefficiencies in the delivery of care. In some cases, this is

⁸ Data available at: <http://archive.sba.gov/advo/research/rs371.pdf> (Last accessed on 12/29/11)

⁹ Includes Occupational Safety rules, Health rules, and Homeland Security regulations.

¹⁰ David F. Schaffer & Robert B. Ward, *The Comeback State*, The Public Policy Institute of NYS, Inc.; January 1994, p.67

due to the magnitude of agencies and organizations having jurisdiction over the operation of hospitals, each with their own well intended, but often overlapping and sometimes inconsistent regulatory accreditation requirements¹¹.

One example of a rule that is imposed by some states, including New York, but not by the federal government is the Department of Health's Certificate of Need (CON) program¹². The federal government originally required CON because studies at the time indicated that the process would help lower healthcare costs by regulating the number and concentration of health facilities in various regions of the country. The idea was that the healthcare market, left to itself, would build far too many costly facilities, and that in doing so, would drive the cost of healthcare upward. CON, in contrast, would allow planners to determine levels of acceptable demand for certain healthcare services and to then guide the market supply of such facilities to gradually accommodate those levels.

Years after implementation, evidence of the CON's efficacy was decidedly mixed. Many reports concluded that CON had no effect on lowering healthcare costs; other studies concluded that CON certificates could be used to increase costs through weakened and controlled competition. Due to this research, the federal government began to rethink the usefulness of this process as health care costs continued to rise even with strict CON regulations in-place¹³. Ultimately, in 1987, federal policy makers decided to no longer mandate the use of the CON process and defunded its use.¹⁴ New York decided to continue with its CON program even after the federal government stopped mandating its use. In New York, the Public Health and Health Planning Council (PHHPC) is responsible for conducting these CON reviews.

According to a 2009 report by the Hospital Association of New York State (HANYS)¹⁵, in 2008 it took a median time of 210 days to approve a CON application undergoing the full review and approval, while it took a median time of 148 days to conduct the less intensive administrative review for an approval with contingencies. Even with the expedited timeframe it still takes five months to approve such an application. This shows just how much of a delay having to go through the CON process adds to the building of new hospital facilities. While the CON process is supposedly in place to help stem the growth of health care spending, it has not shown itself to be any more effective at curbing New York's health care sending than it did nationally. According to the Centers for Medicare and Medicaid Services, which measures public spending on health care, physical and clinical services spending in New York has gone from \$11.9 billion a year in 1991 to \$33 billion in 2009, with an average rate of growth of 5.8%¹⁶, a much higher rate of growth than the overall economy.

¹¹ comments of the GNYHA on CON reform at a special meeting of the Planning Committee of the NY Hospital Review and Planning Council, September 18, 2008, NYC

¹² 10 NYCRR Part 705

¹³ Improving Healthcare: A Dose of Competition, Report by the Federal Trade Commission and the Department of Justice, 2004

¹⁴ Data available at: <http://www.ncsl.org/default.aspx?tabid=14373> (Last accessed 12/29/11)

¹⁵ Report available at: http://www.hanys.org/legislation/reform/docs/2009-10_tangled_up_in_rules.pdf (Last Accessed 12/29/11)

¹⁶ Data available at: <https://www.cms.gov/NationalHealthExpendData/Downloads/res-tables.pdf> (Last accessed 12/30/11)

HANYS members reported that upwards of \$2 billion in construction projects are currently being held up by DOH. This they believe, translates into many construction related jobs going unfilled at this point when our state desperately needs to create jobs. GNYHA noted that construction costs increased 12% per year while applications made their way through the “all-too-slow” approval process. Due to continuing complaints from the healthcare industry, the Department of Health (DOH) adopted revised CON regulations in July 2010 that increased project threshold requirements that establish the level of review¹⁷, created a new category called limited review, and placed non-clinical projects and health information technology projects into a class no longer needing SHRPC approval. These include: non-clinical infrastructure projects; projects for facility repair and maintenance; and projects for one for one equipment replacements. Prior to this change even getting a boiler replaced or repairing the roof on a facility required a CON review.

The newly revised CON regulations will come into effect in late January 2012. The health care industry hopes that these changes will finally reduce the amount of time and expense that the CON process added to get even basic repairs approved. Unfortunately, according to HANYS, the revised CON regulations have not solved the backlog problem at DOH because of limited CON review staff and the increase in projects for limited review. Most healthcare organizations, while currently pursuing a policy of incrementally lowering the burden of the CON process, have concluded that while CON had merits in its beginning, the process that presently exists really has little to do with health planning and should be abolished altogether.

Child Performer Regulations

Another example of rules unique to New York State are new regulations that the Department of Labor (DOL) attempted to implement that dealt with child performers in this State¹⁸. These new proposed rules would govern the way Broadway theaters, film and production companies employ any actors under the age of 18. The proposed rules sought to implement restrictive parameters on the hours these actors may perform. A restriction on any work by a minor aged actor after 10 pm was included. In addition, the rules sought to (1) *limit* parent supervision for those performers over the age of six, (2) require two physicals and mental evaluations every year, and (3) require tutors or teachers to be available for instruction while children are on sets for more than 5 hours. The proposed rules made no mention about home schooling, and required substantial amounts of additional reporting paperwork concerning health, education and financial plans. The new rules, which were proposed in November 2010, had two public hearings associated with them and numerous public comments submitted to DOL. Parent advocacy groups, major production studios and theaters were concerned that they would be forced to relocate out of state due to this onerous proposal.

ARRC received comments from the Child Performers Coalition which believed that the proposed DOL rules would “...have extreme adverse consequences to the New York City and New York State economy. Loss of revenue could total millions of dollars per year as productions that can leave the State will leave the State taking with them revenue, jobs and opportunities for

¹⁷ The level of review was based on the expected amount that would be spent on the building of a new facilities. DOH will now exempt smaller facilities from this review process.

¹⁸ LAB-45-10-20-P, Addition of Part 186 to Title 12 NYCRR

entertainment community members, both young and old, to work and pursue their career.” The Motion Picture Association of America echoed similar concerns. As the Senate Co-chair of ARRC, Sen. Carlucci expressed concern that these rules, if enacted, could place thousands of New York acting, film, production and theater jobs in danger. After undertaking a review of the proposed child performer regulations, Sen. Carlucci believed the costs of implementing these rules would be overly burdensome to the parents, production companies, and theaters, without producing the benefits that DOL likely wishes to achieve. Senator Carlucci sent a letter to DOL Commissioner Colleen C. Gardner outlining his concerns.

Sen. Carlucci’s fears, which were shared by his colleagues in the IDC, were based on the fact that according to the Office of the State Comptroller¹⁹, the film industry contributed to 36,000 jobs in New York in 2008. The industry paid over \$3.3 billion in direct wages and another \$1.7 billion in indirect wages. These rules would also adversely affect the theater industry, which according to estimates²⁰ provided \$984 million in direct economic benefits during the 2008-09 season. Both of these industries also provide much additional indirect economic activity by spurring tourism, which brings in billions of dollars in revenue to the state and many municipalities in the State. While it was commendable that DOL is trying to ensure that minors involved in the various performance industries here in New York are cared for adequately, are able to receive a good education, and to build up skills that might help them to pursue all their opportunities in the future, drastic and dramatic proposals such as proposing that no teenaged performers be allowed to work after 10 pm appear ill-informed and ill-suited to ensuring the well-being of the people these rules are meant to protect. The possibilities of significant economic collateral damage from possible productions shifting their locations to other states or countries, or from some beloved Broadway production having to shut down only magnified the unreasonableness of this proposal. Why should productions take place in NY under these rules when they can go to North Carolina and have no rules or very few rules to contend with?

As of the printing of this report DOL is reviewing comments and is working on revising its rules to take into account comments of the child performer, theater and acting industry. While it is positive that DOL is examining the many comments it received, this delay does not guarantee that the final rules published by DOL will address the serious concerns raised by the industry. State agencies have in the past produced rules that ignored industry concerns even after making statements that seemed to acknowledge industry concerns. The fact remains that these proposed regulations would make New York State uniquely uncompetitive when it comes to film and theater productions featuring child performers.

Ballast Water Regulations

The Department of Environmental Conservation (DEC) enforces most environmental standards here in New York. As was noted before, many of the regulations considered more costly to business are environmental regulations. While many of these rules can be costly to implement, they were created to safeguard the health and well-being of the public and confer very significant benefits. For example, poor air quality can greatly increase the incidence of diseases like

¹⁹ Report available at: <http://www.osc.state.ny.us/reports/other/filmindustry22-2010.pdf> (last accessed 12/29/11)

²⁰ Data available at: http://www.broadwayleague.com/index.php?url_identifier=broadway-s-economic-contribution-to-new-york-city (Last accessed 12/29/11)

Asthma, which is costly to treat and severely impact the quality of life of individuals. The problem here in New York State is that state agencies try to impose rules that are unique or almost completely unique to this state, making private activity in New York much more difficult, or sometimes even threatening the very viability of certain economic activities in New York.

The ecology of the Great Lakes and other bodies of water has been terribly damaged by the introduction of invasive species from abroad, including zebra mussels, spiny water fleas, or Eurasian milfoil²¹. These species, freed from predators, parasites, and other means of control, experience rapid population growth and outcompete local species. These species also disrupt the economy of the States' bodies of water by disrupting existing aquaculture and fishing practices. They can cause other forms of economic disruption as well: zebra mussels have caused many problems by clogging up pipes needed for the intake/outflow of water. International trade is the primary means by which invasive species spread around the world. For aquatic species, this means riding along on the tens thousands of cargo ships that move most of the world's trade between its busy ports. One of the ways in which an invasive species can travel aboard a cargo ship is in the ballast water, water that is held inside the ship in special tanks to regulate the buoyancy of the vessel. Ships can intake or discharge water into these tanks depending on their stability needs. When a ship takes water in, they invariably pick up small water creatures or their eggs, seeds, or spores. When water is discharged at a new port, these involuntary stowaways are now introduced into alien waterways.

The damage caused by invasive aquatic species carried in ballast water has led to rules and regulations on the treatment of ballast water, in order to prevent alien species from being accidentally discharged into ports. In 2004 seventy-four nations met during a meeting of the International Maritime Organization (IMO) and signed the International Convention for the Control and Management of Ships' Ballast Water and Sediments²², which set several rules on where and how ballast water was to be discharged. This treaty is not yet in force as it has not been ratified by enough members, but it does demonstrate the global community's concern about the issue. This IMO convention recommended a certain maximum number of organism greater than a certain size in each cubic meter of ballast water. In 2006 new rules on ballast water for ships entering the Great Lakes through the St. Lawrence Seaway, which runs between New York and Canada, were issued. These rules prevent ships from discharging ballast water in the Great Lakes and ask that tanks be flushed with sea water, as a means to kill any freshwater species in those tanks. These rules appear to have been successful in preventing new invasive species from ballast water being introduced into the Great Lakes²³. In 2008, the EPA was forced, after a lawsuit from environmental groups, to issue regulations on ballast water by creating a permit system based on ballast water rules, including rules that required ships to flush their ballast tanks out at sea²⁴.

²¹ Data available at: <http://www.epa.gov/glnpo/invasive/> (Last accessed 1/11/12)

²² Data available at: [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-\(BWM\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-(BWM).aspx) (last accessed 1/12/12)

²³ See http://www.cleveland.com/open/index.ssf/2011/12/new_ballast_water_standard_pro.html (last accessed 1/12/12)

²⁴ See; http://www.huffingtonpost.com/2011/11/30/ship-ballast-water-regulation_n_1121782.html (last accessed 1/12/12)

The DEC here in New York felt that these international and federal rules were not stringent enough. Under existing law, states are granted the power to impose their own more stringent environmental regulations if they see the need or have special circumstances. DEC proposed New York- specific regulations that would apply to all ships seeking to dock in the state or passing through New York waters. DEC decided to follow in the footsteps of California, which created regulations on the quantity of organism in ballast water that were many orders of magnitude more restrictive than those levels suggested by the IMO²⁵, by some estimates a thousand times more restrictive than the IMO suggested rules. DEC in New York chose to impose a limit 100 times as restrictive as the IMO suggested levels. The State of Wisconsin also issued a similar limit around the same time, but after complaints from the shipping industry in late 2010 the Wisconsin Department of Natural Resources modified its standards when it was found that the technology did not exist to even measure whether ballast water complied with the more strict limit, and commercial technology certainly did not exist to treat ballast water in order for it to meet the new standards²⁶. Remember that the proposed regulations from DEC are very similar to those that Wisconsin was planning to implement: if the technology does not exist to be able to comply with or enforce Wisconsin's originally proposed standards, then the technology to enforce the regulations that DEC wants to implement is also non-existent. Industry groups sued DEC to stop these new standards, and State courts found that the agency had the ability to impose these new limits on shipping.

Sen. Diane Savino, who represents parts of Staten Island and Brooklyn, two boroughs with deep economic and historic ties to the Port of New York and New Jersey, has sent letters to Governor Cuomo urging him to have DEC reconsider these rules and the damage that they would cause the economy of the State²⁷. The Port of New York and New Jersey is estimated to support almost 171,000 direct jobs, a total of close to 280,000 jobs in the whole region, and accounts for around \$49 billion in personal and business income, which equals over \$1.6 billion in tax revenue to for state and local governments in New York and New Jersey²⁸. Given that no technology exists for ships to purify their ballast water to the levels DEC wants to impose, no ship could come to use the port without facing a fine. Because these proposed rules would apply to all ship also passing through New York waters, officials in both Canada and other Great Lakes states have voiced their concern. The governors of Indiana, Ohio, and Wisconsin sent a joint letter to Governor Cuomo urging that these new DEC standards be reviewed in light of the impossibility for shipping companies to meet them²⁹. Because of the pressure from elected officials and industry groups, the DEC had delayed its implementation of these new regulations until 2013, but this does not solve the technological problems inherent in the DEC regulations. Nor does this acknowledged that shipping is a global industry in which New York must compete with other ports around the East coast, or the damage these rules could cause with our relations to other states along the Great Lakes and Canada, since their shipping industries would be negatively impacted as well by these DEC rules.

²⁵ Ibid.

²⁶ See: <http://www.joc.com/maritime/wisconsin-study-proposes-modified-ballast-rule> (last accessed 1/12/12)

²⁷ See index.

²⁸ Data available at: <http://www.panynj.gov/about/pdf/port-economic-impact-2011.pdf> (last accessed 1/12/12)

²⁹ See index.

Pesticide Licensing

Ballast water regulation is not the only example of the DEC trying to impose rules whose costs might exceed benefits, or whose rationale is questionable. The EPA is responsible for granting licenses for new pesticides or for new uses for existing licensed pesticides³⁰. Given the possible dangers to human health and the environment from these kinds of substances, the EPA conducts stringent investigations into the effects of these substances before granting them a license for sale and use in the United States. Here in New York, DEC has its own pesticide licensing requirements on top of the federal ones, which means that any pesticide that makes it through the stringent EPA licensing requirements must then go through a new licensing process for use just in New York³¹. Agricultural producers in New York, who rely on pesticides to efficiently reduce the damage caused by pests, are forced to wait even longer than their competitors in neighboring states to use these new products because of this duplicative licensing system. This duplicative system puts our farmers at a disadvantage without any clear benefit to the people of New York. The EPA process for licensing of pesticides is a stringent one and has been shown to protect the public nationwide, so why duplicate the process? Consumers in New York purchase food grown all over the country and indeed, the world, and making New York grown products more expensive only leads to consumers choosing to purchase food products grown elsewhere, under those jurisdiction's pesticide rules.

Certificate of Authority and Sales Tax Forms

The Department of Taxation and Finance has a variety of regulations regarding the collection of State revenues and taxes. As was noted before, any revenue system will have costs associated with its basic administration, so not every cost that is associated with tax compliance can be associated with the regulatory burden that this report concerns itself with. At the same time, there are certain administrative rules that are unnecessarily burdensome or impose costs that go beyond those necessary for the efficient administration of the tax code.

One such rule is the requirement that small businesses renew their certificates of authority to legally collect sales tax for the Department on an annual basis³². Many businesses complain that this is a redundant, cumbersome, and time consuming task. These small businesses say that it takes hours, or in some cases, days of lost productivity to simply re-file the same information with the Department. It should be noted that it falls on the Department itself to then review all this information again, so this requirement not only imposes costs in time to small businesses but also for the Department itself as well.

A simple regulatory solution that members of the business community have recommended is the creation of a "pre-filing" system to replace the current system. The Department would send businesses that had valid sales tax certificates of authority a pre-filled form with the information the Department had on file. Businesses would then be able to simply mark off the form if none of the filling information had changed, which is typically the situation for long-established small businesses. If the Department views this as an excessive burden on itself, then even more simply

³⁰ See: <http://www.epa.gov/pesticides/regulating/index.htm#eval> (last accessed 1/13/12)

³¹ Chapter 67 of the Laws of 1992, 6 NYCRR part 326

³² 20D NYCRR 540.1/540.2

a new form could be created in which a business would affirm that all previously filled information regarding the application for a certificate was unchanged and remained valid. This form could be downloadable from the Department's website and would remove the need to mail businesses a pre-filled form. Either way, making it easier for businesses to have their valid sales tax certificate of authority makes sense not only for the businesses involved but for the Department itself.

Another administrative rule that the Department imposes on small businesses is a fine of \$50 if a business files a late sales tax form, even when no sales tax is due to the State³³. It is certainly in the interests of the State to collect sales taxes from vendors in a timely manner, but collecting fines from businesses that owed no sales tax to the State for filling the form late is unnecessarily punitive. The Department should waive the late penalty on fillings from businesses that owe no sales tax if they fall within a certain period after the filling date, or at the minimum reduce them if the business did not owe the state any sales taxes.

When regulatory agencies listen to those being regulated, they can reach outcomes that protect the public without imposing unreasonable costs. Outdoor wood boilers (OWB) are freestanding combustion units located outside of a business structure, a home or a farm building, that consists of a firebox surrounded by a water reservoir to heat such structures. While designs may vary by manufacturer, a typical OWB resembles a small shed with a short chimney to release combustion gasses and an oversized firebox, built to accommodate un-split logs up to five feet in length. These types of boilers are popular in rural and farm communities which have access to wood at much lower prices than oil or gas. Many OWBs produce thick and dense smoke, which is a serious air pollution concern and for this reason DEC decided to regulate their use in New York.

The initial proposals by DEC would have imposed rules for any new OWBs to be sold in New York, as well as new rules on where they could be installed. DEC also wanted to impose a phase-out and replacement schedule for existing OWBs. The DEC elicited numerous comments from small businesses, farmers, clean air advocates and homeowners. The New York State Farm Bureau warned that the regulation as originally proposed would have a dire economic impact on nearly 10,000 farmers and rural residents. OWBs are a significant investment an expensive, and a phase-out schedule would have imposed massive costs on many small business and homeowners, costs that they could not have anticipated or planned for.

Eventually DEC adopted new rules³⁴ on January 19, 2011. The final regulation omitted a phase-out period for existing wood boilers but enacted tough new restrictions on models to be sold in New York and setbacks for locating new OWBs. Under the new regulations, beginning April 15, 2011 only new OWBs approved by EPA testing and DEC for smoke plume opacity can be sold in New York State. The new OWBs must have a permanent stack height extending a minimum of 18 feet above ground level and have setbacks of at least 100 to 300 feet depending on nearby structures, roads and property boundaries. The Farm Bureau was able to support the final adopted rules and the restrictions to use newer, EPA/DEC approved cleaner burning OWB models. These rules as finalized will protect the public from particulate pollutants from OWBs in

³³ Section 20D NYCRR 536(a).1-Penalties and Interest.

³⁴ ENV-16-10-035-A enacting 6 NYCRR Part 247

the future while sparing those that have already invested and purchased OWBs the immense cost of having to replace them early. A phase-out of existing OWBs would impose costs above the possible gains to health, and as such would represent burdensome and poor regulation.

Figure 5: Summary of Highlighted Regulations and their Impact

| Regulation | Industry Impacted | Industry Contribution to NY or Regional Economy | Negative Impact |
|---|---|---|--|
| Certificate of Need (CON) Process | Healthcare Industry | \$73.5 Billion to NYS GDP, \$58.6 Billion in payrolls in 2009³⁵ | Slows ability to maintain existing facilities, construct new facilities. Each year of delay can increase costs by 12%. With \$2 Billion in delayed projects, this adds up to \$240 million |
| Child Actor Work limits | Film and Theater Industries | In 2008 Film Industry contributed \$5 Billion in total wages, Theater Industry \$1 Billion in Economic Activity in 2008-09 | Limits the hours child actors can work, threatens profitability of productions that prominently feature children. Just one such Show, <i>Mary Poppins</i> , did \$45 million in sales in 2010 ³⁶ |
| Ballast Water Standards | Shipping and Transportation Industries | \$49 Billion in Business and Personal Income, 280,000 Jobs total in 2010 | Limits the number of ships able to travel in NYS waters. Current technology unable to meet proposed standards. Entire \$49 billion in economic activity threatened. |
| NY Registry of Pesticides | Agricultural and Landscaping Industries | NYS Farms had \$4.4 Billion in Sales in 2007³⁷ | Slows down the ability of businesses to use pesticides already approved by federal government. Each decision can take up to more than 5 months ³⁸ and is accompanied by a \$620 fee ³⁹ . |
| Yearly Renewal of Sales Tax Certificate of Authority | Wholesale, Retail, and Service Industries | \$280 Billion in sales from taxable services in FY 2008-09⁴⁰ | Each business that collects sales tax must spend time each year recertifying for their certificate, even if no information has changed. Each hour on average can cost \$25 to a business |

³⁵ Data found at: <http://www.bea.gov/regional/downloadzip.cfm> (Last Accessed 1/19/12)

³⁶ Data found at: <http://www2.broadwayworld.com/grossesshow.cfm?show=MARY%20POPPINS&year=2010> (last accessed 1/19/12)

³⁷ Data found at: <http://www.osc.state.ny.us/reports/other/agriculture21-2010.pdf> (Last accessed 1/19/12)

³⁸ Data found at: <http://www.dec.ny.gov/chemical/8528.html> (Last accessed 1/19/12)

³⁹ Data found at: http://www.dec.ny.gov/docs/materials_minerals_pdf/prodbook.pdf (last accessed 1/19/12)

⁴⁰ Data found at: http://www.tax.ny.gov/pdf/stats/stat_excise/taxable_sales_and_purchases_march2008_february2009.pdf (last accessed 1/19/12)

III. Improvements to the Regulatory System

During the first half of the 2011-2012 session Sen. Carlucci, as co-chair of ARRC, championed legislation that helps to improve the regulatory climate of New York State. As was mentioned in the introduction, two of these pieces of legislation passed both houses of the Legislature and have been signed into law.

The first piece of legislation was Senate bill 4816 (Carlucci), which is now Chapter 524 of the Laws of 2011. This new law will require State agencies, when adopting new rules that involve the assessment of penalties on small businesses or local governments, to consider including a “cure period” that will allow time for correction or amelioration of violations prior to the imposition of penalties. Senator Carlucci’s legislation promotes good business practices by allowing businesses to negotiate an amicable remediation of a violation with New York State before onerous fines are levied. In many cases, state regulatory agencies are in too much of a hurry to fine businesses for perceived violations of New York laws or regulations. This new law will give small businesses a tool to use with the state when heavy handed fines may have been imminent. Under the new law, if a business is found in violation of new state laws or regulations, the fining agency must first consider a cure period where the business and agency can determine a mutual outcome of remediation before serious fines are levied. This common-sense approach to regulations recognizes that the point of rules and regulations is to prevent harm to the public, not to raise additional revenue for a state agency or the state as a whole. Providing a cure period allows a business to actually fix what is wrong so it can be in compliance with the regulations and thus protect the public. The City Council of New York passed a similar law in 2010. At the time the New York City Regulatory Review Panel explained that:

“To help small businesses during these difficult economic times, the Panel recommends ... new and innovative strategies to enforce compliance with agency rules by means other than automatic fines or penalties. Such strategies would be especially useful for low-risk violations that do not pose an imminent threat to public health, safety, or well-being. Several large agencies ... have already adopted such an approach, providing small business owners with an opportunity to cure low-risk violations without having to pay fines or penalties. This approach saves businesses time and money, allowing them to focus on business rather than deal with government. It also fosters a productive relationship between small business owners and City agencies, as opposed to one that may be perceived as strictly punitive.”

This legislation was supported by the New York State Business Council and the New York State Farm Bureau, in addition to other small business organizations and supporters.

The second piece of legislation signed into law was Senate bill 4820 (Carlucci), now Chapter 571 of the Laws of 2011. The new law will reduce the amount of materials incorporated into reference that must be filed with judicial libraries. As the bill memo explains, Executive Law §102 sets forth a process for state agencies to incorporate previously-published materials into the text of their rules. This process can be useful when the agency needs to ensure that its rules are identical to regulations of other jurisdictions (e.g., Federal OSHA rules, California auto emission

standards) or when it is desirable to adopt national or international standards (e.g., National Association of Insurance Commissioners, Underwriters Laboratories).

The statute requires dissemination of the incorporated by reference materials to a number of official repositories, including the Legislative Library and to one court law library in each of the State's judicial districts. When the law was enacted, Federal documents were exempted from this filing requirement as they were already on file in these locations. Since then, the Internet has emerged as a primary source for access to information. This bill reflects the widespread electronic availability of information by excluding incorporated materials that are available without charge online from the filing requirement.

The requirement for library dissemination of incorporated materials was added to §102 in recognition of the provisions of Article IV, §8 of the State Constitution, requiring that the Legislature shall provide for the "speedy publication" of all adopted rules and regulations. This charge necessitates that the text of incorporated materials must be available to some degree to legal practitioners and members of the general public.

This new Chapter will save the State approximately \$9,000 to \$30,000 annually without adversely impacting public information. Examples of materials that are incorporated by reference into regulations are; any books, tables or documents that are over 500 pages in length and are generally available to the public through other means without charge. Under the new law, an agency would not have to file printed copies of such materials with the Legislative Library and court law libraries, provided such material is readily available without charge on the internet. Agencies need only to identify the address at which such materials can be accessed.

IV. New Proposals for Further Improvement

The IDC believes that there is still a lot of work to be done in improving New York's regulatory process and lowering the burden of regulations on businesses. The IDC will continue to push for legislation previously introduced that helps lower the regulatory burden and will also introduce new legislation to make further positive changes to the way rules and regulations are created and maintained, and the impact they have on businesses in the state.

Senate bill 4815 (Carlucci): Electronic Permit Applications

This legislation would reduce unnecessary barriers to electronic filing of applications for business permits with state agencies by allowing agency regulations to substitute an affirmation under penalty of perjury for a required sworn acknowledgement or oath, and allowing fingerprints and other criminal history information to be submitted electronically. The New York State Business Council supports the adoption of electronic commerce applications for permitting and regulatory compliance. The Council believes this action will reduce administrative costs for both business and the state.

Senate bill 4818-A (Carlucci): Distribution of New York State Register

S.4818-A would reduce state expenditures by eliminating the requirement to provide free hard copies of the New York State Register to entities that opt to receive a free online version instead. ARRC and Department of State (DOS) staff believe this measure will save the state tens of thousands dollars or more, due to decreased mailing and production costs and savings could reach \$100,000 once all factors are taken into account.

This bill would enable the DOS to conserve state resources and reduce paper waste by eliminating an annual mailing to city, town and village clerks advising them of how to request paper copies of the publication. The bill will also save money and paper by allowing discontinuance of print subscriptions at request of agencies or individual legislators. Currently, anyone can view the State Register without charge online at www.dos.state.ny.us/info/register.htm. Executive Law section 148 (1)(a) will continue to allow entities to receive Register copies upon written request.

Senate bill 4819 (Carlucci): Streamlining Regulatory Analysis Documents

This bill would allow for the combination of certain portions of regulatory analysis documents to avoid repetition and reduce paperwork, while still requiring an agency to fully identify the adverse impacts of a rule and consider approaches to minimize the burden. Examples of “regulatory analysis documents” that are covered by the legislation include the Regulatory Impact Statement (RIS), Regulatory Flexibility Analysis (RFA), Rural Area Flexibility Analysis (RAFA) and the Job Impact Statement (JIS).

Two Year Review of Regulations Impacting Small businesses, Local governments or Rural Entities

The first new piece of legislation would address the issue of how often rules and regulations are reviewed to gauge their effectiveness and impact. New York State enacted legislation in 1996 to establish a “five-year review” cycle for substantive rules to address the complaint that once adopted, regulations tended to remain on the books forever without any further review. Agencies are required to list the rules that were adopted five years ago, and to thereafter conduct a review of these rules every five years. The conclusions of each review must state the agency’s intention to either modify or retain the rule. However, if the agency decides to retain the rule, it must provide a justification. The public is invited to comment on the continued need for the rules.

Over time, some shortcomings in this process have become apparent. For example, the mandatory timeframe for an initial review of rules that adversely impact small businesses is, in many cases, too long. If the costs and burdens of a new rule exceed the agency’s estimates, many small businesses may not survive until the rule is initially reviewed five years down the road. This bill recognizes that accelerated review may be appropriate for specific rules that place a significant burden on small businesses and other entities that face the possibility of insolvency in very short time frames.

For rules impacting small businesses, local governments or rural entities, the default period for initial review would be after two years and agencies would be required to engage in outreach

efforts to encourage participation on the review by such affected parties. Similar outreach provisions were added to the rules providing for publication of prospective regulatory agendas in 2008. The default period would remain five years for other rules, but could also be adjusted by the agency based on the specifics of the rule. Agencies would have the ability to lengthen the review period beyond five years but only after they were capable of justifying the need to do so. This approach will allow New York agencies to commence an initial review in less than five years, as is the practice in other states like Florida and Hawaii (two years) and Massachusetts (four years), while ending the requirement for a “one-size-fits-all” schedule.

Even with a five year review cycle in place, there have been indications that agencies do not always follow the law and review rules in time. For example, in 2008 the co-Chairs of ARRC wrote to three agencies concerning deficiencies in their compliance with the five year review process. One agency announced that it was retaining its rules from 2003 without first soliciting any public comment. A second agency reviewed its rules from 2007, instead of 2003. A third reviewed its 2003 adoptions but failed to re-review the rules it had originally adopted in 1998, for existing rules that it should have conducted in 2008, 2009 and 2010. Failures to comply with the five year review process like these ones too often go unnoticed not only by the public but by the groups being regulated themselves. This new bill would require that the Secretary of State publish in the State Register on a weekly basis a delinquent list of agencies that have not commenced a required review of rules for that year. Hopefully this public acknowledgement of the failure to carry out the regulatory process as mandated by even the existing law will force agencies to comply with these necessary reviews.

Ban On Any Regulation That Includes Quotas as Part of the Implementation of the Rule

As noted before, one of the new pieces of legislation passed last year by Sen. Carlucci created a cure period that would give business a chance to come into compliance with existing regulations before heavy fines were imposed, in accordance with the fact that the purpose of regulations is to reduce possible harm to the public, not to raise revenue for the government. This second new piece of proposed legislation would also deal with this topic by incorporating into the State’s administrative procedure law safeguards already in place in labor and tax laws to prevent revenue raising from becoming a central aspect of the regulatory agenda.

Back in 1978 the labor law was amended to prevent discrimination against police officers for failing to meet pre-ordained quotas for the number of traffic tickets issued or arrests or stops made within a specified time period. More recently, Tax Law §3012 was enacted as part of the “Taxpayers’ Bill of Rights” to bar imposition of quotas in tax collection efforts. Both times, the idea was that if the enforcers of rules and regulations came to see that their jobs hinged on issuing fines, as opposed to safeguarding the public by ensuring that regulations were being followed, they would seek to impose unjust or unnecessary fines. This kind of perverse incentive distorts the purpose of the regulatory system and undermines faith in it. If people come to believe that regulations exist not to protect the public but instead are used as a form of stealth tax, public support for the roles of regulations will decline. By incorporating into the states administrative law rules that prevent the discrimination against employees if they fail to meet any existing enforcement quotas (which is defined in the legislation) we can prevent any such perverse incentives from being created.

Require State Agencies to Work More Effectively with Businesses Regarding the Fiscal and Job Impact of New Regulations

As noted earlier, there are really no hard numbers when it comes to knowing how much specific regulations cost. At best, a few federal agencies create ranges of possible costs, something that does not happen much at the state or local level. Most industry groups complain about the costs of regulations but either lack the resources to quantify the costs or have not taken actions to do so. Given the importance of knowing what the possible costs of regulatory actions are, this lack of data hinders the ability to have impartial debates on the merit of certain regulations.

Currently, state agencies, as they develop rules, are asked to create a variety of impact statements, including a rural impact statement if a regulation might affect areas defined in the law as rural, a jobs impact statement, a regulatory impact statement that attempts to quantify the costs to the state and local governments and is to identify any possible new local mandates to be imposed, well as a regulatory flexibility analysis that is supposed to measure the effects on small businesses, new compliance costs, the ability of entities to comply with the rules based on technology. These required impact statements were created to ascertain the kind of cost data needed to have a full accounting of what regulations costs. The fact that as was stated before, no hard numbers exists, show that the rationale for these statements is not working.

This process needs to be reformed. The third IDC legislative proposal seeks to make the necessary reforms to address this issue. Agencies themselves prepare these cost analyses via the Regulatory Impact Statement (RIS) and Regulatory Flexibility Analysis (RFA) and then, after they are published in the New York State Register, the public is given the opportunity to comment on such proposed rulemakings and the cost impacts of such proposals. If we are serious about changing the rulemaking process then it is critical that the comments and input of the affected regulated parties is considered and incorporated into the rule making process before such proposal is filed with the Secretary of State

Under the IDC proposal agencies would be mandated to seek the comments of those industries and groups adversely affected by such rule making prior to the rule being drafted and filed. Further, such, comments must be included in the Register when the proposed rules are first publicized. This way, the general public and all regulated parties will be able to see what the affected industries think about the effects the rules will have on them. Agencies would be able to publish if the affected industries failed to answer a request for feedback. In addition, both the affected industries and the regulatory agency could be required to develop some method by which a cost and benefit estimate can be developed and made public, so that the public at large can comment on them and be able to evaluate the credibility of the various arguments or methodologies. This proposal might increase the state agency costs and time that it takes to promulgate new rules. However, one of the goals that should be satisfied to establish a more cost efficient regulatory system is that rule makings should be promulgated in a manner that promotes quality well thought out governmental programs and regulatory requirements that satisfies the public's need for a rule, but, is done in a manner that is simple and easy to follow and enforce.

In addition, proposed legislation would change the procedures on how agencies estimate the job impact of new regulations. Current law states that agencies need to examine possible job losses from a new regulation, but ignore the possibility that this regulations might impede the creation of new jobs by limiting the ability of businesses to expand within the State.

Allow Business Associations to Petition State Agencies on Rule Proposals

Current law allows associations of municipalities, such as the New York Conference of Mayors, to petition agencies with regards to certain proposed rules, to alter their provisions of enforcement mechanisms under the theory that certain different industries have peculiarities that change the effect general rules would affect them. The law recognizes that municipal governments face certain issues that private businesses don't and as such some rules being contemplated by an agency might not make sense when imposed on local governments. The reality is that not every business faces the same issues and that any rule or regulation might have very different effects on different types of businesses. The same can even be said of businesses in the same sector but operating in very different environments or parts of the State. The IDC's fourth legislative proposal would allow not only associations of municipal governments but business associations, whether they represent business in the same trade or in the same region, to file petitions with regulatory agencies regarding proposed legislation.

Require DEC, one of the biggest promulgators of rules, file enforcement documents regarding new regulations with the Secretary of State

Often after a regulation is promulgated technical questions about compliance with that regulation remain. How a business files papers or the way an agency defines the terms in the regulation are some examples of the technical details that define how a regulation is put into practice. Regulatory agencies regularly send clarifications or instructions to businesses to clarify these technical issues. Agencies might also have internal documents informing their own staffs about how rules and regulations are to be enforced. Current State Administrative Procedure Act (SAPA) states that these documents, whether internal or those sent to regulated businesses, must be filed with the Secretary of State. Unfortunately the law does not apply to DEC, one of the main regulatory agencies in the State. There is no reason why DEC should continue to be exempt from this law. The IDC proposal would add DEC to the list of agencies that must file these kinds of documents. This law has a built-in sunset clause, but since its original passage in 1994 it has been extended consistently by the Legislature. The IDC proposes that this sunset be removed and the law be made permanent.

Require Regulatory Impact Statements for Any Newly Introduced Legislation

As was noted earlier, some rules and regulations are promulgated as the result of newly enacted legislation. Because of this, a significant burden of the final responsibility for promulgating a rule making falls on those who are responsible for drafting these rules and regulations [necessary] in the first place. Currently, when new legislation is introduced, legislators are required in certain circumstances to submit a fiscal impact statement, which discloses the possible additional costs such legislation will impose on state government]. The fourth IDC legislative proposal for improving our regulatory process would change the State Legislature's

law making process to mandate the preparation and use of a new Legislative Regulatory Impact Statement in addition to the already existing requirement to prepare and file fiscal impact statement before a bill could be considered by either the Assembly or Senate. Such a Legislative Regulatory Impact Statement would necessitate that the costs to businesses in this State be taken into account and which disclosed the possible costs to businesses and local governments before any legislative action could be taken. . Forcing the State Legislature to acknowledge the possible costs to the New York's business community and the state as a whole before the bills they are trying to enact should allow for a more informed debate on the need for certain legislative proposals.

V. Conclusion

Rules and regulations exist to ensure the safety of the public, and as such are one of the most crucial functions of government. But while many regulations have clear benefits, others impose duplicative or unnecessary reporting requirements, damaging New York's small business environment.

The members of the IDC have sought to lighten the burden that unnecessary or inefficient regulations place on New York's businesses. In the past session, two pieces of legislation were passed and signed into law that ease the burden imposed on small business by unnecessary regulation, Sen. Carlucci and his IDC colleagues will continue to fight to ensure that the regulatory process in New York continues to improve, that outdated and unnecessary regulations are removed, and that unnecessary regulations are not implemented in the first place. We believe that the new proposed pieces of legislation will help achieve those goals. The IDC will continue to work with ARRC and the business community to ensure that New York has a credible regulatory system that protects the public, while ensuring the vitality of our business community.

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2009 Summary of Regulations Adopted with Small Business Impacts

Agriculture and Markets (3):

- Certification of seed (AAM-35-08-11-P/A)
 - Impacts farms and seed producers
 - Establishes general seed certification standards
 - small economic impact

- Animal health requirements for animals entering fairs (AAM-02-09-05-P/A)
 - Impacts farms
 - Enacts new requirements for animals entering fairs to protect animal health
 - Small economic impact

- Firewood, nursery stock, logs, green lumber, stumps, roots branches, debris (AAM-13-09-12-E)
 - Impacts farms, nurseries and logging
 - Enacts Asian Long Horned Beetle quarantine to prevent the spread of beetle
 - Small to large economic impact

Banking Department (2):

- Mortgage loan regulations (BNK-18-09-09-P/A)
 - Impacts small/large banks and mortgage loan companies
 - Amends various mortgage loan regulations
 - Small economic impact

- Registration and financial responsibility requirements for mortgage loan servicers (BNK-40-09-05-E)
 - Impacts small/large banks and mortgage loan servicing companies
 - Implements provisions of Subprime Lending Reform Law (Ch. 472 of 08)
 - Small economic impact

Criminal Justice Services (1):

- Security guard instructor/security guard training school fee (CJS-33-09-03-P/A)
 - Impacts security companies and security guard training schools
 - Establishes application fees for approval of security guard training schools and certification of security guard instructors
 - Small economic impact

Economic Development (2):

- Empire Zones reform (EDV-03-09-18-E)
 - Impacts general small businesses
 - Adopts changes to enhance the program's strategic focus
 - The program provides a questionable economic impact because job guarantees are missed on a daily basis by participating companies at the expense of non-participating small businesses
 - small economic impact

- Minority and women business (MWBE) enterprise program (EDV-28-09-13-P/A)
 - Impacts general minority and women owned businesses
 - Accept federal certification of MWBE without requiring state certification
 - Positive economic impact for MWBE small business participants, no economic benefit for small businesses not participating
 - small economic impact

Environmental Conservation (14):

- New major facilities and major modifications to existing facilities/New Source Review (ENV-39-07-06-P/A) adopted 2/18/09
 - Impacts various small businesses that plan to construct new or modified plants
 - DEC must review emissions sources of new/existing plants to make sure they will be within or curtailed to meet an area's ozone emissions standards.
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Severe economic impact

- Operation and maintenance of dams (ENV-07-08-11-P/A) adopted 8/19/09
 - Impacts farms and some small businesses that own dams
 - adopts requirements for owner dam safety programs, permitting and enforcement
 - Moderate economic impact

- Open fires (ENV19-08-03-P/A) adopted 9/30/09
 - Impacts farms and agricultural operations
 - bans open burning
 - Moderate economic impact

- Firewood restrictions to protect forests from invasive species (ENV-50-08-01-P/A) Adopted 3-18-09
 - Impacts loggers and firewood distributors
 - Places restrictions on the transportation of firewood from area to area
 - Small economic impact

- Management of marine commercial fisheries for weakfish and black sea bass (ENV-51-08-01 P/A) adopted 4/01/09
 - Impacts commercial fisherman/businesses
 - amend regulations for commercial limits on weakfish, construction of traps for black sea bass and totals
 - Small economic impact

- Volatile organic compound (VOC) limits for 11 new consumer products categories (ENV-24-09-05)
 - Impacts paint distributors, hardware stores
 - eliminates voc's in a variety of household goods to help to attain 8 hour ozone standard
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate economic impact

- Atlantic Ocean surfclam management (ENV-40-09-07)
 - Impacts clamming businesses
 - adopt management measures necessary to ensure the long-term clam fishery
 - Small economic impact

- Proposed fishery closures for Hudson River American Shad and fishery restrictions for the Delaware River American Shad (ENV-46-09-09-P)
 - Impacts commercial fisherman/businesses
 - Protect the Hudson River and Delaware River Shad stocks
 - Small economic impact

- The commercial/recreational harvest limits for winter flounder (ENV-48-09-03-P)
 - Impacts commercial fisherman/businesses
 - To reduce the harvest limits of winter flounder
 - Small economic impact

- Nitrogen Oxide (NOx) emission controls for hot mix asphalt production plants (ENV-51-09-08-P)
 - Impacts asphalt production plants, asphalt businesses
 - Calls for a reduction in NOx emissions by installing pollution controls
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to Severe economic impact

- Portland cement plants and glass plants (ENV-51-09-09-P)
 - Impacts cement plants and glass plants, cement/glass businesses
 - Calls for reductions in NOx emissions at cement and glass plants

- The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
- Moderate to severe economic impact
- Adoption of VOC emission limits for commercial/industrial adhesives and sealants (ENV-51-09-10)
 - Impacts small businesses that manufacture adhesives/sealants
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to severe economic impact
- Stationary combustion installations (ENV-51-09-11-P)
 - Impacts small businesses with large boilers for heating or manufacturing
 - Calls for reduced emission limits for all boilers, combustion turbines, defines mid-size boiler and allows for replacement option
 - Moderate to severe economic impact
- Graphic arts facilities engaged in rotogravure, flexographic, offset lithographic and letterpress printing (ENV-51-09-12-P)
 - Impacts small business printing operations
 - Calls for reduced VOC limits on emissions
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to servere economic impact

Health Department (5):

- Approval of nonclinical projects (H L T-34-08-06-P/A)
 - Impacts health care clinics, radiology, health care businesses
 - Health care businesses constantly complain about the Certificate of Need process (CON) and its cumbersome paperwork requirements
 - Substitute prior limited review for administrative CON review for construction projects between \$3 million and \$10 million.
 - Small economic impact (better than full CON review)
- Notification and Submission requirements for continuing care retirement communities (H L T-39-08-07-P/A)
 - Impacts private retirement community businesses
 - Revises necessary approvals for extended construction date
 - Small economic impact
- Tanning Facilities (H L T-41-08-06-P/A) adopted 10/7/09
 - Impacts tanning businesses
 - Establishes standards for safe and sanitary operation of tanning facilities

- Small economic impact
- **Initial Purchase of Magnetic Resonance Imagers (MRI's) (HLT-46-08-02-P/A)** adopted 4/15/09
 - Impacts radiology and MRI businesses
 - Substitutes administrative CON review for Full CON review
 - Small economic impact but better than full CON review
- Relocation of extension clinics (HLT-49-08-03-P/A) adopted 4-15-09
 - Impacts health care clinics
 - Substitutes prior limited review for administrative CON review for relocation of extension clinics in same service area
 - Small economic impact but better than administrative CON review

Labor Department (2):

- Minimum Wage (LAB-32-09-01-E)
 - Impacts all small businesses
 - Brings NYS's minimum wage in-line with Federal Minimum wage
 - Moderate economic impact
- Ski tows and other passenger tramways (LAB-46-09-03-P)
 - Impacts ski resorts and other businesses that rely on ski tow/tramways
 - Ensure that ski tows/tramways are constructed/operated in safe manor
 - Small economic impact.

Motor Vehicles Department (1):

- Dealer document fee (MTV-26-09-13-P/A)
 - Impacts car/vehicle dealers
 - Raises the dealer document fee from \$45 to 75
 - Moderate economic impact

State Department (4):

- Installation, servicing, maintaining security or fire alarms (DOS-32-08-06-P/A)
 - Impacts security and fire alarm installer businesses
 - Add additional qualifying education module for licensure
 - Small economic impact
- Temporary swimming pool enclosures (DOS-44-08-05 EP/A) adopted 1/28/09
 - Impacts hospitality industry, hotels, motels, campgrounds
 - Requires 48" high fencing around pool and locking gate
 - Small economic impact

- Electrical bonding of gas piping, protection (DOS01-09-03-E)
 - Impacts construction industry-construction of new homes, buildings
 - requires bonding of gas piping, protection of gas piping
 - Small economic impact
- Continuing education of home inspectors (DOS-03-09-07-E)
 - Impacts home inspection companies
 - requires continuing education for home inspectors
 - Small economic impact

Tax and Finance Department (2):

- Registration fees and related penalties for cigarette and tobacco dealers (TAF-27-09-10-P/A)
 - Impacts retail distributors of cigarettes and tobacco products
 - make technical changes
 - Small economic impact
- Informational returns for wholesale dealers of cigarettes and tobacco products (TAF-49-09-02-P)
 - Impacts wholesale (businesses) dealers of cigarettes and tobacco products
 - Requires quarterly filing of informational returns
 - Small economic impact

Transportation Department (1):

- Regulation of the use of highways by large trucks (TRN-34-09-21-P)
 - Impacts trucking companies and farmers
 - Reduces large truck traffic and improves safety in local communities, reduces road maintenance costs
 - Moderate economic impact

Insurance Department (1):

- Conduct Trustworthiness and Competence of Insurance Producers, Especially Relating to Compensation Arrangements with Insurers (INS-48-09-02-P)
 - Impacts Insurance Companies and Insurance Producers
 - Requires Insurance Producers to make certain disclosures about their role in the insurance transaction to insurance customers
 - Moderate economic Impact
 - Article 78 filed

2010 Summary of Regulations Adopted with Small Business Impacts

Agriculture and Markets (2):

- Firewood, nursery stock, logs, green lumber, stumps, roots branches, debris (AAM-03-10-03-P/E)
 - Impacts farms, nurseries and logging
 - Enacts Asian Long Horned Beetle quarantine to prevent the spread of beetle
 - Small to moderate economic impact
- Ash trees, nursery stock, logs, green lumber, firewood , stumps (AAM-10-10-08-E)
 - Impacts farms, nurseries, logging
 - Establishes an Emerald Ash Borer quarantine to prevent spread of the beetle.
 - Small to moderate economic impact

Banking Department (3):

- Registration and financial responsibility requirements for mortgage loan servicers (BNK-01-10-03-E)
 - Impacts small/large banks and mortgage loan companies
 - Amends various mortgage loan regulations
 - Small economic impact
- Registration and financial responsibility requirements for mortgage loan originators (BNK-01-10-06-E)
 - Impacts small/large banks and mortgage loan companies
 - Requires individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of banks.
 - Small economic impact
- Registration and financial responsibility requirements for mortgage loan servicers (BNK-13-10-02-E)
 - Impacts small/large banks and mortgage loan servicing companies
 - Requires persons or entities that service mortgage loans to be registered with Superintendent of Banks
 - Small economic impact

Economic Development (2):

- Empire Zones reform (EDV-03-10-10-E)
 - Impacts general small businesses
 - Adopts changes to enhance the program's strategic focus
 - The program provides a questionable economic impact because job guarantees are missed on a daily basis by participating companies at the expense of non-participating small businesses
 - Small economic impact

Education Department (1):

- Mandatory quality review program in public accountancy (EDU 30-10-03-P)
 - Impacts accounting firms
 - Establishes mandatory quality review program for public accounts/paperwork
 - Small economic impact

Environmental Conservation (10):

- Proposed fishery closures for Hudson River American Shad and fishery restrictions for the Delaware River American Shad (ENV-46-09-09-A)
 - Impacts commercial fisherman/businesses
 - Protect the Hudson River and Delaware River Shad stocks
 - Small economic impact
- The commercial/recreational harvest limits for winter flounder (ENV-48-09-03-A)
 - Impacts commercial fisherman/businesses
 - To reduce the harvest limits of winter flounder
 - Small economic impact
- Nitrogen Oxide (NOx) emission controls for hot mix asphalt production plants (ENV-51-09-08-A)
 - Impacts asphalt production plants, asphalt businesses
 - Calls for a reduction in NOx emissions by installing pollution controls
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to Severe economic impact
- Portland cement plants and glass plants (ENV-51-09-09-A)
 - Impacts cement plants and glass plants, cement/glass businesses
 - Calls for reductions in NOx emissions at cement and glass plants
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to severe economic impact
- Adoption of VOC emission limits for commercial/industrial adhesives and sealants (ENV-51-09-10)
 - Impacts small businesses that manufacture adhesives/sealants
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to severe economic impact

- Stationary combustion installations (ENV-51-09-11-A)
 - Impacts small businesses with large boilers for heating or manufacturing
 - Calls for reduced emission limits for all boilers, combustion turbines, defines mid-size boiler and allows for replacement option
 - Moderate to serious economic impact

- Graphic arts facilities engaged in rotogravure, flexographic, offset lithographic and letterpress printing (ENV-51-09-12-A)
 - Impacts small business printing operations
 - Calls for reduced VOC limits on emissions
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Moderate to serious economic impact

- Management of striped bass, haddock, Atlantic cod, American lobster, coastal sharks and weakfish (ENV-15-10-08-P/A)
 - Impacts commercial fisherman/businesses
 - Makes state regulations consistent with Interstate Fishery Management Plans
 - Small economic impact

- Asphalt pavement and asphalt based surface coatings (ENV-16-10-13-P/A)
 - Impacts manufacturers, installers of asphalt coatings
 - Requires lower VOC emissions for asphalt coatings
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Small to moderate economic impact

- Outdoor wood boilers used to heat homes and commercial establishments (ENV-16-10-35-P)
 - Impacts farmers, small businesses that use wood boilers
 - Institutes emission standards, stack heights for new and existing units
 - Moderate to severe economic impact

Health Department (5):

- Revisions to Certificate of Need (CON) process for threshold levels (HLT-12-10-11-P/A)
 - Impacts health care clinics, radiology, health care businesses
 - Health care businesses constantly complain about the Certificate of Need process (CON) and its cumbersome paperwork requirements
 - Constitute first phase of regulatory changes at part of DOH review of CON process
 - Small to moderate economic impact

Labor Department (4):

- Minimum wage (LAB-44-09-19-A)
 - Impacts all small businesses
 - Brings NYS's minimum wage in-line with Federal Minimum wage
 - Moderate economic impact
- Ski tows and other passenger tramways (LAB-46-09-03-A)
 - Impacts ski resorts and other businesses that rely on ski tow/tramways
 - Ensure that ski tows/tramways are constructed/operated in safe manor
 - Small economic impact.
- Hotel and restaurant wage orders (LAB-42-10-05-P/A)
 - Impacts hotel and restaurant workers
 - Combines hotel and restaurant wage orders, creates onerous paperwork requirements concerning tip pooling and 6-year record keeping
 - Moderate economic impact
- Child performers (LAB-45-10-20-P)
 - Impacts NYC/Broadway Productions, Hollywood Productions and small production companies (Senator Carlucci has production co in dist)
 - Establishes regulations regarding the employment of Child Actors
 - Moderate to severe economic impact

Motor Vehicles Department (1):

- Dealer document fee (MTV-26-09-13-P/A)
 - Impacts car/vehicle dealers
 - Raises the dealer document fee from \$45 to 75
 - Moderate economic impact

State Department (2):

- Electrical bonding of gas piping, protection (DOS-01-13-10-E)
 - Impacts construction industry-construction of new homes, buildings
 - requires bonding of gas piping, protection of gas piping
 - Small economic impact
- Security guard registration for bouncers (DOS-03-09-07-E)
(resulting from a NYC abduction/homicide of NYC women)
 - Impacts bars, restaurants, nightclubs, bouncers
 - New requirement for registration with state
 - Small economic impact (EXPIRED in 2011)

Tax and Finance Department (1):

- Informational returns for wholesale dealers of cigarettes and tobacco products (TAF-49-09-02-A)
 - Impacts wholesale (businesses) dealers of cigarettes and tobacco products
 - Requires quarterly filing of informational returns
 - Small economic impact

Insurance Department (1):

- Conduct Trustworthiness and Competence of Insurance Producers, Especially Relating to Compensation Arrangements with Insurers (INS-48-09-02-A)
 - Impacts Insurance Companies and Insurance Producers
 - Requires Insurance Producers to make certain disclosures about their role in the insurance transaction to insurance customers
 - Moderate economic Impact
 - Article 78 filed

2011 Summary of Regulations Adopted with Small Business Impacts From Jan 1 to July 1, 2011

Agriculture and Markets (1):

- Certification of small grain seed (AAM-03-11-12-P/A)
 - Impacts farms and seed producers
 - Establishes general seed certification standards
 - small economic impact

Banking Department (2):

- Registration and financial responsibility requirements for mortgage loan servicers (BNK-11-11-07-E)
 - Impacts small/large banks and mortgage loan servicing companies
 - Requires mortgage loan servicers to be registered with Superintendent of Banks
 - Small economic impact
- License, financial responsibility, education, and test requirements for mortgage loan originators (BNK-11-11-08-E)
 - Impacts small/large banks and mortgage loan companies
 - Requires individuals engaging in mortgage loan origination activities be licensed by Superintendent of Banks.
 - Small economic impact

Economic Development (2):

- Empire Zones reform (EDV-03-09-18-E)
 - Impacts general small businesses
 - Adopts changes to enhance the (now closed) program's strategic focus
 - The program provides a questionable economic impact because job guarantees are missed on a daily basis by participating companies at the expense of non-participating small businesses
 - small economic impact

Education Department (4):

- Mandatory quality review program in public accountancy (EDU 30-10-03-E/A)
 - Impacts accounting firms
 - Establishes mandatory quality review program for public accounts/paperwork
 - Small economic impact
- Continuing education for certified public accountants and public accountants (EDU-14-11-05-P)
 - Impacts accounting firms
 - Requires the completion of continuing education requirements
 - Small economic impact
- Continuing education of land surveyors and engineers (EDU-14-11-06-P)
 - Impacts land surveying and engineering businesses
 - Requires mandatory continuing education
 - Small economic impact
- Massage Therapy continuing education (EDU-26-11-14-P)
 - Impacts health spas, spas and massage therapy businesses
 - Requires continued education for massage therapists
 - Small economic impact

Environmental Conservation (3):

- Outdoor wood boilers used to heat homes and commercial establishments (ENV-16-10-35-A)
 - Impacts farmers, small businesses that use wood boilers
 - Institutes emission standards, stack heights for new units and omits existing units (could be an illegal rule making, no court action yet)
 - Moderate to severe economic impact

- Outdoor wood boilers used to heat homes and commercial establishments (ENV-18-11-09)
 - Impacts retail distributors of outdoor wood boilers
 - Provides for an extension of the sell-thru date for existing wood boilers
 - Moderate to severe economic impact

- New Source Review Requirements for proposed new major facilities (ENV-03-11-05-E)
 - Impacts various small businesses that plan to construct new or modified plants
 - DEC must review emissions sources of new/existing plants to make sure they will be within or curtailed to meet an area's ozone emissions standards.
 - The EPA enforces/implements National Ambient Air Quality Standards (NAAQS) on the states, if your state is out of ozone compliance then your state has to implement a wide range of pollution controls to stop ozone depletion
 - Severe economic impact

Health Department (1):

- **Children's camps, swimming pools, bathing beaches** (H L T-13-11-04-P)
 - Impacts day and away camp businesses
 - Amends standards for camps, swimming and cabins (DOH omitted included internal guidelines due to vast public and legislative protest) -
 - Small to moderate economic impact

THE SENATE
STATE OF NEW YORK



DAVID CARLUCCI
SENATOR, 38TH DISTRICT

CO-CHAIR
ADMINISTRATIVE REGULATIONS
REVIEW COMMISSION
COMMITTEES
BANKS
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2/7/2011

Commissioner Colleen C. Gardner
NYS Department of Labor
W. Averell Harriman State office Campus
Building 12
Albany, NY 12240

Dear Commissioner Gardner:

I am writing you concerning the proposed addition of Part 186 to Title 12 of the New York Codes, Rules and Regulations (NYCRR) relating to Child Performers (State Register I.D. #LAB-45-10-00020-P. I support the Department of Labor's (DOL) mission to establish regulations concerning the safety and employment of child performers. However, I share the concerns of parents of child performers, production companies and Broadway theatrical groups that the proposed rules are too onerous and too dangerous to the future of a healthy film, television and theatrical industry in New York.

The film, production and theater industry is responsible for thousands of jobs in New York State. If we were to impede these businesses with undue or overly burdensome regulations they may seek to do business in another state or country. This would cause serious negative economic consequences for New York and damage its reputation for being a premiere film and television production mecca.

While the safety and well-being of childhood performers should be given notable consideration by all who are involved in the film, television, production and theater business; the Department of Labor should involve all of these parties in the drafting of rules that will affect the industry. At this time I would recommend the DOL engage in negotiated rule making (**Negotiated rulemaking** is a process in American administrative law, used by state and federal agencies, in which representatives from a government agency and affected interest groups negotiate the terms of a proposed administrative rule) with industry representatives to make sure the regulation adopted into law will best serve all parties involved.

After a review of the proposed child performer regulation, it appears the costs of implementing the rule will be overly burdensome to the parents, production companies and theaters without producing the benefits that DOL wishes to achieve. For example, costs associated with providing two physical and mental health evaluations by a physician per year seems too demanding. Many in the industry believe one physical per year or every other year would suffice. The rule imposes significant amounts of paperwork and red tape that will result in significant added costs for child performers and employers. Specifically, the educational requirements to retain and manage a tutor and management of educational hours and paperwork will result in substantial added costs. The additional costs to retain a nurse and management of health requirements and associated paperwork will only make matters worse.

During this recessionary period in American history where everyone is being asked to do more with less, how can the DOL justify this burdensome and costly regulation at this time? State government is being asked to live within its means and to reduce costly mandates. It is imperative the DOL meet with industry representatives and advocates to devise a rule that will benefit both child safety and this very important industry that we all enjoy.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Carlucci', written in a cursive style.

David Carlucci
Member of Senate
38th Senate District



New York State Department of Labor
Andrew M. Cuomo, Governor
Colleen C. Gardner, Commissioner

March 3, 2011

Honorable David Carlucci
NYS Senate
845A Legislative Office Building
Albany, NY 12247

Dear Senator Carlucci:

Thank you for your recent letter expressing your interest in the Department of Labor's Proposed Rule governing child performers. As mentioned in your letter, the regulations grow out of a mandate set forth in Chapter 89 of the Laws of 2008, and its predecessor statute, designed to protect the health, safety and well-being of child performers.

I very much appreciate your comments regarding the Department of Labor's obligation to protect the safety and well-being of New York's child performers and the responsibility of employers of child performers to do the same.

We are currently in the process of reviewing and assessing the comments we received during the rulemaking process. Once this review and assessment has been completed, we will make necessary changes to the language of the proposed rule. The revised rule resulting from this process will be published in the State Register and another period of public comment will commence.

We are confident that we can address the legitimate concerns raised by representatives of performers and the industries that employ them through the rulemaking process. I will keep you apprised of any follow-up action taken in connection with this rules and welcome any additional comments you may have at that time with regard to our response to the issues you have identified.

Thank you again for contacting me on this important topic.

Sincerely,

Colleen C. Gardner
Colleen C. Gardner

*Thanks for your
input & I will
stay in touch as
things move forward.*

W. Averell Harriman State Office Campus
Building 12, Room 500, Albany, NY 12240
www.labor.ny.gov



THE LEGISLATURE
STATE OF NEW YORK
ALBANY

May 26, 2011

Howard Glaser
Director of State Operations
Executive Chamber
State Capitol, Albany, NY 12224

Dear Director Glaser:

Recently Governor Cuomo issued Executive Order #14. This order revoked the earlier Executive Order #20 of Governor George Pataki that created the Governor's Office of Regulatory Reform and established a process for executive review of agency rulemaking. In his order Governor Cuomo indicated that you will now be responsible for determining the process for agency submission and Executive Chamber review of new and amended regulations, and for issuing guidelines regarding such process to state agencies.

As the co-Chairs of the Administrative Regulations Review Commission (ARRC), we offer you our cooperation and assistance as you move forward in these efforts. ARRC has over thirty years of experience in exercising oversight of the rulemaking process and reviewing agency rules. ARRC has also been responsible for developing many of the improvements to the regulatory process codified in the State Administrative Procedure Act and other statutes.

We would appreciate being kept informed of activities undertaken as part of this new process for submission and review of agency regulations, and request copies of any guidelines or other documents that will impact the adoption of rules implementing legislative enactments. We are heartened by Governor Cuomo's commitment to real transparency and real accountability, and we look forward to seeing that commitment reflected in the new executive review process in New York State.

Please feel free to contact us for any information or assistance we can provide.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Carlucci".

David Carlucci
Senate Chair

A handwritten signature in black ink, appearing to read "Charles D. Lavine".

Charles D. Lavine
Assembly Chair

CHAIR
CHILDREN AND FAMILIES

COMMITTEE MEMBER
CIVIL SERVICE AND PENSIONS
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THE SENATE
STATE OF NEW YORK



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August 1, 2011

New York State Governor Andrew M. Cuomo
The Executive Chamber
Capitol
Albany, NY 12224

Dear Governor Cuomo:

I am writing this letter to notify you of a serious issue that is threatening the economic and financial viability of member businesses in an industry of utmost importance to Staten Island, New York City, and New York State in general. The New York State Department of Environmental Conservation (DEC) has proposed regulations recently that might have the unintended effect of killing the Shipping Industry here in New York State.

DEC proposed standards regarding the absorption, treatment, filtration and discharge of ballast water would be a serious detriment to the many businesses here in the Shipping and Maritime industry on the North Shore of Staten Island. Not only will this effect economic development in the New York City area, but will undoubtedly also have the same effect on other ports and waterways around New York State, for example those on the St. Lawrence River. While it is important to protect our waterways, the DEC's standards are unreasonable and possibly unattainable.

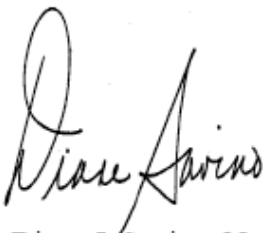
These standards, which would be set one hundred times stronger than the federal government regulations, will make business think long and hard about taking the risk to invest in this crucial industry in this region. It will create a disincentive for ships to dock here or pass through New York waters, and would also effect New Jerseys' ports, and shipping industry, which would surely create another whole set of logistical issues.

Another problem is that there is no method as of yet to test these ships to see if they meet the new standards in the first place. In essence, these proposed standards will have a great effect on economic development and job creation, but it will be for the cities of Boston, MA, Norfolk, VA, and Baltimore MD and not New York State.

I request that you direct DEC to reconsider implementing these standards in light of the disastrous effect they will have on not only the shipping industry in the Kill Van Kull, but also businesses statewide. Also, I ask that New York State Economic Development Council and the Empire State Development Corporation investigate the long term effects of having these regulations in place. Of great assistance would be asking a member of your staff, or a member of the staff of the ESDC to join me in attending the next monthly meeting of the Board of Directors of the Maritime Association of the Port of New York/New Jersey. It is being held at the Union League Club in Manhattan, on September 28th, 2011.

Thank you greatly for your time and attention to this matter of utmost importance.

Sincerely,

A handwritten signature in cursive script that reads "Diane Savino". The signature is written in dark ink and is positioned above the printed name.

Diane J. Savino, New York State Senator- 23rd District

CC: Mr. Kenneth Adams, CEO- Empire State Development Corporation
Honorable Lieutenant Governor Robert Duffy, Chairperson- New York State Economic Development Council
Mr. Joseph Martens, Commissioner- New York State Department of Environmental Conservation
Mr. Richard P. Sabatini, CEO- Staten Island Terminal
Mr. Timothy Ferrie, President- Maritime Association of the Port of NY/NJ
Mr. Edward J. Kelly, Executive Director- Maritime Association of the Port of NY/NJ

September 7, 2011

The Honorable Andrew Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

We are writing to share our concerns regarding regulations adopted by the New York Department of Environmental Conservation (NYDEC) that could seriously impede maritime commerce in the Great Lakes States to the west of New York.

In late 2008, NYDEC issued rules intended to prevent the introduction of aquatic nuisance species into New York waters via the ballast water of commercial vessels. While we share NYDEC's concern regarding the impact of invasive species on the ecology of the Great Lakes, we note that the International Maritime Organization (IMO) has coordinated a global treaty to require all ships to install environmental technology by 2016 to clean ballast water to a specific water quality standard. The IMO is the maritime arm of the United Nations and it coordinates international shipping policy. Many Great Lakes states have incorporated the IMO ballast water treatment standard into their own rules. Likewise, the U.S. Coast Guard (USCG) has embraced these same requirements for new federal regulations to be issued later this year.

Under New York's regulations, shipowners must install technology on existing vessels by August 1, 2013, to treat ballast water to a level 100 times more stringent than the IMO standard. Any vessels built after January 1, 2013, must include technology to treat ballast water to a level 1,000 times more stringent than the IMO standard. These rules not only apply to ships visiting New York ports, but also extend to ships in passage through New York waters destined for the ports of neighboring states and provinces. The rules apply to ships whether or not they discharge ballast water.

Today, there is no technology approved by the USCG to meet New York's regulatory requirements. In fact, the USCG has yet to establish a ballast water treatment technology approval process. Shipowners will not install ballast water treatment systems unless USCG approved, because they are unable to obtain insurance otherwise.

We also note that in February 2010, the Wisconsin Department of Natural Resources (WDNR) established ballast water treatment regulations similar to the NYDEC; i.e., 100 times the IMO standard. Wisconsin's ballast water discharge general permit required the WDNR to conduct a feasibility determination of this standard, which it completed in December 2010. After considerable analysis, and in consultation with the Ballast Water Collaborative, a group of leading environmental scientists, vendors, naval architects and other experts in the U.S. and Canada, including New York DEC staff, the WDNR concluded that treatment technologies do not exist today to meet the 100 times IMO standard. The WDNR ballast water general permit was subsequently modified to require the IMO standards.

Ohio and Indiana employ the Vessel General Permit (VGP) under the National Pollutant Discharge Elimination System (NPDES) – which has gone through each state’s 401 review process and includes conditions that do not exceed IMO standards to regulate ballast waters. Further, USEPA has a Memorandum of Understanding with the US Coast Guard to, when inspecting vessels, ensure they are complying with the VGP.

We know the U.S. Environmental Protection Agency tasked its Science Advisory Board (SAB) to address the question of whether ballast water treatment technology exists now, or in the foreseeable future, to meet a standard greater than IMO. In the SAB’s recently issued final report, it emphatically stated that no such technology exists.

The State of New York is now the only jurisdiction in the Great Lakes that still regulates ballast water treatment technology more stringently than the IMO standard, and New York’s standards are technologically impossible to meet. Unless the NYDEC regulations are amended, they will possibly force the closure of the St. Lawrence Seaway, and imperil thousands of maritime-related jobs in the Great Lakes States and Canada. Fortunately, the final USCG ballast water regulations will be published in the next few months. We have always supported a strong, consistent standard that covers all U.S. waters.

NYDEC regulations are already having an effect on maritime commerce in the Great Lakes as shippers, ports, industry and labor unions look to establish long-term business agreements and plan future investments. Preventing the spread of invasive species continues to be a top priority for all of us, but waterborne shipping is critical to our economies, and we must work together toward controlling invasive species while also protecting the commerce of our nation’s waterways. We urge New York to take prompt action and amend its ballast water regulations to align with the IMO and USCG standards.

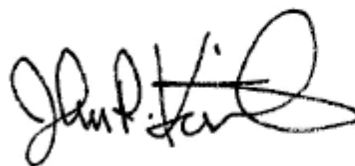
Sincerely,



Governor Scott Walker
Wisconsin



Governor Mitch Daniels
Indiana



Governor John Kasich
Ohio