

1 BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
2020-2021 EXECUTIVE BUDGET ON
5 WORKFORCE DEVELOPMENT

6 -----

7
8 Hearing Room B
Legislative Office Building
Albany, New York

9
10 February 5, 2020
9:32 a.m.

11

12 PRESIDING:

13 Senator Liz Krueger
Chair, Senate Finance Committee

14
15 Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

16 PRESENT:

17 Senator James L. Seward
Senate Finance Committee (RM)

18
19 Assemblyman Edward P. Ra
Assembly Ways & Means Committee (RM)

20
21 Senator Jessica Ramos
Chair, Senate Committee on Labor

22
23 Assemblyman Marcos A. Crespo
Chair, Assembly Committee on Labor

24
Senator Andrew Gounardes
Chair, Senate Committee on Civil Service
and Pensions

1 2020-2021 Executive Budget
Workforce Development
2 2-5-20

3 PRESENT: (Continued)

4 Assemblyman Peter J. Abbate, Jr.
Chair, Assembly Committee on
5 Governmental Employees

6 Senator Diane J. Savino
Chair, Senate Committee on Internet and
7 Technology

8 Assemblyman Walter T. Mosley
Chair, Assembly Commission on Skills
9 Development and Career Education

10 Senator Rich Funke

11 Assemblyman Joe DeStefano

12 Senator Shelley Mayer

13 Assemblyman Harry Bronson

14 Senator Robert Jackson

15 Assemblywoman Patricia Fahy

16 Senator John Liu

17 Assemblyman Al Taylor

18 Senator Brian A. Benjamin

19 Assemblywoman Nicole Malliotakis

20 Senator James Sanders Jr.

21 Assemblywoman Marianne Buttenschon

22 Senator Michael H. Ranzenhofer

23 Assemblywoman Jo Anne Simon

24 Senator Patty Ritchie

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3 PRESENT: (Continued)

4 Assemblywoman Judy Griffin

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1 CHAIRWOMAN KRUEGER: Good morning. If
2 everyone would come take their seats. Thank
3 you. Good morning.

4 And then, Commissioner Reardon, if
5 you'd like to come up -- I'll start off with
6 the general announcements, but you can come
7 on up.

8 Good morning. My name is Liz Krueger.
9 I'm chair of the New York State Senate
10 Finance Committee and cochair of today's
11 budget hearing, along with my colleague
12 Helene Weinstein, the chair of the Ways and
13 Means Committee in the Assembly.

14 Today is our seventh of 13 hearings
15 conducted by the joint fiscal committees of
16 the Legislature regarding the Governor's
17 proposed budget for the state fiscal year
18 2020-2021.

19 Today the Senate Finance Committee and
20 the Assembly Ways and Means Committee will
21 hear testimony concerning the Governor's
22 proposed budget for the New York Department
23 of Labor, the New York State Department of
24 Civil Service, and the New York State

1 Governor's Office of Employee Relations.

2 Following each testimony there will be
3 some time for questions from the chairs of
4 the fiscal committees and other relevant
5 committees, as well as other legislators on
6 those committees.

7 I will now introduce members from the
8 Senate. Assemblymember Helene Weinstein,
9 chair of Ways and Means, will introduce
10 members of the Assembly. In addition -- I
11 don't -- okay, we'll skip that for the
12 moment.

13 Just before I go to introducing
14 people, because we might get a few more here,
15 for everyone testifying today, you are
16 allowed to have an opinion about what's being
17 spoken about or testified about; you're just
18 not allowed to do loud responses. If you
19 oppose or support something going on, things
20 like that (gesturing) work fine, and we can
21 all see you.

22 Even if you are not able to testify in
23 person today, you are welcome to submit your
24 testimony, wherein it will go to all members

1 of the Legislature and be up online for the
2 public to see, I think up to seven days after
3 each hearing.

4 There are time clocks that let you
5 know how long you have left to speak.
6 Government witnesses have 10 minutes. Other
7 witnesses have five minutes.

8 Trust me, if you have a 10-page piece
9 of testimony, you would get through two
10 pages. Don't read your testimony. Highlight
11 the bullet points that you think it's most
12 important for us to hear from you, because
13 otherwise we'll be cutting you off and you
14 saved all the good stuff for your last pages.
15 That's not the way to do it.

16 Again, chairpeople have 10 minutes to
17 ask questions, all other legislators have
18 five minutes, for the government witnesses.
19 Any legislator who feels the need to ask
20 additional follow-up questions should talk to
21 Helene or myself. And for nongovernmental
22 witnesses, all legislators have three minutes
23 to ask the witnesses.

24 I am joined by Senator Andrew

1 Gounardes, chair of --

2 SENATOR GOUNARDES: Civil Service
3 Committee.

4 CHAIRWOMAN KRUEGER: Thank you, I
5 couldn't remember what we called --

6 (Inaudible comments off the record.)

7 CHAIRWOMAN KRUEGER: -- Jessica Ramos,
8 Richard Funke -- are you the ranker, sir?
9 Thank you -- John Liu and Diane -- is that
10 Diane in the front? Good, just
11 double-checking. Diane Savino, chair of
12 Labor {sic}.

13 And the Assembly?

14 Oh, I'm sorry. Excuse me. Jessica
15 Ramos is chair of Labor. I'm so sorry.
16 Diane Savino.

17 CHAIRWOMAN WEINSTEIN: We are -- the
18 Assembly is joined by the chair of our Labor,
19 Assemblyman Crespo; chair of our Government
20 Employees Committee, Assemblyman Abbate. And
21 our ranker on the Ways and Means Committee,
22 Ed Ra, will introduce his conference members.

23 ASSEMBLYMAN RA: We're joined this
24 morning by Assemblyman Joe DeStefano, who's a

1 member of the Labor and Government Employees
2 Committees.

3 CHAIRWOMAN KRUEGER: And we're also
4 just being joined by Jim Seward, who's our
5 ranker on Finance, and Senator Shelley Mayer,
6 who snuck in on the Assembly side.

7 Hello, Shelley. You can come down
8 here if you prefer. Shelley was an
9 Assemblymember, so I guess she feels
10 comfortable down there.

11 All right, good morning, Commissioner
12 Reardon. You have 10 minutes to present.

13 COMMISSIONER REARDON: Thank you very
14 much.

15 Good morning, Chairs Krueger and
16 Weinstein and distinguished members of each
17 committee. Thank you for this opportunity to
18 talk about some of the proposals that
19 Governor Cuomo has put forward in his
20 Executive Budget, as well as the Department
21 of Labor.

22 My name is Roberta Reardon, and I am
23 the commissioner of the Department of Labor
24 of New York State. I am very proud to lead

1 the department in carrying out its mission of
2 protecting workers, providing benefits to the
3 unemployed, and connecting job seekers to
4 jobs.

5 The work we do is challenging and
6 constantly evolving, but the dedicated and
7 motivated employees behind our record of
8 accomplishment continue to deliver.

9 Governor Cuomo has been steadfast in
10 his commitment to ensuring equal opportunity,
11 no matter where you stand on the economic
12 ladder. As a state, we are in a stronger
13 economic position -- better than we have been
14 in many years. Most importantly, though,
15 greater prosperity isn't reserved for the
16 wealthiest few. Under the Governor's
17 leadership, I can report today that the
18 minimum wage is \$15 in New York City, \$13 in
19 Long Island and Westchester, and \$11.80 in
20 the rest of the state. At the start of this
21 administration, New York's minimum wage was
22 just \$7.25 an hour.

23 Under Governor Cuomo's leadership,
24 New York has had the strongest decade of

1 growth since the 1940s. Since the beginning
2 of this administration, the New York State
3 economy has added 1.2 million private-sector
4 jobs and has experienced a record-setting
5 117 consecutive months of growth. The state
6 also maintains a very low unemployment rate
7 of 4 percent.

8 Against the backdrop of low
9 unemployment, we also see fewer New Yorkers
10 collecting unemployment insurance --
11 581,000 in 2019, and that is down from over
12 1.4 million claimants during the recession.
13 I am proud to say that the Unemployment
14 Insurance Trust Fund has a balance of
15 \$2.5 billion, thanks to the UI reform laws
16 passed a few years ago here.

17 Our Unemployment Strikeforce is
18 working to provide more intensive services to
19 communities dealing with high unemployment.
20 These targeted efforts are in addition to the
21 broad array of services our staff provide in
22 the 96 career centers operated in your
23 districts.

24 Businesses are the lifeline of our

1 economy, and the Department of Labor supports
2 this relationship through the many positive
3 actions we take on behalf of the business
4 community. In 2019, we served over 33,000
5 businesses. Over the past three years, we've
6 approved more than 300 new registered
7 apprenticeship programs and added 30 new
8 trades. Additionally, the New York Youth Tax
9 Credit Program connects at-risk youth to
10 jobs. These programs help us diversify our
11 workforce to meet the needs of emerging
12 sectors.

13 The Department of Labor is committed
14 to protecting workers and leveling the
15 playing field for all businesses. Year after
16 year, the department has distinguished itself
17 as a national leader in returning unpaid
18 wages to workers. Since 2011 we have
19 returned nearly \$320 million to approximately
20 280,000 workers. We return over 80 percent
21 of the unpaid wages reported to us.

22 We have accepted Governor Cuomo's
23 challenge to tackle the problems affecting
24 our most vulnerable workers. The state

1 recently adopted important reforms in the
2 farming industry. Following a statewide
3 series of hearings to gather input from all
4 stakeholders, Governor Cuomo signed a bill to
5 establish the Farm Laborers Fair Labor
6 Practices Act. It grants farmworkers
7 overtime pay, a day of rest each week, and
8 protections that other workers have enjoyed
9 for over 80 years.

10 We continue to lead the nation in
11 protecting employees from sexual harassment
12 in the workplace. In 2018 the Governor
13 proposed, and the Legislature passed,
14 legislation to protect all workers.
15 Department staff worked closely with
16 representatives of the business community to
17 develop the training materials that all
18 businesses can use to comply with the
19 requirements.

20 Last month a new salary history ban,
21 that was recommended in the department's 2018
22 gender wage gap study, took effect. It
23 breaks the cycle of unfair compensation by
24 prohibiting all employers from asking

1 prospective or current employees about their
2 salary history and compensation. Women are
3 disproportionately prone to abuses in these
4 areas.

5 In 2019, Governor Cuomo directed the
6 department to eliminate the subminimum wage
7 for all workers in "miscellaneous" industries
8 throughout the state. These are car wash
9 attendants, nail salon workers, dog groomers,
10 and tow truck drivers, just to name a few.
11 By the end of this year, more than 70,000
12 workers will be in a better position to
13 support themselves and their families.

14 Governor Cuomo wants to bring paid
15 sick leave to 1.3 million workers who still
16 can't take a day off to go to the doctor or
17 recover from an illness without the fear of
18 being fired or losing their wages. It is in
19 the best interest of workers, businesses, and
20 the general public to have a sick employee
21 remain home and take care of themselves,
22 rather than bring their illness to work.

23 The upcoming census is extremely
24 important to our state, and we need to ensure

1 that everyone is counted, in spite of the
2 negative rhetoric that's coming out of
3 Washington. The department is actively
4 engaged in the statewide effort to count
5 every New Yorker, with a special emphasis on
6 communities that have been identified as
7 "hard to count."

8 Where we are going is built upon the
9 strong foundation of where we have been. As
10 Governor Cuomo has said, we must continue to
11 transform our words into action -- into
12 tangible, positive change in the life of
13 every New Yorker. We intend to do just that.

14 Thank you.

15 CHAIRWOMAN KRUEGER: Thank you. Thank
16 you.

17 First up is our chair of Labor,
18 Jessica Ramos.

19 SENATOR RAMOS: Good morning,
20 Commissioner. {Mic off.}

21 COMMISSIONER REARDON: I'm not sure
22 you're on.

23 SENATOR RAMOS: Sometimes I'm not sure
24 it's just how loud I am or whether the mic's

1 actually working.

2 But good morning, Commissioner. Can
3 you tell us how many employees there are in
4 the Department of Labor?

5 COMMISSIONER REARDON: It's over
6 3,000.

7 SENATOR RAMOS: And about how many are
8 workplace inspectors?

9 COMMISSIONER REARDON: We have over a
10 hundred inspectors. I think it's 125.

11 SENATOR RAMOS: And how many workplace
12 inspections did the DOL carry out in New York
13 State in 2019?

14 COMMISSIONER REARDON: I don't have
15 that number, but I can get it for you.

16 SENATOR RAMOS: Can you walk me
17 through what a routine workplace inspection
18 looks like?

19 COMMISSIONER REARDON: So it depends
20 on which kind of inspection you're talking
21 about. We have a wide range. If it's public
22 safety and health, it's one process. The
23 asbestos people have a process. It is
24 varied. So if you want to know about a

1 specific kind, it would be helpful.

2 But they essentially -- we receive a
3 complaint, is generally how these inspections
4 are generated, and they go in and ensure that
5 the regulations are being followed. There
6 are certain things that employers have to
7 file. It really depends on what they're
8 looking for.

9 SENATOR RAMOS: Given the proposed
10 budget cuts in the Governor's proposal for
11 the Department of Labor, do you think you
12 will be able to keep up the rate of work, the
13 capacity that you have?

14 COMMISSIONER REARDON: I'm not sure
15 what budget cuts you're talking about.

16 SENATOR RAMOS: He is -- the Executive
17 Budget is proposing a \$3.62 billion cut, a
18 decrease -- oh, it's actually a decrease of
19 \$13 million from last year's budget.

20 COMMISSIONER REARDON: So I think
21 that's actually referring to the LAOs. Our
22 budget did not decrease this year. And I
23 think that is actually the legislative
24 add-ons that get added in every year that

1 come from the Legislature.

2 SENATOR RAMOS: Okay. Last time -- at
3 last year's hearing we talked a little bit
4 about sexual harassment. Can you tell me
5 about how you're continuing to work with
6 employers on training? Have you created
7 multilingual training, any other new methods
8 that you're employing?

9 COMMISSIONER REARDON: Thank you for
10 asking about that. It's something we're
11 really proud of.

12 We know that we've had -- it's been a
13 law for about a year. We have had over
14 350,000 individuals contact our website that
15 deals with the sexual harassment training.
16 And in light that there are a little over
17 400,000 businesses in this state with more
18 than one employee, that is a very good sign
19 that employers are actually accessing the
20 training website.

21 I am tell you anecdotally -- and it's
22 just funny to me -- I did a lot of the
23 videos that we use, and consequently I go
24 around the state and I'll walk into a room

1 and people go: "Oh, you're Roberta. I saw
2 you, you were in the training." So it's a
3 funny thing to have happen, but it says to me
4 that people are actually using the videos and
5 that people, that the employees are actually
6 paying attention to it. So I've had some
7 really great conversations with employers and
8 their employees about how the trainings are
9 working.

10 The best thing -- and I think you and
11 I have talked about this before -- for me --
12 and, you know, I worked in industries that
13 had a lot of issues in these areas and I was
14 aware of it myself. The best thing about the
15 training is it takes this out of the shadows
16 and it puts it in the public square. And we
17 now have conversations openly and frankly
18 about what is sexual harassment. Because to
19 some people, a joke is a joke. To other
20 people, it's not a joke, it's offensive.

21 These trainings actually raise
22 everybody's awareness. But it gives
23 everyone, employer and employee, the ability
24 to have that conversation together. And it

1 allows the employer to have a written policy
2 that's frank and open and people need to
3 follow it, it's protective for the employer.
4 For the employee, they understand what the
5 standards are. And most important, they
6 understand what is the process within that
7 workplace if they feel harassed.

8 When it happened to me a long time
9 ago, there was no one to talk about it with,
10 there was no one to go to. And I didn't talk
11 about it with my colleagues because I was
12 embarrassed. And, you know, that was a
13 terrible thing. That's not going to happen
14 anymore. Now we're going to say if this
15 happens to you, here's the process, here's
16 how we deal with it, and here's your access
17 to justice.

18 So I have to say to all of you, thank
19 you for giving us that task. It was great
20 for us to do, and I'm very happy that we've
21 done it. And we've added -- you know, as the
22 law has changed, we've updated the training
23 videos appropriately.

24 SENATOR RAMOS: Is there a formal way

1 in which you're reaching out to employers who
2 aren't taking advantage of these materials
3 that the Department of Labor has produced?

4 COMMISSIONER REARDON: So we -- you
5 know, when -- there are a lot of different
6 ways to reach employers. We do a lot of
7 business connection through our business
8 services people on the workforce side. And
9 that's part of the packet that our business
10 services people take with them -- just a
11 reminder, these things are available. There
12 are a lot of ways that we touch employers and
13 a lot of ways we touch employees, and we make
14 sure that this is part of the dialogue.

15 We do not do the enforcement. That's
16 the Division of Human Rights. And any time
17 somebody alerts us to a problem, we refer
18 them to DHR because that's where the action
19 will be taken.

20 I have worked very closely with
21 Commissioner Fernandez, and she's a great
22 colleague and it's a pleasure to have her
23 there. It's a great teamwork.

24 SENATOR RAMOS: Thank you. I was

1 wondering -- I mean, I'm very happy that the
2 Governor felt inspired by the car washers
3 bill that we passed in the Senate and the
4 Assembly last year in order to take away the
5 subminimum wage or the tipped wage for so
6 many workers. Why weren't restaurant workers
7 included?

8 COMMISSIONER REARDON: So we did very
9 extensive hearings. We had 40 hours of
10 public hearings that I attended every minute
11 of, and I'm really glad I did. We also had
12 over 3,000 written comments following the
13 hearings. And we did a lot of research with
14 other states, with scholarly writings about
15 all of this.

16 The thing that became immediately
17 clear in those hearings was that the workers
18 in the miscellaneous industries were the ones
19 most at risk for a lot of wage theft. We
20 knew from our own investigations that these
21 industries, for a variety of reasons -- not
22 just because there are bad employers, but
23 because it's hard -- those regulations were
24 difficult to enforce, difficult to follow.

1 These were people who -- these are
2 workers who came to us and said, I don't know
3 what my base pay is. I can't tell if I'm
4 paid correctly or not because I don't know,
5 on any given day, what kind of base pay I'm
6 going to get, it's too complicated.

7 And a car wash is a great example of
8 this. They would have a tip jar at the
9 counter, and people may occasionally put
10 money into it. At the end of the day, the
11 manager or whoever would take the tip jar in
12 the back, count it, and hand out money. And
13 the workers said: We don't know how much was
14 in the tip jar, we don't know if it was
15 distributed appropriately to the workers, we
16 don't know if the manager or whoever was
17 pocketing part of it, because we have no
18 control over it. So that was -- that's a red
19 flag. That says this is an industry -- oh,
20 and also these are industries, if you think
21 about dog walkers, tow truck drivers, car
22 washers, even nail salons -- a lot of the
23 people doesn't understand that these people
24 are depending on tips.

1 SENATOR RAMOS: So you don't believe
2 that wage theft is rampant in the restaurant
3 industry?

4 COMMISSIONER REARDON: We knew that
5 the first remedy had to be the miscellaneous
6 industries, because they were the ones most
7 at risk.

8 We did hear a terrific amount of
9 testimony, in those 40 hours and in the
10 written testimony, from hospitality. And I
11 must say I was surprised that many, many,
12 many -- the majority of workers who came into
13 the hospitality part of the hearings said we
14 like the system the way it is.

15 So that means that there is not a
16 clear understanding in the worker pool of
17 that industry -- well, it's not one
18 industry -- of the hospitality area.

19 So we are going to continue to monitor
20 it and see how this develops. It is a very
21 diverse industry. It goes all the way from a
22 four-table mom and pop, you know, coffee
23 stand all the way to the Four Seasons, and
24 everything in between. And it encompasses

1 very robust economies and some economies that
2 are not very good at all. So it takes a lot
3 of thinking to figure out how we want to deal
4 with this.

5 But the surprise was how many people
6 came into the hearing and said, Please don't
7 change it. So, you know, you have to listen
8 to the workers too.

9 SENATOR RAMOS: Thank you,
10 Commissioner. I'm going to yield my time for
11 the second round, please. Thanks.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Assembly. Oh, I'm sorry, we are
14 joined by Senator Brian Benjamin and Senator
15 James Sanders.

16 CHAIRWOMAN WEINSTEIN: And since we
17 started, we were joined by Assemblyman
18 Mosley, Assemblyman Taylor, Assemblywoman
19 Buttenschon, Assemblywoman Simon,
20 Assemblywoman Fahy.

21 And we go to Assemblyman Crespo, chair
22 of our Labor Committee.

23 ASSEMBLYMAN CRESPO: Thank you,
24 Helene.

1 Commissioner, good morning --

2 COMMISSIONER REARDON: Good morning.

3 ASSEMBLYMAN CRESPO: -- and thank you
4 for your testimony.

5 One quick comment just to thank you.
6 The Strike Force initiative in the Bronx, the
7 new data shows a historic drop in
8 unemployment, and we're extremely grateful
9 for the work that's happened there.

10 Which leads me, though, into one area
11 where you mentioned the tax credit to small
12 businesses that provide opportunities to
13 youth in certain communities, and coupled
14 with Summer Youth Employment and other
15 programs. One thing I would love to follow
16 up, maybe not necessarily now, but I want to
17 put this on your radar, is I would like to
18 get a better sense of the total number of
19 youth, those between 14 and 17 or 18, that
20 are being serviced by one of the many
21 programs. I'd like to get a better sense of
22 just how many lives are we reaching. And I
23 do believe it's an important part of that
24 pathway out of poverty, is to get an early

1 start.

2 COMMISSIONER REARDON: I agree with
3 you.

4 ASSEMBLYMAN CRESPO: So I'd love to
5 get a little more into that at another time.

6 But just -- the sick leave proposal,
7 do you know how many employers in the state
8 currently provide sick leave?

9 COMMISSIONER REARDON: I do not. I do
10 know that the proposal would affect about
11 1.3 million workers, so that gives you some
12 sense -- it's probably -- a lot of -- we all
13 know a lot of larger companies, corporations,
14 have their own -- a lot of unionized
15 companies also have these things written into
16 their contracts or their policies. So
17 probably it's mid-to-smaller businesses that
18 don't, although there may be some larger ones
19 that don't.

20 But it is 1.3 million workers would be
21 affected.

22 ASSEMBLYMAN CRESPO: So New York City
23 has a -- currently has a policy, and one of
24 the things that they did in their language in

1 their program was to clarify that if you are
2 part of a collectively bargained employment
3 opportunity and there are already, you know,
4 agreed-upon terms as it relates to sick
5 leave.

6 I don't see the same language carried
7 over in the budget language. Is that
8 something that you are looking into or
9 discussing?

10 COMMISSIONER REARDON: I could be
11 wrong -- I often am -- but I think that
12 there's language in there that collectively
13 bargained situations are carved out.

14 And the understanding is usually in --
15 I was a union president, so I'm really
16 familiar with this. When you're collectively
17 bargaining for your members, you bargain
18 above the local standard. You know, you try
19 to raise the standard for your workers.

20 So it would be highly unusual if there
21 was a collective bargaining agreement that
22 was less than the standard.

23 ASSEMBLYMAN CRESPO: I just think --
24 and maybe that's something we should kind of

1 dive into after this. Because I did see a
2 number of folks, different organizations,
3 that were concerned that the proposal wasn't
4 very clear, and there was a concern that it
5 may potentially, if it remains as is, could
6 have that impact.

7 And then one other thing in terms of
8 if you are an employer, I think the lowest
9 threshold would be four employees or more, if
10 I'm not mistaken. But if your personnel
11 numbers changed through the year, how is that
12 calculated?

13 COMMISSIONER REARDON: Usually the way
14 it works is it's -- for things like this,
15 it's per year. But I don't know what the
16 standard is in this particular piece of
17 legislation. I'd have to look.

18 But in other situations I know -- I
19 think it was in maybe the wage bill, there
20 was another thing like this where the
21 standard was set at the first of the year and
22 it didn't change until the next year.

23 ASSEMBLYMAN CRESPO: Well, again,
24 we'll follow up on that. I just wanted to

1 get a sense of the practical implications for
2 those where there's changes, where some --
3 you know, an employer who may start the year
4 with a certain number and then, midway
5 through, at what point does that employee
6 earn that leave and/or the costs associated
7 with it.

8 Very quickly on the farmworker
9 legislation, we worked really hard to find
10 balance and thread a needle, and after so
11 many years finally those got those
12 protections in place. I know there was a
13 lawsuit filed, and a stay, on the issue of
14 consanguinity, if I said that correctly.

15 Is there an understanding that this
16 proposal would resolve what's at the heart of
17 the lawsuit? And then is there -- has there
18 been discussions or is it your understanding
19 that if this issue were passed and if that is
20 resolved, that that would stop any efforts
21 from the industry to continue to challenge
22 the legislation?

23 COMMISSIONER REARDON: So I'm not
24 going to comment on the litigation because

1 that's in front of the courts. It would be
2 inappropriate for me to comment on that.

3 I will say that there is some I
4 believe Article VII language being developed
5 that may touch on that. But we are moving
6 ahead with implementing the majority of it --
7 because it's a very narrow part of the Fair
8 Labor Practices Act that's under review. So
9 we're continuing to enforce the rest of it.
10 And I look forward to what happens with the
11 litigation.

12 I want to congratulate all of you for
13 passing that bill. It really was a
14 remarkable effort, and it was a remarkable
15 negotiation. It's -- you know, it's not just
16 an up or down kind of question, and you did
17 an amazing job of threading that needle. And
18 thank you.

19 ASSEMBLYMAN CRESPO: Well, I
20 appreciate it. But that required also a lot
21 of conversations and give and take, after so
22 many years, to finally strike that balance.
23 And I certainly believe that we need to do
24 more for farmers and make sure that their

1 businesses continue to be vital. And I want
2 to be a part of that conversation and be
3 helpful.

4 But I am concerned that we -- if
5 addressing this doesn't resolve an
6 understanding and an agreement in those
7 negotiations, that would be a concern. And I
8 want to make sure that we're not undermining
9 the very protections it took so long to
10 achieve.

11 COMMISSIONER REARDON: I will say that
12 I've worked very hard to form a
13 relationship -- it's not hard to do -- with
14 Richard Ball, the commissioner of Ag &
15 Markets. He's a wonderful -- he's a good
16 friend. And we've talked about these issues
17 since I first met him four years ago. And
18 we're in agreement that these are issues that
19 need to be addressed.

20 ASSEMBLYMAN CRESPO: And then I'm
21 going to keep it till the last issue because
22 we're going to run out of time. But I
23 noticed that in your testimony there was not
24 a specific mention on the prevailing wage

1 proposal and/or the so-called gig worker
2 proposal, which are two of the major items
3 affecting this part of the budget, and major
4 policy changes.

5 So I want to focus on the gig worker
6 just a little bit. How would this work? We
7 would create a task force, assuming the
8 budget gets passed April 1st. That group
9 would then have 30 days to propose
10 legislation. And if it's not adopted, the
11 same language would authorize your department
12 to promulgate rules. And there's not a lot
13 of specificity as to what -- the position you
14 would then immediately approve.

15 So can you elaborate a little bit on
16 how this would work?

17 COMMISSIONER REARDON: So the -- first
18 of all, the task force can -- we can convene
19 the task force now. There's nothing that
20 would stop us from convening them. And I
21 look forward to working with the people that
22 you appoint.

23 I think it's a really -- this is a --
24 you know, first of all, thanks to the

1 Governor for calling it "digital marketplace"
2 and not "gig." I worked in the gig industry.
3 These are not gigs. It is the digital
4 marketplace. And it is a really turbuluous
5 {sic} workplace. It's turbulent. It's
6 changing rapidly. There are some gig
7 companies that have already disappeared.
8 There are ones that are just emerging and we
9 don't even know about them.

10 And we need to understand, first of
11 all, who we are identifying in this
12 landscape, because that's a big part of this.
13 Who is a digital marketplace worker, how do
14 we define them? Who are the employers? And
15 then we can begin to talk about what kinds of
16 labor protections do we need to look at for
17 this area.

18 You need to protect workers because
19 they should not be working in a place where
20 all of the risk of a company is pushed onto
21 them without a choice on that worker's part.
22 On the other hand, you want to make sure that
23 emerging technology has a place to thrive and
24 develop. We're very proud of all the tech

1 work that we do here in New York State, and
2 we want to make sure that we're as welcoming
3 as possible, balancing that. And that is
4 going to be a big part of this investigation.

5 We've been looking at it up till now,
6 but now I think with the formation of the
7 task force, we'll have an opportunity to
8 really dig in and begin to do the defining
9 work that has not been done yet.

10 ASSEMBLYMAN CRESPO: And so if the
11 task force meets, we discuss this in 30 days
12 and we fail to sort of meet an agreement on a
13 a tangible proposal, there is some language
14 in there that would be -- or it seems to be
15 the parameters under which your agency would
16 promulgate certain rules. And there's a
17 mention of what an ABC test would look like.

18 We also have the Fair Play Act in law,
19 which has many more criteria associated with
20 it.

21 So I guess just generally, if we fail
22 to make a recommendation, do you see your
23 agency looking towards this strict ABC? Do
24 you see yourselves maybe promulgating

1 something more elaborate, like the Fair Play
2 Act? And would that, in your mind, apply to
3 all digital marketplace workers or all
4 independent contractors?

5 COMMISSIONER REARDON: Right now the
6 focus is a task force to talk about digital
7 marketplace, so that's what we're going to
8 start with.

9 I would be very hesitant to say this
10 is what I think should happen, because we
11 haven't even described who we're talking
12 about. So I don't want to create a solution
13 for a problem I can't identify.

14 And there's nothing to stop this task
15 force from being informative and informing
16 the opinions of the Department of Labor. You
17 know, I'm certainly not the wizard of digital
18 marketplace workers. I need help, like we
19 all do. And I look forward to working with
20 your appointees on this because it's a huge
21 issue for everyone. It's not just a New York
22 City issue, it's not just a New York State
23 issue, it's global. And we need to get a
24 handle on it.

1 ASSEMBLYMAN CRESPO: Thank you.

2 CHAIRWOMAN WEINSTEIN: We were joined
3 by Assemblyman Bronson.

4 Senate.

5 CHAIRWOMAN KRUEGER: Thank you.

6 John Liu.

7 SENATOR LIU: Thank you, Madam Chair.

8 Thank you, Commissioner, for being
9 here today.

10 COMMISSIONER REARDON: Good morning.

11 SENATOR LIU: And I want to continue
12 with questions about the issue that
13 Assemblymember and Chairman Crespo already
14 asked you about.

15 You stated that you're not quite sure
16 who the workers are, but you're very clear
17 that we're talking about the digital
18 marketplace. But we're talking about -- I
19 mean, there's a general sense of who we're
20 talking about, isn't there? I mean, it's not
21 that hard to identify who these workers are.

22 COMMISSIONER REARDON: Do you think?

23 I mean, I --

24 SENATOR LIU: I mean, you know, you

1 might be able -- you can certainly identify
2 the vast majority of the workers just off the
3 top of your head.

4 So I'm not asking you to identify the
5 workers, I'm asking -- I would ask you what
6 kinds of issues are there. What kinds of
7 protections might there be that these workers
8 are currently lacking?

9 COMMISSIONER REARDON: There have been
10 a lot of discussions in a lot of different
11 forums about this. One of my cautions has
12 always been: Be careful that you don't fix
13 the first problem you see and cause a larger
14 problem because you think you've fixed it.

15 And I think that the portable benefits
16 issue is a good part of this. That's a very
17 important thing for workers in this kind of
18 volatile workplace. But it's not the only
19 issue they face. A friend of mine said to
20 me -- here's an example -- I order a pizza
21 and an employee of the pizza shop gets in the
22 car, drives, drops off the pizza, gets a tip
23 or not, drives back, goes back to work. He
24 or she is an employee.

1 Same pizza, different shop. They have
2 a delivery service, not an employee of the
3 shop. That person gets into their car, they
4 deliver the pizza.

5 On the way back, the first person has
6 an accident. They're an employee, they get
7 workers' comp because they're on the clock
8 and they may have, you know, provided
9 healthcare from the employer, all kinds of
10 situations. They're an employee.

11 The second person has nothing. If
12 they have an accident in that car, it's
13 probably their car, and they're probably on
14 the hook for that. But they also have no
15 workers' comp, they won't have any
16 unemployment insurance. So they're on their
17 own. And what happens to workers when that
18 happens? They're not just on their own,
19 they're on our own, because society has a
20 responsibility --

21 SENATOR LIU: I understand that. So
22 the worker in the second scenario that you
23 illustrated basically doesn't have
24 protections that we would expect all workers

1 to have.

2 COMMISSIONER REARDON: Yes.

3 SENATOR LIU: And yet that person is a
4 worker. So we're talking about how to extend
5 the same protections that the first worker
6 has to the second worker. That second worker
7 is now on call, they may be contacted by
8 their app, they may not even have ever met
9 their employer in person.

10 But this is a problem that didn't just
11 start with this so-called digital
12 marketplace. Right? It's been happening for
13 quite some time. Workers that don't have
14 protections that other workers have, because
15 they've been classified as, as Chairman
16 Crespo mentioned, independent contractors.

17 So the Department of Labor -- and this
18 predates your tenure -- didn't really do much
19 to address this issue, the issue of
20 independent contractors, the issue of
21 employers classifying their employees as
22 independent contractors even though those
23 employees got no other paycheck from any
24 other source, were directly told what to do

1 and what not to do, under the total control
2 of the employer -- and yet because they were
3 classified as independent contractors, they
4 had no benefits or protections whatsoever.

5 COMMISSIONER REARDON: So we do have
6 the joint task force, which goes out and
7 works on misclassification cases all the
8 time. It's not just the DOL, it's workers'
9 comp, it's often the Department of State,
10 often the State Liquor Authority, because it
11 involves those industries. And we regularly
12 go after misclassification on a regular
13 basis. So the fact -- to say that we've done
14 nothing is not correct.

15 The misclassification cases are often
16 decided by courts, which is a problem because
17 the court changes an opinion and then we have
18 to adjust.

19 I will say it's important to
20 responsible -- because I've done this. I
21 have been a legitimate independent
22 contractor. I have signed an agreement with
23 an employer saying I'm going to -- in my case
24 it was research -- I'm going to do research

1 for you and I am running my own business
2 doing it. And I pay the 1099s at the end of
3 the year. So there are legitimate people who
4 have small businesses. My brother is a
5 graphic designer, he's a one-man band.

6 SENATOR LIU: We're not talking about
7 those people, we're talking about people who
8 are -- and I want to take a point that you
9 just mentioned before, that all right, I
10 stand corrected, the Department of Labor has
11 been part of this -- what you called the
12 joint task force. That task force has taken
13 employers to task.

14 COMMISSIONER REARDON: Yes, we have.

15 SENATOR LIU: But you alluded to the
16 fact that the courts don't always interpret
17 in the same direction that the task force
18 does, meaning there's a shortcoming in the
19 law. The law needs to be beefed up to
20 protect these workers.

21 COMMISSIONER REARDON: I just enforce
22 it.

23 SENATOR LIU: Thank you.

24 Thank you, Madam Chair.

1 CHAIRWOMAN KRUEGER: Thank you.

2 CHAIRWOMAN WEINSTEIN: Assemblyman Ra.

3 ASSEMBLYMAN RA: Good morning,
4 Commissioner.

5 COMMISSIONER REARDON: Good morning.

6 ASSEMBLYMAN RA: Just on that same
7 topic of this digital marketplace worker
8 classification task force, would it be
9 contemplated that, you know, there would be
10 public hearings, opportunity for public
11 comment from people that are in this industry
12 and other stakeholders to come in and speak
13 to this task force before they put forth the
14 recommendations?

15 COMMISSIONER REARDON: We do that on a
16 pretty regular basis, so I would not be
17 surprised to see that we do that. I mean,
18 it's important to hear from everybody
19 affected. It's not unlike the tip credit
20 hearings that we held. We want to know how
21 it affects the workers and how it affects the
22 businesses.

23 ASSEMBLYMAN RA: And I know you said,
24 you know, we have to kind of get to the

1 bottom of really what we're even talking
2 about. So I would say at this point you
3 don't have, you know, a basic ballpark of how
4 many workers we think would be impacted by
5 the work of the task force?

6 COMMISSIONER REARDON: It's hard to
7 say. Yeah, it's a very -- you know, we
8 haven't defined it, so it's hard to count.

9 ASSEMBLYMAN RA: Thank you.

10 CHAIRWOMAN WEINSTEIN: Senate?

11 CHAIRWOMAN KRUEGER: Thank you.

12 Good morning. Just briefly, clearly
13 the issues of the gig economy, digital
14 workers, independent contractors, is enormous
15 and is on all our minds. But we aren't
16 really the right place to have the discussion
17 here. Because while the Governor has said
18 he's creating a task force, we all think that
19 we need to be involved in this and likely the
20 law.

21 And I would just urge all of my
22 colleagues to call for some kind of joint
23 hearings specifically around these issues,
24 invite yourself to whenever this task force

1 is going to meet. Have the members been
2 named yet?

3 COMMISSIONER REARDON: I don't think
4 so.

5 CHAIRWOMAN KRUEGER: Okay. So
6 encourage both houses that we want to be on
7 that task force, we want to have hearings
8 with that task force. We probably want to
9 have hearings ourselves because I suspect
10 it's an enormous number of people throughout
11 the State of New York, and nobody has
12 clarified this. And based on the number of
13 people showing up at our offices to talk
14 about it, everyone thinks we do need to do
15 something about it.

16 But in order to move this hearing,
17 we're going to try to stay focused on issues
18 within the budget documents for all of these
19 speakers and questioners today. And while I
20 think this might be the biggest issue facing
21 you, it's not one that I think this -- you
22 are ready to give us answers to or we are
23 ready to even complete our questions on.

24 With that, Senator Seward is next up.

1 SENATOR SEWARD: Thank you.

2 Thank you, Commissioner.

3 COMMISSIONER REARDON: Good morning.

4 SENATOR SEWARD: I had a question
5 regarding prevailing wage and how these are
6 set in the various regions around the state.

7 There's been speculation, I hear it
8 often from various stakeholders in the past,
9 where they're questioning just where these
10 numbers come from and how does the department
11 calculate the prevailing wage in each region.
12 And of course I have no way of knowing, you
13 know, whether the speculation is accurate or
14 not, because we just don't know where these
15 numbers are coming from and what's behind
16 them.

17 So my question is, has there been any
18 effort by your department to increase the
19 transparency with how you calculate the
20 prevailing wage for each region of our state?

21 COMMISSIONER REARDON: That's a good
22 question. I've not had that conversation
23 with my staff. I'd be happy to have that
24 conversation with you.

1 bill.

2 My question is, why are these minimum
3 thresholds even being proposed if the board
4 can simply do away with them when it so
5 chooses, it would have that kind of power?

6 COMMISSIONER REARDON: So my thinking
7 about this board is that it is a board that
8 meets when clarity is needed about a
9 particular project. The regulations as
10 currently written are pretty clear -- you
11 know, 30 percent or more of public funding,
12 and they identify what the public funding is
13 and what some carve outs are, and \$5 million
14 or more in the cost of the project. And so
15 that's a pretty clear determination.

16 My understanding of this board is that
17 we are there in cases of lack of clarity,
18 when it's hard to determine whether the
19 project as proposed is meeting those
20 benchmarks. I do not expect this board to be
21 constantly in session saying yea or nay on
22 every project that goes on. That would be
23 wrong, frankly. And it is a board of -- it's
24 a decision-making board when other decision

1 points can't be met.

2 And I can tell you, as the chair of
3 that board, I have a lot of other work to do,
4 so I'm not looking forward to making all
5 those decisions. But I also think the
6 regulations are going to be clear enough --
7 I've had a lot of conversations with
8 businesses and with developers and
9 construction companies, and the one thing
10 that they all say is, look, we can adapt to
11 regulations, that's what we do. What we want
12 is clarity.

13 What we don't -- what's hard for them
14 is to have a sort of murky world where this
15 may or may not be in or out. This is a way
16 of saying, these are the rules, this is the
17 framework, and this is what applies. This
18 doesn't apply, this does apply. The board is
19 there when, for a particular reason, you
20 can't really make that determination.

21 SENATOR SEWARD: Well, I appreciate
22 you sharing your vision of what this board
23 would do, as chair. But I think perhaps we
24 as a Legislature need to tighten up the

1 language a bit to provide that direction.

2 I want to -- the final question is
3 regarding the paid sick leave proposals in
4 the budget. The language submitted by the
5 Executive requires employers to provide no
6 less than one hour of paid sick leave for
7 every 30 -- I believe it's 30 hours of work.

8 Is it the intention of this proposal
9 to have part-time employees accrue sick
10 leave?

11 COMMISSIONER REARDON: Well, if it's
12 one hour for every 30 hours, then it covers
13 somebody who's working 30 hours.

14 SENATOR SEWARD: Okay. Which would be
15 considered part-time in many cases.

16 Have you or the administration
17 considered the impact on -- you know, I'm
18 talking about the smallest of small
19 businesses here -- you know, family farms,
20 you know, small coffee shops, that type of
21 thing, who often bring on an extra employee
22 or two at the very busy season for them, but
23 it would kick them up to the point where they
24 would now be really unable to do that because

1 they would be required to pay sick leave for
2 all of their employees. Is there any
3 consideration of that when you bring on
4 someone temporarily?

5 COMMISSIONER REARDON: The way it's
6 written right now is four or fewer. It's
7 sick leave with no pay. Five or more, it's
8 paid sick leave, and that's the
9 determination.

10 And, you know, I can't really speak to
11 the seasonal employees. I'd have to have a
12 conversation, you know, more about that. But
13 that is the intention, is that if you have a
14 very, very small business, you will provide
15 sick leave but you won't pay for it.

16 But I do want to point out the
17 productivity of a sick worker drops
18 precipitously, and that harms the business as
19 well as the other people who are working with
20 that sick employee, and it harms the public.
21 It's flu season. How many times have you
22 walked into a restaurant, a coffee shop, a
23 bank, whatever, and somebody is coughing and
24 sneezing, blowing their nose, and you're kind

1 of like, Oh, maybe I need to go somewhere
2 else?

3 It's in the public interest to make
4 sure that workers have the opportunity to
5 take a day off and get well, rather than come
6 into the place of business and share their
7 illness with everybody in there. And the
8 research has said when people have this kind
9 of paid sick leave available, typically they
10 don't use all of it. I mean, I don't know, I
11 don't get sick that often -- thank God -- but
12 if I do have the flu, I don't want to share
13 it with any of you.

14 SENATOR SEWARD: Well, we appreciate
15 your perspective. And I would just ask that
16 we keep in mind these small businesses and
17 what the impact would be and how we can work
18 that out.

19 COMMISSIONER REARDON: Yes. Yeah.
20 Thank you.

21 SENATOR SEWARD: Thank you.

22 CHAIRWOMAN KRUEGER: Thank you.
23 Assembly.

24 CHAIRWOMAN WEINSTEIN: Assemblyman

1 Bronson.

2 ASSEMBLYMAN BRONSON: Good morning,
3 Commissioner.

4 COMMISSIONER REARDON: Good morning.

5 ASSEMBLYMAN BRONSON: So I first want
6 to ask a quick question about a topic that's
7 near and dear to your heart and mine, and
8 that's the apprenticeship programs.

9 COMMISSIONER REARDON: Yes.

10 ASSEMBLYMAN BRONSON: So do you have a
11 status for us regarding the Empire State
12 Apprenticeship Tax Credit Program? And if
13 you can answer that in twofold. One, how
14 many folks have been taken advantage of, for
15 16-year-olds to 24-year-olds? And how many
16 in the general apprenticeship program?

17 COMMISSIONER REARDON: So I'm going to
18 see if I can find you the actual numbers. I
19 don't know if I have it here. Hold, please.
20 Because, you know, I love this program as
21 much as you do.

22 In 2019 we had 114 programs, and 69
23 businesses took part in the tax credit
24 itself. I can't tell you exactly how many

1 apprentices in each program.

2 I have to say that -- we've talked
3 about this a lot -- apprenticeship is such a
4 wonderful way for someone to develop a career
5 and have a job at the same time. And thank
6 you for this program, because it enables us
7 to expand the use of apprenticeships beyond
8 the traditional places. The building and
9 construction trades are the gold standard.
10 They've been doing it for decades, and they
11 do it extremely well. But they're teaching
12 the rest of industry how they can develop an
13 apprenticeship program to have a great
14 pipeline of workers and support people in
15 their region who want to stay in that region
16 and work.

17 It is -- it's a great opportunity.
18 We're expanding the number of women in
19 apprenticeships because of this. And we're
20 expanding outside of the building and
21 construction trades. You know, the numbers
22 that I gave you in my opening statement, most
23 of those trades were not building and
24 construction, they were outside of it -- so

1 IT, healthcare. I go out all the time and
2 talk to people about apprenticeships.

3 Advanced manufacturing. We're
4 beginning to develop a really strong core of
5 manufacturing entities that are developing
6 their own apprenticeship programs. One of
7 the things that people talk about a lot when
8 I go out is they have trouble finding skilled
9 tradespeople, not in building and
10 construction, but in their plants, to
11 maintain their plant. And the apprenticeship
12 program is a wonderful way for that company
13 to develop a pipeline.

14 And those are the people I visited on
15 National Apprenticeship Week and met some
16 fabulous young apprentices -- young men,
17 young women. And they're learning to be
18 skilled tradespeople and working in their
19 region. And thank you for the tax credit --
20 and they said that to me.

21 ASSEMBLYMAN BRONSON: Excellent. And
22 if you could just get me a full report on
23 where we're at, what kind of industries that
24 people have been taking advantage of this

1 program, and how many are in the special tax
2 credit, the higher dollar amount. And also
3 the tax credit also included a mentoring
4 program, and whether or not people are taking
5 advantage of that enhanced mentoring tax
6 credit.

7 COMMISSIONER REARDON: Mentoring is
8 really, really important. It really helps.

9 ASSEMBLYMAN BRONSON: On another
10 issue, the \$175 million workforce development
11 funds, the applications were released in the
12 middle part of last year. Do we have a sense
13 of how many applications have been submitted?
14 And in --what type of areas are they
15 covering?

16 COMMISSIONER REARDON: So I don't have
17 those numbers. That's actually in the Office
18 of Workforce Development, you know, at the
19 executive level. We work very, very closely.

20 I have to say Madhuri Kommareddi is a
21 fabulous, fabulous person in that job, and
22 she's wonderful to work with. And Karen
23 Coleman, who's our deputy commissioner for
24 workforce, they work very closely as a team.

1 It is -- it's a really smart way to do it.

2 So there are -- as you know, there are
3 lots of parts of agencies that have some
4 component of workforce development. You
5 know, vets have programs, OTDA has programs.
6 A lot of our stuff is workforce development.
7 The Workforce Development Office is a way to
8 bring all of that together and have a more
9 holistic view of what kind of work we're
10 doing, what kind of work we're incentivizing.

11 They're working very closely with the
12 REDCs. I think the first thing that Madhuri
13 did when she came in was go out and visit all
14 the REDC councils and talk to them: What are
15 your priority projects, what are the
16 deficits? How can we help you build a
17 pipeline of training?

18 And the thing about the CFA, the
19 money, unlike other programs, it's ongoing.
20 So there's no clock on it. You don't have to
21 have your applications in by April 30th and
22 then the money stops. This is a rolling
23 amount of money, so people have the time
24 actually to be thoughtful about what is the

1 program I want to develop, write a good
2 application, and have a shot at getting the
3 money. So it's ongoing. But people are
4 really, really excited about it.

5 ASSEMBLYMAN BRONSON: So I don't have
6 a lot of time left, but on the prevailing
7 wage, an issue you know I've been working on
8 for the last three years, the public subsidy
9 board that has been in the Governor's
10 proposal, I'm a little bit confused since we
11 have minimum thresholds set up, we have some
12 exemptions.

13 But how is this supposed to work?
14 Because it's saying that you set up minimum
15 thresholds, that certain carve-outs will
16 happen, maybe for affordable housing. And
17 they also will make a recommendation on the
18 definition of construction. So how do you
19 see this working, since we have some of those
20 issues addressed in the statute itself, as
21 proposed.

22 COMMISSIONER REARDON: I'm not sure I
23 understand your question, I'm sorry.

24 ASSEMBLYMAN BRONSON: All right.

1 Well, I'm out of time, so we'll have to talk
2 offline. But the subsidy board is confusing
3 because it's supposed to give recommendations
4 on items that are actually already part of
5 the proposed statutory language.

6 COMMISSIONER REARDON: So let's talk
7 offline. I've love to do that.

8 CHAIRWOMAN WEINSTEIN: Before we go to
9 the Senate, we've been joined by
10 Assemblywoman Malliotakis.

11 CHAIRWOMAN KRUEGER: Senator Brian
12 Benjamin.

13 SENATOR BENJAMIN: Thank you,
14 Commissioner, for being here. I have a
15 couple of questions particularly focused
16 around the connecting job seekers to jobs
17 part of your job. And I'm very concerned
18 about at-risk youth, and so I want to start
19 off with asking a question about the Youth
20 Tax Credit Program.

21 Is that program -- how is it doing?
22 Is it oversubscribed, in terms of do you need
23 more capacity with the tax credit? Or is
24 it --

1 COMMISSIONER REARDON: I think it's
2 working really well. You've increased it, I
3 think last year or two years ago. So it's
4 really -- it is a terrific program.

5 And as you know, the opportunity to
6 connect an at-risk youth with a job is so
7 impactful, because it gives -- think about
8 how you were with your first job. You know,
9 it opens a whole world of experience up to
10 you. And for young people, sometimes they
11 don't know that they have that capacity. So
12 it's a great opportunity.

13 It's great for the business. They
14 need workers, and it incentivizes them to
15 hire the people who are right in their
16 neighborhoods. I just think that -- it's not
17 unlike the summer youth programs. These are
18 really, really important.

19 SENATOR BENJAMIN: Do we have a sense
20 that in some cases what we need to spend more
21 resources on is job training or preparing for
22 the jobs of the future? Or do you feel that
23 sort of this tax credit program sort of helps
24 people get that first job, and that job leads

1 to -- because one of the things we're very
2 concerned about is not just having a job, but
3 sort of a career.

4 And so I'm concerned about making sure
5 that we're not just focused on getting that
6 initial job and then they're there for a
7 couple of months and they leave or what have
8 you. How do we think about this from a sort
9 of holistic standpoint?

10 COMMISSIONER REARDON: Thank you.
11 That was one of my first questions when I
12 came in as commissioner and looked at all of
13 the stuff we do. And I had that question,
14 are we -- it's one thing to make sure someone
15 has the experience of working. That's very
16 important. But we also want to make sure
17 that training is available, that career paths
18 are available. And we do a lot of that work
19 in the Career Centers. We have an online
20 tool, Career Zone, where young people can go
21 in and do research on their own and say, you
22 know, I want to do -- I want to work in the
23 IT field, so you go in there and find that,
24 and I live in Rochester, and you find that.

1 And then it can tell you what kinds of jobs
2 are there, what the average salaries are,
3 where the training in your area is available,
4 whether it's a two-year college or a
5 four-year college, an apprenticeship program.
6 And they always come into the Career Center
7 and have conversations with the career
8 counselors.

9 It is a great question. Because I
10 always tell people, it's one thing to have a
11 job; it's a whole other thing to have a
12 career.

13 SENATOR BENJAMIN: So moving on to the
14 Unemployment Strike Force -- and I might have
15 missed this, so I apologize if I'm asking you
16 a question that you already answered. But
17 can you talk about, just holistically, how
18 the program is doing? Do you feel that it
19 needs to grow in certain places? Are there
20 extra resources that you believe are needed
21 to do so?

22 Just give me a sense of sort of how
23 it's working, how it's interlapping with the
24 career centers, et cetera.

1 COMMISSIONER REARDON: So as the
2 Assemblymember knows from the Bronx, we
3 started there. And it was a huge success,
4 continues to be a huge success. We --

5 SENATOR BENJAMIN: How do you define
6 success? Help me understand that.

7 COMMISSIONER REARDON: So we put --
8 let's see. I have a number here, let me see
9 if I can find it. I think it's 75 percent of
10 the people who come in are connected to work.
11 I'm not sure where that is, but it's a
12 very -- it's a huge number.

13 We took the Bronx and then we
14 patterned it in Western New York and Buffalo.
15 And in Buffalo, we looked at -- Buffalo is an
16 interesting case because the city itself is
17 growing and expanding, its economy is
18 growing, but they had zip codes where the
19 meter was not moving. And in fact their
20 unemployment numbers weren't that bad because
21 people were not -- they were on the bench.
22 They weren't even looking for work.

23 So those are the places that we went
24 into. We connected with community groups,

1 with the churches. We outsourced our career
2 counselors into the community. So I may not
3 want to go into a state office to talk to
4 somebody, but I might go into my church. We
5 did that. We got a lot of support from the
6 religious community in Buffalo. And the
7 numbers are really striking. It really is
8 impactful.

9 So we've taken that and we've
10 patterned it in other high-poverty areas
11 around the state.

12 But I want everybody to remember that
13 the lessons that we learned in the Bronx and
14 in Buffalo and in the other cities we're
15 doing it, we take those lessons and we share
16 it across the 96 Career Centers in the state.
17 So it's not just oh, I've learned this thing
18 in Buffalo and the people in, you know,
19 Batavia don't know anything about it. We
20 make sure that everybody knows the kinds of
21 methods that we're using and how important it
22 is to have that personal connection when
23 someone comes in for help.

24 And any time a community group wants

1 to work with us, we're happy to do it,
2 because that is a really critical part of
3 connection.

4 SENATOR BENJAMIN: Sure. I'd love to
5 talk to your office about Harlem and East
6 Harlem. Particularly, we have a lot of
7 public housing, and there are some employment
8 issues. And so I would love to talk to your
9 office about how we can bring that to my
10 district.

11 COMMISSIONER REARDON: I would love to
12 have that conversation.

13 SENATOR BENJAMIN: Thank you.

14 COMMISSIONER REARDON: Thank you.

15 CHAIRWOMAN KRUEGER: Thank you. The
16 Senate is continuing, the Assembly is out.

17 Senator Diane Savino.

18 SENATOR SAVINO: Thank you, Senator
19 Krueger.

20 Good morning, Commissioner.

21 COMMISSIONER REARDON: Good morning.

22 SENATOR SAVINO: I would just like to
23 point out that with respect to the digital
24 marketplace, the Senate actually has held two

1 hearings on this. And I know the Assembly
2 did one as well. I know Senator Krueger is
3 incredibly busy, so she probably didn't catch
4 them. But we've discussed it pretty
5 thoroughly with people on all sides of the
6 issue.

7 So I do look forward to working with
8 you, with the task force. Because I don't
9 think it's as simple as people think either.
10 You understand --

11 COMMISSIONER REARDON: We've talked
12 about this.

13 SENATOR SAVINO: Right. We have had
14 this conversation before. And I think it's
15 important that we take a deep breath and do a
16 deep dive and come up with what should be a
17 clear set of rules so that everyone does
18 understand who they are.

19 Because we don't want to wind up where
20 California wound up. They started in a good
21 place, but if we were to go down that road,
22 it would be conceivable that your agency
23 would be responsible for issuing exemption
24 after exemption after exemption, which is

1 what happened in California. And as of
2 today, they still don't have clarity as to
3 who really is a digital marketplace worker.

4 And even with respect to that term,
5 almost every industry now finds business
6 through a digital marketplace. Whether
7 you're a driver or you're an independent
8 contractor, you're a home improvement
9 contractor, there's lead generators -- we can
10 go on and on.

11 So I just think we need to be careful
12 and be thoughtful and come up with something
13 that, one, makes sense and, two, you can
14 enforce.

15 COMMISSIONER REARDON: Yes.

16 SENATOR SAVINO: On that note, you and
17 I have discussed this over the years -- we've
18 saddled you with the Wage Theft Prevention
19 Act, with misclass in the construction
20 industry, misclass in the trucking industry,
21 the Domestic Worker Bill of Rights, the mold
22 remediation licensing requirements.

23 And now, as you know, I'm very happy
24 that the Governor signed the elevator safety

1 bill. We have a chapter amendment that still
2 has yet to be adopted. But your agency is
3 going to be responsible for the vast majority
4 of approving of the training and making sure
5 that this happens.

6 Do you believe, based on the current
7 number of FTEs -- who have to handle all
8 these other things and figure out the digital
9 marketplace -- are you prepared to take on
10 the additional responsibility of the Elevator
11 Safety Act?

12 COMMISSIONER REARDON: That is a great
13 question. Thank you. And we put a lot of
14 thought into that particular bill, because at
15 the beginning it was different than it is
16 now. And thank you for the changes.

17 Look. We, like every commissioner who
18 comes in front of you, all of us struggle
19 with budget issues. It's not easy. And, you
20 know, it's our responsibility to the citizens
21 of the state, to the taxpayers, to use their
22 money as wisely as we can.

23 That said, I am incredibly proud of
24 the staff of the Department of Labor, and

1 particularly Worker Protection. They are so
2 dedicated. And we have worked very hard to
3 make sure that we support them appropriately.
4 So we've been working with technology to make
5 sure that, you know, they have the ability to
6 be as efficient as possible when they're out
7 in the field and cut down the number of times
8 they have to come back to the office and do
9 this (gesturing). You know, that's a time
10 waste, and we don't want people to do that.

11 As these things come in, we make
12 adjustments and we look at it. And I know
13 that there's consideration when -- you know,
14 do we need more staffing? That's actually
15 part of those conversations.

16 Right now I think we're fine. But,
17 you know, it is -- it's always an issue for
18 all of us. I'd be silly to sit here and say
19 I don't -- you know, that it's not. But
20 these are amazingly well-trained individuals.
21 We have hired a few more inspectors in the
22 Work Protection area in the last couple of
23 years.

24 SENATOR SAVINO: Good.

1 COMMISSIONER REARDON: And I'm proud
2 of the work they do.

3 It is -- look, we live in an
4 increasingly complex world. The digital
5 marketplace is just one piece of it.
6 Technology changes the way we do everything.
7 And sometimes it makes it easier, and
8 sometimes it makes it more complex. And it's
9 really figuring out how do we fit into that,
10 what's our role, how do we help employers be
11 efficient with their employees, how do we
12 protect workers on the job.

13 SENATOR SAVINO: And finally, in the
14 few seconds I have left, with respect to the
15 sick leave proposal -- so if you're a state
16 work, a county worker, a city worker, their
17 sick leave policies are in their collective
18 bargaining agreement. And in citywide time
19 and leave regulations, where they dictate the
20 usage -- how you get to access that sick
21 leave, whether or not you have to call in by
22 a certain hour, how many days before you have
23 to produce a doctor's note.

24 Do we anticipate requiring that in the

1 legislation, or are we going to allow
2 employers, if we do this, to create their own
3 sick leave policies?

4 COMMISSIONER REARDON: So you're
5 right, the municipalities and the state have
6 their own very elaborate plans. I -- right
7 now I don't see it in the legislation, but I
8 guess that's to be determined by you.

9 SENATOR SAVINO: Thank you.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Senator James Sanders to close. Oh,
12 excuse me, not to close. Senator James
13 Sanders.

14 SENATOR SANDERS: I don't mind
15 closing.

16 COMMISSIONER REARDON: Good morning.

17 SENATOR SANDERS: Good morning. Good
18 morning, Commissioner. I'm sure you don't
19 mind me closing either.

20 A question about the Workforce
21 Development Office. How -- do you have any
22 ideas how we can more successfully use this
23 to get to the populations that we're not
24 getting to, the unreached populations that

1 seem to be -- that we're not being able to
2 get into the market?

3 COMMISSIONER REARDON: So we have
4 worked very hard at the DOL -- and I know
5 that the Office of Workforce Development is
6 also focusing on exactly those questions.

7 Part of the issue is for the entity,
8 the people that want to develop the training
9 program, they need to understand they need to
10 fill out an application for the funding, and
11 there are guidelines. We have -- you know,
12 we have a lot of information about that.
13 Part of what we do on a pretty regular basis
14 is reach out to community groups and talk
15 about what is available, how you do it -- you
16 know, what's entailed, what are the
17 limitations for getting a CFA -- and work
18 with people to understand that there is a
19 process here and you have to follow it. But
20 if you follow it, there's money, and you can
21 train people.

22 It is -- the training programs are so
23 critical. Because a skilled worker is always
24 going to be more valuable in the workplace.

1 That's just -- that's the nature of work.
2 And we are there to make sure that we have
3 those opportunities for everybody -- not just
4 the kid that can go to a four-year college
5 and get a great degree, but everybody. And
6 training is critical at every level.

7 We have -- one thing I talk about with
8 people is we are now experiencing, pardon the
9 expression, all of you who are in this -- I'm
10 in it -- the silver tsunami. So the baby
11 boomers are beginning to retire. And
12 employers are seeing, Oh, my skilled workers
13 are leaving, I don't have a skilled worker to
14 plug into that job. So they're beginning to
15 think differently about training pipelines.
16 This is where apprenticeship comes in. This
17 is where we say to young people: Here's a
18 job path that might be really good for you,
19 we want to talk to you about it.

20 And again, going back to the comment
21 about not being able to find skilled
22 tradespeople, for whatever reason, a lot of
23 people think that working with your hands
24 is -- doesn't make much money, doesn't have

1 status, whatever. Those are great jobs. If
2 you're a skilled tradesperson in industry,
3 you can make close to six figures pretty
4 handily. And we need to help young people
5 and their parents understand that those are
6 great career paths that should be pursued by
7 everybody.

8 SENATOR SANDERS: I have concerns over
9 the effects of prevailing wage on the MWBE
10 community. I hope that you can address that.
11 And I also want to know how you think of the
12 California model for the digital marketplace,
13 and is this a good model for New York?

14 COMMISSIONER REARDON: So I am not
15 intimately familiar with the ins and outs of
16 the California law. I've heard sort of the
17 macro version of it, and I've certainly read
18 a lot of articles, you know, yea and nay. In
19 the entertainment industry there's a lot of
20 confusion right now, so I hear that.

21 I think, again, we need to look at
22 New York and identify who the workers and the
23 employers are in New York and then begin to
24 develop our own regulations.

1 SENATOR SANDERS: Your thoughts on
2 prevailing wage and its impact on the MWBE
3 community?

4 COMMISSIONER REARDON: So the
5 prevailing wage issue -- I think sometimes
6 the MWBE conversation is that they are not
7 signatory to a union contract. The
8 prevailing wage law is about prevailing wage.
9 It's not necessarily, by its very nature, a
10 union contract. So that's a different
11 conversation.

12 But the conversation really is can
13 that employer compete at that level. That's
14 really what it's all about. We work a lot
15 with MWBE employers, and I'd be happy to have
16 a conversation with you offline about
17 specifics. I know there's some confusion
18 about it. But it really is, do they -- are
19 they capitalized enough to work at a high
20 level or not?

21 SENATOR SANDERS: I look forward to
22 that offline conversation. I'm concerned
23 that your department may not be -- have the
24 staff necessary to do all of these tasks that

1 you've been entrusted to do. How confident
2 are you?

3 COMMISSIONER REARDON: So prevailing
4 wage, we already have a public works
5 department, and they have a work outline that
6 they do -- you know, they have procedures
7 that they follow. They're very good at it.
8 This is just more of that. I don't think
9 it's going to be all that different.

10 SENATOR SANDERS: Thank you very much.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Senator Richard Funke.

13 SENATOR FUNKE: Thank you.

14 Thank you, Commissioner, for being
15 here. (Mic off.)

16 COMMISSIONER REARDON: Good morning.
17 You're not on.

18 SENATOR FUNKE: I'll try one more.
19 Thank you, Commissioner.

20 COMMISSIONER REARDON: Collegial.

21 SENATOR FUNKE: I just have a couple
22 of questions about your earlier statement.

23 You mentioned that the economy is
24 good, and it is. I think those of us who

1 represent upstate New York may challenge you
2 a little bit on some of that.

3 Of the 1.2 million private-sector jobs
4 that were created, can you tell me how many
5 were created in the Rochester area, for
6 example? And if it's lagging behind, why
7 it's lagging behind?

8 COMMISSIONER REARDON: So I don't know
9 the actual numbers per region. I could find
10 that out for you.

11 The thing that I always look at is
12 when you look at the unemployment numbers
13 across the state, every region has had a
14 dropping unemployment rate year over year.
15 And we have had 117 months, consecutive
16 months of growth.

17 There's no question that the economy
18 of New York State varies across the state.
19 That's why the minimum wage law was tiered
20 the way it was. And thank you for doing
21 that, I think that's a very smart approach,
22 because it's not a one-size-fits-all
23 approach. And in Rochester, it's
24 interesting, there are parts of Rochester

1 that are on fire, and then there are other
2 parts of Rochester that are not.

3 So we have to look at how do we help
4 the people in the areas of high unemployment
5 in Rochester and help them find a career
6 path, get the kind of training they need.
7 There's a lot of new growth in Rochester.
8 It's different -- it's a different economy
9 and it's a different industry. There's a lot
10 of tech coming in. And we need to make sure
11 that the people who live in Rochester know
12 that those jobs are coming and that they're
13 prepared to walk into those jobs when they're
14 there.

15 SENATOR FUNKE: Regionalizing the
16 minimum wage was something that we fought
17 for, and it is a good idea. However, it
18 seems to me -- and correct me if I'm wrong --
19 that before it went to \$12.50, there was
20 going to be a study conducted by the Labor
21 Department to talk about the impact on small
22 businesses, what's the real impact -- how
23 many businesses have closed, for example,
24 because of that.

1 I have a manufacturing company in my
2 community now that employs about 500 people,
3 and they are seriously considering moving now
4 because of the impact, the compression issue
5 and so on. With regard to minimum wage and
6 their bottom line and what has been taken
7 away, that's a serious issue.

8 We have direct-care workers. We
9 thought -- we thought, in our conference,
10 that there would be a parallel path between
11 fast food workers and others on the minimum
12 wage front. And now fast food workers are
13 ahead. And that's had an impact on direct
14 care workers and how we retain them and keep
15 them.

16 So my question, final question is,
17 will you conduct a study, not only on that
18 particular issue but how the farm bill may
19 impact upstate farms as well going forward,
20 to give us a clear idea of the impact of
21 this?

22 COMMISSIONER REARDON: So my
23 understanding was that before the minimum
24 wage increase was green-lighted for upstate

1 last year, the DOB would do a study, and they
2 did. And we concurred that the economy is
3 robust.

4 There's no doubt that there is churn
5 in these economies. There's no doubt that
6 there are businesses that unfortunately
7 decide to go somewhere else. But again, we
8 have a real influx of new industry coming
9 into the state.

10 In Utica there's a new project,
11 Cree -- it's a nanotechnology company --
12 coming in. And one of the reasons they're
13 coming here is because the gentleman who's
14 the head of it, his wife is from the area.
15 And that's why they came to see it. And they
16 are -- it's a very exciting project. They
17 are technical workers, and they've got --
18 this is a great example of being able to
19 plan.

20 They've got about a two-and-a-
21 half-year on-ramp, because they've got to
22 build the plant. In that two and a half
23 years, we're going to have the opportunity to
24 go into the local worker pool and say, Here's

1 what you need to train in in order to qualify
2 for a job at Cree.

3 And Cree has been wonderful about
4 this. We're already figuring out where the
5 programs are going to be, how we get people
6 into them. That is an excellent example of
7 planning and being able to keep the local
8 population employed in the new employment
9 picture.

10 So I understand that there are
11 pressures. Our intent is to support the
12 workers. But look, workers need employers.
13 I always used to tell my members in my union,
14 it's a symbiotic relationship. You know,
15 they need you to make the movie and you need
16 them to pay your check.

17 SENATOR FUNKE: Thanks, Commissioner.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Senator Ramos to close.

20 SENATOR RAMOS: Thank you, Senator
21 Krueger.

22 I did have a few more questions. I
23 have one more about the formerly tipped-wage
24 workers. Is the Department of Labor doing

1 anything to make sure that these workers are
2 notified that they now have the right to make
3 minimum wage?

4 COMMISSIONER REARDON: Oh, the
5 miscellaneous, yes.

6 So there's a lot of outreach. It's
7 one of the things that I'm really fond of
8 doing myself, but our inspectors do it too,
9 and the Career Centers -- everybody does it.

10 The first increase will be the
11 June 30th or 31st -- is June a 30-day month?
12 Whatever the last day of June is.

13 SENATOR RAMOS: But how are they
14 being -- are you doing anything to notify
15 them?

16 COMMISSIONER REARDON: Oh, we're
17 working with them. We're working with
18 advocates, we're working with the very people
19 that came to the hearings. We're making sure
20 that they are aware. And we're certainly
21 notifying their employers, because their
22 employers are the ones who have to adjust --
23 when we did the minimum-wage rollout, we had
24 a very big campaign about it. And we're

1 doing a smaller version of that.

2 SENATOR RAMOS: Okay, great. I mean,
3 just given that so many of those workers in
4 those miscellaneous industries, if you will,
5 very often don't speak English as their first
6 language, if at all. So I do want to ask
7 about your language access plan. Does it
8 involve outreach for workers to know about
9 language availability? Have you seen an
10 influx of non-English speakers file
11 complaints or make use of the materials that
12 you provide?

13 COMMISSIONER REARDON: So we typically
14 print everything we have in six languages.
15 We have language access available in all the
16 Career Centers.

17 If they're speaking a language that we
18 don't have someone who's fluent in it, then
19 we can get someone on the phone to translate
20 for us. Our Department of Immigrant Policies
21 and Affairs people, many of them are
22 multilingual. And again, they also take all
23 their materials printed in various languages.

24 If we're going to a community -- for

1 instance, there's a community of Bhutanese
2 workers in Central New York -- we make sure
3 that we have the availability to communicate
4 with them in their language.

5 SENATOR RAMOS: Great.

6 COMMISSIONER REARDON: We take it very
7 seriously.

8 SENATOR RAMOS: And of course many
9 times these workers are undocumented. So
10 with fear of employer retaliation, perhaps of
11 outing them on their documentation status,
12 would you be open to increasing the 180-day
13 cutoff to file discrimination complaints?

14 COMMISSIONER REARDON: I'd have to
15 have that conversation internally.

16 But, you know, we -- when we go out
17 and work with workers, we don't ask their
18 status. That's not our job. That is the job
19 of the federal government, and that's not our
20 business. And we make it abundantly clear to
21 all the people that we work with, and
22 particularly the advocates who work with
23 them, that they should come in and talk to
24 the Department of Labor, and we will -- you

1 know, we are not going -- we're not calling
2 ICE, we're not asking for papers. That's
3 not -- we couldn't enforce it if we did, so
4 why would we do it?

5 If you have a problem, regardless of
6 your status, you know, bring in your
7 complaint and we will follow up.

8 SENATOR RAMOS: Thank you.

9 And lastly, I'm big on government
10 transparency, and therefore FOILs. Can you
11 tell us the status of various FOILs that have
12 been requested from your agency? And can
13 your agency commit to a status report on
14 FOILs, either monthly or quarterly?

15 COMMISSIONER REARDON: I'm not -- you
16 know, I don't know the status of individual
17 FOILs. I'd have to know who's asking. But
18 there's a process.

19 I think we -- didn't we --

20 SENATOR RAMOS: Do you know how many
21 FOILs you fulfilled last year?

22 COMMISSIONER REARDON: No, I don't. I
23 could get you that number.

24 SENATOR RAMOS: I would love to see

1 it.

2 COMMISSIONER REARDON: Sure.

3 SENATOR RAMOS: Would you be -- can
4 you answer my question about committing to a
5 status report?

6 COMMISSIONER REARDON: I'd have to
7 have that conversation internally.

8 SENATOR RAMOS: Okay, thank you.

9 CHAIRWOMAN KRUEGER: Thank you.

10 Thank you very much, Commissioner, for
11 your time this morning.

12 COMMISSIONER REARDON: Thank you very
13 much. It's great to see all of you.

14 CHAIRWOMAN KRUEGER: Thank you.

15 And next up, New York State Department
16 of Civil Service, Lola Brabham -- you'll
17 pronounce it correctly for us -- acting
18 commissioner.

19 ACTING COMMISSIONER BRABHAM: Good
20 morning.

21 CHAIRWOMAN KRUEGER: Good morning.
22 When you're ready.

23 ACTING COMMISSIONER BRABHAM: Good
24 morning, Chairwoman Krueger, Chairwoman

1 Weinstein, and distinguished members of the
2 Senate Finance and Assembly Ways and Means
3 Committees. My name is Lola Brabham, and I
4 am honored to serve as the acting
5 commissioner for the Department of Civil
6 Service.

7 Thank you for the opportunity to
8 comment on Governor Cuomo's Executive Budget
9 for fiscal year 2021 as it relates to the
10 Department of Civil Service, as well as to
11 highlight some of the department's key
12 accomplishments over the past year.

13 The Department of Civil Service is
14 responsible for the administration of the
15 civil service merit system and serves as the
16 central human resource agency for state
17 government. In this capacity, the department
18 provides workforce management services to
19 70 Executive-controlled state agencies,
20 serving approximately 150,000 employees.

21 In addition, the department is
22 responsible for ensuring that state agencies
23 and localities have the necessary talent to
24 fulfill their core missions and to meet

1 high-priority workforce needs. Over the past
2 year, the department has held approximately
3 6,000 civil service exams and tested more
4 than 130,000 candidates for state and local
5 positions.

6 The department continues to streamline
7 the examination process through the use of
8 technology and business process improvements.
9 In 2019, the department collaborated with the
10 Office of Information Technology Services to
11 modernize the state's approach to test
12 delivery. A new test management system has
13 been designed and will be fully operational
14 this year, which will streamline our
15 examination process to be even more
16 responsive to hiring needs.

17 The department remains committed to
18 providing resources to assist with workforce
19 development, including guidance to state
20 agencies in using workforce analytics.
21 Workforce analytics is a business
22 intelligence tool that enables HR
23 professionals to make evidence-based
24 decisions on workforce and succession

1 planning.

2 Through the department's new Office of
3 Diversity and Inclusion, the state is working
4 at both the enterprise and agency levels to
5 strengthen diversity, foster inclusive
6 environments, and create pathways for better
7 incorporating equal opportunity principles
8 into the vital programs and services
9 delivered to the public.

10 In 2019, a Strategic Plan for
11 Statewide Diversity and Inclusion was created
12 and distributed to state agencies to inform
13 decision-making and enhance the competencies
14 needed for building and sustaining a
15 workforce that reflects the diversity of
16 New York's communities.

17 At the same time, the department also
18 began conducting comprehensive training to
19 all State agencies under Executive control.
20 The Department has trained more than
21 1,500 individuals on implicit bias and
22 approximately 1,000 employees responsible for
23 reasonable accommodation.

24 To create greater awareness and

1 interest in employment opportunities, the
2 department participated in more than 250
3 outreach and recruitment events in 2019.
4 These events complement the more targeted
5 recruitment efforts of our state agency
6 partners so that they have a pipeline of
7 talent available to meet their hiring needs.

8 Another responsibility of the
9 department is to provide oversight and
10 guidance to 94 local civil service agencies
11 responsible for approximately
12 360,000 employees. Over the past year, the
13 department responded to more than
14 2,800 requests for technical assistance and
15 trained more than 450 local government
16 employees on topics related to merit system
17 administration.

18 The department also remains focused on
19 administering NYSHIP, one of the nation's
20 largest health insurance programs. Through a
21 variety of employee benefit programs
22 available to state employees under statute or
23 through collective bargaining, NYSHIP
24 provides comprehensive coverage to more than

1 1.2 million state and local government
2 employees, retirees, and their dependents.

3 In addition, the department remains
4 engaged with the Workers' Compensation board
5 and the Governor's Office of Employee
6 Relations to deliver the state's Paid Family
7 leave program to management/confidential
8 employees. In 2019, the department expanded
9 the benefit to include employees of the
10 Division of Housing and Community Renewal,
11 represented by District Council 37, employees
12 of the Tug Hill Commission, Interest on
13 Lawyers Account, and the Roswell Park Cancer
14 Institute. We look forward to expanding this
15 benefit to additional employees as agreements
16 are made through the collective bargaining
17 process.

18 The initiatives that I have
19 highlighted today reflect the department's
20 ongoing commitment to supporting strategic
21 workforce needs. New Yorkers expect and
22 deserve quality service from their state
23 government, and we must continue to attract,
24 hire, and retain a diverse and talented

1 workforce to meet that demand.

2 Thank you again for the opportunity to
3 appear before you today, and I'm happy to
4 address any questions you may have.

5 CHAIRWOMAN KRUEGER: Thank you.

6 First up, the Senate chair of the
7 Civil Service and Something -- I always get
8 the committee name wrong -- Andrew Gounardes.

9 ACTING COMMISSIONER BRABHAM: Good
10 morning, Senator.

11 SENATOR GOUNARDES: Thank you. Good
12 morning.

13 A couple of quick questions for you
14 this morning. Number one, the Governor's
15 proposed budget projects a reduction of more
16 than 1,000 full-time employees in the state
17 workforce. Can you tell us what that's
18 attributed to?

19 ACTING COMMISSIONER BRABHAM: I'm
20 sorry, you said one thousand --

21 SENATOR GOUNARDES: More than 1,000, I
22 think it's about 1200 -- a reduction of about
23 1200 full-time employees in the projected
24 budget. Can you give us any indication as to

1 what that --

2 ACTING COMMISSIONER BRABHAM: I'm
3 sorry, I'm not familiar with any reductions.
4 There are no reductions in force being
5 contemplated in the state budget.

6 In fact, as I read it, there are
7 actually some additions being made, and I do
8 believe it's around a thousand. And some of
9 that has to do with adding additional folks
10 at the Department of Health that will be
11 focused on Medicaid and holding down the cost
12 of Medicaid. There are some positions
13 associated with the new Office of Cannabis
14 Management that is being contemplated.

15 SENATOR GOUNARDES: So there's no
16 reductions projected --

17 ACTING COMMISSIONER BRABHAM: I'm not
18 aware of the 1,000 figure that you're
19 referring to. I will certainly --

20 SENATOR GOUNARDES: It's like
21 1200-plus. Okay. Okay.

22 ACTING COMMISSIONER BRABHAM: Yeah, I
23 will certainly look into it, and we can get
24 back to you on that.

1 SENATOR GOUNARDES: Okay, thank you.

2 Can you -- one of the things I've
3 heard from a lot of state employees this past
4 year as I've gone around to different
5 worksites and visited them and talked with
6 them is a consistent complaint across
7 multiple agencies about positions -- about
8 noncompetitive positions being created when
9 there have been vacancies for competitive
10 positions open.

11 So can you give us a sense as to how
12 many exempt positions have been created over
13 the past year with approval from the
14 department?

15 ACTING COMMISSIONER BRABHAM: Well, I
16 can tell you that exempt positions are --
17 there's roughly 3,000 exempt positions across
18 all state government, and that represents
19 less than 2 percent of the total workforce.

20 SENATOR GOUNARDES: And how many of
21 those were created in the past year? Or
22 what's the increase?

23 ACTING COMMISSIONER BRABHAM: I don't
24 know the exact number of how many were

1 created in 2019, but we can certainly provide
2 you with that.

3 SENATOR GOUNARDES: Because I went and
4 I spoke with one employee who said that in
5 their department alone, 36 positions were
6 created in one year, just in their office.
7 Which seems very high to make --

8 ACTING COMMISSIONER BRABHAM: Yeah, I
9 find that highly doubtful, that 36 exempt
10 positions were created in one department.

11 But I will remind you that -- and you
12 mentioned at the beginning of your comments
13 about competitive and noncompetitive
14 positions, which are different from exempt
15 positions. And I would like to say that
16 Civil Service Law both allows for and
17 supports the creation of noncompetitive
18 positions when it is determined by the
19 Civil Service Commission that a particular
20 title is not able to be tested for on a
21 competitive basis.

22 So there is an allowance in the law
23 for the creation of noncompetitive positions,
24 and it does not require that -- you mentioned

1 that an employee said well, non competitive
2 positions are being created while, you know,
3 there are perfectly capable people in the
4 department. And that may be true, but there
5 may be no association between the
6 noncompetitive positions that are being
7 created and the competencies of other
8 individuals for other positions.

9 SENATOR GOUNARDES: Sure. I mean, I
10 think a recurring theme that I've heard over
11 and over again is positions not being filled
12 and employees being asked to take on the
13 workload of two or three employees who have
14 been either retired or, through attrition,
15 positions not being filled, and then seeing
16 other slots being opened and created without
17 any, you know, more equitable distribution of
18 workload and work responsibilities.

19 So we can move on from this.

20 ACTING COMMISSIONER BRABHAM: Sure.

21 SENATOR GOUNARDES: I'd love to follow
22 up with you outside of this hearing --

23 ACTING COMMISSIONER BRABHAM: We
24 certainly will.

1 SENATOR GOUNARDES: -- and have a
2 chance to really engage on some of these
3 issues with you.

4 ACTING COMMISSIONER BRABHAM: Yes.

5 SENATOR GOUNARDES: Can you give us a
6 sense, how many provisional employees are
7 employed by the state currently?

8 ACTING COMMISSIONER BRABHAM: We
9 currently have about 1600 provisional
10 employees, which represents less than
11 1 percent of the state workforce.

12 SENATOR GOUNARDES: And how long have
13 they been in that provisional status for?

14 ACTING COMMISSIONER BRABHAM:
15 Provisional employees typically are not in a
16 position for -- in provisional status for
17 more than a year. The reason why people are
18 placed in provisional status --

19 SENATOR GOUNARDES: No, I understand
20 the reason why. But can you give us a sense
21 as to, of that 1600, how many -- how long, on
22 average? I know that they're not supposed to
23 be more than a year. But are we in fact
24 under a year, or are we more than a year or

1 are we two years, three years?

2 ACTING COMMISSIONER BRABHAM: I can't
3 speak to all of the positions, but we can
4 certainly provide you with a breakdown of how
5 many have been less than a year and if there
6 are any more than a year.

7 SENATOR GOUNARDES: Okay, that would
8 be helpful.

9 And the same question for temporary
10 employees. How many temporary employees do
11 we have with the state workforce?

12 ACTING COMMISSIONER BRABHAM: We
13 currently have about 7,000 employees that
14 would fall in kind of the bucket of temporary
15 positions.

16 And some of those individuals are
17 hourly, some of those individuals only work
18 seasonally. And some of those individuals
19 are in temporary project jobs; they are state
20 employees who are serving in a temporary
21 capacity in another title to work on a
22 project, essentially.

23 SENATOR GOUNARDES: Sure. And do we
24 monitor how long -- I mean, how do we monitor

1 how long both provisional employees and
2 temporary employees have that designation
3 for? How do we track that?

4 ACTING COMMISSIONER BRABHAM: It
5 depends on why someone is in a temporary
6 status. For example, if it is a temporary
7 project job, those jobs are approved for
8 18 months, and you must come back to the
9 commission for an approval to extend the job
10 beyond that period. So it really would
11 depend upon why the individual is in the
12 temporary status.

13 SENATOR GOUNARDES: Those are all the
14 questions I have for now. I'll defer to my
15 colleagues, and I may come back in a little
16 bit. Thank you.

17 ACTING COMMISSIONER BRABHAM: Thank
18 you, Senator.

19 CHAIRWOMAN KRUEGER: Thank you.
20 Assembly.

21 CHAIRWOMAN WEINSTEIN: Assemblyman Ra.

22 ACTING COMMISSIONER BRABHAM: Good
23 morning.

24 ASSEMBLYMAN RA: Thank you. Good

1 morning. I just wanted to ask you about a
2 few of these proposals for retirement benefit
3 reform. I know we've seen them in the past.

4 So just to start, do you know the
5 total liability the state has for other
6 post-employment benefits?

7 ACTING COMMISSIONER BRABHAM: I'm
8 sorry, the liability has for --

9 ASSEMBLYMAN RA: The state's liability
10 for post-employment benefits other --

11 ACTING COMMISSIONER BRABHAM: For
12 which post-employment benefits?

13 ASSEMBLYMAN RA: -- you know, things
14 of this nature other than pensions.

15 ACTING COMMISSIONER BRABHAM: For
16 which post-employment benefits?

17 ASSEMBLYMAN RA: Just, I mean, in
18 general. Or what the savings would be from
19 these particular proposals.

20 ACTING COMMISSIONER BRABHAM: Okay.
21 So there are two proposals in the Executive
22 Budget that deal with the Medicare Part B
23 premium for retirees. Is that what you're
24 referring to?

1 ASSEMBLYMAN RA: Yes.

2 ACTING COMMISSIONER BRABHAM: Okay.

3 The first proposal is commonly referred to as
4 IRMAA, and that proposal deals with
5 higher-income retirees who receive a
6 supplemental Medicare Part B premium
7 reimbursement. That reimbursement can range
8 anywhere -- per individual, on an annual
9 basis -- from \$700 to up to \$4,000, depending
10 upon their income.

11 A higher-income retiree is defined as
12 an individual making anywhere from \$87,000 to
13 \$109,000. So this proposal recommends that
14 we eliminate the supplemental reimbursement
15 that goes to the higher-income retirees.

16 The sec -- I'm sorry, go ahead.

17 ASSEMBLYMAN RA: Do you know what the
18 fiscal savings is from doing that?

19 ACTING COMMISSIONER BRABHAM: I don't
20 have the number of savings. Last year we
21 paid about 10,000 reimbursements to retirees.
22 So we can get you a number on what that
23 translates to in terms of dollars and cents.

24 ASSEMBLYMAN RA: Please. Okay.

1 ACTING COMMISSIONER BRABHAM: The
2 second proposal has to do with the Medicare
3 Part B base premium, which is \$144 a month
4 and goes to each retiree who is enrolled in
5 Medicare. And this proposal recommends
6 capping the base premium reimbursement at the
7 2020 level of \$144 a month, and that any
8 future increases be subject to budget
9 negotiations.

10 And that would impact all of the
11 retirees -- and you asked about the savings
12 there. I think the budget contemplates
13 approximately \$2 million in savings in 2021,
14 growing to about \$12 million in 2022.

15 ASSEMBLYMAN RA: So do you know, would
16 that number cover the monthly premium of
17 current retirees?

18 ACTING COMMISSIONER BRABHAM: The
19 number of retirees?

20 ASSEMBLYMAN RA: No, would that cover
21 their premium? If we capped this number and
22 it's not going to grow into the future, is
23 that cover going to cover or is this going to
24 create more out-of-pocket costs for those

1 retirees?

2 ACTING COMMISSIONER BRABHAM: If this
3 proposal -- if this legislation was enacted,
4 if this proposal went forward, it would be
5 capped at \$144. We don't know what future
6 Medicare Part B premium costs would be;
7 that's set by the federal government. But if
8 it were to go up, again, that would be
9 subject to budget negotiations in the future.

10 ASSEMBLYMAN RA: Thank you.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Senator Richard Funke.

13 SENATOR FUNKE: Thank you.

14 ACTING COMMISSIONER BRABHAM: Good
15 morning.

16 SENATOR FUNKE: Good morning,
17 Commissioner.

18 The Assemblyman asked a couple of the
19 questions that I was interested in as well.
20 I just wondered, you said you don't know how
21 many current retirees would be impacted by
22 the state's discontinuation of the IRMAA
23 subsidy payment. You don't know how many
24 employees --

1 ACTING COMMISSIONER BRABHAM: No, what
2 I said was -- is that last year we paid
3 10,000, and that we would certainly like to
4 get back to what we anticipate paying this
5 year.

6 SENATOR FUNKE: Okay.

7 ACTING COMMISSIONER BRABHAM: Okay?

8 SENATOR FUNKE: I always feel like you
9 get --

10 ACTING COMMISSIONER BRABHAM: And on
11 the Medicare Part B base premium, it would
12 impact 168,000 state employees and 136 local
13 government employees.

14 SENATOR FUNKE: I always feel like you
15 get what you negotiate in life, so I become
16 concerned when we start taking benefits away
17 from retirees. Since the state requires
18 retirees to enroll in Medicare Part B, I'm
19 wondering if you think it's fair to freeze
20 reimbursements to people now living on a
21 fixed income.

22 ACTING COMMISSIONER BRABHAM: You
23 know, Senator, we certainly understand the
24 sensitivity of that. But the cost of

1 providing health insurance, whether it be to
2 current employees or retirees, continues to
3 rise, you know, on an annual basis, as you
4 well know.

5 And what we seek to do is hold those
6 healthcare costs down, and something that is
7 going to be manageable for the state. But we
8 certainly recognize the sensitivity of it.

9 SENATOR FUNKE: There's also a
10 proposal that would not apply to individuals
11 who are currently state employees. It does,
12 however, set up a situation where individuals
13 have different benefits in retirement which
14 would depend upon the date that they're
15 hired. Correct? So --

16 ACTING COMMISSIONER BRABHAM: If
17 you're referring to the sliding scale --

18 SENATOR FUNKE: This is the sliding
19 scale --

20 ACTING COMMISSIONER BRABHAM: Yes, the
21 sliding scale proposal?

22 SENATOR FUNKE: Yeah.

23 ACTING COMMISSIONER BRABHAM: It would
24 largely be driven by the number of years of

1 state service, similar to what we do with the
2 pension benefit right now.

3 SENATOR FUNKE: Is the goal here to
4 set up a new tier?

5 ACTING COMMISSIONER BRABHAM: No, the
6 goal is to provide employee -- or retirement
7 health insurance in relation to the number of
8 years of state service. So the sliding scale
9 would actually start at 10 years and increase
10 by 2 percent every year as you go up to 30
11 years.

12 So an individual, say, who only worked
13 for the state for 10 years would have 50
14 percent of their retiree health insurance
15 costs covered by the state, and then on and
16 on. You know, as I said, it would increase
17 every years. And this is similar to what we
18 do with the pension benefit now. The longer
19 you work, the greater the benefit.

20 SENATOR FUNKE: Any consideration
21 given to the fact that it may be more
22 difficult to recruit and retain qualified
23 employees with these proposals?

24 ACTING COMMISSIONER BRABHAM:

1 Actually, Senator, what we believe is that
2 this would actually help us with retention.
3 For those who are interested in having a
4 robust, you know, retirement benefit, it
5 would actually encourage people to work
6 longer for the state.

7 SENATOR FUNKE: All right. Thank you.

8 ACTING COMMISSIONER BRABHAM: Thank
9 you.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Senator Seward.

12 SENATOR SEWARD: Senator Seward
13 passes.

14 CHAIRWOMAN KRUEGER: Senator Seward
15 passes.

16 Senator Gounardes for a closing --

17 SENATOR GOUNARDES: No, I'm good.

18 CHAIRWOMAN KRUEGER: You're good? Oh,
19 okay. Assembly?

20 Then thank you very much for your time
21 with us today.

22 ACTING COMMISSIONER BRABHAM: Thank
23 you for your time today.

24 CHAIRWOMAN KRUEGER: Next up, Michael

1 Volforte, New York State Governor's Office of
2 Employee Relations.

3 Good morning -- or afternoon. No,
4 morning still.

5 DIRECTOR VOLFORTE: Good morning.

6 CHAIRWOMAN KRUEGER: Whenever you
7 wish.

8 DIRECTOR VOLFORTE: Thank you very
9 much.

10 Chairs Weinstein and Krueger and
11 honorable members of the Assembly and Senate.
12 My name is Michael Volforte, and I serve as
13 the director of the Governor's Office of
14 Employee Relations.

15 Thank you for the opportunity to
16 address you on Governor Cuomo's
17 Executive Budget proposal for fiscal year
18 2021 as it relates to the state workforce.

19 During the past year, the state
20 concluded bargaining with three unions
21 representing executive branch employees. The
22 agreements reached continue to build upon the
23 Governor's consistent theme -- fair
24 compensation increases for our hardworking

1 and dedicated workforce, while maintaining
2 fiscal discipline through benefit
3 enhancements and changes to health insurance
4 and ensuring that state agencies are enabled
5 to deliver the services that they provide to
6 the public. Negotiations continue with two
7 more unions, which we hope to conclude in the
8 coming months.

9 The state offers many negotiated
10 benefit programs for executive branch
11 employees resulting from a collaboration
12 between the state and the unions that
13 represent our employees. These programs are
14 designed to increase employee productivity
15 and morale by improving the quality of
16 worklife for our employees.

17 Our Employee Assistance Program helped
18 over 23,000 employees, and more than
19 30,000 employees are saving money through our
20 pre-tax contribution programs that are
21 healthcare, dependent care, transportation
22 and adoption expense-related.

23 Through our labor-management
24 collaboration, we've also distributed over

1 10,000 job-and-career-related tuition benefit
2 reimbursements and trained the workforce in
3 both instructor-led and online programs.
4 We've also continued our commitment to a
5 well-informed and advised workforce with our
6 suite of mandatory training, which this year
7 we will add training on safe mail handling.

8 Also, as part of the Governor's broad
9 agenda to protect the LGBTQ community,
10 cultural competency training regarding gender
11 identity and expression will also be made
12 available to all state employees. This will
13 include updating other mandatory annual
14 trainings to ensure that best practices for
15 transgender and gender-nonconforming cultural
16 competency are integrated into all our
17 training.

18 Through all of these programs we are
19 able to serve the workforce and provide
20 assistance in maintaining quality of worklife
21 and career advancement. We recently
22 completed our first year of independently
23 investigating complaints of protected-class
24 employment discrimination and harassment in

1 executive branch agencies covered by
2 Executive Order No. 187.

3 With our team, we are actively
4 investigating complaints of discrimination
5 and harassment in order to ensure that all
6 allegations are investigated, individuals are
7 advised of the result of that investigation,
8 and appropriate action is taken in a timely
9 manner against anyone found to have violated
10 our policy.

11 The Governor has continued to be a
12 strong supporter of public-sector unions and
13 continues to build upon past initiatives to
14 aid in their fight with the anti-labor
15 movement working to expand the impact of the
16 Supreme Court's Janus decision. In this
17 year's budget, the Governor has proposed
18 additional protections for unions, clarifying
19 the intent of prior protection of personal
20 information and expanding access to newly
21 hired employees so they can learn about the
22 benefits of union membership.

23 As we turn the page to the next fiscal
24 year, the state's overall workforce remains

1 part of the health insurance plan, we have a
2 mental health and substance abuse component
3 that employees can access, just like they can
4 for other health insurance needs.

5 We also have an Employee Assistance
6 Program, which is a resource and referral
7 program that exists in all agencies. There's
8 a labor/management committee that's organized
9 to oversee it, and individuals in agencies
10 are trained to be resources and referrals for
11 individuals, where they can go confidentially
12 and they can get information on where they
13 can go for -- if they have mental health
14 issues and a variety of other problems.

15 SENATOR GOUNARDES: Are we proactive
16 in communicating that availability to
17 workers, or is it more of a passive thing
18 where it's just, you know, here's a phone
19 number on a refrigerator in the break room
20 type of thing? Or is it an actual -- people
21 know it's there, there's active engagement on
22 reaching out for assistance if you need help?
23 Can you walk us through some of that?

24 DIRECTOR VOLFORTE: I think it's

1 both -- there are those passive elements that
2 you described, but there's also many active
3 elements. There are EAP and worklife
4 services fairs where we make that information
5 and individuals available.

6 And all of that occurs at the local
7 level, so it's not anything that's put out
8 from a central perspective where we have
9 individuals going necessarily from Albany
10 into the various regions. It's actually
11 local employees who work with other local
12 employees at the state level who are advising
13 their coworkers of the availability of EAP.

14 SENATOR GOUNARDES: Okay. What do we
15 do -- can you give us -- you know, we're very
16 concerned about student debt and many people
17 who are in public service, civil service who
18 take on debt, whether they're teachers,
19 firefighters, transit workers, office
20 administrators, you know, agency workers,
21 et cetera.

22 What can we do to communicate to our
23 employees about student debt repayment
24 options, whether on the private side or

1 public side? And how do we help them
2 navigate that, if at all?

3 DIRECTOR VOLFORTE: I'm not aware of
4 any programs that we have that -- because
5 we're not in -- we don't have a role in
6 student debt, student loans. But all of --
7 with most our unions we have very active and
8 robust tuition reimbursement programs that
9 are advertised to employees.

10 And as I said, we actually have
11 distributed about 10,000 or so individual
12 benefits where some of that is
13 tuition-related in terms of where they can
14 get actually tuition reimbursement or even a
15 voucher to pay up-front costs if they're
16 continuing their education and it's
17 job-related.

18 Or we actually pay for training and
19 development programs that maybe aren't
20 degree-related but still have a cost to them
21 that help them further their careers.

22 SENATOR GOUNARDES: Are you familiar
23 with the Public Service Loan Forgiveness
24 Program?

1 DIRECTOR VOLFORTE: Generally, yes.

2 SENATOR GOUNARDES: Okay. So a
3 federal program passed 13 years ago that
4 anyone who works in government or eligible
5 public service occupation for 10 years and
6 makes student loan payments can then have
7 their federal loans forgiven. And it was
8 designed in part to help incentivize and
9 encourage people who are graduating to enter
10 government service of any kind, enter public
11 service of any kind.

12 And it has its issues, but I think a
13 bigger problem is making sure that people
14 know that it's an opportunity for them if
15 they want to -- it's a way to attract and
16 recruit new workers.

17 And so I think it would be smart, as a
18 statewide commitment, we educate our
19 workforce about the availability of this
20 program, if we want to make this a hospitable
21 environment to work and not have to worry
22 about the burden of student debt. This is
23 like a lay-up, just to send a flyer out
24 saying, hey, you're eligible, if you work

1 here for 10 years, here's an added bonus, you
2 might be able to have your loans forgiven.

3 So I would strongly encourage you to
4 think about developing something along those
5 lines to help people know about the
6 availability of a program like this, because
7 it could make a difference for many, many
8 people.

9 DIRECTOR VOLFORTE: I will do that.

10 SENATOR GOUNARDES: No other
11 questions.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Jim Seward.

14 SENATOR SEWARD: Thank you, Madam
15 Chair.

16 And thank you, Director, for being
17 here today.

18 You mention in your testimony that
19 there are some pending labor contracts,
20 negotiations for the next -- coming up for
21 the next year.

22 DIRECTOR VOLFORTE: Yes. Yes, sir.

23 SENATOR SEWARD: You know, if we
24 finalize a budget on March 31st and these

1 labor contracts are consummated after that
2 date, where does the funding come from to
3 fund these, assuming that there would be some
4 increases in salaries and expenses for the
5 state?

6 DIRECTOR VOLFORTE: As we've done with
7 past agreements in recent history, while
8 there may be appropriations tied to those
9 increases, once we put forward a pay bill to
10 implement them statutorily, the cost of those
11 increases comes out of existing agency
12 budgets, so we wouldn't anticipate requesting
13 additional funds to cover those agreement
14 costs.

15 SENATOR SEWARD: I see. Okay.

16 Do you anticipate either the minimum
17 wage or pressure on the spending cap that the
18 Governor talks about -- and I certainly
19 support -- do you anticipate that these will
20 have any impact on the timing of these
21 contract negotiations?

22 DIRECTOR VOLFORTE: No, because we're
23 already taking the state minimum wage that
24 the Department of Labor sets and we're

1 applying it to the state workforce as they
2 become -- each wage increase becomes
3 structured in the law.

4 So we're already implementing that, in
5 terms of that, so that's not really anything
6 that we're -- that needs to be factored into
7 negotiations. So I don't anticipate a delay
8 or an effect on when we would conclude
9 negotiations.

10 SENATOR SEWARD: We often hear
11 concerns from our state workforce,
12 particularly our PEF members and others,
13 concerns that jobs are being shifted from,
14 you know, state jobs to consultant service
15 contracts. Do you know how many jobs have
16 been shifted from, you know, the state
17 workforce to these consulting service
18 contracts within the last year?

19 DIRECTOR VOLFORTE: No. My office
20 doesn't have that information. I know that
21 there's generally available information that
22 comes out with the budget on the scope of
23 consultant services in the State of New York
24 that state agencies have. I think the

1 Department of Budget -- the Division of
2 Budget, excuse me, is required to put that
3 out.

4 SENATOR SEWARD: So that doesn't
5 channel at all through your office?

6 DIRECTOR VOLFORTE: No.

7 SENATOR SEWARD: Okay. Thank you.

8 CHAIRWOMAN KRUEGER: Thank you.

9 Thank you very much for being with us
10 today.

11 DIRECTOR VOLFORTE: Thank you.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Okay, now our next testifier is Fran
14 Turner, director of legislative and political
15 action, Civil Service Employees Association,
16 Local 1000. Hi, Fran.

17 And the rumor is we're going to be
18 protested. So when they come in, if they
19 come in, we'll just wait politely for them to
20 hopefully be done quickly and not interrupt
21 you too long.

22 MS. TURNER: Sounds good to me.

23 I do want to comment -- I always like
24 going after Civil Service and GOER, because

1 they have a good perspective on things. But
2 I'm sorry Senator Funke left, because I do
3 want to comment on recruitment and retention.

4 Over the past probably four years,
5 recruitment and retention in the state
6 workforce has been very, very difficult,
7 especially in our human resource areas, where
8 we provide the services to the
9 developmentally disabled and the mentally
10 ill.

11 And I will say this. After listening
12 to Commissioner Reardon, I could only wish
13 that the state would have as robust a
14 pipeline into finding these direct care
15 workers and hooking them up where we need
16 them. It's something that we really need to
17 look at.

18 But now I want to get to the main crux
19 of our testimony, because it's a little bit
20 different this year. I agree with
21 Mr. Volforte, the state workforce is pretty
22 stable. But we don't see that stability
23 under this proposed budget with the local
24 government workforce.

1 You know, CSEA represents over
2 50 county government workers -- over
3 50 counties where we represent the workers,
4 outside the City of New York. And the
5 Governor's proposal on Medicaid is very
6 concerning to us, because when you shift
7 costs to local governments and then you tell
8 them don't go beyond the tax cap -- which
9 isn't even 2 percent -- and when you say that
10 they're going to pay the growth in Medicaid
11 to which they really have very, very little
12 control, the local governments are left with
13 how do we fill this gap, it's either raise
14 taxes more or cut services.

15 Those services are provided by our
16 CSEA members. They are the highway workers,
17 they're the child protective workers, the
18 social workers, and they're the Medicaid
19 examiners that determine who is eligible,
20 based on state and federal rules and regs,
21 for Medicaid.

22 So I do want to talk about those
23 Medicaid examiners, because I did hear in
24 previous hearings that you held on Medicaid

1 that perhaps they aren't doing a very good
2 asset search, okay, to enroll people in
3 Medicaid. And I have to tell you, I can
4 speak from personal experience from just a
5 few months ago. Their asset search is so
6 thorough that you and I may say it's a little
7 bit annoying, because they check and recheck
8 and require and require. And the mounds of
9 paperwork that they go through to determine
10 whether a person is eligible, based on state
11 and federal law, is tremendous.

12 So they do their jobs, they sign
13 people up. They don't have much more
14 responsibility than that. They don't have
15 control over the costs in Medicaid.

16 And I think we all agree that the
17 biggest cost driver in Medicaid is long-term
18 care. And if you're going to go to the
19 biggest driver, you have to go there to look
20 for the biggest savings. We're not saying
21 that there probably can't be cost
22 containment; we're saying that it's misplaced
23 to look at the counties, who have very little
24 control over cost containment.

1 One other point that needs to be
2 brought up. While the counties do sign up
3 people for Medicaid, our New York State
4 Health Insurance Exchange actually signs up
5 more. It's not the job of the counties.
6 They go through the exchange to qualify and
7 get enrolled in Medicaid. And then they
8 go -- their care service is determined by the
9 managed long-term-care companies.

10 So it really has no relationship to
11 the counties, and there's really no movement
12 for them or place for them to save any money
13 to keep down the costs of the Medicaid
14 program.

15 So we're concerned, because as I said,
16 if you can't raise taxes, if you have to stay
17 within an artificial cap of -- for growth,
18 the only place left you have is services.
19 And to cut services on the local level means
20 you are going to put people out of work as
21 well, because our members deliver those
22 services.

23 So hopefully this needs to be looked
24 at, and let's go where the money is. You

1 know, where they say follow the money, let's
2 follow the money and figure out what is the
3 cost driver and how we get the cost driver
4 under control without hurting the services
5 that we're responsible for providing to the
6 citizens of the State of New York.

7 On a few other things on the state
8 side, I do want to bring up one thing -- I'm
9 sorry Senator Gounardes isn't here. The FTEs
10 that he referred to, we believe a lot of
11 that -- we know a lot of it is related to the
12 proposed closures in Corrections. Now, last
13 year the Governor did some closures, they
14 were very orderly, people got redeployed.
15 But it really is unfair to leave people
16 questioning where are the facilities that
17 we're going to close, why aren't we using the
18 one-year notice -- which is a notice not just
19 to the workers but to the communities that
20 may feel an economic impact from the loss of
21 the facility.

22 I'm blinking {timeclock beeping}.

23 But in any event, transparency is
24 always good. Let's figure out how many --

1 what are we talking about so that we don't
2 upset everybody across the State of New York,
3 not knowing where these cuts may come from.

4 And I'm blinking, so your turn.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Senator Jessica Ramos, chair of Labor.

7 SENATOR RAMOS: Oh, thank you so much.

8 No, I don't have any questions for
9 you.

10 CHAIRWOMAN KRUEGER: Okay.

11 SENATOR RAMOS: Let me defer to
12 Andrew.

13 CHAIRWOMAN KRUEGER: Andrew had to
14 walk out for a little bit.

15 Go ahead.

16 CHAIRWOMAN WEINSTEIN: We were joined
17 by Assemblywoman Griffin, and we go to
18 Assemblyman Crespo for a question.

19 ASSEMBLYMAN CRESPO: Fran, just very
20 quickly, the advocacy for childcare funding.
21 I know you have it in your testimony. A lot
22 of the anti-poverty hearings that we have
23 done, two of the major issues that kept
24 coming up were transportation access and

1 childcare access. And I've been meeting with
2 a number of groups.

3 Is there a specific number that your
4 organization feels we should be looking at in
5 terms of the investment in childcare, and
6 providing that it's one of the major barriers
7 for those who are either trying to stay
8 employed and/or those who want to be
9 employed?

10 MS. TURNER: I couldn't give you a
11 figure, Assemblyman. I can just say that
12 access needs to be expanded, right?

13 If we want to keep people employed,
14 access needs to be expanded. And for many
15 counties, that's not going to happen, because
16 there aren't enough resources to expand that
17 access and get the childcare -- get people
18 the childcare that they need.

19 I don't have an exact figure. We
20 could look at it. But there's never enough
21 money in childcare.

22 ASSEMBLYMAN CRESPO: Couldn't agree
23 with you more. But just want to make sure we
24 have it.

1 CHAIRWOMAN KRUEGER: Thank you.

2 Senator Jim Seward.

3 SENATOR SEWARD: Thank you, Madam

4 Chair.

5 And Fran, it's good to see you again.

6 MS. TURNER: You as well.

7 SENATOR SEWARD: Just a quick comment.

8 I want to thank you for your testimony. And
9 certainly, you know, my conference and I are
10 very concerned, as you are, and your members,
11 about possible cost shifts in this budget --
12 you mentioned the Medicaid issue -- and any
13 cost shifts to local governments, because
14 that means on the backs of local taxpayers
15 and impact on local workforce in delivering
16 those important services on the part of local
17 governments.

18 So we share those concerns, and we
19 appreciate your testimony this morning.

20 MS. TURNER: Thank you.

21 CHAIRWOMAN KRUEGER: Thank you.

22 I also want to thank you for your
23 testimony. Helene Weinstein and I sit here
24 every day listening to people come and

1 testify, and we sat through the healthcare
2 hearing all day, and the mental health and
3 hygiene hearing, and the things that you were
4 pointing out about that, perhaps people
5 aren't understanding the correlation between
6 what triggers Medicaid cost growth, what does
7 not, how little role there is in the
8 counties.

9 And also what you were also touching
10 on, that we now have large swaths of service
11 provision where there's nobody to work
12 because we have literally driven people away
13 from the kinds of jobs we desperately needed
14 to serve the most vulnerable New Yorkers.
15 And I know that that has been a continuing
16 message from you and your workers to us for
17 many years.

18 So I appreciate your being, I suppose,
19 in front of the trend. But you and I didn't
20 want that trend, so --

21 MS. TURNER: No, not at all.

22 CHAIRWOMAN KRUEGER: So thank you.

23 CHAIRWOMAN WEINSTEIN: Ditto.

24 (Laughter.)

1 CHAIRWOMAN KRUEGER: Thank you very
2 much, Fran.

3 MS. TURNER: Thank you.

4 CHAIRWOMAN KRUEGER: All right, our
5 next testifier, Barbara Zaron, Organization
6 of New York State Management Confidential
7 Employees, along with Joseph Sano, perhaps.

8 MS. ZARON: Good morning still.

9 CHAIRWOMAN KRUEGER: Good morning.

10 MS. ZARON: Thank you all for the
11 opportunity to come and speak to you about
12 our concerns, our support for certain
13 positions and our opposition to -- you
14 probably know, because we've gone through
15 this, this is probably the sixth year -- we
16 absolutely oppose the Governor's proposals on
17 retiree health insurance.

18 And one of the Assemblymen I think
19 asked the question about the savings. I took
20 the numbers out of the budget, and they're in
21 this testimony, so you can refer to that.

22 We ask your support -- we have done
23 this for several years now -- for our retiree
24 pay parity bill. It passed the Senate this

1 past session. We certainly thank the Senate
2 for that. It is now in Senate Finance going
3 through towards passage, I hope, this year,
4 and we're focusing our efforts in the
5 Assembly to get additional support.

6 We asked that the Governor put it in
7 his budget; he did not. So we're asking that
8 you put it in your one-house budget bills.

9 The second thing that we support is
10 Section W of the PPGG part of the budget, and
11 that refers to what I think Mr. Volforte
12 mentioned, the protection for unions. OMCE
13 is technically not a union, but we do
14 represent the management/confidential
15 employees, and we would love to have those
16 provisions extended to us in terms of being
17 provided the information and making it
18 official that we can participate in
19 orientation programs where the agencies
20 invite us to do so.

21 I'd just like to make a comment on
22 Commissioner Brabham, and I think in response
23 to a question, said there are approximately
24 3,000 exempt employees, approximately

1 2 percent of the workforce is in exempt-class
2 positions, and 29 to 30 percent of M/C
3 positions are in the exempt class.

4 So this is an issue that's dear to our
5 hearts and very concerning to us, because we
6 get requests that go through the Civil
7 Service Department to convert competitive
8 class positions to either noncompetitive or
9 exempt positions. And we are very strong
10 supporters of the merit and fitness-based
11 civil service system, so we think that
12 30 percent of the M/C workforce being in
13 exempt-class positions is excessive.

14 So I will leave it at that. You have
15 my written testimony. If -- I'm available to
16 meet with any of you in terms of answering
17 questions or discussing these things further.

18 CHAIRWOMAN KRUEGER: Thank you.

19 We've been joined by Senator Mike
20 Ranzenhofer and Senator Pat Ritchie.

21 And I'm just checking, do any Senators
22 have any questions? Okay, I'm handing it
23 over to the Assembly.

24 CHAIRWOMAN WEINSTEIN: We're good.

1 Thank you.

2 CHAIRWOMAN KRUEGER: And thank you
3 very much, Barbara. You are always very good
4 about getting around to each of us to make
5 sure that you sit down and explain everything
6 carefully. So appreciate that.

7 MS. ZARON: Thank you.

8 CHAIRWOMAN KRUEGER: Thank you.

9 All right. Retired Public Employees
10 Association, Edward Farrell.

11 Good morning. Hi.

12 MR. FARRELL: Thank you. Is it still
13 morning? Very close.

14 Senator Krueger, Assemblywoman
15 Weinstein, I represent the Retired Public
16 Employees Association. We just celebrated
17 our fiftieth anniversary. We represent the
18 interests of the 500,000 retirees of the
19 State and Local Retirement System.

20 Contrary to perception, 80 percent of
21 the public retirees stay here in New York.
22 And we contribute significantly to the
23 economy, pumping in almost \$12 billion
24 annually. So we're a force in the New York

1 community. You know us. You see us at
2 church, you see us at the senior center, you
3 see us at all sorts of events. We're a
4 fabric of the community.

5 I'm just going to make a few points
6 about my testimony. When Medicare was
7 created, New York decided it would be good to
8 enroll eligible participants in Medicare
9 because the state would save money. And that
10 was back in 1966. And the state made the
11 covenant with retirees at that time that said
12 because we're saving money and you have to
13 pay this additional premium, we're going to
14 reimburse you. And even by reimbursing you,
15 we're still going to save money.

16 And I want to point out, because not
17 everyone realizes, retirees still pay the
18 annual regular NYSHIP premium, as does
19 everyone else, active employees.

20 Two specific proposals that were
21 talked about earlier. Capping the
22 reimbursement rate, we of course think it's a
23 horrible idea. The current statute says that
24 retirees will be reimbursed the standard

1 premium. It doesn't have a dollar amount.
2 The Governor's proposal wants to put a dollar
3 amount in statute.

4 And I take a little exception with
5 what the president said earlier -- of Civil
6 Service -- saying, Well, it's something we
7 negotiate every year. Well, you can
8 negotiate anything every year, but if you put
9 this in statute and make it permanent, that's
10 an additional hurdle for you, as the
11 Legislature, to try and change existing law.
12 So we point that out.

13 The cost of this is minimal. It's
14 \$2.2 million in the current financial plan,
15 which is less than rounding error. But it's
16 real numbers to real people, who would have
17 to pay additional premiums.

18 The other is true with the IRMAA
19 reimbursement, which some retirees are
20 required to pay. The cost of that in the
21 current fiscal year is also minimal --
22 \$3.7 million. But they impact real people.

23 And you'll see there are just quotes
24 from a few of the people who did submit

1 emails saying: I recently retired, I have an
2 illness, I worked in Lower Manhattan, I'm now
3 counting on my health benefits. This is when
4 I really need them.

5 And there's another example from a
6 couple, a husband and wife who had a combined
7 service of 72 years of public service. Now
8 they are retired, they get to the point where
9 they've said, All right, we've put in our
10 years, we've gone through a lagged payroll,
11 we've gone through zero increases, we've gone
12 through a lot of things. Now we're retired
13 and we get hit with: Well, now we're going
14 to cut your benefits.

15 So it's not just numbers, it impacts
16 real lives.

17 So those are -- you've been supportive
18 on these issues in the past, and we thank
19 you. And we call for your support again.
20 It's important to real people.

21 I'm just going to touch quickly on a
22 couple of things that are not in the budget
23 but have fiscal implications which we hope
24 you would consider. And the first has to do

1 with access to skilled nursing facilities for
2 retirees in the Empire Plan.

3 As I stated earlier, the state made a
4 commitment when the state joined Medicare
5 that any federal benefits would be in
6 addition to what you were already getting,
7 you would not be getting reduced benefits.
8 But in this particular instance, retirees get
9 zero benefits. If you're an active employee
10 working for the State of New York, and not a
11 retiree, obviously, and you had to go to one
12 of these facilities, you could get 120 days
13 at the facility fully reimbursed, paid for by
14 the Empire Plan through your benefits.

15 If you are a retiree in the Empire
16 Plan, the Empire Plan pays zero. You get no
17 benefits. They said you get what Medicare
18 gives you, which is 20 days of coverage. So
19 it's 120 versus 20. And to qualify for the
20 20 days from Medicare, you have to stay three
21 days in a hospital.

22 So this is the most egregious of the
23 discrepancies. So I point that out.

24 There are quickly a couple of other

1 things -- survivor's benefits that have not
2 been increased in 50 years, prescription drug
3 reimbursement. M/Cs -- Barbara was here
4 earlier, you know what that issue is,
5 retirees who lost their increase in payroll
6 and then had to retire.

7 So in closing, let me just say the
8 Governor said he has to make these cuts to
9 retirees because health benefits are
10 increasing higher than 2 percent a year.
11 Well, that's not a news flash. Retirees are
12 not driving the increases in health insurance
13 costs in the Empire Plan. We're part of it,
14 we're integrated in with active employees.
15 So it's not things that we are doing that's
16 driving up costs. And to say we have to take
17 these cuts because health insurance is
18 increasing faster than 2 percent is a very
19 weak argument.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Senator Jim Seward.

22 SENATOR SEWARD: Thank you.

23 Very quickly, Ed, it's good to see
24 you, and congratulations to your organization

1 on celebrating 50 years.

2 MR. FARRELL: Thank you.

3 SENATOR SEWARD: I just want to say
4 thank you for the information you provided
5 us. And also just make the point that many
6 of us share your concerns about what you call
7 breaking the covenant with retirees, relating
8 to the capping of the Medicare reimbursement
9 as well as eliminating the IRMAA
10 reimbursement for certain retirees. We share
11 those concerns. And hopefully we can make
12 corrections in the Governor's proposal, as
13 has been done in the past.

14 MR. FARRELL: Great. That would be
15 wonderful.

16 And Senator Seward, it's been a
17 pleasure working with you. I wish you the
18 best.

19 SENATOR SEWARD: Thank you.

20 CHAIRWOMAN KRUEGER: Thank you.
21 Assembly.

22 CHAIRWOMAN WEINSTEIN: Assemblywoman
23 Griffin.

24 ASSEMBLYWOMAN GRIFFIN: Thank you.

1 Good morning -- good afternoon, I
2 guess we're close. I appreciate your
3 testimony, and I -- especially when it comes
4 to IRMAA. I represent 8021, and I have a lot
5 of retirees call the office and are very
6 concerned about changes in IRMAA.

7 One point of concern is the -- it says
8 the high-income earners, it's defined in the
9 budget as high-income earners will receive --
10 more will be deducted from them. And I
11 wondered, how does that affect you and did
12 you receive a schedule of income categories
13 which show you who are the high-income
14 earners as retirees?

15 MR. FARRELL: We do not know, nor does
16 Civil Service know, because it comes off
17 federal tax returns from two years ago.

18 ASSEMBLYWOMAN GRIFFIN: Okay.

19 MR. FARRELL: So it's not a deduction
20 for the IRMAA cost. The retirees pay that
21 cost up front. And then at the end of the
22 year, you submit information to the
23 Department of Civil Service and get
24 reimbursed for what you've already paid.

1 ASSEMBLYWOMAN GRIFFIN: So at the
2 present time you don't know what the
3 categories are for who would be -- have to
4 pay more, is that -- would that be correct?

5 MR. FARRELL: I'm not sure I
6 understand the question.

7 ASSEMBLYWOMAN GRIFFIN: So how do you
8 find out, like when it says -- when it
9 categorizes the high-income earners, how does
10 someone know if they're considered a
11 high-income earner as a retiree?

12 MR. FARRELL: An individual would know
13 because we send them information, to our
14 members, and publicize it.

15 And as I said, it's based upon your
16 adjusted gross federal income of two years
17 ago. So it is not as easy a transition as
18 you may think, that some people do get
19 confused that they have to go back two years.

20 But Social Security does send you a
21 statement at the end of each year which says
22 what you received in payments and what you've
23 made in IRMAA. So it is on the statement
24 that you get annually.

1 ASSEMBLYWOMAN GRIFFIN: Okay. Thank
2 you very much.

3 MR. FARRELL: You're welcome.

4 CHAIRWOMAN KRUEGER: Thank you.

5 I think we're done also. Thank you
6 very much.

7 MR. FARRELL: Thank you very much.

8 CHAIRWOMAN KRUEGER: Thank you.

9 And our next testifier is a panel:
10 Martha Ponge, of Manufacturers Association of
11 Central New York, and also Harold King,
12 Council of Industry.

13 Okay, are you both groups?

14 MS. PONGE: Yes.

15 CHAIRWOMAN KRUEGER: Did we get
16 testimony from both of you? We think we only
17 have one.

18 MS. PONGE: Just one.

19 CHAIRWOMAN KRUEGER: Just one.

20 Perfect, thank you.

21 MS. PONGE: Thank you.

22 Good morning, distinguished members of
23 the Finance and Ways and Means Committees,
24 Finance Chair Krueger, Ways and Means Chair

1 Weinstein. My name is Martha Ponge, and the
2 I'm the director of apprenticeship for the
3 Manufacturers Association of Central
4 New York. I'm joined by Manufacturing
5 Alliance partner Harold King, president of
6 the Council of Industry in the Hudson Valley.

7 We're here to advocate for the
8 Manufacturers Intermediary Apprenticeship
9 Program, known as MIAP. We're very grateful
10 that the Legislature has supported this
11 program for the past four years, but
12 unfortunately the Governor's completely
13 eliminates our funding.

14 Since 2016 we've grown our MIAP
15 partners to seven regions in the state, and
16 collectively we sponsor almost 30 trades.
17 We've also worked very closely with the
18 New York State Department of Labor and
19 partnering companies to establish new trades
20 in advanced manufacturing as well as IT
21 trades.

22 Currently we have multiple trades
23 under development in the areas of things like
24 continuous improvement, non-destructive

1 testing, which continues our efforts to
2 expand training to many nontraditional
3 trades. Additional training outlines to be
4 developed this year will support
5 industry-driven sectors in the growing
6 sectors of film, dairy and agriculture,
7 computer gaming, auto, childcare, and the
8 energy sector -- and, most recently,
9 apprenticeships that support persons with
10 disabilities.

11 In order to address the skill gap much
12 earlier on, we've created a pilot
13 pre-apprenticeship program with the Syracuse
14 City School District, beginning in the ninth
15 grade. This provides stackable credentials
16 and allows students to go directly from high
17 school to apprenticeships in manufacturing
18 careers. This program is one of our first
19 steps to raise awareness within school-age
20 youth and their families, as well as expose
21 them to alternative pathways that lead to
22 meaningful careers in advanced manufacturing.

23 In Central New York, we have more than
24 50 companies actively participating in

1 apprenticeships. That's over 150 people who
2 are being trained and supported. Harold's
3 organization has over 100 individuals honing
4 their technical skills. And our Rochester
5 region has very similar numbers but is also
6 very active in engaging in the development of
7 youth apprenticeships.

8 In 2019 the enacted State Budget
9 provided \$750,000 in funding for MIAP. This
10 appropriation aided the expansion of current
11 regions and initiated our outreach on
12 Long Island and in New York City. I'm very
13 pleased to report that Long Island, which is
14 home to over 3,000 manufacturers -- and
15 10,000 open positions -- has eight companies
16 who have committed to establishing
17 apprenticeship programs. That number was
18 zero a year ago.

19 The momentum is growing across
20 New York State. Both of these regions,
21 Long Island and New York City, have the
22 capacity to grow faster than any of the
23 others to date, and it's imperative we
24 continue to support their burgeoning efforts.

1 According to the United Way of
2 New York State, the top 10 fastest-growing
3 jobs have an average salary of \$32,000 per
4 year. In vast contrast, employees within
5 advanced manufacturing make an average salary
6 of over 71,000. These manufacturing jobs
7 significantly raise household income and
8 improve overall quality of life.

9 I believe now more than ever the time
10 is right to invest in MIAP. MIAP has
11 consistently afforded individuals a pathway
12 out of poverty and access to springboard
13 careers that eradicate the limits of their
14 future income. With the flexibility of the
15 New York State Registered Apprenticeship
16 Program, we can meet individuals where they
17 are and bring them to the skill levels
18 required to attain and keep these good jobs.

19 There are over 50,000 open positions
20 in high-demand, high-paying sectors in
21 New York State. It's critical that we
22 continue to bridge the gap between the
23 individuals who want access to these jobs and
24 the manufacturers in New York State that need

1 these individuals to remain competitive in
2 the global market.

3 In order to continue the highly
4 successful and very effective program we've
5 created, and meet the growing needs across
6 New York State, we are respectfully
7 requesting a million dollars in funding to
8 sustain and grow MIAP.

9 Thank you very much.

10 CHAIRWOMAN KRUEGER: Did you have more
11 to add, or are you just --

12 MR. KING: No, I was here just to nod.
13 She's done a great job.

14 (Laughter.)

15 MR. KING: And to say what she is
16 doing in Central New York is happening in the
17 Hudson Valley, and we're definitely trying to
18 extend it across to other regions of the
19 state.

20 CHAIRWOMAN KRUEGER: So just one
21 question to pass along. Is the money that
22 was cut out of the budget member-item money
23 that was taken out of Department of Labor?

24 MS. PONGE: It was a legislative

1 add-in, yes.

2 CHAIRWOMAN KRUEGER: So it was a
3 legislative add. So you're asking us to put
4 it back and grow it.

5 MS. PONGE: Yes, please.

6 MR. KING: Yes, please.

7 CHAIRWOMAN KRUEGER: Thank you.
8 Assembly?

9 CHAIRWOMAN WEINSTEIN: We're okay.

10 CHAIRWOMAN KRUEGER: Senator Jim
11 Seward.

12 SENATOR SEWARD: Just a quick
13 question.

14 You know, we're continuing to hear
15 about the decline in population, particularly
16 in Central New York. I represent part of
17 that region myself, in my district, and I
18 know full well about that, and also the
19 impact on our labor force because of that
20 decline.

21 MS. PONGE: Absolutely.

22 SENATOR SEWARD: Can you -- you've
23 been talking about workforce training and
24 providing new skills for our labor force, and

1 I think the trend for internships and
2 apprenticeships are very, very positive in
3 that regard.

4 But can you give us an assessment
5 overall of how we're doing in New York State
6 in terms of workforce development and
7 educating these -- our workforce?

8 MR. KING: I can kind of chime in.
9 I've been involved in workforce development
10 through our association in the Hudson Valley
11 for the better part of 20 years, and it's a
12 challenging job, particularly as we, for the
13 better part of two decades, fought the
14 perception that manufacturing was dark and
15 dirty and dingy and not a good career path.

16 I think that's shifted. I think we're
17 getting more people to understand that it is
18 what advanced manufacturing is -- high-tech,
19 high-paying jobs, high-value-added companies.

20 I do think, you know, that while it's
21 getting better, there's still a lot of work
22 to do. We've done a lot and I think this
23 program has done a lot to connect existing
24 infrastructure -- the community colleges, the

1 BOCES, the United Ways, other social service
2 agencies -- to our member firms and get the
3 word out that these jobs are available and
4 that they are, as Martha said, not the
5 \$30,000-a-year jobs but the \$75,000,
6 \$80,000-a-year jobs.

7 SENATOR SEWARD: Thank you.

8 CHAIRWOMAN KRUEGER: Thank you. All
9 right, thank you very much for your
10 testimony.

11 MS. PONGE: Thank you very much.

12 MR. KING: Thank you.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Next up is a panel, Christina Fisher,
15 Northeast executive director for TechNet, and
16 two gig economy workers, Charlene DuBuque and
17 Jonathan Aviles. And maybe they can explain
18 the difference between being a gig worker and
19 being something else, since that was an
20 earlier discussion.

21 We've also been joined by Senator
22 Robert Jackson.

23 Just to clarify the way we've set it
24 up, so Christina would get five minutes and

1 then the two gig workers would split five
2 minutes.

3 MS. FISHER: Okay. I actually
4 probably don't need five minutes, if you want
5 to give them a little extra time.

6 CHAIRWOMAN KRUEGER: Fine. Then we'll
7 just move along and give the two workers more
8 time to talk.

9 MS. FISHER: Perfect.

10 CHAIRWOMAN KRUEGER: Thank you.

11 MS. FISHER: Well, good morning.
12 thank you for the opportunity to be here with
13 you today. My name is Christina Fisher. I'm
14 the executive director for the Northeast for
15 TechNet.

16 TechNet is a national bipartisan
17 organization of technology CEOs. We advocate
18 at the 50-state and federal level on policies
19 to advance the innovation economy.

20 I really appreciate the opportunity to
21 be here to discuss this important issue and
22 to discuss the needs of workers working
23 outside of the traditional employee-employer
24 dynamic.

1 We are entirely supportive of the
2 conversation around the independent
3 workforce, and we are committed to providing
4 meaningful protections for workers, while
5 being able to maintain the flexibility that
6 they so desire and preserving their right to
7 work when, where and how they want.

8 We would like to work collaboratively
9 with the Governor's office, with the
10 Legislature, with labor, with other members
11 of the business community to address these
12 issues, and we hope to do that through the
13 task force envisioned by the Governor in his
14 Executive Budget proposal. New York has a
15 real opportunity here today during this
16 legislative session to be a leader on this
17 issue, and we hope that you'd continue to do
18 so.

19 Technology has enabled a valuable new
20 form of work that has enabled thousands of
21 New Yorkers to be able to work flexibly, earn
22 supplemental income --

23 CHAIRWOMAN KRUEGER: Would somebody
24 close the door in the back?

1 Just because the people talking
2 outside makes it hard for us to hear you,
3 sorry.

4 MS. FISHER: No, it's okay. Thank
5 you. I appreciate that.

6 SENATOR JACKSON: And please speak
7 closer to the microphone.

8 MS. FISHER: Oh, sure, I'm sorry. I
9 apologize.

10 So technology has enabled a valuable
11 new form of work that has allowed thousands
12 of New Yorkers to be able to work flexibly,
13 earn supplemental income, and be able to
14 build their business. We believe that it is
15 not if we protect the worker, but how we do
16 so in the era of flexible work, and not if we
17 offer benefits, but how we do so in a way
18 that offers the most good to the most number
19 of people while also taking into account
20 these flexible work arrangements.

21 This conversation is very important,
22 and we hope to be able to continue to work
23 with you all. And we are especially happy
24 today to be here to be able to bring to you

1 two workers who work for different platforms
2 who can share their specific experiences and
3 will be able to tell you about how flexible
4 work directly impacts their lives.

5 I'm happy to have with me today
6 Charlene DuBuque, from Ballston Spa, and
7 Jonathan Aviles, from Watertown, who will
8 both talk about their experiences.

9 Charlene, do you want to go first?

10 MS. DUBUQUE: Hello, and thank you for
11 your time today. My name is Charlene
12 DuBuque, and --

13 CHAIRWOMAN KRUEGER: One second. What
14 we'll do is we'll give each of you three
15 minutes, because you didn't use your full
16 five. Okay, so three minutes for this lady,
17 and then we'll do three minutes more for the
18 gentleman, and we'll ask questions of
19 everybody afterwards.

20 MS. DUBUQUE: Okay, thank you.

21 Hello, and thank you for your time
22 today. My name is Charlene DuBuque, and I'm
23 a mom of four from Ballston Spa. I've been
24 using the gig economy to supplement my

1 household's income for over 10 years now. By
2 chance, I learned about VIPKid this summer,
3 and the rest is history. Since then I've
4 been on an amazing journey that's taken me on
5 a virtual road trip across China, allowed me
6 to pay off debt, and offered me the
7 flexibility to care for my children on my own
8 terms.

9 VIPKid is a digital platform that
10 connects online teachers in North America
11 with children in China who wish to learn
12 English. There are over 100,000 teachers on
13 the VIPKid platform, teaching over 700,000
14 students in China, and this number is only
15 expected to grow. In New York State alone,
16 over 3,000 teachers currently contract with
17 VIPKid. Ninety percent of VIPKid teachers
18 are women, and a good number are stay-at-home
19 moms.

20 Here is my experience and why I'm
21 passionate about VIPKid and what we do.
22 First, the money is fantastic. Second, I
23 love the experience of being able to connect
24 with kids all the way in China. Many of

1 these students have become friends with my
2 own children, and without VIPKid that
3 experience would never have been possible.

4 But what I love best about VIPKid is
5 the flexibility I have. I can pick my own
6 hours and work as little or as much as I need
7 to. Despite having a bachelor's and master's
8 in history, I've been using the gig economy
9 to supplement my household's income for years
10 now. As the mother of a son with some
11 significant mental health needs -- which at
12 one point required a seven-week
13 hospitalization -- a conventional full- or
14 part-time job is not an option. I need to be
15 available for medicine, doctor's
16 appointments, and to maintain a reliable
17 schedule.

18 Many mothers have a decision to
19 make -- go to work and put your young
20 children in daycare, or stay at home and
21 forgo any income. Flexible work provides a
22 third option for many of us -- being able to
23 have nontraditional work with flexible
24 scheduling.

1 This autonomy over my own schedule is
2 what attracted me to VIPKid. I'm able to
3 make money on my own time and under my own
4 terms. If I want to pick up extra work to
5 save for a trip or pay down student debt, I
6 can do it. If I want to take a couple of
7 weeks off or work a different gig, there's no
8 penalty, and I pick up right where I left
9 off. I don't want to be an employee. I
10 value being my own boss.

11 I want people to see that flexible
12 work provides more than just a gig
13 opportunity. Stay-at-home moms like myself
14 are gaining experience so, should we ever
15 decide to return to conventional work, we
16 have the skills needed to get back into
17 things. With VIPKid, I can be an ESL teacher
18 without the need for a computer programmer or
19 franchise fee.

20 I'm provided a platform to market my
21 unique teaching style to a large, established
22 pool of future customers. The students I
23 teach picked me, and they return to me
24 because of the brand I've worked hard to

1 create and maintain.

2 A few months ago I was having lunch
3 with a friend, and she said to me, "Charlene,
4 you just seem happier." Though I've been
5 with VIPKid only six months, the experience
6 has really changed my family. We've been
7 able pay off debt, and I just love what I do.
8 I find value and pride in teaching.

9 I just want you to really consider how
10 some of this legislation is going to affect
11 mothers like me here in New York State.

12 Thank you for your time.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Hi.

15 MR. AVILES: Hi. Good morning, or
16 afternoon. My name is Jonathan Aviles.
17 Thank you for your time today, Chair Krueger,
18 Chair Weinstein, and members of the Senate
19 and Assembly.

20 I particularly want to say good
21 morning to Senator Patty Ritchie and
22 Assemblymember Ken Blankenbush, my
23 representatives in Watertown. I also want to
24 thank Senator Diane Savino for paying

1 attention to people like me who work in the
2 gig economy, which is what I'm going to talk
3 about today.

4 I moved to upstate New York from
5 North Carolina about a year and a half ago
6 because I wanted to branch out and experience
7 a new place. Back in North Carolina I'd
8 worked as a manager at a restaurant chain,
9 and so I started doing the same thing when I
10 came here. For six months I started work at
11 4:30 in the morning and worked into the
12 afternoon. I would get home and be so tired
13 that I couldn't do anything else. And I had
14 to be in bed by 7 or 8 to be able to make it
15 to work on time the next morning.

16 The hours made it really tough for me
17 to try to meet new people and to settle in my
18 new home. My boss at the restaurant always
19 expected us to go above and beyond at work,
20 but never recognized those of us who worked
21 especially hard.

22 I am a hard worker, and I've always
23 felt that I have more to give. I wanted to
24 be in a position where I could help the

1 franchise grow and grow as a person, but I
2 eventually realized I wasn't going to get
3 that opportunity there. I had to find
4 something else.

5 So I did two things. I started
6 building my own business in interior design,
7 and I started delivering food through
8 DoorDash in my spare time. I take pride in
9 being an independent person, and the
10 opportunity to work on my own schedule with
11 DoorDash has meant a lot to me. Work is
12 available for me at a moment's notice so I
13 can dash when I have a free hour or just need
14 a break from interior design.

15 Because I'm not tired all the time
16 anymore, my life is more full. I have energy
17 to pursue interior design professionally and
18 to go shopping or spend time with friends.
19 One of the best aspects is that it only takes
20 me a few days of dashing to save money to go
21 visit my family back in North Carolina, and I
22 don't have to take a vacation to do that.
23 I'm actually going there for two weeks in
24 March, and I'll be able to dash on my free

1 time down there if I choose to.

2 Through DoorDash I have found a great
3 way to make money that still allows me to
4 pursue my other career interests, like
5 interior design. When I'm dashing, I make
6 sure to offer the best customer service. I
7 am honored to have consistently earned top
8 dasher status in my community, and it feels
9 so great to be appreciated for all my effort.

10 I'm also a very social person. I have
11 great relationships with the people that work
12 at restaurants I deliver from a lot. I talk
13 to other dashers about what it's like working
14 with DoorDash, and I like to talk to people I
15 meet while I make deliveries.

16 A few months ago I was on a delivery,
17 I met a guy who was working as a delivery
18 driver for Pizza Hut. He asked me about
19 DoorDash and we talked about how it works and
20 how you can make good money when you need it.
21 He wanted to say thank you, because he had
22 started working at DoorDash as well --
23 {timeclock beeping}. I'm sorry.

24 I just want to say I'm running my own

1 business every day, both when I design a room
2 and when I make a delivery, and I hope you
3 guys won't make me give that up.

4 Thank you all for your time.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Senator Ramos.

7 (Off the record.)

8 SENATOR RAMOS: Hi, how are you? Good
9 to see you again, Charlene. Thank you so
10 much for your testimony.

11 I want to -- I have a few questions.
12 First off, have you guys seen the Governor's
13 proposed language in the budget to deal with
14 the gig economy?

15 MS. FISHER: Yes, we have seen that
16 language, and we are pleased that there is a
17 task force that will be looking at these
18 issues. And we hope to be part of that
19 conversation as it moves forward.

20 SENATOR RAMOS: So you support the
21 idea of a task force.

22 MS. FISHER: We are supportive of the
23 task force, yes.

24 SENATOR RAMOS: Now, I constantly hear

1 in many of -- in all of my conversations with
2 various different app workers, if you will,
3 that they're worried about losing their
4 flexibility in scheduling. I want to
5 understand why that is. Who has threatened
6 to take away your flexibility in scheduling?

7 MS. FISHER: So the conversation that
8 we have been having here in New York and
9 we've seen across the country is about
10 changing -- reclassifying these workers to
11 employees. And it is our concern that under
12 that traditional employee-employer dynamic,
13 that these workers will not be able to enjoy
14 the flexibility that they deserve.

15 Under the traditional work
16 environment, you don't get to go start
17 working at Starbucks and then decide that you
18 want to go run out in the middle of your
19 shift to --

20 SENATOR RAMOS: Yeah, but I think
21 that's actually something that everyone
22 understands. I don't think anyone wants to
23 take away the flexible -- your ability as a
24 worker to control your schedule. Not even

1 organized labor. A whole entire industry, if
2 you will, is predicated on the fact that
3 people are able to make their own schedules,
4 whether they're just supplementing their
5 income or this is their full-time income.
6 Right?

7 So I've had a lot of trouble with that
8 narrative, because I don't think that anybody
9 actually has that intention.

10 I want to ask the gentleman --
11 Jonathan Aviles, right?

12 MR. AVILES: Yes. Yes.

13 SENATOR RAMOS: Your experience
14 working for DoorDash, how does that work for
15 your car insurance payment, the wear on your
16 car, the cost of doing business as a business
17 owner, as you call yourself?

18 MR. AVILES: Well, I have I believe a
19 good warranty with my car, and I think that
20 that should be able to cover everything that
21 comes with driving --

22 SENATOR RAMOS: But they don't.

23 MR. AVILES: I'm sorry?

24 SENATOR RAMOS: But they don't.

1 MR. AVILES: Oh.

2 SENATOR RAMOS: Or they do?

3 MR. AVILES: Well, from my
4 understanding -- I don't know a lot about car
5 warranties. But from the conversations I've
6 had with my dealership, that if there was
7 anything mechanical like engine failure or
8 something with the brakes, that they would be
9 able to fix that, or it would be covered
10 under the warranty. So --

11 SENATOR RAMOS: But if something
12 happens to your car -- so if you are making
13 deliveries for DoorDash and you get into an
14 accident and something happens to your car,
15 it's covered by your insurance. Does
16 DoorDash have any -- do they offer you any
17 compensation for repairs or anything -- what
18 do you do for health insurance?

19 MR. AVILES: Well, I -- I have health
20 insurance through New York State, New York
21 State Health is when I first got down here.

22 As far as car insurance, well, I did
23 have that collision -- car insurance with
24 my -- with my insurance capacity. I haven't

1 really looked into car insurance with
2 DoorDash. I'm not really sure if they offer
3 that. But it wasn't really my -- like my
4 concern at the moment, because again, I
5 already have insurance through my car
6 insurance.

7 SENATOR RAMOS: When you pick up the
8 food that you're going to deliver, do you
9 enter the restaurant?

10 MR. AVILES: Yes, I do -- I think we
11 are required to enter the restaurant to pick
12 up our orders.

13 SENATOR RAMOS: And if you enter the
14 restaurant and you slip and fall in the
15 restaurant and something happens to you --
16 you twist your ankle, you break your ankle --
17 who's going to cover those medical bills if
18 you didn't have health insurance from the
19 state?

20 MR. AVILES: Well, I'm -- well, with
21 the health insurance, I'm really not, like,
22 familiar with -- with that aspect. All I
23 know is, you know, health insurance is good
24 to have always.

1 SENATOR RAMOS: I'm sorry, I don't
2 mean to put you on the spot --

3 MR. AVILES: No, you're fine.

4 SENATOR RAMOS: For me it's much more
5 like if you're getting hurt on the job,
6 shouldn't you have access to workmen's
7 compensation? You don't think you do?

8 MR. AVILES: Well, I'm more of like
9 a -- I mean, this is only speaking for me.
10 I'm a very careful person anywhere I go,
11 so --

12 SENATOR RAMOS: Yeah, but stuff
13 happens.

14 MR. AVILES: Yeah, stuff does happen.

15 SENATOR RAMOS: Stuff.

16 MR. AVILES: That's a really good
17 point. But like I said, as -- right now, as
18 my particular situation, I currently have
19 health insurance, so I really can't speak on
20 if other people don't have insurance and
21 happen to have that.

22 SENATOR RAMOS: No, I hear that. And
23 for me, that's what the conversation is
24 largely about. I mean, I understand even

1 from speaking to Charlene -- and I'm sorry
2 I'm not asking you questions, but it's
3 largely because we've already met. You know,
4 if you already have insurance -- the issue at
5 hand to me is about making sure that
6 everybody across the board has access to the
7 same protections and not having to depend on
8 their spouse for insurance, for example. You
9 see what I'm saying?

10 MR. AVILES: Yeah. Absolutely.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Senator Diane Savino. Oh, wait, the
13 Assembly --

14 SENATOR SAVINO: Thank you, Senator
15 Krueger.

16 Nice to see you, Christina. And I
17 want to thank you for the work that you've
18 been doing on this. I know you've spent a
19 lot of time with myself, with Senator
20 Sanders.

21 And I want to talk a bit, though,
22 about the concept of flexibility, because I
23 know that comes up regularly as a concern,
24 that those who have found the ability to earn

1 extra income or all of their income through
2 the digital marketplace, that that would be
3 lost. And I just would like to hear your
4 thoughts about how can we -- how can we find
5 a way to see to it that you retain the
6 flexibility but you provide the statutory
7 protections that are extended to those who
8 are in the traditional definition of an
9 employee, the workers' comp, as it's been
10 referenced, the unemployment insurance,
11 coverage under the Human Rights Law.

12 Is there a pathway to be able to
13 create that and still retain this new
14 flexible workforce?

15 MS. FISHER: Thank you for that
16 question. We absolutely do think that there
17 is a path forward. And I wish I had a very
18 specific detailed policy proposal for you
19 today, but I think that is exactly why we're
20 having the conversation through the task
21 force proposed in the Governor's budget, and
22 it's why we are so supportive of that
23 conversation, as we do very much believe
24 there is a way to do both -- to offer

1 other names to consider, and then you have a
2 right to decide whether or not you want to
3 take me on as a client?

4 MS. DUBUQUE: Pretty much. The
5 parents pick us. So we are put onto the
6 platform, we market ourselves through the
7 platform, and the parents decide if they want
8 to pick us as their teacher. And if they
9 like us, they can keep booking us, and that's
10 pretty much how it works.

11 SENATOR SAVINO: So I always refer to
12 these things kind of like digital
13 Pennysavers.

14 MS. DUBUQUE: Yes, absolutely.

15 SENATOR SAVINO: At least you know
16 what a Pennysaver is. So many young people
17 look at me like I'm crazy, like what's a
18 Pennysaver?

19 So it's -- it's -- it's your ability
20 to find more business through their
21 marketplace.

22 As opposed to DoorDash, which is
23 you're delivering food from multiple
24 restaurants. But DoorDash finds you or you

1 find DoorDash? How does it work?

2 MR. AVILES: Well, the orders come in
3 through our app. So once a customer places
4 an order through the app, the app then
5 confirms the order and then finds the nearest
6 dasher that can fulfill that order.

7 SENATOR SAVINO: Can you turn it down?

8 MR. AVILES: You can, if -- if it's
9 not somewhere that -- if it's too far for you
10 or if it's not like a good restaurant for you
11 to go to, then dashers do have the
12 opportunity to decline that order. And it
13 would go to the next dasher.

14 SENATOR SAVINO: My time is up. But
15 thank you for your testimony, both of you.
16 All three of you.

17 CHAIRWOMAN KRUEGER: Assemblymember --

18 CHAIRWOMAN WEINSTEIN: Assemblymember
19 Crespo.

20 ASSEMBLYMAN CRESPO: Thank you.

21 How many hours, on average -- you said
22 you do this supplementally -- do you work on
23 the platform?

24 MS. DUBUQUE: On the VIPKid platform I

1 work around 10 to 20 hours per week. And I
2 do other gig work, which -- I ran out of time
3 so I wasn't able to talk about that.

4 ASSEMBLYMAN CRESPO: So -- and for
5 you?

6 MR. AVILES: I do about 15 to 20 hours
7 a week.

8 ASSEMBLYMAN CRESPO: A week.

9 MR. AVILES: Yes.

10 ASSEMBLYMAN CRESPO: And so look, I --
11 that's important, the question of whether the
12 majority of the workforce is individuals like
13 you who have a full-time position elsewhere
14 and are doing this supplementally, versus
15 those that may be now doing this full-time.
16 You know, it's one of the things that we're
17 grappling with.

18 And while just out of respect to the
19 fact that I want to focus on budget items and
20 we do have another hearing that's set to
21 begin, I just want to let you know I
22 appreciate the fact that you're both here,
23 and I see other members of the industry that
24 are here as well. It is important for us to

1 hear your voice in this conversation and your
2 take on it.

3 Similarly, though, I just would
4 encourage you to consider that for us it is
5 not -- and I think something other colleagues
6 have mentioned, we're trying to strike a
7 right balance here. We want to make sure
8 that everyone who is out there employed in
9 any title or capacity has a right to
10 protections that they deserve to have. We
11 have, as a state, worked really hard to
12 ensure that those protections exist, and
13 there's a lot of businesses that are paying
14 high costs to provide those services. And
15 there may be ways to thread that needle and
16 figure this out, and that will be a part of
17 the conversation.

18 But your voice in this is important,
19 and our efforts are just meant to make sure
20 that you have the flexibility, whether that's
21 in -- as an independent contractor, whether
22 that's an employee who's working under an
23 agreed-upon part-time sort of situation. The
24 fact is we just to make sure you have all the

1 protections and the earnings and the safety
2 net systems that are in place for others at
3 your disposal as well. And that's something
4 we're going to work towards.

5 But thank you for being here.

6 MR. AVILES: Thank you.

7 MS. DUBUQUE: Thank you.

8 CHAIRWOMAN KRUEGER: Thank you.

9 Senator Jim Seward.

10 SENATOR SEWARD: Thank you all for
11 being here.

12 This is a fascinating topic. As one
13 who was involved with the ridesharing and car
14 sharing and other sharing aspects as -- when
15 I chaired the Insurance Committee in the
16 Senate, we got involved in these issues. And
17 it's -- certainly the so-called gig economy
18 is an emerging part of our economy.

19 Now, my question is regarding the
20 number of gig workers that are out there. I
21 would note I think in 2017 the U.S.
22 Department of Labor -- these are national
23 numbers -- said there were 10.6 million
24 independent workers out there. More recently

1 there was a MetLife study which indicated
2 that there were 45 million people involved as
3 independent workers out there. That's a real
4 challenge for us here in the Legislature as
5 we try to fashion some sort of sensible
6 employment legislation along these lines.

7 So my question is, how would you
8 determine how many gig workers there actually
9 are? And zero in particularly here in
10 New York State. Is there a way to determine
11 that?

12 MS. FISHER: I mean that's obviously
13 not exactly an easy answer. Because
14 sometimes people work for a few months at a
15 gig economy job, some will work for years at
16 a gig economy job. So the number is
17 constantly in flux.

18 I don't have a number for you today.
19 But I would be happy to try to see if we
20 could help the Legislature find a more
21 accurate number for New York.

22 SENATOR SEWARD: My question was sort
23 of on the methodology. How would you come up
24 with that number?

1 MS. FISHER: Well, I'm working with a
2 coalition of -- I have several member
3 companies within my organization, and I'm
4 also working with a coalition on the ground
5 that's trying to lend voices to this. So
6 we're working with several gig economy
7 companies, on-demand companies.

8 But this is a very broad group of
9 people. You know, it's anything from a dog
10 walker to a freelancer to a coder. So, you
11 know, I will help -- try to work with those
12 organizations to try to get you an accurate
13 number.

14 SENATOR SEWARD: Thank you.

15 CHAIRWOMAN KRUEGER: Thank you.

16 Any other Assembly? No more Assembly.

17 Senator James Sanders to close.

18 SENATOR SANDERS: I'm your closer.

19 It's good to see you all. Thank you
20 for coming up.

21 Christina, you may want to use a
22 different mic. You're a little muddy there.

23 You were speaking of -- can you tell
24 me the weaknesses of what you believe the

1 California model would be for New York?

2 MS. FISHER: Sure. The California
3 model has resulted in significant uncertainty
4 for a lot of workers. We've already seen a
5 significant number of job loss as a result of
6 the legislation, employees having to --
7 workers having to be reclassified --

8 SENATOR SANDERS: Use a different mic.

9 MS. FISHER: Sorry. Is that better?
10 Sorry. So I'll start over.

11 California is a very difficult and
12 complex model that we do not think is
13 workable for New York. We've already seen
14 significant job loss, consumer costs
15 increasing.

16 What we really want here is for
17 New York to be a leader in this space, as you
18 have done so in the past with the Black Car
19 Fund. This is not the first time that
20 New York has thought outside of the box on
21 these types of issues. So we're really
22 supportive of how the Legislature and the
23 Governor have already thought about this
24 issue, and we just continue to look forward

1 to working with you on that.

2 SENATOR SANDERS: I have found it
3 useful to hear from -- when I'm trying to
4 figure out legislation, I have found it
5 useful to hear from both sides. You have
6 said that you guys are working on some type
7 of the proposals that you believe would be
8 useful?

9 MS. FISHER: We are -- yes, we're
10 thinking about what is the right model for
11 New York, and we're -- that's why we want to
12 continue to participate in the task force as
13 it moves forward. And we do very sincerely
14 want to work with all parties involved and
15 think about this collaboratively, because how
16 we may view it may be different for somebody
17 else. So that's why I think a task force is
18 so important, because it gets all parties
19 involved to sit down at the table and have
20 that type of conversation.

21 SENATOR SANDERS: I'm very interested
22 in this because as my colleague right above
23 me said, there are people who are falling
24 through the cracks, and we have an obligation

1 to ensure that those people are looked out
2 for and have all of the rights that they
3 should have.

4 At the same time, if there is a way of
5 doing this without crippling an industry,
6 without crippling a market, then this is
7 good. So it would be very useful for you to
8 come up with -- or you and your organization
9 to come up with some proposals that we can
10 see if it meets the need.

11 MS. FISHER: Absolutely. I'd be happy
12 to do that. And I look forward to working
13 with you further on this issue.

14 SENATOR SANDERS: I look forward to
15 working with you and working with you all in
16 the days to come. Thank you very much.

17 Thank you.

18 CHAIRWOMAN KRUEGER: Thank you. Thank
19 you all very much for your time today.

20 MS. FISHER: Thank you.

21 MS. DUBUQUE: Thank you.

22 CHAIRWOMAN KRUEGER: Clearly these
23 issues, as we discussed earlier in the day,
24 need further discussion by the Legislature.

1 Our next testifier is Donna Liquori,
2 Fight for Freelancers New York.

3 Good afternoon.

4 MS. LIQUORI: Hi. My name is Donna
5 Liquori. I'm a freelance journalist and
6 writer based near Albany. I'd like to thank
7 the committee chairs, Senator Krueger and
8 Assemblywoman Weinstein, for this
9 opportunity.

10 I'm here to represent myself as well
11 as an ad hoc grassroots organization. We
12 call ourselves Fight for Freelancers
13 New York. We're all New Yorkers, taxpayers,
14 and contributors to the state's economy. I'm
15 here to talk about the specific proposal in
16 Section GGG about the task force that you all
17 have been just talking about.

18 Our group sprung up when word of
19 measures resembling AB5, which is
20 California's law, were being considered for
21 New York. And it's been a disaster. We're
22 hearing that companies are simply dropping
23 independent contractors rather than trying to
24 understand the law. There have been a number

1 of lawsuits.

2 We urge you not to follow that path.
3 AB5 has a lot of problems. If it was a good
4 law, it wouldn't require carve-outs, it
5 wouldn't require any of those things or
6 additional legislation which I think is in
7 process. There also have been a number of
8 lawsuits, including one by the ASJA.

9 We're hearing, you know, real horror
10 stories that whole art organizations are
11 closing, writers are being blacklisted.
12 Companies just don't want to try to interpret
13 the law because it's so complicated. And
14 that's really troublesome. Even in
15 New Jersey and in New York we're hearing --
16 we're seeing ads for writers and they're
17 saying we don't want anybody from Metro
18 New York or California. So already just word
19 of this possibility is affecting our
20 industry.

21 I've been doing this pretty much most
22 of my adult life. I've been a freelance
23 writer doing contract work. It's worked out
24 really well for me. I've also worked in --

1 I've taken full-time jobs occasionally, and
2 I've been a shop steward for a union. So
3 this is not -- you know, this has nothing to
4 do with any anti-union sentiment. We just
5 want to continue to work the way we've been
6 working.

7 It's particularly important, I think,
8 in New York because we're different, I
9 believe, than the other states. We have this
10 huge creative economy in New York, and that's
11 really important. That's one of the reasons
12 I live here. And we know that, through a
13 survey by the Freelancers Union, that
14 freelancers have contributed \$31.4 billion --
15 and that's in one year -- to the economy in
16 New York City. That's just New York City.
17 Our group makes up people from all over the
18 state.

19 We are -- we've kind of approached
20 this by reaching out to the unions as well as
21 legislators just to educate them. And one of
22 the striking things that we see is that
23 people don't really understand what we do or
24 how we go about doing it. It's important to

1 note that because the work of freelancers is
2 nuanced and difficult to understand if you
3 haven't lived it.

4 So we want to be available for this
5 task force. We want you to speak with us and
6 learn about how we make our living, and
7 represent us to ensure that there isn't
8 another AB5 in New York.

9 Again, to recap, we know that the
10 measures are directed at the so-called gig
11 economy, and we know that the intentions are
12 noble -- you want to protect people who are
13 being exploited, and we all agree with that.
14 We think that's important. But there's a
15 huge fallout.

16 So I appreciate Senator Savino's
17 comments earlier on how this needs to be very
18 thoughtful. New York is very different than
19 most other states.

20 And there's also federal legislation
21 that mirrors AB5. The big problem we find
22 with AB5 is that the ABC test, which is also
23 included in the Governor's proposal, it's
24 referenced, is very problematic. I'm not a

1 labor historian, but I do know that that test
2 dates back to the 1930s. And as far as I
3 know, there wasn't an internet or digital
4 economy back then.

5 So I just ask that you, you know,
6 consider us and also use us as a resource if
7 there is a task force. And I'm here to
8 answer any questions you may have.
9 Thank you.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Any questions, Senate? Diane Savino.

12 SENATOR SAVINO: Thank you.

13 Thank you, Donna, for your testimony.

14 You're not with the Freelancers Union,
15 though, which is a separate --

16 MS. LIQUORI: I'm a member of the
17 Freelancers Union, but I'm not speaking for
18 them.

19 SENATOR SAVINO: You're not here on
20 their behalf.

21 I'm going to be meeting with the new
22 executive director, Rafael Espinal, next week
23 to talk about this. And I just want to make
24 the point that when we introduced this bill

1 last year, the first draft of the Dependent
2 Worker Act, the most complaints we got -- I'm
3 sure I can speak for Assemblyman Crespo --
4 was from freelancers, because they were
5 afraid that they would get caught up in this.

6 So in California it's created a lot of
7 consternation amongst the freelancers
8 community, and in fact big companies like
9 Vox Media just severed their contracts with
10 more than 200 freelancers because there was
11 this arbitrary decision that if you did more
12 than 35 pieces a year, that you would be
13 considered an employee of that.

14 What can we do to avoid capturing
15 freelancers, who have been the original gig
16 economy -- and happily -- for years? How do
17 we keep you out of this mess?

18 MS. LIQUORI: Well, I would look at
19 the ABC test. The prong that affects me the
20 most is the B prong. It basically states
21 that you can't do work that's similar to what
22 the company does. And it's pretty hard, if
23 you're working for a newspaper -- you know, I
24 do work for newspapers. According to this

1 prong, I wouldn't be allowed to write. I'm a
2 writer, I'm a journalist. I think that's
3 what sparked the --

4 SENATOR SAVINO: Right.

5 MS. LIQUORI: So I would get rid of
6 that. I think that's just very problematic
7 for everybody.

8 The A prong is also problematic
9 because it says that you can't take
10 direction. And any editor-writer
11 relationship that I've ever had, I've always
12 gotten questions. That's what editing is all
13 about.

14 So I would take a really close look at
15 this ABC test. And I just think that we can
16 do better than that. It's obviously not
17 working, just by looking at California.

18 And the 35 article limit, I know that
19 will -- it would hurt a lot of people who do,
20 you know, a lot of quick-hit kind of things.
21 Sometimes people do that much in a week or
22 two. So I felt that that was very arbitrary,
23 and that lacked understanding. So my
24 suggestion would be to learn as much as

1 possible about the industry.

2 SENATOR SAVINO: Thank you.

3 CHAIRWOMAN KRUEGER: Thank you.

4 We're going to -- there are more
5 questions, but we're going to ask you to
6 leave so we can move on, because we're a
7 half-hour late for the next hearing.

8 MS. LIQUORI: Thank you.

9 CHAIRWOMAN KRUEGER: And our last but
10 very important testifier is Patrick Lyons,
11 legislation director, New York State Public
12 Employees Federation.

13 Just in case anyone forgot, this is
14 the workforce development hearing for the
15 State of New York.

16 MR. LYONS: Good morning.

17 CHAIRWOMAN KRUEGER: Thank you. Good
18 afternoon.

19 MR. LYONS: Good morning, Chairpersons
20 Krueger and Weinstein and distinguished
21 members of the committees. My name is
22 Patrick Lyons. I'm the legislative director
23 at the New York State Public Employees
24 Federation. I'm joined by our legislative

1 representative Scott Lorey. Our president,
2 Wayne Spence, sends his regards and his
3 regrets on not being able to attend today's
4 hearing.

5 As you can see from our formal
6 comments, we have identified significant
7 shortcomings in this year's Executive Budget
8 proposal. However, given our limited time, I
9 would like to focus on just a couple of
10 issues that require your immediate attention.

11 First, as you have been hearing in
12 your districts, our members are feeling
13 overwhelmed, overworked, underappreciated and
14 understaffed, and that is due in large part
15 from the flat budgets that we have had over
16 the past many years as well the continued
17 move to privatize the public services that
18 they provide.

19 In this budget the Governor continues
20 a disturbing trend of using private and
21 not-for-profit entities to do the work that
22 was once performed by state employees. And
23 we feel as though continuing to divert these
24 resources away from state agencies that

1 provide critical services to the residents
2 and taxpayers of the state is detrimental to
3 our taxpayers, to our clients, to our
4 members, and to taxpayers in general.

5 The state currently spends more than a
6 billion dollars -- that's with a b --
7 annually on more than 8200 full-time
8 consultants. At the same time, in this
9 year's Executive Budget, the Executive Budget
10 calls for the elimination of more than 1300
11 state positions.

12 We thank you and your colleagues for
13 your continued support for legislation to
14 require cost/benefit analyses be conducted
15 before state agencies enter into outside
16 agreements for services. Conducting these
17 analyses should be a standard operating
18 procedure for all state agencies, and we're
19 hopeful that, working together, we can
20 encourage the Governor to sign this important
21 legislation this session.

22 We encourage you to increase the
23 financial support for the state agencies so
24 that they can once again provide the critical

1 services that they provide to our residents
2 in a cost-effective manner.

3 A second proposal in the Executive
4 Budget that we find disturbing is the
5 proposal to greatly expand the provisions of
6 the current design-build program. That would
7 award a single contract to a single entity
8 for both the design and construction of a
9 project. This proposal expands the number of
10 agencies that would be eligible for that
11 proposal and also makes the program
12 permanent.

13 Design-build allows for the
14 privatization of public work that has been
15 traditionally performed by state employees.
16 These important projects require oversight in
17 order to protect taxpayers and New Yorkers.
18 The current design-build program puts
19 extraordinary responsibility in the hands of
20 developers who are seeking to maximize their
21 bottom lines, and that is why taxpayers need
22 representation during the design,
23 construction and approval phases for all
24 taxpayer projects.

1 Our engineers are prepared to
2 represent the interests of taxpayers and to
3 ensure that projects are designed correctly,
4 utilize materials appropriate to the project,
5 and meet the highest safety standards upon
6 completion.

7 One only needs to look at the issues
8 with the Big Dig in Boston or the recent
9 whistleblower revelations regarding the
10 potential use of faulty bolts on the Governor
11 Mario Cuomo Bridge to understand the
12 importance of having state engineers involved
13 in these projects.

14 We also take note that legislation
15 recently enacted for the City of New York was
16 designed to ensure that city engineers are
17 there to inspect all design projects in the
18 city. We would like to see this safeguard
19 expanded to include state engineers in all
20 phases of the project -- design, construction
21 and inspection.

22 Another area of major concern in this
23 year's Executive Budget is the introduction
24 of this type of design-build proposal in the

1 Office of Information Technology Services.
2 This proposal circumvents traditional design
3 and approval processes and removes safeguards
4 against fraud and abuse.

5 OITS was created to put the state's
6 technology platforms under a single entity to
7 develop, implement and provide a continuity
8 of service for the state's ongoing IT needs.
9 The state should maximize its limited
10 resources by developing the long-term human
11 capital and technological infrastructure to
12 design, implement and maintain these systems
13 in-house. We believe that OITS should use
14 existing staff and expand its staff to meet
15 these critical needs.

16 In the state operations budget, the
17 executive again requests \$1.59 million to
18 train state employees on IT systems for the
19 express purpose of "ensuring that the state's
20 information technology needs can be met by
21 state employees." This money has never been
22 spent in the three years it has been
23 allocated.

24 Our request is that we expand that

1 pool of resources and make it available to
2 the workers so that they can develop this
3 capacity in-house.

4 Another troubling proposal in this
5 Executive Budget is the closure of the DOCCS
6 facilities. Fran Turner mentioned that
7 earlier. We have not seen a plan on what is
8 going to transpire with these closures. We
9 feel as though the year of planning is
10 important for communities, for our members,
11 and for the clients and inmates that they
12 serve, so that we have a transition plan
13 that's appropriate. And we see no compelling
14 reason to change this existing standard.

15 Lastly, the Executive also seeks to
16 achieve budgetary savings by cutting promised
17 health insurance benefits to retirees as well
18 as for new state workers hired after a
19 certain date. Cuts to promised benefits,
20 coupled with the continued downsizing,
21 outsourcing and privatization of public
22 services, only serves to demoralize the state
23 workforce.

24 In sum, we look forward to working

1 with you to reject these proposals, and to
2 strengthen the state civil service system to
3 ensure that the state workforce is there to
4 provide the needed services and ensure the
5 efficient and effective use of state tax
6 dollars.

7 Thank you for your time and your
8 continued support. I'm happy to answer any
9 questions that you might have.

10 CHAIRWOMAN KRUEGER: Thank you.

11 I don't think we have any questions
12 for you, but we carefully follow up with you
13 on your testimony, and appreciate your being
14 here. And say hello to your executive.

15 We are now closing the Workforce
16 Development hearing. We are going to let
17 people who were here for the first hearing
18 leave. We are going to let Senators and
19 Assemblymembers who aren't staying for
20 Housing to leave. Many have already shown
21 up, I feel, for Housing.

22 (Discussion off the record.)

23 CHAIRWOMAN KRUEGER: We're going to
24 ask you to take one or two questions from

1 Senator Jackson.

2 I apologize, Senator Jackson.

3 MR. LYONS: Of course.

4 SENATOR JACKSON: Let me thank you for
5 coming in. I was a state employee from 1975
6 to 1980, then I went to go work for PEF for
7 23 years. So let me thank you for your
8 service, and please communicate with our
9 president, Wayne Spence, that I think he's
10 doing a great job in representing the PS&T
11 unit of the State of New York.

12 But with respect to the budget, do you
13 feel that there's enough right now in the
14 Executive Budget to address the issues and
15 concerns that you have raised in your
16 testimony?

17 MR. LYONS: We feel as though there is
18 room for improvement in terms of the agency
19 budgets. We've been watching the testimony
20 during the course of the week. I think the
21 agency heads were not able to be very
22 forthcoming in terms of the needs that they
23 have and in terms of the resources that are
24 available, and we feel as though additional

1 resources are needed to enhance the services
2 provided through the agencies.

3 SENATOR JACKSON: Now, you had
4 mentioned in your testimony about the
5 design-build and the fact that PEF has
6 hundreds of engineers in order to do the type
7 of work that is necessary, but it seems as
8 though the Governor wants to contract out to
9 others in the business.

10 Do you think that -- I believe the
11 contract says that they must use state
12 employees first before they contract out? Do
13 you know about that?

14 MR. LYONS: I believe the design-build
15 is separate and apart from that and they
16 don't necessarily need to use state engineers
17 on those projects.

18 SENATOR JACKSON: Do you think that
19 putting in legislation that mandates that
20 state employees be used first may be the
21 appropriate way in order to ensure that the
22 state uses its employees to carry out the
23 work?

24 MR. LYONS: Absolutely. The state

1 employees should be the first opportunity for
2 these kinds of projects. And at a minimum,
3 the taxpayers need to have representation on
4 these projects to make sure that they're
5 being handled appropriately.

6 SENATOR JACKSON: Now, looking at the
7 SUNY hospitals, I see in your testimony that
8 you are asking that the \$87 million subsidy
9 be restored. Now, you understand, as far as
10 the budget, there's about a \$6.2 billion
11 deficit with about \$4 billion of Medicaid.

12 MR. LYONS: Yes.

13 SENATOR JACKSON: How would the
14 Medicaid situation impact SUNY hospitals and
15 the members that you represent?

16 MR. LYONS: I don't have the answer to
17 that handy, but I can certainly follow up
18 with your office on that. We're asking for
19 the additional resources to make sure that
20 they're still operational because of the
21 important function that they serve in their
22 communities.

23 SENATOR JACKSON: I want to thank you
24 for coming in and giving your testimony, you

1 and the leader of PEF.

2 MR. LYONS: Thank you, Senator.

3 SENATOR JACKSON: Thank you, Madam
4 Chair.

5 CHAIRWOMAN KRUEGER: Thank you. And
6 I'm sorry I didn't see you before,
7 Mr. Jackson.

8 All right, now we are officially done
9 with the Workforce Development hearing.

10 If everybody who was here for this
11 hearing and doesn't want to hang out, wants
12 to leave, we need about five minutes to
13 transition the tech material between the
14 Senate and the Assembly. The Assembly runs
15 the Housing hearing, and we do see many of
16 our colleagues from both houses. We'll be
17 introducing you when the next hearing starts.
18 It might be a good leg-stretch minute or two.

19 (Whereupon, at 12:35 p.m., the budget
20 hearing concluded.)

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