S.8306-B, Part Y (Budget) and S.8309-A, Part II (Budget)

STAFF CONTACT : Ken Pokalsky | Vice President | 518.694.4460

BILL	**S.8306-B, Part Y (Budget) and S.8309-A, Part II (Budget)**
SUBJECT	**Unemployment Insurance Program**
DATE	**March 18, 2024**
OPPOSE	

The Business Council strongly opposes provisions in the Senate budget resolution and budget bills related to the state's Unemployment Insurance (UI) program. The Senate's proposal: fails to provide employers any relief from record-high unemployment insurance taxes; adds billions in additional costs to a UI program still deeply in debt; fails to fully address the state's remaining $7 billion in federal UI advances; and imposes a 24 percent tax increase on a small share of New York businesses.

Specifically, the Senate budget provisions would:

- reduce the UI benefit wait period for striking workers from two weeks to one week, and

- increase the Corporate Franchise Tax rate to 9% for taxpayers with a business income base over $5 million for tax years 2024, 2025 and 2026, and while neither the Senate bills nor resolution specifies the use of this new revenue (projected at $5.1 bill in aggregate), the resolution states that it will advocate its deposit into the state unemployment insurance account, and the reinstitution of maximum benefits indexed to the state annual weekly wage.

<u>Strikers' Benefits</u> – While advocates for a reduction of two-week waiting period argue that striking workers are treated unfairly under the state's UI system, the opposite is true – strikers are already afforded UI benefits under circumstances that make virtually all other workers ineligible.

The UI system pays benefits to employees who, in most cases, have lost employment due to factors beyond their control but who remain in the labor market and continue to actively seek employment. (State law has "good cause" exemptions for cases involving domestic violence, the illness or disability of immediate family members, and several other specific circumstances.)

Strikers' benefits run counter to these core provisions of federal and state UI laws. Despite no specific strikers' exemption from the availability and job search mandates in federal or state law, striking workers receive UI benefits in New York without meeting these eligibility requirements that apply to all other workers. Moreover, New York is one of just two few states that provides UI benefits to workers on strike under any circumstance. We note that California's Governor Newsom vetoed legislation providing UI benefits to strikers in September 2023, saying "Now is not the time to increase [UI] costs."

Indexed Benefits – State legislation adopted in 2013, based on negotiations involving business and organized labor, included multiple amendments to the state's UI program intended to both increase claimant benefits and improve the UI fund's financial stability. Among those amendments was the indexing of maximum UI benefits to increases in the state average weekly wage (AWW, with benefits at an increasing percentage of the AWW, to a cap of 50%), with the indexing to be suspended if the state's UI fund balance shrinks to a specified level (i.e., 30% of the "average high-cost multiple" as defined in federal law.) This provision was triggered after the state's 100% "reduction in force" mandate issued in March 2020, which resulted in an almost immediate loss of 1.7 million jobs and $13 billion in "regular" state employer-funded UI benefits that year alone - pushing the state's UI program deep into the red.

The Senate's proposal, while lacking key details, argues for an unspecified increase in maximum benefits in 2024 (we assume to 40% of the AWW), and further increases in the maximum benefit to 44% by 2026. Based on the currently applicable state average weekly wage of $1,785, this would be a 42% increase in the maximum benefit this year, and a 56% increase in 2026. When a similar proposal was considered in 2022, an informal cost estimate was more than $500 million annually, so the impact of the current proposal on the UI would be even greater now.

We believe that these costs are unsustainable in the state's UI system, even with the temporary influx of funds as proposed by the Senate.

Paying Down the UI Debt – Federal law provides funding advances to states to continue making UI benefit payments during times of severe economic stress. New York's advances peaked at $9.7 billion in April 2022. Since then, the state has paid down nearly $3 billion in principle, and several hundred million in interest payments, exclusively through increased federal and state payroll taxes on employers.

In sharp contrast, since 2022 thirty-four other states have devoted more than $26 billion in federal emergency aid and general fund resources to pay down their states' UI debt. New York is one of only two states with UI debt dating back to the COVID recession, and the only state that has failed to take any meaningful steps to reduce the UI tax burden on its employers.

As such, it is ironic that the Senate is now proposing a significant 24% increase in the corporate franchise tax rate to provide increased funds for the state's UI program. And while the UI program is designed to be experience-rated – meaning that employers with significant layoffs pay higher UI taxes – this proposal imposes this estimated $5.1 billion multi-year tax increase on a small fraction of the state's business community.

Moreover, this proposal will provide zero UI tax relief to New York employers for the next several years, at least, as combined federal and state UI taxes will continue to increase until the state's federal advances are fully paid and the balance in the state's UI fund increases.

Since the state's massive UI system debt was the result of state policy mandates, rather than business actions, we strongly recommend that any refinancing proposal include an infusion of public funds – as has been done by virtually every other state that experienced UI program financial stress as a result of the COVID pandemic. This relief can be through partial paydown of the outstanding balance, state payment of annual federal interest charges, state repayment of COVID-era fraudulent UI benefit payments and/or state offsets for increased federal UI tax charges.

However, we believe the increased UI program costs and lopsided tax mechanism in the Senate budget proposal are ill-advised. We strongly recommend against their approval.