



2024 End of Session Wrap Up

The 2024 Legislative Session concluded on Saturday, June 8th. The end of session was marked by a last-minute turn of events. The governor without warning decided to delay the implementation of New York City's congestion pricing plan which was to take effect on June 30th. Due to this decision, a \$1 billion gap was created in the MTA's capital budget. The legislature felt blind-sided by the governor's move, and this caused negotiations on several fronts to break down. Although the governor proposed to fill this new gap via a payroll tax on NYC employers, the legislative leaders quickly nixed this proposal and left Albany without fixing MTA's new shortfall. Legislative leaders would not commit to addressing the issue by year's end. There is a feeling within some of the majority conferences of both houses that the governor created this mess, and it is up to her to fix it.

The following is a summary of our wins and possible losses depending on the governor's final action on legislation delivered to her desk. More detail is provided on each bill after this summary.

The Chamber was successful in preventing several harmful and costly bills from being passed by both houses. These included the "Temperature Extreme Mitigation Program (TEMP) Act" which would impose regulations on all indoor and outdoor worksites; expansion of the state's anti-trust law; the packaging reduction and recycling infrastructure act (EPR); and the NY Home Energy Affordable Transition Act (HEAT Act).

Unfortunately, we were not able to prevent both houses from passing bills that will be costly to both employers and consumers. These include expanding the kinds of damages recoverable in wrongful death actions; the Retail Worker Safety Act; the Climate Change Super Fund Act, and a mandate that new residential and commercial properties include EV charging stations and EV ready parking spaces. We will be requesting the Governor vetoes these bills.

WINS:

The TEMP ACT would impose strict standards and requirements to regulate the temperature in both indoor and outdoor worksites and require business owners to medically monitor employees

for heat related illnesses and injuries. The Chamber opposed this bill because the vast majority of business owners value already provide a safe and healthy workplace. This includes ensuring employees are protected from heat-related illnesses and injuries. Employers make these determinations based on the unique and ever-changing circumstances which includes unpredictable weather conditions. These determinations made by businesses, including small business owners, are guided, and enforced by federal employee safety obligations under the Occupational Safety and Health Act (OSHA). This bill did not move out of the Assembly Ways & Means Committee, nor did it move out of the Senate Finance Committee.

The ANTI-TRUST BILL would specify that any actions or practices which attempt to establish a monopoly or monopsony are illegal and void; would make unlawful that persons in a dominant position in the conduct of any business, trade, or commerce, in any labor market, abuse that dominant position; would establish premerger notification requirements; and would allow recoverable damages to be recovered in any action which a court may authorize as a class action.

The Chamber understands and supports the importance of our antitrust laws in helping to promote healthy competition in our free market. The protection provided to markets by antitrust laws has fostered economic growth and innovation, allowing consumers to benefit from higher quality products and better services, all at lower prices. The system has and continues to work well. Antitrust enforcement today appropriately places consumers at the heart of the law.

This legislation would move away from that standard as it does not require any showing of potential or actual harm to consumers arising from the business conduct in question. In fact, contrary to existing federal and state antitrust statutes, aimed clearly at assuring market competition for the benefit of consumers, this legislation seems to provide protection to other market participants, including those impacted by more successful competitors.

The Chamber opposed this legislation. Although the bill was passed in the Senate, it did not move out of committee in the Assembly.

The EPR Bill would create an Extended Producer Responsibility (EPR) program that would require producers of packaging to be responsible for managing post-consumer packaging waste, would establish non-reusable packaging reduction requirements for packaging producers, and would ban the use of certain substances and material from packaging.

The Chamber has long opposed this legislation. The bill arbitrarily excludes packaging with potentially thousands of chemicals at any amount from being considered recyclable. The designation of substances to be excluded would affect a significant amount of current packaging within two years of the bill's effective date. As such, many packaging products would end up at the sorting facility as contaminants and will be landfilled.

The legislation defines "Toxic Substance" as any chemical substance identified by the Department of Environmental Conservation (DEC) or other government entity, research university or other scientific entity deemed authoritative based on credible scientific evidence. The bill also allows

DEC to periodically add to the banned substances list. This language runs counter to the recently finalized chemical regulation legislation signed into law in New York State that focused on children's products. The legislation laid out a framework for working with expert scientists, identifying high priority chemicals, taking action, and making decisions on those chemistries when warranted by the best available risk assessment science on thousands of products.

The bill creates an overly broad prohibition and disregards sound science and could potentially have major unintended socioeconomic, environmental, and public health consequences by arbitrarily eliminating packaging best suited for, among other uses, food preservation, medical supply and device protection and hazardous materials containers. As written, the bill excludes advanced recycling from the definition of "recycling" (does not include: (A) energy recovery or energy generation by any means, including but not limited to . . . pyrolysis, gasification, solvolysis, waste-to-fuel; (b) any chemical conversion process). It also therefore excludes advanced recycling outputs from the definition of "post-consumer recycled material." Advanced recycling is not incineration. Advanced recycling converts post-use plastics into their original building blocks, specialty polymers, feedstocks for new plastics, waxes, and other valuable products.

Although the bill was passed in the Senate and was moved to the floor of the Assembly, the Assembly never brought it to a vote.

The HEAT Act – This legislation would amend the Public Service Law to include achievement of the Climate Leadership and Community Protection Act, or CLCPA. According to the bill sponsors, this legislation is to ensure that state regulation and oversight of gas utilities provides for the equitable achievement of the climate justice and emission reduction mandates set forth in the CLCPA. This bill provides the Public Service Commission with the authority and direction to align gas utility regulation and gas system planning with the CLCPA's mandates.

Specifically, the bill removes the legal basis and subsidies driving the expansion of gas systems and requires the commission to adopt rules to provide for the timely and strategic decarbonization and right-sizing of the gas distribution system in a just and affordable manner prioritizing low-to-moderate income customers and disadvantaged communities and encouraging neighborhood-scale transitions. The Chamber believes this is already the case under the CLCPA, as "all state agencies, offices, authorities, and divisions" are required, when considering and issuing permits, licenses, and all other administrative approvals, to consider whether they are inconsistent with the CLCPA or will interfere with the attainment of the CLCPA's statewide greenhouse gas emission reduction mandates, and where that is the case, to require justification and mitigation measures if such actions are to be approved.

Even so, the CLCPA does not impose any specific restrictions on the use of natural gas or changes in the natural gas distribution system, including the significant system restrictions authorized under the HEAT Act. Many businesses - especially those likely to be designated as "emissions intense" and "trade exposed" (EITEs) under the state's pending "cap and invest" rule - will

continue to rely on adequate and affordable natural gas for the foreseeable future to remain economically viable.

The Chamber is genuinely concerned that the HEAT Act's broad authority to prohibit some uses of natural gas and mandate the discontinued use of portions of the gas distribution system will result in significant uncertainty for numerous in-state businesses, and adversely impact decisions to invest or re-invest in gas-dependent operations. Importantly, the state's electric grid needs significant upgrades and expansions to accommodate the shifting of building and transportation energy needs from fossil fuels to electric power, and the state needs dramatically increased renewable energy production and storage capacity to meeting system supply and reliability needs under the CLCPA's decarbonization goals. Expedited contraction of the natural gas distribution system would only make these other transition efforts more economically disruptive and costly.

As the state moves forward on CLCPA implementation, it is crucial to avoid imposing excessive restrictions on access to reliable energy supplies, and to leave open options to achieve greenhouse gas emissions with the least amount of economic disruption.

The Chamber opposed this legislation, and although it passed in the Senate, the bill never moved out of committee in the Assembly.

LOSSES:

WRONGFUL DEATH Bill – This bill would radically expand the kinds of damages recoverable in wrongful death actions. Specifically, the bill would amend the Estates Powers & Trusts Law (EPTL) section 5-4.1 to extend the time permitted to bring a wrongful death action by one year and six months; amend EPTL section 5-4.3, to permit recovery of damages for emotional loss when a tortfeasor is found liable for causing a death; amend EPTL section 5-4.4 to permit recovery by close family members; and amend EPTL section 5-4.6 to replace distributees with persons for whose benefit the action is brought. The bill would take effect immediately and would apply to all pending actions and actions commenced on or after such an effective date.

Current law regarding wrongful death claims allows recovery for all economic losses arising from the death of a family member, as well as for pain and suffering prior to death. While the grief felt due to the loss of a loved one cannot be disputed, pain and suffering experienced by those not directly injured is not recoverable due to the difficulties in ensuring that juries decide cases based on facts and not sympathy. Emotional losses are speculative. Other causes of action already exist under current law.

The bill's proposed expansion of the law would unduly increase the costs to municipalities, businesses, and individuals defending themselves in New York's civil courts. A report prepared by Milliman, Inc, estimates that for medical professional liability, automobile liability, and general liability, annual loss and loss expenses in New York would increase by 12.6% or \$2.09 billion.

The Chamber will request that the governor vetoes this bill. She has vetoed this bill each year that it has been delivered to her desk.

RETAIL WORKER SAFETY Act – This bill would establish the retail worker safety act requiring employers of retail workers to develop and implement programs to prevent workplace violence. The bill is aimed at increasing worker safety by imposing misplaced mandates on business owners in an ill-advised attempt to prevent workplace violence.

According to the bill sponsors, retail workers are subject to constant verbal harassment, threats of violence and actual violence. Violence has become normalized in retail settings, especially since the pandemic, when retail workers had to enforce mask wearing and social distancing rules to keep themselves safe.

While the sponsors' goals are well intentioned, the focus of their legislation is misdirected. In terms of workers that are subjected to harassment, harassment by a third party, including customers, clients, constituents, or any other individual being served by an employee, is already covered under the New York State Human Rights Law. Current law also explicitly includes protection in employment from harassment based on any protected class.

In terms of acts of violence, the burden of preventing violence at the workplace, or anyplace for that matter, is with law enforcement not with business owners. No amount of mandated employer provided training, risk assessments, or record keeping will reduce the risk of workplace violence. Such a risk should and must be reduced by crime prevention, enforcement, and prosecution on the part of our law enforcement agencies and prosecutors. To that end, the recently adopted budget included provisions to crack down on retail theft by changing the penal code, offering tax credits, and funding state and local law enforcement.

However, as the Chamber had mentioned during our meetings with legislators this year, proposals to require small businesses to hire private security guards, install expensive anti-theft equipment, or to report incidents into a public database should be rejected. New York's state and local law enforcement are responsible for enforcing public safety laws, not business owners. Our business owners are losing money due to stolen goods, property damage, and investments in expensive antitheft equipment. New Yorkers visiting businesses, large and small, are frustrated with their shopping experiences with items placed behind locked cabinets. Retail workers and customers question their safety. Retail theft and prevention efforts are eating into small businesses' already thin profit margins and leading to higher prices for consumers. This situation will only end not by the continued efforts of business owners, but by supporting the efforts of and providing the necessary resources to law enforcement.

Workers are safe when laws are enforced. It is the Chamber's hope that through the provisions and resources included in the budget, combating retail theft will be prioritized, the safety of our

businesses, their employees and customers will be ensured, and our businesses will stop losing billions of dollars to those responsible for committing these crimes. To be clear, the burden of preventing violence and fighting retail theft is and must remain on law enforcement, not on our businesses and not on their employees. The proper enforcement of our laws is the only way to ensure the safety of all.

The Chamber will request that the governor vetoes this bill.

EV CHARGING STATION Bill – This bill would require that new construction with dedicated off-street parking involving a garage, driveway, parking lot or other off-street parking have electric vehicle charging stations or electric vehicle ready parking spaces.

While the Capital Region Chamber supports efforts to reduce the carbon intensity of our economy, we believe that the state’s energy policies must ensure access to secure, affordable, and reliable energy, protect energy consumers and their choices, and provide meaningful environmental progress. The Chamber appreciates the sponsors’ intent behind this legislation. However, we believe that it would be imprudent to enact this bill. Consumers and businesses are already facing ever increasing prices due to inflation, a tight labor market and supply chain constraints. These price increases have impacted residential and commercial real estate development. The mandates included in this legislation would only exacerbate this situation. The Legislature should not be considering policies that will reduce consumer choice, increase construction costs of residential and commercial properties, and ultimately harm our economy.

It is important to note that under the Climate Leadership and Community Protection Act, the Climate Action Council was tasked with developing a draft scoping plan that serves as an initial framework for how the state will reduce greenhouse gas emissions, achieve net-zero emissions, and increase renewable energy usage. The CAC’s Final Scoping Plan was adopted on December 19, 2022. One of the CAC’s recommendations is related to the pending legislation. Unfortunately, as with the scoping plan, the sponsors of this bill fail to provide a cost estimate for this proposal. The Legislature should avoid acting on any energy policy related legislation until they provide the public with a full fiscal analysis of each proposal. It would be imprudent to do otherwise and goes against public transparency.

The Chamber will request that the governor vetoes this bill.

CLIMATE CHANGE SUPERFUND Act – This bill would establish a Climate Change Adaptation Cost Recovery Program that would require companies that have contributed significantly to the buildup of greenhouse gases in the atmosphere to bear a proportionate share of the cost of infrastructure investments required to adapt to the impacts of climate change in New York State. The obligation to pay under the program is based on fossil fuel companies' historic contribution to the buildup of greenhouse gases. The program would operate under a standard of strict

liability; companies would be required to pay into the fund because the use of their products caused pollution. No finding of wrongdoing would be required. According to the bill sponsors, there is a potential to collect up to \$75 billion over 25 years for climate change adaptive infrastructure projects in the state. Monies received would be deposited in the climate change adaptation fund.

This bill has been introduced each year since 2021. Although it had passed in the Senate in prior years, it had never moved in the Assembly. This bill was a last-minute addition to the Assembly's end of session must-do list. It is likely that because several environmental bills were unlikely to be passed by both houses, (partly due to the Chamber's and our allies' strong opposition), Speaker Heastie decided to have the Assembly pass this bill on the last day of session.

The real intent of this bill is to hide the actual costs associated with the state's overly aggressive greenhouse gas emission reduction law, the Climate Leadership and Community Protection Act (CLCPA). The Chamber has long opposed the CLCPA and the final energy plan it created largely because the state has never publicly provided the cost estimates associated with implementing the plan.

The Chamber will request that the governor vetoes the bill.