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NEW YORK STATE ASSEMBLY
JOINT ASSEMBLY STANDING COMMITTEE ON WAYS AND MEANS
ASSEMBLY STANDING COMMITTEE ON ECONOMIC DEVELOPMENT,
JOB CREATION, COMMERCE AND INDUSTRY
ASSEMBLY STANDING COMMITTEE ON CORPORATIONS,
AUTHORITIES AND COMMISSIONS
ASSEMBLY STANDING COMMITTEE ON LABOR

PUBLIC HEARING
on
EMPIRE ZONES PROGRAM REFORM

Hamilton Hearing Room (B)
Legislative Office Building, 2nd Floor
Albany, New York

Monday, April 26, 2004
11:15 a.m. to 4:25 p.m.

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ASSEMBLYWOMAN PATRICIA L. ACAMPORA

15 ASSEMBLYMAN CLIFFORD W. CROUCH

16 ALSO PRESENT:

ASSEMBLYMAN HARVEY WEISENBERG

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1 federal agencies, OSHA, which has a website which is
2 not the most easy to decipher, it becomes literally
3 hard work, phone calls, detective work.

4 MS. JOHN: All right. So, I mean,
5 would it be fair to say that you would mostly be
6 relying on the collective bargaining representatives
7 to bring to your attention if there were an NLRB
8 action going on?

9 MR. DUBOWSKY: Yes, ma'am.

10 MS. JOHN: Thank you.

11 MR. FARRELL: Thank you, Doctor.

12 MR. DUBOWSKY: Thank you, sir.

13 MR. FARRELL: Frank Mauro,
14 Executive Director, Fiscal Policy Institute.

15 MR. FRANK MAURO, EXECUTIVE
16 DIRECTOR, FISCAL POLICY INSTITUTE: Since Richard
17 left, does that mean I can read my testimony?

18 MR. FARRELL: I'm sorry?

19 MR. MAURO: I said since Richard
20 left, can I read my testimony? You asked everybody
21 to summarize their testimony. Or should I summarize
22 it?

23 MR. FARRELL: No, you're given an
24 option. You can do whatever you wish, Doctor.

1 (Off-the-record discussion)

2 MR. MAURO: I will not read my
3 testimony. You can read it. I think it makes sense.
4 I'll focus on a few of the things in it.

5 First of all, there has been a
6 discussion of the boundary amendment process, and I'm
7 going to focus on that specifically. I think that
8 while there are many aspects of the Empire Zones
9 Program that could be improved, I think the boundary
10 drawing, the boundary amendment process in the last
11 several years has been contrary to the law and risks
12 the program passing constitutional muster.

13 The root of many of the current
14 problems with the Zones Program date to 2002, when
15 the rules were amended to excise a phrase, quote,
16 "Provided, however that no Zone shall consist of more
17 than three noncontiguous areas." While the
18 department certainly could have initiated a
19 rule-making process to make that change, it did not
20 initiate a regular rule-making process.

21 In 1998, the State Administrative
22 Procedures Act was amended to provide for a new
23 expedited rule-making process that State Agencies
24 could use for making noncontroversial technical

1 amendments to their existing rules and for adopting
2 new noncontroversial rules. This was Chapter 210 of
3 the Laws of 1998 on the bottom of page two, signed
4 into law by Governor Pataki on July 7th. It replaced
5 three separate provisions of SAPA that had previously
6 existed for the adoption of minor rules and for the
7 repeal of obsolete and invalid rules with a single
8 expedited process for the adoption of what it defined
9 as a consensus rule. That change took effective on
10 October 1st of 1998.

11 In order to use this new consensus
12 rule-making process, an agency must conclude that no
13 person is likely to object to adoption because the
14 rule merely - and it lists three things - repeals
15 regulatory provisions which are no longer applicable
16 to any person; implements or conforms to
17 non-discretionary statutory provisions; or makes
18 technical changes or is otherwise non-controversial.

19 And it then must include in its
20 notice of its proposed consensus rule-making in the
21 State Register a statement setting forth a clear and
22 concise explanation of the basis for the agency's
23 determination that no person is likely to object to
24 the adoption of the rule as written.

1 In the March 8th, 2000 edition of
2 the State Register, the New York State Economic
3 Development Department proposed to use this new
4 provision in a way that was clearly inconsistent with
5 the letter and intent of the law. In this
6 rule-making, DED used the new consensus rule-making
7 process to repeal a requirement that New York State
8 Economic Development Zones, and now called Empire
9 Zones, could not consist of more than three
10 non-contiguous areas. It proposed to do this by
11 simply excising the following clause from Section
12 10.6 of its rules: "Semi-colon, provided, however,
13 that no Zone shall consist of more than three
14 noncontiguous areas."

15 The required statement as to why
16 this proposal qualified as a consensus rule concluded
17 with the following sentences: Quote, "With no limit
18 on the number of non-contiguous areas allowed in the
19 Zone, EDZs will eventually include only property used
20 for productive business activity. The proposed rule
21 would thereby enhance the Department's mission of job
22 growth and job retention. Due to the beneficial
23 nature of the proposed rule, the Department has
24 determined that no person is likely to object to the

1 adoption of the rule as written."

2 While this statement certainly --
3 end quote. While this statement certainly explains
4 why the Department believed that this rule change
5 would be good, it did not endeavor to explain in any
6 way how this proposal met the definitional standards
7 of SAPA for a consensus rule. The only one of the
8 standards that could conceivably have applied in this
9 case was that the Department concluded that no person
10 is likely to object to adoption because it merely is
11 otherwise noncontroversial. It is hard to believe
12 that the Department believed this. But in any event,
13 it did not endeavor to say why the proposal was
14 otherwise noncontroversial. And subsequent events
15 have certainly demonstrated that this was a quite
16 controversial proposal.

17 Note, for example, the Assembly's
18 efforts in the 2002 amendments to the Zones Law to
19 address the problems created by this rule change
20 through the 75/25 provisions and the Governor's
21 efforts this year to deal with these problems through
22 the superboundary and related proposals in the
23 Article VII revenue bill that he submitted in
24 conjunction with this year's Executive Budget.

1 The Commissioner of Economic
2 Development should be held accountable for this
3 misuse of a reasonable safety-valve mechanism that
4 was added to the State Administrative Procedures Act
5 to deal with truly technical and noncontroversial
6 rules.

7 The Department tried to use this
8 consensus rule-making process again in 2002 to
9 further eviscerate the standards for targeting. And
10 I've attached here that 2002 rule-making and my
11 comments on that. Under the consensus rule-making
12 law, if the Department receives any negative
13 comments, it must withdraw the rule, and it did. And
14 it could have re-issued the rule as a real
15 rule-making and withstood public comment, but it
16 chose not to do that.

17 As indicated above, I do not
18 believe that DED's 2000 rule changes and the way it
19 was subsequently implemented, that rules change,
20 would have proven to be problematical as it has if
21 the benefits available under the program had not been
22 greatly enriched by legislative action later in the
23 year. I have been told on several occasions by
24 Assembly staff that they were unaware of DED's rule

1 change at the time that the enrichment of the program
2 was being negotiated. This seems logical to me since
3 the Assembly worked expeditiously to close this barn
4 door through the 75/20 (sic) rule once the nature and
5 use of the rules change became known.

6 When the 75/25 rule was first being
7 negotiated, when the budget was close to adoption in
8 the spring of 2002, in a conversation, the Director
9 of the Zones program was complaining to me about the
10 intricate nature of this rule and its complicated
11 nature. I mentioned that the rule that they had
12 adopted in the first place that made this 75/25 rule
13 necessary had been done on a consensus rule-making
14 process, which was not applicable in this case. And
15 the Director's response was, "Well, the Assembly
16 could have objected to that rule the way you objected
17 to our current one."

18 I don't think that this is a game
19 that they should be trying to get rules adopted when
20 people don't happen to read a particular week's issue
21 of the State Register. I think this should be
22 investigated, and I think there's a good chance that
23 this rule would be found null and void.

24 While the 2000 rules change

1 certainly allow a Zone to be comprised of more than
2 three noncontiguous areas, even if it was legally
3 adopted, I believe that the Department has been
4 incorrect in its conclusion that this rules change
5 allows for many of the kinds of scatter-shot spot
6 zoning boundary changes that it has approved since
7 the adoption of this rule.

8 Why is that? My conclusion in this
9 regard is based on the language of the opening
10 sentence of Subdivision (a) of Section 958, which
11 says, "To be eligible for designation as an Empire
12 Zone, an area must be characterized by pervasive
13 poverty, high unemployment, and general economic
14 distress, must correspond to traditional neighborhood
15 or community boundaries, and where appropriate be
16 bounded by major natural or man-made physical
17 boundaries such as bodies of water, railroad lines,
18 or limited-access highways, and must meet the
19 following requirements," and then it goes through the
20 statistical requirements.

21 Under current law, this provision
22 that I just quoted of Section 958(a) also applies to
23 the Zones designated pursuant to 959(b), (c), and (d)
24 since each of these latter sections only

1 notwithstanding paragraph (i) of Subdivision (a), not
2 any of the other parts of Subdivision (a). Paragraph
3 (i) of Subdivision (a) establishes the quantitative
4 criteria for Zone designation. Subdivisions (b), (c)
5 and (d) provide alternative criteria which can be
6 used in lieu of paragraph (i) of Subdivision (a), but
7 they do not notwithstanding the general requirement.

8 When I mentioned this to some
9 officials, some local Zone administrators, or to the
10 former Director of the Zones Program, I said, "Well,
11 what does community or neighborhood mean?" I mean, I
12 think they really need to buy dictionaries for the
13 people at Department of Economic Development. They
14 don't know what noncontroversial means. They don't
15 know what community means. They don't know what
16 neighborhood means. This is not anything that we
17 ever envisioned in writing this law in the first
18 place.

19 My recommendation in dealing with
20 this: The Commissioner of Economic Development
21 should be required to review all of the existing
22 Zones to determine if and how the requirements of the
23 opening sentence of Section 958 are being complied
24 with and make appropriate changes in all of the Zone

1 boundaries to ensure compliance with this
2 requirement. Appropriate transition rules should be
3 adopted by the Legislature for businesses that are
4 outside of boundaries complying with these statutory
5 requirements, but which have already been fully
6 certified. No additional certifications should be
7 made until such boundary changes are made.

8 While the Legislature has broad
9 discretion in establishing classes for purposes of
10 tax laws, there must be a rational basis to the
11 distinction drawn by the Legislature in order to pass
12 muster under the equal protection clauses of the U.S.
13 and New York State Constitutions. The way in which
14 the boundary amendment process has been implemented
15 in the last several years undercuts the
16 classifications that have been established by
17 statute. The statute, in effect, creates classes.
18 It establishes rules by which some people are taxed
19 in one way and other businesses are taxed in another
20 way. That's pretty powerful that you can be taxed in
21 that different way. And the Legislature has a
22 legitimate classification. But the implementation of
23 the rules has undercut the validity of that. And so,
24 we have today a situation where there are many

1 businesses who are in exactly the same circumstances
2 as people who are in Zones who aren't getting
3 benefits that people in Zones are.

4 In order for a program like the
5 Zones Program to be constitutional, there have to be
6 clear criteria, clear distinctions, for where those
7 Zones are and what benefits they get.

8 What does the current law do? The
9 current law sets the general standard I read about an
10 area being characterized by pervasive poverty, high
11 unemployment, and general economic distress, and
12 corresponding to traditional neighborhood and
13 community boundaries. And then it has four different
14 sets of quantitative criteria, at least one of which
15 have to be made. But that's not all. Then, it has
16 to apply, and it has to be designated as Zone. But
17 on the basis of what? Something that hasn't been
18 evaluated at all.

19 What the Zones have to do to be an
20 applicant for a Zone, what you have to show to be
21 designated is you have to show that you're going to
22 do all these other coordination of services, that
23 you're going to work to make child care available,
24 you're going to work to make job training available.

1 It's an entire long list. And the Governor's
2 proposed bill would repeal many of those requirements
3 on the part of the Commissioner of Economic
4 Development.

5 I think that the law as it
6 currently stands, if implemented properly, would
7 probably pass Constitutional muster. But as it has
8 been implemented, I think if you review this in a
9 thorough way, based on any constitutional review of
10 the -- or for any rational basis, they have
11 administered this program in a way that totally
12 undercuts its constitutionality.

13 There are also possible legal
14 problems with the amount of discretion that the
15 Legislature has granted to administrative officials
16 in determining which businesses are taxed one way and
17 which similarly taxed businesses are treated in a
18 different way. The way the law is set up, it
19 distinguishes between the boundary amendment process
20 and the certification process. The law does not
21 envision that the boundaries will be amended for
22 specific businesses. It envisions that there can be
23 boundary changes for changes in circumstances, but
24 the certification process is separate from the

1 boundary amendment process. And local governments
2 are required to, by local law, to designate a
3 certification officer who cannot be a member of the
4 Zone Administrative Board.

5 The Zone Administrative Board is
6 the body which approves boundary amendments and
7 otherwise runs the program. But they create this
8 separation to try to make this program
9 constitutional. I worked on the original drafting of
10 this legislation in 1986, and that is what we are
11 trying to do is to figure out a way to establish a
12 constitutional process.

13 Now, what's going on in practice is
14 that the boundary amendments are frequently made to
15 fit particular businesses. The Commissioner of
16 Economic Development is the only gatekeeper on the
17 boundary amendments, whereas certifications have to
18 be approved also by Labor and by the local
19 certification officer. Boundary amendments coming
20 from the local Zone Administrative Board and the
21 local government only have to be approved by the
22 Commissioner of Economic Development.

23 There are several problems that
24 have occurred. The Commissioner of Economic

1 Development is required to hold a hearing when land
2 is being excised from a Zone, but the Commissioner
3 deems that the hearing that the local governing body
4 holds on the local law with the boundary changes
5 meets that requirement. If you read the law, it's
6 clear that that is supposed to be on the application.
7 And the applications, with the reasons why the
8 boundary amendments are made, are frequently not
9 available, and never to my knowledge are presented at
10 the time the hearing by State law for a local law are
11 held on the local law amendment.

12 So, the required hearings are not
13 being held. And in many cases, the Commissioner of
14 Economic Development, through his staff, approaches
15 the local Zone bodies with parcels that he would like
16 to see in. And I know of a case in my home Zone
17 where there is a parcel that was being added for what
18 was really a local project that was a remote parcel.
19 Everybody I've ever talked to at the staff of the
20 Department of Economic Development thought it was a
21 stinker, but they had to approve it. Why?

22 My conclusion is they had to
23 approve it because in the same package was a parcel
24 that the Commissioner of Economic Development through

1 his staff had approached the local people to put in.
2 So, they had him over a barrel. So, he had to
3 approve it.

4 The stuff he said earlier about
5 doing what the locals want, I mean, when you read the
6 rules on certification and the law on boundary
7 amendments, the Commissioner's job isn't to do what
8 the local governments wants. He has standards he has
9 to follow. When it comes to certification, he has
10 standards that are the same as Labor and local
11 government, and he has some additional ones. And
12 Labor has some additional ones.

13 I think this problem of conflicts
14 of interest is most severe in cases where Zone
15 administration has been contracted out to
16 nongovernmental organizations. And this is ironic,
17 because some of these nongovernmental organizations
18 do a very good job of administering the program. But
19 here you have a private body not subject to the
20 Freedom of Information Law, not subject to the Open
21 Meetings Law, administering the program and making a
22 decision that this business will pay taxes on one law
23 and this business will pay taxes on a much more
24 onerous law.

1 The Governor has actually proposed
2 in his bill that they amend the law to eliminate the
3 requirement for a separate Zone Certification
4 Officer, and that they let the Zone Coordinator be
5 the certifier, totally eliminating the needed and
6 intended checks and balances. The Zone Coordinator
7 is frequently an employee of this nongovernmental
8 organization. They are, to a degree, quite
9 responsive, and the Governor's goal is to make them
10 more responsive to the Department of Economic
11 Development, and it is not a separate check.

12 But I think this whole idea, even
13 though some of these nongovernmental organizations do
14 a decent job, I think the idea of allowing
15 nongovernmental organizations to determine which
16 businesses pay taxes in one way and which businesses
17 pay taxes in another way could not conceivably be
18 right or constitutional.

19 In addition to what's in my
20 prepared testimony, we have a ten-point plan for
21 reforming the Zones that go into things that I think
22 are important, but don't strike at the heart of the
23 program as much as this misuse of the boundary
24 amendment process since 2000.

1 MR. FARRELL: Thank you. Susan
2 John?

3 MS. JOHN: Mr. Mauro --.

4 MR. FARRELL: And by the way, I'm
5 glad you gave us the short version.

6 MR. MAURO: Thank you, Denny.

7 MS. JOHN: Mr. Mauro, are most of
8 the county Zone programs administered by
9 nongovernmental entities?

10 MR. MAURO: I don't know. I think
11 they're -- I don't know which are which. I think
12 there's a good number of Zone programs that are run
13 by these nongovernmental organizations.

14 MS. JOHN: And --?

15 MR. MAURO: But since you mentioned
16 the county Zones, I should mention, just if I could,
17 one of the things that I think is very important. We
18 say that we should be strengthening rather than
19 weakening the program's focus on the State's neediest
20 areas. This is in our ten-point plan. I think one
21 of the good things about the Assembly Bill is that it
22 would repeal Subdivision (c) of 958. It is a basis
23 on which you can be certified, not on the basis of
24 anything in your county or your municipality, but you

1 can be certified on some phenomenon in the
2 metropolitan area, even a foreseen phenomenon.

3 So, if there's some reason to
4 anticipate sudden and severe economic disruption
5 someplace in the metropolitan area, a county can be
6 certified. All the Zones certified in the last round
7 in 2002 were certified under this 958(c). And when
8 you look at the list, I don't think you could
9 conclude that these are among the State's neediest
10 areas.

11 MS. JOHN: You may have heard
12 earlier I was questioning about communities that have
13 an increasing tax base as opposed to those with a
14 declining tax base, that that is a factor that ought
15 to be taken into consideration. You know, am I
16 correct in surmising that you would see that as being
17 consistent with the reforms that you're advising?

18 MR. MAURO: Sure. If they were
19 administering the program the way it should be
20 administered, according to the law, I don't think
21 this problem would come up. I don't think the kind
22 of scatter-shot spot zoning that has gone on is
23 legal. They think it's legal because they took out
24 the rule that said you can have more than three

1 noncontiguous parcels. But they're missing the fact
2 that there's this other requirement that says that
3 all Zones, whether they're county Zones or any other
4 Zones, have to meet that definition of being
5 characterized by pervasive poverty, high
6 unemployment, and general economic distress and must
7 correspond to traditional neighborhood or community
8 boundaries.

9 I think that there needs to be a
10 review. And for any Zones that have reached a point
11 where they don't comply with that anymore, the
12 Commissioner should have to change the boundaries
13 back to what they are, and the Legislature should
14 adopt an appropriate transition rule. By what that
15 means, I say I think the businesses that are already
16 certified in the scatter-shot places, I think there
17 has to be some transition mechanism where they
18 receive benefits for a while, but I don't think any
19 more businesses should be certified until all the
20 Zones are reviewed to make sure they comply with the
21 first sentence of Section 958.

22 MS. JOHN: Is it fair to
23 characterize your testimony here today as demanding a
24 measure of accountability under the statute as it's

1 reauthorized?

2 MR. MAURO: Sure. I think not just
3 accountability, but I think there has to be
4 compliance with the law. I think this law has been
5 administered in a cavalier manner. I don't know if
6 it's intentional or unintentional, but the law has
7 not been implemented as written.

8 MS. JOHN: Thank you, Mr. Mauro.

9 MR. FARRELL: Robin?

10 MR. SCHIMMINGER: Mr. Mauro, I
11 really enjoyed your testimony. Let me assume that
12 you were the king and that you put in place all the
13 recommendations that you have now gave. And then you
14 visited Western New York, and you heard about a
15 company called GEICO, which I'm sure you're familiar
16 with. They made a decision, a corporate decision,
17 maybe even an international one. They made a
18 decision to open up a new regional facility in
19 Western New York in reliance on Empire Zone benefits.

20 And they're locating - despite what
21 Ambassador Gargano said, Buffalo - they're locating
22 in Amherst, an affluent suburb. Okay. The Zone in
23 the town of Tonawanda is sending acreage across
24 municipal lines into Amherst because that's where

1 GEICO wanted to locate. Send the Zone to you.
2 They've made a corporate decision to open in Western
3 New York and to provide as many as 2,500 jobs.

4 When the announcement was made,
5 people in Western New York were dancing in the
6 street. If you are the king and if you enact all of
7 your recommendations, what will you say to GEICO and
8 those people who were dancing in the streets?

9 MR. MAURO: Well, what I have
10 recommended here is that there be a transition rule
11 and that GEICO would get those benefits, you know,
12 for a period to be determined by the Legislature, but
13 it shouldn't have happened in the first place; that
14 that was inconsistent with the law when it was done.
15 That was wrong, but I'm saying that the companies
16 that have relied on that and have made investments.

17 So, what I say here is appropriate
18 transition rules should be adopted by the Legislature
19 for businesses that are outside of boundaries
20 complying with the statutory requirements but which
21 have -- the existing statutory requirements, but
22 which have already been fully certified.

23 So, I think that -- now, I think
24 that one of the real problems with the GEICO deal is

1 if we make it clear, as we did with the GEICO deal,
2 that you can get the same tax discounts for locating
3 in the nicest office parks in the wealthiest suburbs,
4 that this program is losing its ability to revitalize
5 Buffalo. I mean, this is a very rich program, and it
6 can't be that everybody's below average. And, you
7 know, I think this idea that every county should have
8 a Zone really undercuts the validity of this program.

9 There are probably counties that
10 have Zones right now that shouldn't. I mean, I can
11 understand this motivation when the first boundary
12 amendment occurred in Rochester and a parcel of the
13 town of Henrietta was brought in. That's when the
14 Livingston County Legislature began the move, passed
15 the resolution calling for every county to have a
16 Zone. Their view was quite simple. Henrietta is
17 better off than we are. When Saratoga becomes a
18 Zone, how can you say to other counties they can't be
19 a Zone? But you're making the entire program
20 meaningless.

21 My written testimony begins with
22 something I didn't read about what happened to the
23 Urban Job Incentive Program started in 1968 as part
24 of Nelson Rockefeller's response to the problem with

1 the cities and the assassination of Martin Luther
2 King. By 1979 that program had become a grab bag.
3 It was a statewide program with very loose criteria.
4 We tried to reform it for four years. The
5 Professional Economic Development Community kept
6 being very resistant to that, saying it's too
7 valuable, we can't fix it. And finally, in '83 it
8 had become so scandalous that both houses of the
9 Legislature readily went along with the repeal of it.

10 So, I think that the Empire Zones
11 Program cannot be -- unless we had a lot of money and
12 we wanted to make it our General Tax Law, if we had
13 that much money, that would be fine, where it was the
14 Tax Law every place. But leaving aside it being the
15 Tax Law every place, you have to have a rational
16 basis for where it applies. And it has to be
17 consistently applied.

18 MR. SCHIMMINGER: When this
19 company, GEICO, made its decision to locate in New
20 York State, Western New York, more particularly the
21 town of Amherst precisely, they said, "What triggers
22 our decision is the fact that we can get Empire Zone
23 benefits." This company could have gone to a lot of
24 other states in the northeast. The Governor has a

1 proposal in his recommendations for Flex Zones. I
2 take it you don't like that proposal?

3 MR. MAURO: Well, I don't. But I
4 think there's an argument for it, although I think it
5 would pass Constitutional muster, because the
6 Legislature would be establishing a clear standard
7 that I think it has to create at least 300 jobs
8 outside of --

9 MR. SCHIMMINGER: It's an
10 inducement.

11 MR. MAURO: -- low-income Zones or
12 150 jobs. So, I think it would pass muster. I think
13 the problem with these programs where you get money
14 for the new -- let's take GEICO. Now, why in the
15 world should New York State be subsidizing GEICO's
16 cost of doing business to compete with State Farm?
17 There are two or three auto insurance companies that
18 employ as many people in New York State as GEICO.
19 Just because GEICO is new, what logic does that
20 create for the State to tax them differently?

21 MR. SCHIMMINGER: Well, that is the
22 age-old question.

23 MR. MAURO: Right.

24 MR. SCHIMMINGER: The age-old

1 question.

2 MR. MAURO: Right. So, I don't
3 think that it's good.

4 MR. SCHIMMINGER: Why do we give
5 specific benefits to specific companies who threaten
6 to leave, or who say they're going to create jobs --

7 MR. MAURO: Right.

8 MR. SCHIMMINGER: -- and maybe do
9 create jobs --

10 MR. MAURO: Right.

11 MR. SCHIMMINGER: -- when maybe the
12 better approach is to reduce the burden for
13 everybody --

14 MR. MAURO: Yeah, sure.

15 MR. SCHIMMINGER: -- across the
16 State?

17 MR. MAURO: Yeah.

18 MR. SCHIMMINGER: But Ambassador
19 Gargano has sat at that very table at previous
20 hearings and said, "Look, other states have similar
21 programs, the carrots that attract companies. And if
22 we don't have them" --.

23 MR. MAURO: Well, I don't think
24 anyone has a program which is this rich. I mean,

1 there are states that -- take Ohio's Enterprise Zone
2 Program. All the benefits are local. If local
3 governments want to have an Enterprise Zone they can
4 if it meets certain criteria. The benefits are
5 local. There's great disclosure. I mean, this
6 program, the State -- I mean, local governments have
7 no reason not to want this program. The State pays
8 your property tax for ten years. Why did the
9 Governor last year propose that local governments
10 have to pay half the cost? Because he knew what you
11 learned today, that this program was exploding in
12 cost.

13 Why did the Governor propose this
14 year to create a ratchet that you only get the full
15 benefit under current law if you create 100 jobs and
16 other than that you get it prorated? He's trying to
17 stem the red ink.

18 MR. SCHIMMINGER: Let me just go
19 back to transition rules for a minute. And I hear
20 what you're saying in regard to the GEICO situation.
21 There was this phenomenon, and the loophole has now
22 been closed, by which entities would reincorporate
23 and become a new business and take advantage of the
24 program. But the benefits continue. I guess that's

1 a transition rule.

2 MR. MAURO: No, a transition rule
3 would be to -- I think a transition rule would be
4 something like the Governor's proposing. I mean, he
5 could have proposed a tougher transition rule. But
6 what he did propose was that these firms be treated
7 by the new rules rather than the old rules, by the
8 ratcheting, by the prorating.

9 So, what the theory is, that you
10 will save most of the money that you would save
11 anyway by taking them out by the per-job thing.
12 Because I think, say, an example of big property tax
13 drain on this, it's my understanding that a company
14 that bought some of Niagara Mohawk's small hydropower
15 plants when this rich program came along, they had
16 automated their plants. They created like one
17 employee for one plant, or two, got into the program.
18 So, the State's paying enormous property taxes on
19 those hydroplants to local communities with the
20 company hiring one person. Sometimes one person to
21 cover two plants.

22 So, I think this program I can
23 understand from a local government perspective. You
24 can give away someone else's money, and there's no

1 local cost. I can also understand why counties that
2 don't have Zones want a Zone. Because they're
3 saying, "Well, you know, how can I be in this
4 business?" I guess if you're an economic developer
5 and you don't have this, you know, you want it. But
6 I don't think that's the basis on which we should be
7 doing this. I don't think that we can steer
8 development and that we can revitalize distressed
9 areas if you can get the same benefits for building
10 in a greenfield as building in a brownfield.

11 MR. SCHIMMINGER: Thank you.

12 MR. FARRELL: Thank you.

13 MR. MAURO: Okay.

14 MR. FARRELL: To close, Brian
15 McMahon, Executive Director, New York State Economic
16 Development Council.

17 (Off-the-record discussion)

18 MR. BRIAN MCMAHON, EXECUTIVE
19 DIRECTOR, NEW YORK STATE ECONOMIC DEVELOPMENT
20 COUNCIL: Good evening. We will shorten our
21 testimony considerably. I'm Brian McMahon. Joining
22 me is Bill Mannix, who is the Empire Zone Coordinator
23 for the Town of Islip; and Don Western, who is the
24 Zone Coordinator for Onondaga County.