CHECKLIST *for* CHANGE:

POLICY PRIORITIES FOR NEW YORK

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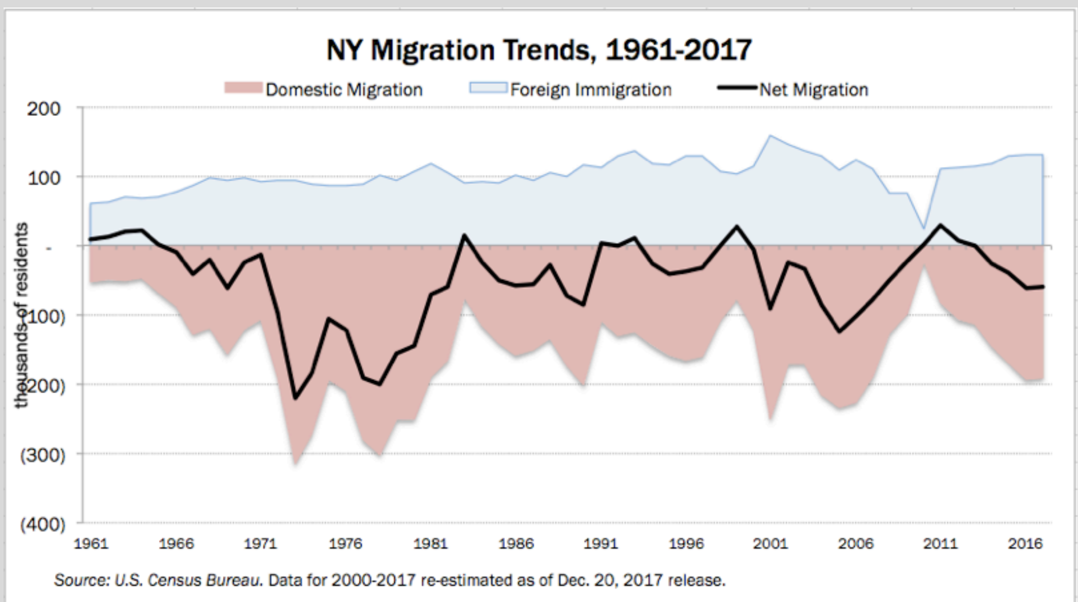
Based on key measures of growth and competitiveness, New York has been losing ground for decades—failing to keep up with national economic trends and exporting millions of residents to other states.

Change is clearly needed. But where to begin?

This paper is intended to help answer that question. Our initial checklist of policy priorities focuses on six areas in which national rankings show that New York is a national outlier—where needed reforms would reduce the state's cost burdens and improve its climate for growth.

Our checklist is by no means an exhaustive menu. There are more needed reforms where these came from—reforms to improve fiscal management on the state and local levels, boost accountability and transparency, make infrastructure projects more cost-effective, address lawsuit abuse and improve education in New York, to name a few.

The six priority areas identified here are highlighted as representing essential *first* steps in the right direction.



New York lost another 190,508 residents to other states during the year ending July 1, 2017, bringing the state's net domestic migration loss since 2010 to more than 1 million people. In both absolute and relative terms, New York has led the nation in net domestic out-migration since 2010. As shown above, New York has been a net domestic migration loser for more than 50 years, but recent annual losses are back up to near-peak levels.

Checklist for Change

Policy Priorities for New York

1. Keep cutting taxes

- ✓ Phase out the temporary "millionaire tax" surcharge
- ✓ Adjust personal income tax brackets to reflect inflation
- ✓ Eliminate the inequitable rate "cliff" in the estate tax
- ✓ Make the property tax cap permanent

2. Curb health care costs

- ✓ Roll back health insurance taxes and excessive provider subsidies
- ✓ Raise the bar on Medicaid reform
- ✓ End price controls and mandates on health insurance
- ✓ Reform oversight of medical malpractice
- ✓ Remove barriers to competition in the health-care marketplace

3. Control public employee compensation

- ✓ Repeal the Triborough Amendment's longevity pay guarantee
- ✓ Cap binding arbitration awards to police and firefighter unions
- ✓ Require health insurance contributions from public employees
- ✓ Enact needed pension reforms

4. Reduce the job creation toll

- ✓ Suspend multi-year minimum wage hikes
- ✓ Repeal expanded salaried overtime rules
- ✓ Reform the workers' compensation system

5. Adopt pro-growth energy policies

- ✓ Reform the PSC and scrap its undemocratic mandates
- ✓ Address electricity transmission challenges
- ✓ Reconcile the state's conflicting policies on natural gas

6. Streamline state development regulations

- ✓ Adopt binding time limits for the SEQR process
- ✓ Increase predictability of impact "scoping"
- ✓ Define local community "character" based on local land-use laws

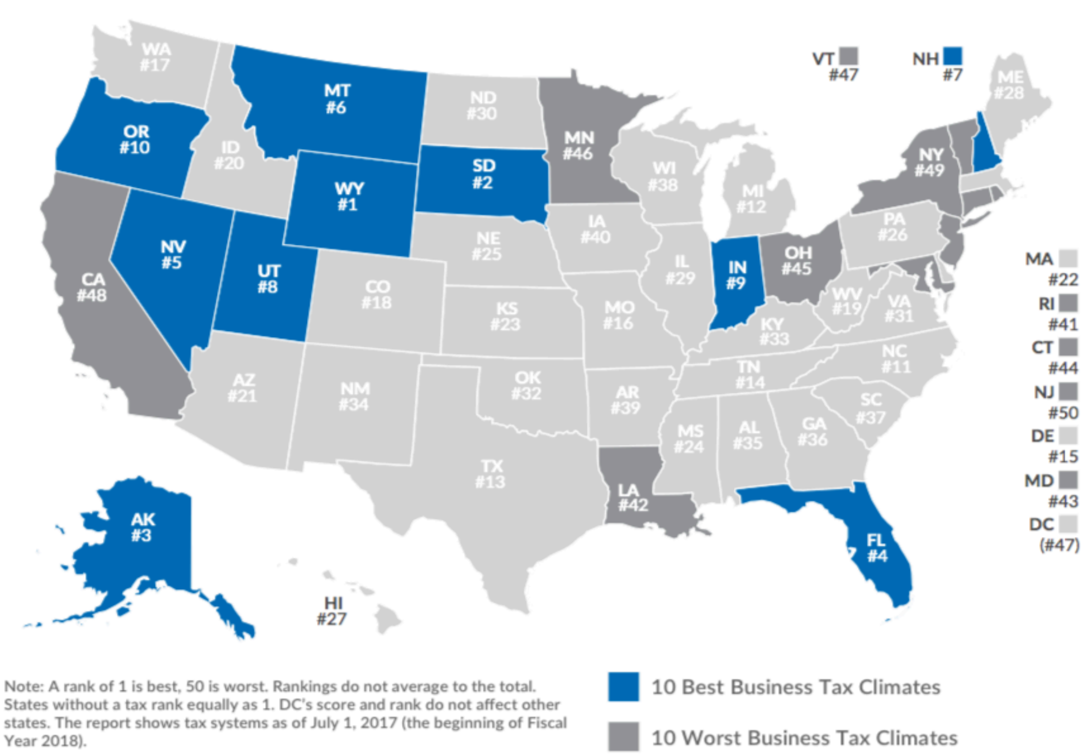
1. Keep cutting taxes

- ✓ **Phase out the temporary "millionaire tax"**
- ✓ **Adjust personal income tax brackets for inflation**
- ✓ **Eliminate the inequitable rate "cliff" in the estate tax**
- ✓ **Make the property tax cap permanent**

New York imposes one of the nation's heaviest tax burdens on its residents and businesses, stifling growth and adding to the cost of living, working and creating jobs in the Empire State. Over the past 20 years, the state has taken some important steps to lighten this burden, starting with a historic personal income tax reduction followed by other state tax cuts in the mid-1990s. More recent improvements have included the cap on local property tax levies, enacted in a 2011 reform of state business and estate taxes, enacted in 2014 and a multi-year reduction in state personal income taxes on middle- to upper-middle-income households, enacted in 2016.

But New York still has a long way to go—as reflected in its perennially low ranking in the Tax Foundation's State Business Tax Climate Index, mapped below.

2018 State Business Tax Climate Index



Note: A rank of 1 is best, 50 is worst. Rankings do not average to the total. States without a tax rank equally as 1. DC's score and rank do not affect other states. The report shows tax systems as of July 1, 2017 (the beginning of Fiscal Year 2018).
Source: Tax Foundation.

A more competitive and efficient tax code is essential for promoting improved economic growth throughout the state. The need for state tax reduction and reform has become all the more urgent since the December 2017 passage of the Tax Cuts and Jobs Act, the most sweeping rewrite of the federal tax code in 30 years.

By curtailing the state and local tax (SALT) deduction, the new federal law will effectively increase the relative economic cost of New York's high state and local taxes, underscoring the need to reduce spending at every level of government.

Because New York State tax laws include numerous references to the federal Internal Revenue Code, the governor and the Legislature also will need to consider immediate changes to the state tax code. Many will be minor or technical in nature, especially on the corporate side. Because the federal law was enacted in a rush, it is likely to give rise to a plethora of tax avoidance strategies and consequences unforeseen by Congress. These too, may ultimately require a state adaptation or response.

State lawmakers should take time to carefully analyze choices and options for further reform of the state tax code. One first step is both obvious and easy to accomplish: decouple from federal law where necessary to existing state itemized deductions.

Building on recent changes, the Legislature should address the following priorities:

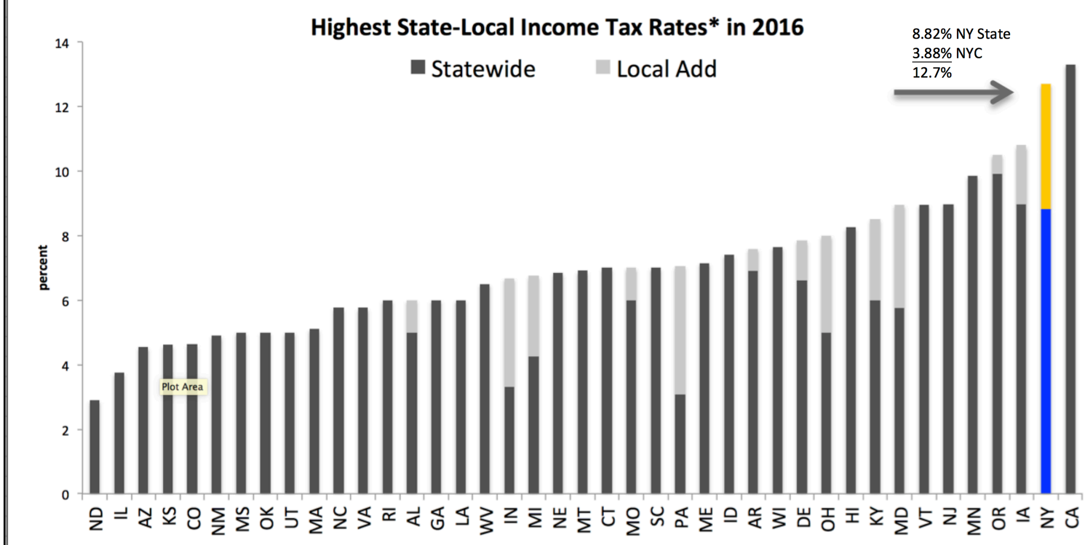
Phase out the temporary "millionaire tax"

The personal income tax, or PIT, is New York's largest single revenue source, accounting for nearly two-thirds of all state taxes. The state PIT is also highly progressive, which means that effective tax rates (amounts paid after deductions, credits and exemptions) rise steeply with income.

Under the Tax Relief Act of 1995, New York State's highest personal income tax rate was set at 6.85 percent—its most competitive level in decades. As of 2017, the median top rate for states with income taxes was 6 percent, and 15 states had rates higher than 6.85 percent.

Since 2009, however, New York has imposed a substantial temporary surtax on filers with incomes starting at $1 million. The so-called "millionaire tax" rate is 8.82 percent—effectively a 29 percent hike, applied like a flat tax on total taxable incomes of affected filers. This ranked 7th highest among all statewide income tax rates as of 2017, and second-highest among the 10 largest states that have an income tax.

New York City residents pay an added local income tax that raises their combined top rate to 12.7 percent, exceeded only by California's 13.3 percent.



* Tax on wages & salaries only; NH and TN tax interest and dividends only. CO, IL, IN, MA, MI, NC, PA and UT are flat rates; all other rates apply at varying income threshholds; NY statewide rate is flat rate on all taxable income for filers whose incomes start just above $1 million. Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming have no income tax.

Source: Federation of Tax Administrators

By imposing one of the nation's highest rates on top earners, New York makes itself less attractive to high-income economic decision-makers and investors. The temporary surcharge also has increased the state's already risky reliance on the highest-earning 1 percent of taxpayers, who generated more than 40 percent of total PIT receipts in 2017. The wages, bonuses and investment income of the wealthiest taxpayers are exceptionally volatile, adding to the state's fiscal woes during economic downturns.

New York's millionaire earners on average claimed SALT deductions of $500,000 as of 2015—and this group will be, by far, most negatively affected by the cap on federal deductions enacted in the 2017 Tax Cuts and Jobs Act. In fact, New York City residents in the top tax brackets will be paying a higher combined "all in" marginal rate, despite a cut in the maximum federal tax rate.

As a result, for top earners, New York's net tax "price" has just risen to its highest level ever, compared to states with lower income tax rates, or (as in the case of Florida and Texas) no tax at all.

Phasing out the 8.82 percent rate, now due to expire Dec. 31, 2019, would restore the permanent-law top rate of 6.85 percent. This is an essential step towards a more competitive overall tax structure—especially under the new federal SALT deduction cap.

Adjust personal income tax brackets for inflation

In 2016, Governor Cuomo and the Legislature agreed on an eight-year, phased-in reduction of personal income taxes they said was aimed at "middle class" taxpayers, which will affect those earning up to $321,040, as detailed in the tax table below.

New York State Personal Income Tax Schedule for Married-Filing Jointly

2016 Tax Brackets[1]	*1997 Law*	*2011 Law*[2]	*New Law - Tax Years* 2018	2019	2020	2021	2022	2023	2024	2025
0 - 17,050	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
17,050 - 23,450	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
23,450 - 27,750	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%
27,750 - 42,750	5.90%	5.90%	5.90%	5.90%	5.90%	5.90%	5.85%	5.73%	5.61%	5.50%
42,750 - 160,500	6.85%	6.45%	6.33%	6.21%	6.09%	5.97%	5.85%	5.73%	5.61%	5.50%
160,500 - 321,050	6.85%	6.65%	6.57%	6.49%	6.41%	6.33%	6.25%	6.17%	6.09%	6.00%
321,050 - 2,140,900	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%
2,140,900 and over	6.85%	8.82%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%	6.85%

[1] Applies to taxable income after exemptions, deductions
[2] As extended in 2013, through 2017 tax years
Source: Executive Budget, FY 2017 Revenue Bill

However, the new round of PIT cuts has one glaring lapse: it does not permanently extend the required annual adjustment of state income tax brackets and standard deductions to reflect the impact of inflation. "Indexing" for inflation has been a feature of the federal individual income tax code since the early 1980s, and was first introduced to New York as part of the temporary cuts passed in 2011. Without indexing, taxpayers inevitably will experience "bracket creep," paying higher rates even if their income is not rising in real, inflation-adjusted terms.

Adjusting the tax code for inflation every year is thus an essential step to ensure that the new middle-class tax cut produces lasting relief. In the absence of indexing, even if inflation stays around the 2 percent average projected by state and federal economic forecasts, many middle-class New Yorkers and business owners will find themselves paying steadily higher effective PIT rates over the course of a few years.

Eliminate the inequitable rate "cliff" in the estate tax

As of 2018, New York is one of only 12 states still imposing any tax on the estates of its deceased residents. Under a 2014 reform, the state began raising its estate tax threshold in stages, with the goal of matching the federal threshold (also known as the individual exemption, which was $5.25 million at the start of the process) by January 2019. This gradual increase is in the process eliminating New York's added tax on 90 percent of the estates previously subject to it, including many family farms and small businesses.

But the 2014 change also contained a technical flaw that created what tax experts call a sharp "cliff" in New York's estate tax. For arcane technical reasons, an estate valued at just 5 percent more than the death tax threshold will pay the top state rate of 16 percent on the value of *all* of its assets—exceeding the federal tax. Ironically, the net impact of the 2014 reform will be to concentrate much higher effective tax rates on the smallest estates still subject to the tax, with little added impact on the super-wealthy.

Meanwhile, the federal Tax Cuts and Jobs Act has effectively moved the goalpost for conformity with federal law by doubling the federal estate tax threshold. Because the New York law is hooked to the federal law in effect as of 2014, the Empire State once again will be in the position of taxing estates that are not taxed by the federal government—providing wealthy residents with an added incentive to move themselves and their assets elsewhere.

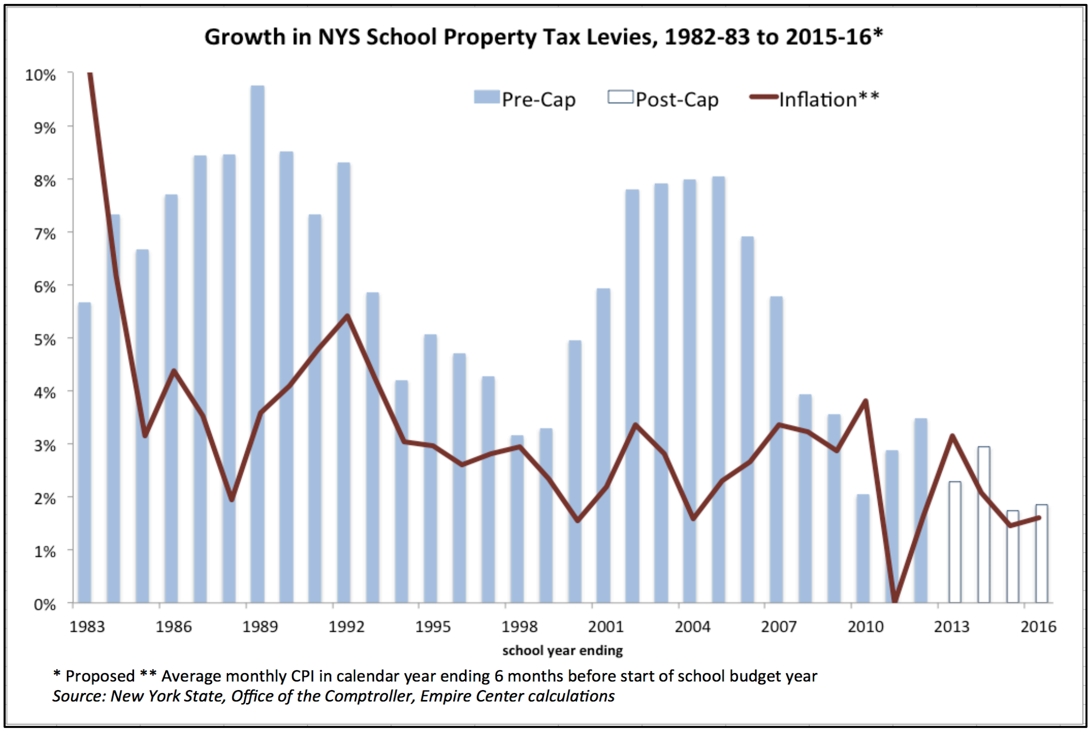
Amending New York's estate tax law to eliminate the cliff by creating a truly graduated rate schedule will ensure that the lowest rates apply to the smallest estates still subject to the tax, consistent with the goals of the 2014 reform. Beyond that change, New York also needs to phase in a move to full conformity with the new, higher federal threshold.

Make the property tax cap permanent

New York's property taxes are exceptionally onerous by any measure. As of 2010, measuring property taxes as a percentage of home value, 15 of the 20 most heavily taxed counties in America were in upstate New York, according to the Tax Foundation. Ranking property taxes as a percentage of household income, five of the top 10 most heavily taxed counties were in New York's downstate suburban region, according to the same data. By both measures, property taxes in most New York counties outside New York City were two to three times the national median.

Since 2012, the increase in annual property tax levies throughout the state (except in New York City) has been capped at 2 percent, or the rate of inflation, whichever is less. The cap can be overridden by a supermajority—60 percent or more of the governing board of a county, city, town, village or special district, or by at least 60 percent of school district residents voting in an annual budget referendum. Exclusions to the cap include taxes generated by new construction, ensuring that localities are not penalized for encouraging growth and economic development.

When compared to both short- and long-term historical trends, illustrated below, the cap has significantly reduced average school tax increases, according to the latest available property tax data for New York school districts.



It's time to make the cap permanent. The cap was enacted in 2011 as a temporary law, linked to the continuation of rent regulations for New York City. It is currently scheduled to expire in 2020—but the Legislature need not wait until then to decide its fate.

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2. Curb health care costs

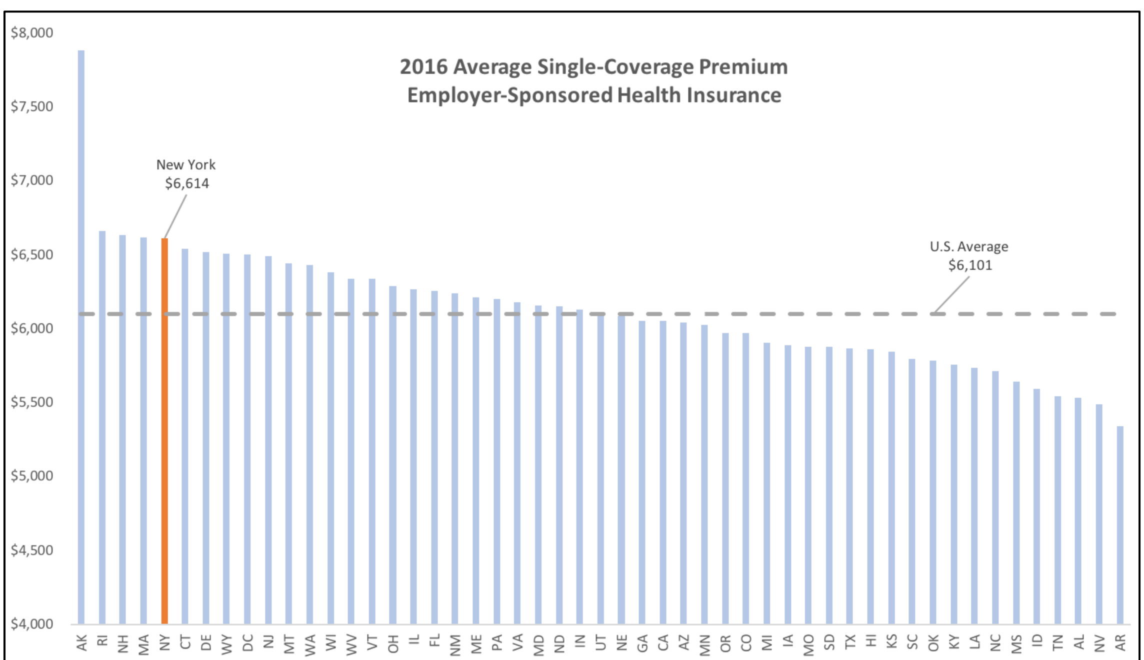
- ✓ **Roll back health insurance taxes and excessive provider subsidies**
- ✓ **Raise the bar on Medicaid reform**
- ✓ **End price controls and mandates on health insurance**
- ✓ **Reform oversight of medical malpractice**
- ✓ **Remove barriers to competition in the health-care marketplace**

Health care in New York is expensive, by virtually any standard.

According to the latest available comparative statistics, New York's per capita health care spending as of 2014 was 22 percent above the national average, higher than all but six states. The same data show New York's per-enrollee Medicaid spending was 44 percent above the national average, ranking fourth behind North Dakota, Alaska and Rhode Island.

High health care costs also are reflected in New York's average premium for employer-provided health insurance coverage—which, as shown below, was second highest of any state's, 14 percent above the U.S. average as of 2015.

In important ways, New York's high spending is not matched by high quality. The average grade for New York hospitals in Hospital Compare, a federal report card, was the lowest among the 50 states as of December 2017. In a 2017 national comparison by the Commonwealth Fund, the Empire State was below average for avoidable hospital use and cost. It ranked 12th overall.



Source: U.S. Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey

State government contributes to the waste and inefficiency with highest-in-the-nation taxes on health care, ill-conceived subsidies and bailouts for providers, heavy-handed regulation of the insurance industry, regulatory hostility to market competition and a misguided system for policing malpractice.

Roll back health insurance taxes and excessive provider subsidies

Originally conceived as a temporary source of funding for hospitals when their fees were deregulated in the 1990s, HCRA has morphed into a $5 billion-a-year fixture of Albany's budgetary gimmickry.

The much-modified law now generates $4.2 billion a year from two taxes—a hefty 9.63 percent surcharge on hospital and clinic services and a per-person levy on health insurance customers that ranges as high as $200 in New York City—which further drive up high premiums for employers and consumers. HCRA raises another $1 billion or so from cigarette taxes and an assessment on hospital revenues.

Most of the money, $3.3 billion, is simply pumped into the Medicaid budget. Other big chunks are distributed to hospitals, ostensibly to compensate them for providing charity care to the uninsured and training young physicians, but with little documented assurance that the money is truly needed or spent as intended. Many of these programs used to be part of the regular budget. Several serve questionable purposes. All would be more efficiently financed through broad-based revenues.

Much of HCRA's spending remains hidden from the public. The lack of accountability infamously allowed former Assembly Speaker Sheldon to tap a HCRA slush fund (since closed down) as part of an extortion scheme that led to his conviction on federal corruption charges.

In addition to rolling back or eliminating HCRA taxes to reduce premiums, the state should reevaluate charity care payments to hospitals in light of the declining uninsured population. If payments continue, they should be tied more directly to delivery of care.

Raise the bar on Medicaid reform

For many years, New York's health plan for the poor and disabled was a bloated symbol of Albany dysfunction, with costs spiraling out of control and quality languishing as legislators deferred to politically powerful providers and labor unions.

Things have begun to improve under the Cuomo administration's push to reduce per-patient costs in large part by mandatorily enrolling recipients in privately run managed care plans. But with costs remaining significantly higher than the national average, and enrollment surging under Obamacare, the state must continue to squeeze more efficiency from Medicaid.

The state should tighten the "global cap" on state Medicaid spending to ensure that New York's per-patient spending moves closer to national norms. It should restrict eligibility rules and beef up enforcement to make it harder for affluent New Yorkers to qualify for Medicaid nursing home coverage by hiding or transferring assets ahead of time.

New York should also expand financial incentives to recipients for behavioral change (such as weight loss, smoking cessation and compliance with a doctor's recommendations). Such "patient ownership" measures have proven potential to improve health and save money, yet New York's experiments in this area remain overly narrow and small-scale.

To ensure efficiency, the state should re-evaluate the cost-effectiveness of New York Medicaid services, including dental care and non-emergency transportation to medical appointments, that are optional under federal law.

In order to protect the fledgling market for individual health coverage, New York should adjust pricing for the Medicaid-like "Essential Plan." The state established the Essential Plan as a maneuver to draw federal aid for coverage of legal immigrants, but it's offered to all New Yorkers between 138 percent and 200 percent of the poverty level. And its low premiums—either $20 or $0 per month, depending on income—are diverting younger, healthier customers away from plans sold through New York's Affordable Care Act (ACA) exchange. This will drive up the cost of exchange plans, particularly for those whose incomes are too high to qualify for ACA tax credits.

End price controls and mandates on health insurance

Albany has a long history of imposing dubious mandates on private health insurance—such as requiring them to cover chiropractic treatment and to pay for more mammograms than recommended by a federal panel of experts. These mandates do not apply to large groups, which are exempt under federal law. But they add 12.2 percent to premiums for small group and individual health insurance plans, according to a 2003 study commissioned by the Employer Alliance for Affordable Health Care.

Slowing the tide is a provision of the ACA that says states must pay for mandates imposed after national health reform took effect. Yet provider groups and allies in the Legislature continue pushing new ones, such as mandating coverage of in vitro fertilization or acupuncture.

In 2010, meanwhile, the Legislature reinstated "prior approval," a law empowering the Department of Financial Services to regulate the price of health insurance—a discredited concept that had been repealed under former Governor Pataki. In the short term, this politicized process discourages insurers from doing business in New York. In the long term, it has failed to significantly improve the affordability of premiums compared to national averages.

To improve the state's health insurance market, the Legislature should roll back excessive insurance mandates and reject new ones. It should activate a mandate review commission, which was established by law in 2007 to study the cost-effectiveness of insurance regulations, but was never fully appointed by the governor and legislative leaders. Finally, it should end prior approval of health insurance premiums.

Reform oversight of medical malpractice

The tort system is particularly poor at sorting out the complex, technical disputes about medical errors and negligence. Studies show that most injured patients never sue, and many who do sue were victims of happenstance rather than malpractice. The system imposes huge legal costs on innocent and guilty doctors alike and gives New York some of the highest malpractice insurance premiums in the country.

At the same time, the threat of litigation encourages doctors to order excessive tests and procedures (so-called defensive medicine) and discourages professionals from frankly discussing errors, which is crucial to preventing them. A better-balanced approach would be to:

- Explore establishing a no-fault insurance system to compensate injured patients;
- Cap non-economic damages from litigation;
- Expand hospital- and doctor-specific reporting on health outcomes, which has reduced mortality from heart-bypass operations and hospital-acquired infections; and
- Strengthen oversight by the state Office of Professional Medical Conduct, including random chart reviews to catch unreported negligence.

Remove barriers to competition in the health-care marketplace

Over the years, the state has enacted a series of laws and regulations impeding competition among health-care providers—putting provider interests above those of patients and payers alike. Removing these barriers would better serve the interests of all New Yorkers. In addition, the state should end bailouts that prop up failing institutions while diverting resources from their financially healthier competition.

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3. Control public employee compensation

- ✓ **Repeal the Triborough Amendment's longevity pay guarantee**
- ✓ **Cap binding arbitration awards to police and firefighter unions**
- ✓ **Require health insurance contributions from public employees**
- ✓ **Enact needed pension reforms**

Personnel costs are the single largest spending category for New York's municipalities and school districts. However, management's efforts to control and restructure the wages, salaries, benefits and staffing levels of government employees are restricted by the state Public Employees Fair Employment Act, better known as the Taylor Law.

Enacted in 1967, the Taylor Law provides some of the nation's most sweeping state guarantees of public employee union rights and privileges. Bankrolled by hundreds of millions of dollars in dues and fees automatically deducted from the paychecks of nearly one million covered employees, state and local unions are a powerful force at every level of government. Not by coincidence, New York now has the nation's most heavily unionized state and local government workforce, with nearly three-quarters of New York's public employees covered by union contracts.

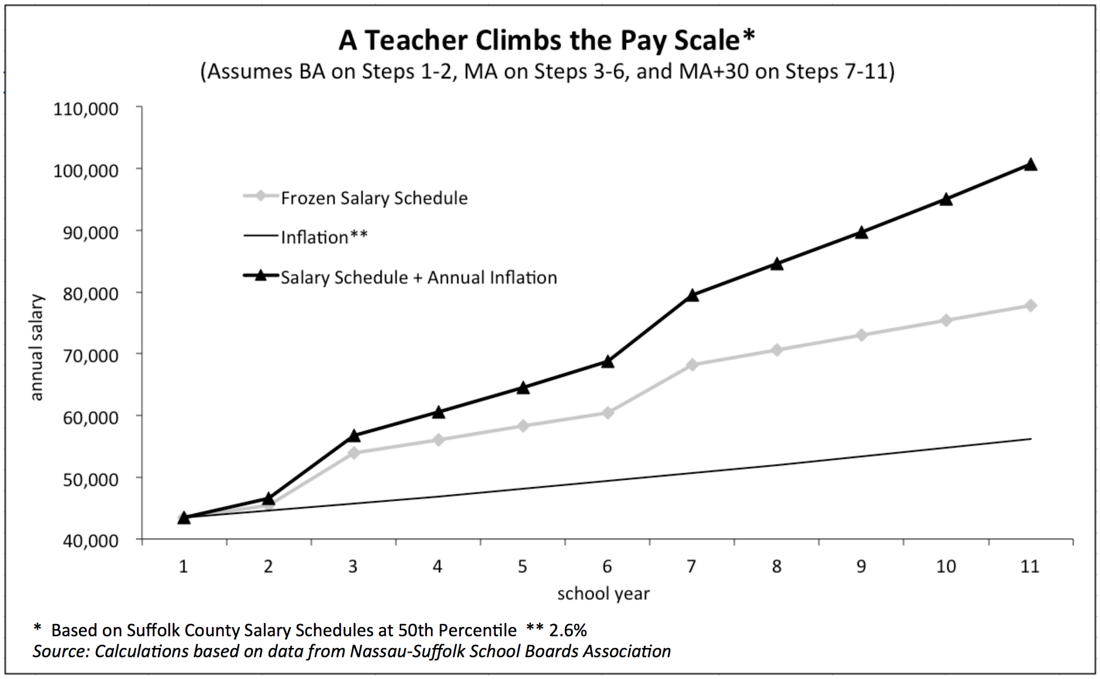
Local and school officials across the political spectrum complain that key aspects of the Taylor Law have tilted the collective bargaining table in unions' favor—making it harder to negotiate fair deals that serve the broader interests of taxpayers and the general public. True local mandate relief in New York requires reform of key provisions of the Taylor Law.

Repeal the Triborough Amendment's longevity pay guarantee

In 1982, labor unions successfully lobbied for an amendment to the Taylor Law to require that all provisions of a public employee collective bargaining agreement—including automatic annual pay increases—must remain in effect even after a deal has expired, regardless of changing local priorities and fiscal conditions. That law, better known as the Triborough Amendment*, gives public employees an incentive to hold out when management is seeking contract concessions.

* N.Y.S. Civil Service Law, Section 209-a(1)e

The requirement to finance automatic pay increases has undermined attempts to stretch taxpayer dollars further in a time of extreme financial stress. Even during a pay freeze following the Great Recession, the Triborough Amendment cost state government $140 million per year. At the same time, it required hundreds of millions of dollars in continuing pay increases for teachers and other local employees, at a time when municipalities and school districts could least afford it.



The Triborough Amendment's impact on pay is illustrated by the chart above, which shows how a teacher in her first 10 years on the job in a typical Long Island school district can qualify for automatic "step" and "lane" pay increments averaging 6 percent a year, even if base pay is "frozen." It's the reason median teacher pay is now over $100,000 in most downstate districts.

Repeal of the Triborough Amendment is thus a top priority for controlling public employee compensation. In the absence of the amendment, an older administrative precedent known as the Triborough Doctrine would continue to prevent employers from unilaterally changing wages, benefits or other basic terms and conditions of employment after a contract expires. Repeal of the amendment would establish a more equitable collective bargaining system in New York's public sector, giving local officials the tools they now lack to negotiate needed changes to costly and outmoded contracts.

Cap binding arbitration awards to police and firefighter unions

When their contract talks reach an impasse, police and firefighter unions in New York State are entitled to unilaterally seek binding "interest arbitration," a form of dispute resolution not available to most other public employees outside the public safety field. In practice, the secretive arbitration process unduly favors unions, resulting in unaffordable salary increases while perpetuating costly work rules and benefits.

Arbitration has played a role in the build-up of large pay packages for eligible employees—especially in downstate suburbs and cities, where average police and fire salaries typically exceed $100,000, as reflected in the table below. Pay is only part of the picture, however. Aside from pension contributions, which are controlled by state law, health insurance premiums have been the fastest growing component of compensation for police officers and firefighters. But the arbitration process tends to discourage significant restructuring of health insurance or other benefits.

Average Police and Fire Salary by Employer Type, 2017

Employer Type	Average Salary	Total Members*
State	$111,370	6,186
Counties*	$156,546	5,147
Cities	$90,899	11,030
Towns	$102,064	3,663
Villages	$91,301	3,434
Miscellaneous**	$117,428	2,872
TOTAL	**$108,930**	**32,332**

* Only Monroe, Nassau, Suffolk and Westchester have county police and firefighters, and 95% in this category work for Nassau or Suffolk County

** Roughly 70% work for Port Authority of NY and NJ police

Source: New York State and Local Retirement System, 2017 CAFR

The arbitration mandate was first passed by the Legislature in 1974 as a temporary law, and has been renewed every few years. In 2013, Governor Cuomo's budget originally called for a 2 percent cap on compensation cost increases resulting from arbitration, defining "compensation" to include health benefits while excluding steps and longevity increments. But faced with legislative and union resistance, he dropped this idea and ultimately settled for a modest "reform" that required arbitrators to put somewhat more emphasis on a local government's "ability to pay" for larger increases. These changes were insignificant, however.

A 2 percent cap on binding arbitration awards, including benefits as well as wage costs, would give unions a greater incentive to settle their differences at the bargaining table while giving employers a better shot at restructuring the unsustainable deals of the past. The cap should be a condition for extending arbitration beyond its scheduled June 2019 expiration date.

Require health insurance contributions from public employees

State government employees contribute 12 to 16 percent of the premiums for individual health insurance coverage, and 27 to 31 percent of premiums for dependent coverage, with the highest percentages required of employees in higher-salaried positions. Nationally, among all employer-provided plans, the average employee contribution came to 18 percent of individual coverage and 31 percent of family health insurance coverage in 2017, according to the Kaiser Family Foundation.

But such cost-sharing is much more limited among most local government and school district employees in New York. Their employees generally make contributions that are much lower, and in some cases, non-existent, even though health insurance costs have been rising faster than inflation or wages. For example, in school districts outside New York City, the average premium contribution by newly hired teachers was 13.5 percent for individual coverage and 14.6 percent for family coverage as of 2017, according to the New York State School Boards Association.

In 2008, the state Commission on Local Government Efficiency and Competitiveness recommended the state require all local government and school district employees to match the premium contributions of state workers. Such a requirement—updated to reflect the current level of state employee contributions—could take effect when current contracts expire and would be phased in over a period of years. Enacting such a proposal would generate massive savings for local taxpayers throughout New York State. In 2010, a Rockefeller Institute study pegged the figure at $1.8 billion after a five-year phase-in; the figure is likely larger now.

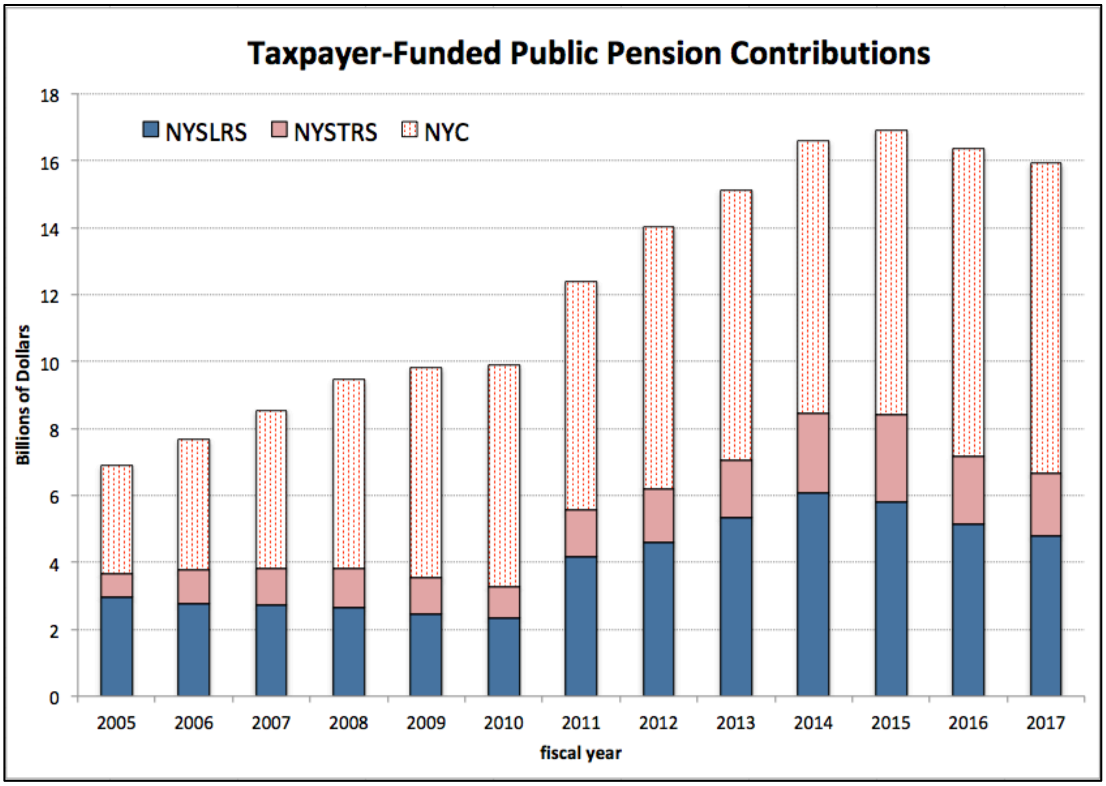
Requiring all public employees to contribute to their health insurance premiums, at least at the same level as state workers, would reduce most municipalities' costs and would also give employees and unions a stake in controlling overall health insurance costs.

Enact needed pension reforms

The vast majority of public employees in New York belong to defined-benefit (DB) pension plans, which guarantee a fixed stream of income based on years of service and peak career salary. Public pension benefits are exempt from state income tax and guaranteed by the state Constitution not to be "diminished or impaired," which means taxpayers shoulder all of the financial risk associated with making good on pension promises. Full-career benefits are generous by private-sector standards, typically amounting to 50 percent or more of peak wages and salaries, and available at early retirement ages, in addition to full federal Social Security benefits.

By contrast, the predominant retirement plan in the private sector is a defined contribution (DC) model, such as 401(k) accounts, supported by employer and employee contributions. Retirement income from such accounts depends on how much is saved and how much the money earns when invested in stocks, bonds or other financial instruments, typically managed by an investment bank.

As shown in the chart below, public pension costs in New York have increased sharply over the past decade—adding to state, municipal and school budgets just when taxpayers could least afford it, pushing large unfunded liabilities into the future.



Between 2005 and 2015, taxpayer-funded annual contributions to the New York State Teachers' Retirement System (NYSTRS) and the New York State and Local Retirement System (NYSLRS) more than doubled, from $3.7 billion to $8.4 billion. Although these costs subsided in 2016 and 2017, they are likely to remain well above 2005 levels for many years to come.

During the same period, New York City's tax-funded pension contributions rose by 163 percent. In fiscal 2019 they will reach a new record level of $9.8 billion—more than is spent by any public plan sponsor in the country, except for the state of California. Despite these increases, the city's five pension systems are underfunded by at least $65 billion, according to their 2016 financial statements.

The run-up in pension costs crowded out funding of essential public services throughout New York State during a time of extreme fiscal and economic stress following the Great Recession of 2007-09. Pension benefits for future employees were reduced modestly from peak levels, and employee contributions were increased, under new pension "tiers" enacted by the state Legislature in 2010 and 2012. However, these changes failed to correct a fundamental flaw in the pension system—the open-ended risk and volatility it imposes on taxpayers.

There is a readily available, state-sponsored alternative to the traditional pension plan. For more than 50 years, the vast majority of State University of New York (SUNY) and City University of New York (CUNY) employees have signed up for a defined-contribution plan that mimics traditional pensions by providing a stream of post-retirement income through private insurance annuity contracts. Annuities protect against the risk that retirees will outlive their savings—a key shortcoming of tax-deferred savings plans designed primarily to accumulate wealth.

In light of these problems, the state as a starting point should:

1. ***End guaranteed pensions and retiree health coverage for elected officials***
   Most state and local elected officials are members of the traditional pension system. This gives politicians a vested interest in preserving the status quo—and in clinging to government employment as a way to build credited pension time. To end this cycle, elected officials should be enrolled in the currently "voluntary" defined contribution plan, an extension of the existing SUNY optional plan created by Governor Cuomo's 2012 Tier 6 pension reform. In addition, politicians should no longer be eligible for retiree health benefits.

2. ***Make K-12 teachers eligible for the SUNY optional retirement plan***
   As a first step in moving all future hires into DC plans, all new teachers should be given the option of choosing the SUNY plan. Seventy-one percent of the New York State public school teachers responding to a 2012 Empire Center survey said they favored the option, which also has been endorsed by the New York State School Boards Association.

3. ***Create all-new retirement plans for the long run***
   Additional DB-DC "hybrid" retirement plans should be developed for all other employees. Such plans can be further tailored to continue providing for the earlier retirement ages of police and firefighters, while fully preserving existing disability and death benefits.

4. ***Mandate truth-in-accounting for public pension funds***
   In calculating how much taxpayers need to contribute to funds each year, the assumed rate of return on pension fund investments is a crucial variable. Pension fund managers use this rate to "discount" the future stream of benefits promised to retirees and beneficiaries. The higher the discount

rate—the more the fund assumes it will earn every year—the less money employers are required to put into the fund every year.

Private pensions can't get away with this practice. While they, too, aspire to beat the financial markets with high returns on their investments, they are subject to accounting rules that require them to discount their liabilities at a much lower rate tied to the yields on top-quality corporate bonds or Treasury bills. The purpose is to ensure that the funds are in a better position to pay their beneficiaries. Similar rules apply to life insurers.

By contrast, when their rate-of-return assumptions turn out to be too optimistic, public funds such as NYSLRS and NYSTRS simply stick taxpayers with a higher bill in the form of increased employer contributions, which are calculated as a share of covered payroll. This is why New York's public pension bills soared over the past decade: financial markets crashed in 2007-09, and taxpayers had to make up the difference when the pension funds suffered double-digit losses instead of earning the 8 percent annual gains they were counting on. NYSLRS and the city funds have since lowered their discount rates to 7 percent, and NYSTRS ticked down to 7.5 percent, but the traditional DB pension model continues to expose New York taxpayer to intolerable levels of financial risk and volatility.

New York's public pension funds should be required by state law to acknowledge their true financial status based on private-sector standards that discount future liabilities based on risk-adjusted market rates of interest, rather than optimistic assumptions about future investment returns. To aid in long-term financial planning, the funds should also be required to provide government employers with at least five years' worth of projected future contributions rates under a range of investment scenarios.

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4. Reduce the job creation toll

- ✓ **Halt the minimum wage hike**
- ✓ **Repeal expanded overtime rules**
- ✓ **Reform the workers' compensation system**

Even as vast regions of the state struggle to generate new employment opportunities, New York has been engaged in an unprecedented economic experiment. State labor laws effectively place a series of tolls on job creation, and New York is testing how high and how fast it can get away with raising those tolls without severely hampering hiring.

Between 2013 and 2016, New York boosted its statewide minimum wage by 24 percent, from the federal level of $7.25 to $9 per hour—which, adjusting for inflation, was the Empire State's highest minimum wage in 37 years. Under legislation enacted in the spring of 2016, New York's minimum will rise by another 39 to 67 percent, to as high as $15 per hour downstate and $12.50 upstate, as detailed in the table below. Employees of fast-food chains will receive raises on a separate schedule, which arrives at $15 sooner in New York City than in the rest of the state.

Scheduled Minimum Wages in New York

					Fast Food Workers**	
Effective	NYC > 10*	NYC < 11*	Long Island & Westchester	Rest of State	NYC	Rest of State
12/31/16	11.00	10.50	10.00	9.70	12.00	10.75
12/31/17	12.00	12.00	11.00	10.40	13.50	11.75
12/31/18	15.00	13.50	12.00	11.10	15.00	12.75
12/31/19	15.00	15.00	13.00	11.80	15.00	13.75
12/31/20	15.00	15.00	14.00	12.50	15.00	14.50
12/31/21	15.00	15.00	15.00	TBD***	15.00	15.00

* total workers

** employed by chains with 30 or more outlets nationally

*** Labor Department to develop a schedule for continuing to raise minimum to $15 an hour

Advocates of New York's $15 minimum promoted the policy as a way of putting billions of dollars into the economy by increasing the buying power of low-wage workers. But in reality, as even leading economists conceptually favoring a minimum wage have long recognized, a government-mandated increase in labor costs is never a simplistic win-win proposition. Any policy imposing higher labor costs creates a set of economic trade-offs and risks.

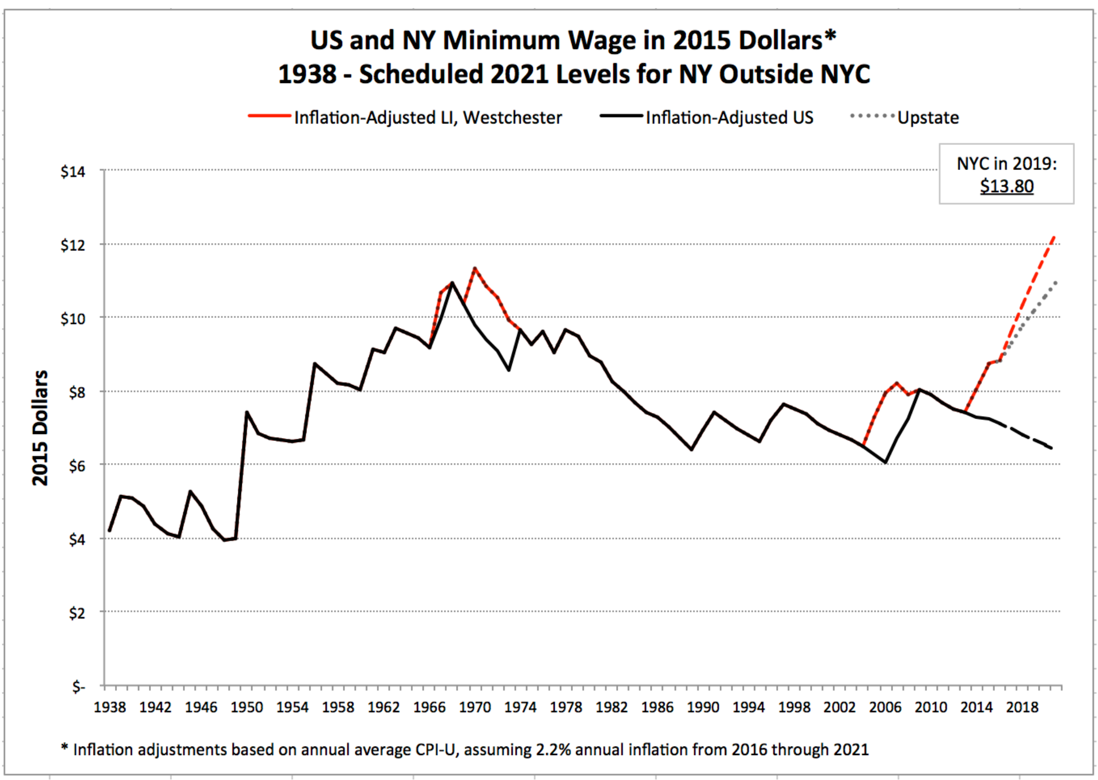
Employers have a limited range of choices for complying with an externally imposed increase in their labor costs. To stay in business, they can raise prices, reduce their net income, cut capital investment and, last but not least, hire fewer workers. The more expensive the mandate, the more disruptive the economic impact of those choices is likely to be.

Some cities elsewhere in the country, such as Seattle, have enacted local laws aiming for a $15 minimum. Only California has adopted a statewide $15 minimum, due to be fully implemented between 2022 and 2023.

Historical perspective

The federal minimum wage was first enacted in 1938 at the nominal level of 25 cents an hour ($4.20 in 2015 dollars). Adjusting for inflation, New York's minimum peaked in 1970 at just over $11 an hour, and over the past 50 years has averaged $8.36.

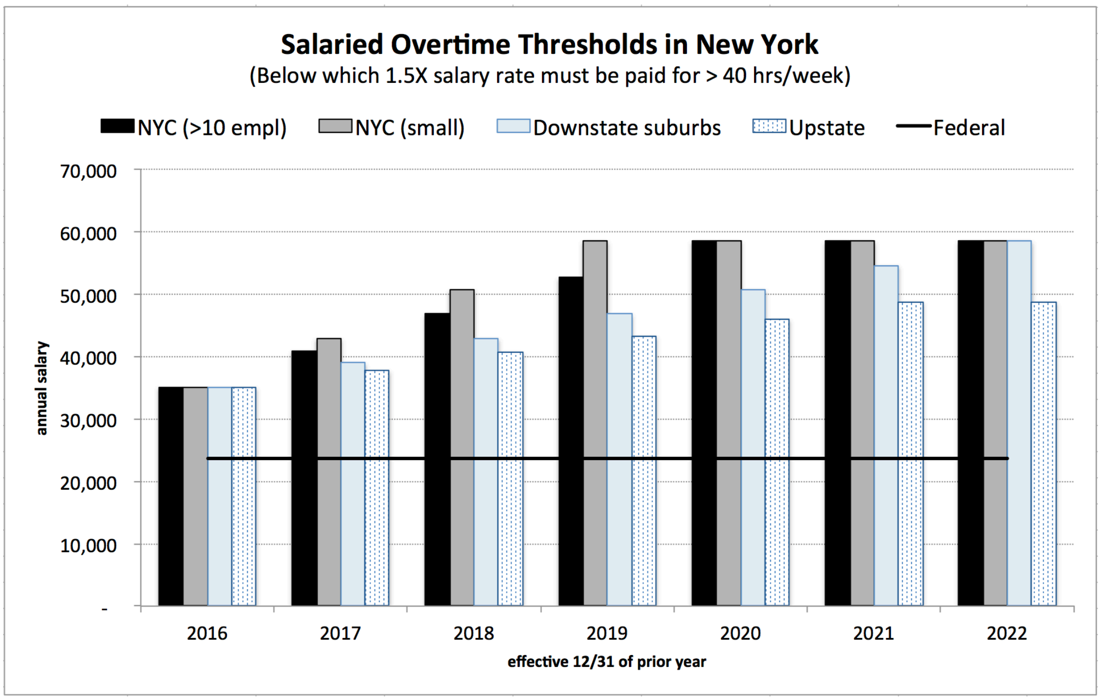
As the minimum wage climbs to $15 in New York City (by 2019-20) and in Long Island and Westchester (by 2021), the inflation-adjusted level will reach an all-time high. Even the lower minimum wage set for upstate New York ($12.50 by 2021), which is to be "indexed" thereafter on a schedule aimed at ultimately reaching $15, will roughly equal the 1970 record in just four years.



By 2022, New York's scheduled minimum wage increase will have cost the state at least 159,000 jobs, according to a study by the Empire Center and American Action Forum. While most of the higher wages would flow to households well above the poverty level, the study found, the loss of job opportunities will mostly affect marginal, low-skill workers.

Further compounding the impact of the minimum wage, the Labor Department rule enforcing the minimum wage statute, effective Dec. 31, 2016, also added provisions that will significantly expand the number of salaried workers in New York who must be paid overtime (1.5 times their usual pay) for working more than 40 hours in a week.

Before the change, salaried workers earning more than $35,100 per year were not eligible for overtime in New York. Under the new rule, however, the threshold is being raised as an arbitrary multiple of the scheduled minimum wages in different regions, as shown in the chart below. By 2021, overtime rules will apply to all employees earning at least $58,500 per year downstate and $48,750 per year in upstate New York.



The state's action immediately lifted the salaried overtime threshold throughout New York to well above the $23,660 federal limit in effect through 2016, and also goes beyond the $47,476 threshold imposed under an Obama administration rule that was blocked by a federal court injunction and ultimately scrapped by the Trump administration.

It represents yet another policy that will make employers think twice about creating jobs or hiring in New York.

State-mandated increases in hourly wages and salaried overtime requirements will be phased in at the same time as a new system providing covered private employees with up to 12 weeks of paid family leave—the most comprehensive paid family leave program in the nation. Employers covered by the New York Workers' Compensation Law will have to permit eligible employees to take paid leave and will have to deduct contributions from their employees' pay to fund paid leave benefits. While the leave requirement is promoted as self-funding, at the very least it will impose significant new record-keeping requirements on employers.

The solution

Because the minimum wage and associated overtime threshold mandate are to be phased in over several years, there is still time to more carefully reconsider the impact of these policies and to weigh their costs against their benefits. To avoid hindering job creation, the state Legislature should:

1. ***Suspend further minimum wage hikes***
   In place of minimum wage increases, which will mainly benefit workers above the poverty line, the state should consider raising its Earned Income Tax Credit, which is directly targeted to low-wage workers supporting families.

2. ***Repeal new salaried overtime rules***
   The state Labor Law should be amended to clarify that overtime standards are not solely within the administrative purview of the labor commissioner.

Reform the workers' compensation system

The employer-funded workers' compensation system covers medical expenses and lost wages for employees injured in the workplace, regardless of fault, while at the same time protecting employers against lawsuits related to workplace injuries. Employers in New York State can obtain workers' compensation insurance coverage by purchasing policies from a private insurance carrier or the government-operated State Insurance Fund, or by self-insuring with approval of the state Workers' Compensation Board.

All 50 states have workers' compensation programs—but New York's consistently has ranked among the costliest in the nation. As of 2016, as shown in the table on the following page, the average workers' compensation premium in the Empire State ranked third highest based on a comparable index developed by the state of Oregon, with premium costs 54 percent above the median for all states.

State Workers' Compensation Insurance Rates

Ranked on State of Oregon Insurance Study Index*

State	Rank	Index	% of study median	State	Rank	Index	% of study median
CA	1	3.24	176	GA	27	1.80	98
NJ	2	2.92	158	ID	28	1.79	97
NY	***3***	***2.83***	***154***	MS	29	1.70	92
CT	5	2.74	149	TN	30	1.68	91
AK	5	2.74	149	NE	32	1.67	91
DE	6	2.32	126	SD	32	1.67	91
OK	8	2.23	121	FL	33	1.66	90
IL	8	2.23	121	MI	34	1.57	85
RI	9	2.20	119	CO	35	1.56	84
LA	10	2.11	115	KY	36	1.52	82
MT	11	2.10	114	AZ	38	1.50	82
WI	12	2.06	112	MD	38	1.50	82
VT	14	2.02	110	TX	40	1.45	79
ME	14	2.02	110	OH	40	1.45	79
WA	15	1.97	107	KS	41	1.41	77
HI	17	1.96	107	DC	42	1.37	74
NH	17	1.96	106	NV	43	1.31	71
SC	18	1.94	105	MA	44	1.29	70
MO	20	1.92	104	OR	45	1.28	69
NM	20	1.92	104	UT	46	1.27	69
MN	22	1.91	104	VA	47	1.24	67
NC	22	1.91	103	WV	48	1.22	66
WY	23	1.87	101	AR	49	1.06	57
IA	24	1.86	101	IN	50	1.05	57
AL	25	1.85	100	ND	51	0.89	48
PA	26	1.84	100				

* The index is designed to make state workers' compensation rates comparable by using a constant set of risk classifications for each state.

Source: 2016 Oregon Workers' Compensation Premium Rate Ranking Summary

By this measure, New York's competitive position has actually gotten *worse* since 2006—when the state's average premium was 10th highest, 27 percent above the median—despite the Legislature's enactment of workers' compensation reform in 2007. Overall workers' compensation costs were expected to decline by some 20 percent as a result of the 2007 changes. Instead, costs actually *increased*.

New York's rising workers' compensation expenses can be attributed to an assortment of factors, including the large increase in the maximum weekly benefit and a substantive shift to costlier permanent partial disability (PPD) claims in the state. In addition, there are concerns that a cap on the duration of benefits could be porous if a greater proportion of claimants applied for hardship permanent disability awards, thereby wiping out expected cost savings.

In 2013, the Cuomo administration took some steps to further reform the system by closing the Reopened Case Fund, which was proving costly for employers, and creating a more efficient, unified assessment methodology for all employers. At the same time, some small additional increases in minimum and maximum benefits were approved, but costs continued to rise.

The fiscal 2018 state budget, enacted in April 2017, included some modest workers' compensation reforms, including a requirement for a long overdue update of medical impairment guidelines, as well as a 2.5-year time limit on temporary benefits, which is expected to accelerate the classification of workers' compensation cases. These two changes are expected to lead to between $450 million and $650 million in savings for employers.

Meanwhile, in several transactions dating back to the 1980s, the Legislature has financially undermined the government's captive State Insurance Fund (SIF) by using "surplus" or "excess reserve" SIF funds to help balance the state budget. Over the past four years alone, as proposed by Governor Cuomo, some $1.75 billion has been siphoned from SIF into the budget.

While the 2017 changes were a step forward, more reform is needed to make New York's workers' compensation costs more competitive with those of other states.

Priority reforms include the following:

1. ***Reset the Maximum Weekly Benefit***
   The 2007 benefits increase has driven up costs and created disincentives for claimants to go back to work. Compounding the problem, maximum weekly benefits have been "indexed" to equal up to half of the average weekly wage—which, inflated by Wall Street salaries and bonuses, is higher than the true average for the vast majority of jobs across the state. The maximum weekly benefit should instead be linked to regional average wages; in the New York City metropolitan area labor markets, the regional average should be adjusted to exclude the distortive effect of financial sector compensation.

2. ***Eliminate the trust fund deposit mandate for private insurers***
   In combination with other 2007 changes, expanding the deposit requirement to permanent partial disability claims appears to have created incentives for carriers to delay disability classifications, resulting in larger payouts. The law should be changed so that it once again requires such deposits only to cover the present value of indemnity benefits for permanent total disability claims and death claims.

3. ***Prohibit raids on the State Insurance Fund***
   State law needs to make it clear that SIF cannot be used as a piggybank to replenish the state budget. To be sure, the fund will ultimately be subject to political influence and fiscal manipulation as long as it is a government agency—which is why the Legislature needs to seriously examine the feasibility of privatizing SIF or spinning it off as a more independent public benefit corporation.

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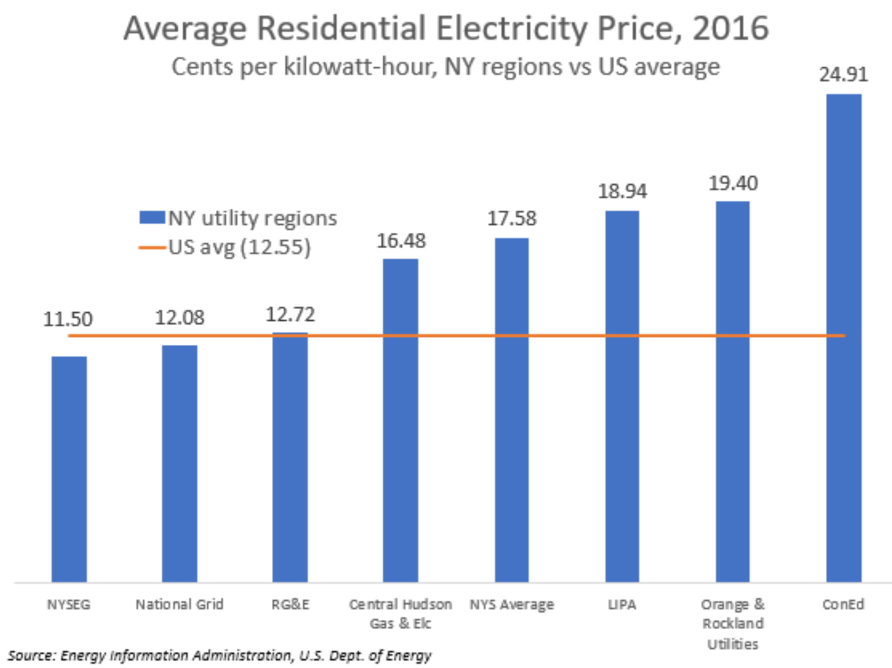
5. Adopt pro-growth energy policies

- ✓ **Reform the Public Service Commission and scrap its undemocratic mandates**
- ✓ **Address electricity transmission challenges**
- ✓ **Reconcile the state's conflicting policies on natural gas**

Energy has been described as the lifeblood of a modern economy—and in New York, energy is especially costly by national standards.

New York residents and businesses, especially downstate, pay some of the highest electricity rates in the country, as illustrated below. These rates reflect the cost of power generation ("supply") and transmission ("delivery"), compounded by high local property tax rates on power plants, transmission rights-of-way and substations.



The state Public Service Commission (PSC), created in 1907 to regulate utility monopolies, has since the 1990s expanded its own powers to levy surcharges on electricity customers and then spend the proceeds as its five commissioners, appointed by the governor, deem fit.

Governor Cuomo has used the PSC as the mechanism by which to push a far-reaching energy policy, known as "Reforming the Energy Vision" (REV), which seeks to "build a clean, resilient, and affordable energy system for all New Yorkers," but hasn't been approved by the state Legislature. By the end of the decade, REV efforts will have collected and spent more than $1 billion outside the state budget process.

A focal point of REV is the Clean Energy Standard, a mandate enacted by the PSC in 2016 ostensibly to promote renewable energy. But the standard's primary function is to bail out three money-losing nuclear plants outside Rochester and Syracuse. The standard requires electricity ratepayers to pay inflated prices for wholesale electricity as part of a credit scheme, with the state dishing out the proceeds from the credits to private businesses. By the end of 2018, the Clean Energy Standard will have cost ratepayers $851 million, with 99.3 percent of the money going to Illinois-based Exelon Corporation, which owns the plants.

But the PSC shouldn't be interfering with the price of wholesale electricity in the first place: since the state-led overhaul of the electricity market in the 1990s, customers are no longer captive to utility-owned power plants. Instead, electricity is generated and sold on a wholesale market, where competition drives down prices and provides valuable market signals to guide investment. As such, there's no longer a need for the state, through the PSC, to regulate the prices paid to generators. This outdated statutory authority has allowed the PSC to impose the Clean Energy Standard on ratepayers.

While the PSC has concentrated on Governor Cuomo's REV agenda, it has paid insufficient attention to its obligation to oversee the electrical grid itself. Nothing illustrates this failing better than the high electricity rates paid in New York City and on Long Island—while established nuclear power plants can't turn a profit less than 300 miles away. The difficulty in moving electricity from upstate, through the Hudson Valley, is not a new one: Cuomo acknowledged it in his January 2012 State of the State speech. But despite some early procedural moves, the PSC has still not approved the transmission upgrades needed to remedy it six years later.

The state's energy markets have also been hampered by policies working at cross purposes with respect to natural gas exploration and distribution.

Much of upstate New York, including the economically struggling Southern Tier region, sits directly atop the gas-rich Marcellus Shale and Utica Shale formations. These previously inaccessible veins of wealth can now be tapped thanks to improved hydraulic fracturing technology, which involves the injection of water, sand and chemicals to release the natural gas trapped thousands of feet below ground. In neighboring Pennsylvania as well as Ohio and other states, shale gas production via "hydro-fracking" has generated significant new wealth, jobs and business opportunities.

State policy under Governor Cuomo has repeatedly recognized the benefits of expanded use of natural gas. For instance:

- State funds are being used to construct a 12-inch, 2.5-mile natural gas pipeline to the state's Marcy Nanocenter site outside Utica in a bid to attract a manufacturing tenant.
- The plan to shut down of Indian Point Energy Center, a nuclear plant in Westchester County, assumes lost capacity will be replaced with electricity generated by gas-fired plants.
- Gas turbines will support an 8-megawatt "microgrid" serving the Empire State Plaza complex in downtown Albany.

But at the same time, the administration has worked in direct opposition to that expansion, most visibly by blocking natural gas development in the Southern Tier using hydraulic fracturing, which has proceeded in Pennsylvania and other nearby states.

State regulators have also blocked needed natural gas infrastructure through administrative actions. In the case of the Constitution Pipeline, which was poised to bring natural gas to the Southern Tier and ultimately New England, the Department of Environmental Conservation moved to kill the project even as the state's economic development arm was issuing grants for companies to tie into it.

New York needs energy policies that balance costs with environmental benefits in the interest of spurring growth.

Reform the PSC and scrap its undemocratic mandates

Instead of implementing environmental or economic policy, the PSC should be focused first on the reliability of the state's electrical grid.

The Legislature should eliminate the PSC's ability to levy surcharges or to mandate any credit schemes such as those used for the Clean Energy Standard. Eliminating these surcharges and mandates will immediately lower electricity prices, especially helping struggling manufacturers and other energy-intensive employers.

The Clean Energy Standard is ostensibly part of Governor Cuomo's efforts to reduce carbon dioxide emissions generated by electricity generators—but it doesn't regulate carbon dioxide directly. If the state wishes to enact measures to limit or reduce carbon emissions, lawmakers should consider legislation regulating carbon directly, and allow market forces to develop the best ways of meeting those criteria. Pursuing renewables for the sake of pursuing renewables, as the Clean Energy Standard was meant to do, and bailing out nuclear power plants, as the Clean Energy Standard does, are not sound public policy.

The poor formulation of the Clean Energy Standard cost New York State an opportunity to encourage substantive movement away from oil or coal, which accounted for nine percent of the state's generation capacity in 2016. The standard went to extreme measures to stifle competition outside the solar panels and wind turbines envisioned by the governor, going so far as exclude the new hydroelectric power being developed in Quebec for potential export. The standard should be eliminated in its entirety.

Address electricity transmission challenges

The PSC should address long-standing transmission issues to improve the flow of electricity, with a special eye to encouraging transmission projects that do not require the seizure of private property.

Reconcile the state's conflicting policies on natural gas

The state should consider pending applications for the Constitution Pipeline and other natural gas projects on their merits, allowing projects that meet existing state standards to proceed. The Legislature should overturn the arbitrary ban on hydraulic fracturing, while enacting safeguards based on best practices from other states.

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6. Streamline state development regulations

- ✓ **Adopt binding time limits for the SEQR process**
- ✓ **Increase predictability of impact "scoping"**
- ✓ **Define local community "character" based on local land-use laws**

Major residential, commercial and industrial developments throughout the country are subject to an array of federal and state laws designed to protect the environment, along with, nearly everywhere, local land-use regulations addressing the community impacts of such projects. But in New York, development efforts face added red tape—in the form of the State Environmental Quality Review Act, or SEQR.

Despite its title, SEQR is not primarily an "environmental" statute but a planning and zoning law, often more restrictive than local regulations. As currently written and interpreted, SEQR is routinely exploited to produce costly delays and uncertainty for the kind of job-creating projects New York desperately needs. That's why several of the state's regional economic development councils have identified SEQR as an obstacle to growth.

In addition to construction projects, actions that may affect the environment, as broadly defined in the SEQR statute, include the adoption of new land-use laws, rules and regulations, bond financing resolutions for public projects and other required permits for private projects.

New York's law also regulates potential effects on, as stated in the law, "existing community or neighborhood character"—a vague concept that has been construed broadly enough to block projects otherwise permissible under existing local land-use ordinances. It can be used to force changes to "mitigate" environmental impacts—not only dictating how a project is built, but effectively deciding whether it gets built at all. SEQR requires an Environmental Impact Statement (EIS) if a project "may" cause a significant adverse environmental impact, further expanding the scope of actions covered by the state law.

The lead agency designated under SEQR also may add a requirement for "scoping," a process that must include an otherwise undefined and open-ended "period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means."

Before a project can win final approval, SEQR requires that adverse environmental impacts be "minimized to the maximum extent practicable."

All in all, New York's SEQR law is one of the most expansive and stringent laws of its type in any state. Thirty-seven states have adopted formal environmental review requirements based at least in part on the original federal National Environmental Policy Act of 1970. In 21 of these states, however, environmental review provisions apply only to certain types of development activities, specific natural resource sectors or particular geographic areas.

New York is one of only 16 states with more broadly applicable, comprehensive environmental planning laws. These laws generally involve three steps: a determination of whether a proposed action is subject to review, an assessment of the environmental impact, and a detailed review of the action's impacts and measures required to reduce or mitigate that impact. But, as shown below, New York's law is one of only *three* applying to policy changes as well as physical developments, to local as well as state actions, and to private as well as public projects.

Comparing Comprehensive Environmental Protection Laws

State/date of enactment	Applies to actions or approvals at these levels	More likely than NEPA to require EIS?	"Action-forcing" provision?	Applies to fully private projects?
California (1970)	State or local	Yes	Yes	Yes
Connecticut[1] (1971)	State	Yes	No	No
Georgia (1991)	State or local	Yes	No	No
Hawaii (1974)	State or county	Yes	No	Yes
Indiana (1972)	State	No	No	No
Maryland (1973)	State	Yes	No	No
Massachusetts (1972)	State	Yes	Yes	Yes
Minnesota (1973)	State or local	Yes	Yes	Yes
Montana (1971)	State	No	No	Yes
New Jersey[2] (1989)	State or local	Yes	Yes[3]	No
New York (1975)	State or local	Yes	Yes	Yes
North Carolina (1971)	State or local	Yes	No	No
South Dakota[4] (1974)	State	Yes	Yes	Yes
Virginia (1973)	State[5]	Yes	No	No
Washington (1971)	State or local	Yes	No	Yes
Wisconsin (1972)	State	No	No	Yes

[1] Separate provision allows counties, cities, and towns to adopt a separate ordinance for review of certain private projects
[2] New Jersey adopted NEPA-like provisions through an executive order only.
[3] Subject to discretion of state environmental agency.
[4] Process proceeds at agency's discretion.
[5] Counties, cities, and towns are exempt from requirement, except for certain highway projects.

Source: Zhao Ma, Dennis R. Becker and Michael A. Kilgore, "Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment" *Journal of Environmental Planning and Management*, Vol. 52, No. 8, Pg. 1040 (Dec. 2009).

While the SEQR process does have some timelines, they don't guarantee that the process will be completed within any particular time period. A drop-dead date by which the process must end does not exist. Indeed, since its inception, the most common complaint about SEQR has been the way it can unnecessarily delay a project, which, if the process takes long enough, can be tantamount to denial. This is especially true for small developers or project sponsors lacking the financial resources to pay for repeated rounds of technical changes and studies demanded by lead government agencies.

Existing deadlines in SEQR are effectively unenforceable, since the only legal recourse for project sponsors or applicants is to file a lawsuit at the very *end* of the process. With such limited enforcement mechanisms, the statute's deadlines become nothing more than guidelines.

Given the wide array of existing environmental protection laws, along with local planning and zoning statues, it's not clear that SEQR is even needed. But assuming it stays on the books, the law should be streamlined. Among the following recommendations, some would require statutory amendment, while others could be accomplished through regulatory revisions.

Adopt binding time limits for the SEQR process

With the submission of an environmental assessment form as the starting point, implement new, hard timelines that effectively would divide the SEQR review process into two phases: 120 days for determination of significance and scoping, and 180 days for completing both a draft and final EIS. Along the way, if deadlines at various stages were not met, then the project would be cleared and advanced for the other needed approvals. Barring any mutually agreed-upon extensions, this would ensure that the SEQR process for any project is completed within 300 days, or about 10 months, from start to finish.

Increase predictability of impact "scoping"

A "scoping" process, resulting in a definitive list of environmental impacts to be considered in the EIS, should be mandatory for all actions or projects unless waived by the lead agency. And once scoping is complete, any new "impact" issues should only be admitted through the existing supplemental EIS procedure and subject to more stringent admission criteria. Such issues must be significant enough that, had the issue been considered during scoping, the project could not have proceeded without mitigation. This would curb the ability of lead agencies to hold up projects by repeatedly introducing new issues late in the SEQR process.

Define local community "character" based on local land-use laws

As broadly defined and applied through the SEQR process, the law's reference to potential impacts on "existing neighborhood and community character" can too easily serve as a vehicle for imposing development restrictions beyond those already found in local land-use laws. For better or worse, the "character" of a neighborhood or community ultimately is reflected in planning and zoning ordinances determined and periodically updated through the democratic process, by locally elected officials.

SUGGESTED READING

E.J. McMahon and Michael Wright, "Streamlining SEQR: How to Reform New York's 'Environmental' Planning Law," Empire Center for Public Policy, Dec. 2013. empirecenter.org/publications/streamlining-seqr/

Zhao Ma, Dennis R. Becker, and Michael A. Kilgore, "Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment," *Journal of Environmental Planning and Management*, Vol. 52, No. 8, Dec. 2009. tandfonline.com/doi/full/10.1080/09640560903327591

Mark A. Chertok and Ashley S. Miller, "Environmental Law: Developments in the Law of SEQRA," 61 Syracuse L. Rev. 721, 2011. lawreview.syr.edu/wp-content/uploads/2013/02/L-Chertok-Miller.pdf

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