



Legislative Update May 2010

During the week of March 22 both the Senate and the Assembly passed resolutions outlining their respective positions on the Governor's executive budget. The next step, theoretically, is to convene conference committees to iron out the differences and also negotiate with the Governor to try to reach a final budget.

Since then there have been closed-door meetings between the Governor, Assembly and Senate leaders but no significant progress has been made on reaching an agreed-upon budget. It is reported that they are at least \$3 billion away from filling the \$9+ billion deficit. Conference committees have not been started.

Since the budget was not adopted prior to April 1 as required by the Constitution, they have passed emergency spending bills to keep government running. Under law Members of the Legislature will have their pay withheld until a balanced budget is adopted.

Below are the highlights and the positions of each house:

State and local government procurement flexibility

The Governor's budget would:

-exempt school construction and the City of Yonkers Educational Construction Fund from the public bidding requirements contained in the Wicks Law and would make permanent the New York City School Construction Authority exemption relating to bidding on public works projects.

Senate: Silent

Assembly: Reject

-provide more contracting flexibility by increasing local competitive bidding thresholds for public works contracts from \$35,000 to \$50,000 and commodities contracts from \$10,000 to \$20,000;

Senate: Accept

Assembly: Accept 35,000 to 50,000

Modify 20,000 to 17,500

-allow local governments to require that bids be submitted in electronic format;

Senate: Accept

Assembly: Technology contracts only

-provide for submitting the statement of non-collusion electronically;

Senate: Accept

Assembly: Accept

-allow for local governments to hold reverse auctions;

Senate: Accept

Assembly: Reject

-allow local governments to award contracts based on best value;

Senate: Accept

Assembly: Reject

-allow local governments to “piggyback” on certain Federal General Services Administration contracts as well as other contracts let by other states and local governments;

Senate: Accept

Assembly: Reject

-provide local governments with the option of advertising for bids in the Contract Reporter instead of the official newspaper.

Senate: Reject

Assembly: Reject

-allow the state to use electronic bidding and reverse auctions for competitive procurements;

Senate: Accept

Assembly: Reject

-authorize the submission of statements of non-collusion electronically for the state:

Senate: Accept

Assembly: Accept

-increase from \$50,000-\$100,000 the threshold under which short-term construction contracts (using abbreviated advertising and not requiring a performance bond) may be used;

Senate: Accept

Assembly: Accept

Prior Approval Health Insurance Rate Adjustments

This part would reinstate prior approval by the Superintendent of Insurance of health insurance rate adjustments made by the health maintenance organizations, not-for-profit insurers, and commercial insurers authorized to write accident and health insurance, and raise the minimum medical loss ratio to eighty-five percent across the board.

Senate: Reject

Assembly: Accept, modify 85% to 82.5%

Group Self Insured Trusts

Would amend the Workers' Compensation Law and the Insurance Law to authorize the Workers' Compensation Board:

- to borrow from the Uninsured Employers Fund;
- enforce judgments against employers who fail to honor their workers' compensation obligations as a member of a group self-insured trust (GSIT);
- require the custodians of records pertaining to insolvent group self-insurers to turn such records over to the Board upon demand;
- allow the Board to recognize insurance products, which transfer the long term workers' compensation obligations from a former self-insurer or group self-insurer to an authorized workers' compensation carrier.

Senate: Accept

Assembly: Accept

MTA Construction

Would extend the MTA's authority to provide owner-controlled insurance to contractors for bridge, tunnel, and omnibus facilities. Currently the MTA may only extend owner-controlled insurance to contractors for subway and commuter rail capital projects.

Senate: Accept

Assembly: Reject

Would create a pilot program to test electronic and reverse bidding for MTA contracts, allow the MTA to receive bids electronically, and provide that the online posting of bids would constitute public openings and readings of bids. The MTA would also be authorized to use reverse bidding, allowing bidders to submit new bids if they are not the lowest bid. The pilot program would be in existence until December 31, 2014.

Senate: Accept

Assembly: Reject

BILLS OF IMPORTANCE DURING CURRENT LEGISLATIVE SESSION

(The full text of these bills can be accessed at www.nysenate.gov)

S955/ A3911 Enacts the "New York State fair pay act"; provides that it shall be an unlawful employment practice for an employer to discriminate between employees on the basis of sex, race and/or national origin by paying different wages.

S1629/ A4350 Provides public and private employees right to review personnel file.

S2245/ A4921 Relates to increasing the maximum unemployment benefit rate, and gradually increase the taxable wage base for employer contributions to the Unemployment Insurance Trust fund.

S2249/ A469 Relates to the dedicated occupational safety and health training and education and occupational health clinic programs fund.

S2364 Permits any medical provider authorized by the workers' compensation board to treat injured workers.

S2732/ A4984 Includes Lyme disease as an occupational disease compensable under the workers' compensation law.

S2781/ A2135 Create a presumption of permanent total disability for claimants who are found eligible for federal social security disability benefits.

S2898A/ A5700A Eliminates 20 million dollar cap on civic facilities authorized to be financed by industrial developments agencies and authorities.

S2904B Requires the posting of wage rates and supplements; provides penalties for failure to do so.

S4053A/ A4920A Increases unemployment benefits.

S4755/ A3871A Requires prior written notice upon hiring and once annually to all employees, informing them of the types of electronic monitoring which may occur; when an employer has reasonable grounds to believe that employees are engaged in conduct which (1) violates the law, (2) violates the legal rights of the employer or the employer's employees, or (3) creates a hostile workplace environment, and electronic monitoring may produce evidence of this misconduct, the employer may conduct monitoring without giving prior written notice.

S4912/ A3705 Subjects projects involving the construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation or alteration of a building, charter school or improvement to property financed, in whole or in part, through an industrial development agency, job development authority, dormitory authority, correctional authority or similar public entity to public work contract requirements concerning hours, wages and supplements for employees; defines the term "public work".

S5470/ A8280 Authorizes the superintendent of insurance to modify or disapprove health insurance rate filings as unreasonable, excessive, inadequate or unfairly discriminatory

S5791/ A8742 Provides workers' compensation benefits for injury or sickness, pregnancy or family leave; applies to an employee and to family members taking family leave to care for an employee.

S6180/ A470A Provides that every contract entered into by a state agency for the procurement of equipment, materials or supplies shall contain a statement in which the contractor attests that no foreign made equipment, materials or supplies furnished to the state pursuant to the contract have been produced in whole or in part by forced labor, convict labor or indentured servitude; provides sanctions for violations; provides waivers for good faith violations.

S6194/A8237A Enacts the "New York state construction industry fair play act"; defines terms; provides notice to persons receiving remuneration from contractors and subcontractors; describes violations; authorizes enforcement and penalties; creates a new fund in the state finance law entitled the construction industry classification fund.

A215A Provides that the failure of a contractor or sub-contractor on a public works project to post a statement of wage rates and supplements shall be subject to prosecution as a misdemeanor and subject to a civil penalty of not less

than five hundred nor more than one thousand dollars; provides for the maintenance and production on the job site of "sign-in" and "sign-out" sheets upon the request of the fiscal officer.

A393 Requires that a contractor or sub-contractor may not engage another person to do work on a public works project unless it is pursuant to a written agreement.

A1147 Change limit on the requirement for prequalification of bidders on public work contracts from population of 50,000 or more to cities of one million or more. It removes language permitting school districts and political subdivisions with a population of less than fifty thousand to utilize a list of prequalified bidders.

A8100 Relates to increasing the maximum benefit rate for unemployment insurance, part-time work, training and extended benefits.

A8522 Enacts the regional labor protection act of 2009 requiring the use of qualified local labor by contractors awarded projects in the construction of public works providing for the expenditure of state public money when the unemployment rate for construction workers is six percent or higher for three consecutive months.