



## **LEGISLATIVE UPDATE**

### **AUGUST 2016**

**The Legislature got off to a slow start in January and little was done until they reached agreement with the Governor on the 2016-2017 budget on March 31, 2016. Both Houses completed passage of all of the budget bills on April 1, 2016. The discussion and negotiations were dominated by minimum wage, paid family leave, education aid, Medicaid and infrastructure spending.**

#### **Some highlights:**

##### **Minimum Wage**

The law will gradually increase the minimum wage to \$15 / hour in most areas of the state between the end of 2018 and 2021.

Beginning in 2019, the state Division of the Budget will conduct an annual analysis of the economy in each region and the effect of the minimum wage increases statewide to determine whether a temporary suspension of the scheduled increases is necessary.

##### **Paid Family Leave**

When fully phased- in, employees will be eligible for 12 weeks of paid family leave when caring for an infant, a family member with a serious health condition or to relieve family pressures when someone is called to active military service. Benefits will be phased-in beginning in 2018 at 50 percent of an employee's average weekly wage, capped to 50 percent of the statewide average weekly wage, and fully implemented in 2021 at 67 percent of their average weekly wage, capped to 67 percent of the statewide average weekly wage. This program will be funded entirely through a payroll deduction on employees for a disability policy. Employees are eligible to participate after having worked for their employer for six months.

##### **Middle Class Tax Cut**

The budget lowers Personal Income Tax rates for middle class New Yorkers.

##### **Education Aid**

The budget provides \$24.8 billion in School Aid, increasing by 6.5 percent for the 2016-17 School Year.

### **Infrastructure Spending**

The budget contained the largest state transportation plan ever approved, with over \$55 billion of transportation investments statewide, including \$27.14 billion for State Department of Transportation and Thruway programs and \$27.98 billion for the Metropolitan Transportation Authority programs. The plan aligns capital programming for DOT and MTA over a 5-year period (SFY 2016-20) and includes additional commitments for priority projects and programs that extend over a sixth year.

- The \$27 billion DOT capital program includes: \$21.1 billion for capital improvement of highways, bridges, rail, aviation infrastructure, non-MTA transit, and DOT facilities throughout the state.
- The \$27 billion MTA Capital Program includes: \$26.6 billion for improvement of capital facilities operated by the New York City Transit Authority, Long Island Rail Road, Metro-North Railroad and MTA Bus and major initiatives including \$1.5 billion for Phase II of the Second Avenue Subway. Specifically, the budget authorizes a record \$8.3 billion of State support for the program.

### **Workers' Compensation Reform**

The Legislature rejected most of the Governor's reforms but did approve proposals that:

- Sweep assessment reserves remitted to the Chairman of the Workers' Compensation Board by the Director of Budget as follows: \$60 million for infrastructure and system upgrades; \$40 million for education and training, and \$10 million for implementation of the Paid Family Leave Act; \$140 million over the next four years to the State Insurance Fund (SIF) for the annual partial payment of the State's obligation under Section 88-c of the WCL. Any remaining money from this sweep can be left with the Board or taken into the General Fund at the direction of the Director of the Budget.

### **Established the New York State Design and Construction Corporation**

The Legislature modified the proposal that establishes the New York State Design and Construction Corporation (NYSDCC) as a subsidiary of the Dormitory Authority of the State of New York (DASNY) to provide additional project management expertise and oversight on public works projects in excess of \$50 million in value that are undertaken by state agencies, departments, public authorities and public benefit corporations after January 1, 2016. Authorizes NYSDCC to review, make recommendations and require corrective action be taken on such public works projects. The Legislature reduced the authority of the Corporation which originally would have allowed it to terminate contracts, contractors, subcontractors or other consultants.

**The budget also provides design-build authorization to the Empire State Development Corporation, the New York Convention Center Development Corporation and their subsidiaries to utilize a design-build project delivery method for the Jacob V. Javits Convention Center, the Empire State Station Complex, the James A. Farley Building Replacement, and the Pennsylvania Station New York Redevelopment projects. The language requires prevailing wage, project labor agreements, and MWBE compliance.**

**MTA procurement reforms** to generate savings for 2015-2019 Capital Plan

Increases the sealed bidding threshold on purchase contracts from \$15,000 to \$100,000, and on contracts for public works from \$25,000 to \$100,000. For personal services contracts, the threshold is raised from \$20,000 to \$100,000.

- **Allows for the use of reverse auctions through electronic bidding whereby the sellers compete to provide the lowest price but only for commodities purchases. The original Governor's proposal was more expansive.**
- **Allows for the disposal of personal property valued at less than \$500,000 by public auction**

Once the budget was adopted the Legislature took a lengthy recess during which it was learned that federal prosecutors had subpoenaed the Governor's office as well as various state entities. The focus appears to be Governor's Buffalo billion economic development initiative, upstate power plants, and SUNY Polytechnic which has handled many of the upstate development projects.

Among those apparently being investigated is Joe Percoco, the Governor's long-time closest aide who he has referred to as his father's third son, another very close former aid to both Cuomo's, Todd Howe, who is now a Washington lobbyist, Alain Kalyeros who is the head of SUNY Polytechnic and the highest paid state employee at \$1.6 million. A large number of contractors who received large sometimes no-bid contracts and were among Cuomo's largest political donors have also been subpoenaed.

Recently it appears that the investigation has expanded to include a larger number of upstate development projects. Subpoenas have been issued to many of the Governor's senior aides and many contractors. Also last week another close political operative, Steve Pigeon from Buffalo was indicted on corruption charges. While there has been no indication that any of this is linked directly to the Governor it is common knowledge that he is very hands on and controlling. In the words of US Attorney Preet Bharara "Stay tuned."

While all this was going on Bharara also set his sights on Mayor de Blasio for activities related to his efforts to drive campaign contributions to local political parties in an effort to turn the Senate over to the Democrats in 2014. They're also looking at how his Campaign for One NY was funded and additional campaign finance law violations. There are at least six separate investigations all involving money and special treatment of large donors.

In May former Senate Majority Leader Skelos was sentenced to five years in prison for his conviction on corruption charges involving using his office to get his son jobs. Former Speaker Sheldon Silver was sentenced to 12 years for his corruption conviction. In both cases a recent US Supreme Court decision has opened the door to appeals.

According the Business Council of New York, the state remains economically divided, New York City has had significant growth since the 2008 recession and while the suburbs and Long Island have kept pace with national trends, upstate barely restored jobs that were lost in the great recession. Aside from Buffalo and the capital region growth has been dismal.

Over the past five years the business climate has improved and this year the overall budget stayed under inflation and significant investment was made in addressing both upstate and downstate infrastructure needs. The Governor, however, championed a number of issues

which will result in significant new cost and mandates on private sector employers, including the \$15 minimum wage and the most generous paid family leave law in the country. Little was accomplished in the way of regulatory reform.

The Republican Senate which is barely hanging on to a majority insisted on the creation of a Business Regulation Council as part of the budget agreement. The goal was to get some regulatory reform done before the end of the session. It consisted of representatives of employers and labor and was lobbied hard by a coalition of 42 business organizations which urged the Council to take up workers comp, healthcare, and WICKS law reform as well as other regulatory issues including scaffold law reform.

The Council ultimately issued a report identifying areas that should be reviewed and discussed but little was done since it was so late in the session and the members could not agree on any big issues.

It was a very good year for status quo. One it is an election year, two the Governor is distracted by the investigations and three we have new leaders in both houses. Very little action was taken on bills that we were following.

**We were, however, successful in getting the most significant bill that we were advocating, the so-called Co-Fed bill passed in both Houses.** The bill provides that a failure on the part of a contractor to give timely notice to a public owner should not invalidate a claim unless the owner was materially prejudiced. (S6909) It is a response to the ever-increasing use of contractor forfeiture enhancement devices that have been used to cost contractor's and subcontractor's millions of dollars. The bill now moves to Governor Cuomo for his consideration sometime this summer. The Association has written to the Governor's Counsel urging the Governor to sign the legislation into law.

Working together with IBEW Local 3 we continued to successfully oppose efforts to weaken public bidding, prevailing wage laws and expansion of design-build. The rest of the summer and fall will be dominated by election efforts with the Presidential situation affecting everything. All 213 members of the legislature are up for reelection and the focus as in the recent past will be on the Senate.

All of the bills we have been following will die at the end of the year since that is when the 2 year term ends.

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