



LEGISLATIVE UPDATE FEBRUARY 2017

After the legislature adjourned in June of 2016 the focus was exclusively on the general elections in November. All 213 members of the Assembly and Senate faced re-election. With a very contentious presidential election, many predicted that the New York State Senate Republican majority was in jeopardy due to the popularity of Hillary Clinton and the controversy surrounding Donald Trump.

When the dust settled, Clinton failed in her attempt to become the first woman president and ran very poorly in the New York City suburbs and many areas of upstate. The result was that despite an all-out effort by Senate Democrats with the help of Governor Cuomo, the Senate Republicans maintain their slim majority.

The Senate Majority now has 31 Republicans plus one Democrat, the Independent Democrat Conference went from 5 to 7 members and the Minority Conference has 24. 32 are needed for a majority. The Senate Republicans have continued their alliance with the Independent Democrat Conference and have a majority coalition. Several of the Independent Democrat members were named committee chairs. In the Assembly, the majority remains comfortably in the hands of the Democrats.

In December, the Governor vetoed the so-called Co Fed bill which we had supported. The bill would have required clauses in certain public works projects to provide that failure to give timely notice to the public owner would not invalidate a claim unless there was material prejudice. We have participated in a coalition to support the bill and are continuing to see if there is a way to get this done this year even though the Governor in his veto message directed the Council of Contracting Agencies to report on notice and forfeiture provisions in public works contracts by September 1, 2017.

Most everything was quiet on the legislative front until November 15th when a commission that was formed in 2015 to recommend pay adjustments for the Legislature and commissioners failed to make a recommendation by the statutory deadline. The Governor's appointees refused to make a recommendation that was not tied to specific policy changes which included legislative term limits, ethics reform, limits on outside income, campaign finance reform and procurement reform. Coincidentally these were the Governor's priorities. The Legislature was outraged and claimed that the commissioners had no legal authority to do so.

Intense negotiations between the Legislature and Governor continued right up until the last week in December but ultimately there was no resolution and there was no special session to consider these issues. Legislative pay cannot be increased during the term of the legislature so that for an increase to take effect in 2017 it had to have been enacted in 2016.

Thus, there will be no opportunity for a legislative pay raise until 2019 at the earliest which is 20 years since the last increase. This has created a toxic relationship between the Governor and the Legislature which can be seen in both houses and in both parties.

The governor cancelled his traditional state of the state speech to the legislature and opted instead to do six local speeches. He further canceled this public budget presentation. The 2017 session is starting on a very sour note.

On January 17th the Governor sent his budget to the Legislature. It calls for spending \$152 billion. He has 30 days to send amendments to the legislature, after which they will act on their own one house budgets and attempt to get an on-time budget. While the budget is supposed to deal with fiscal issues, a preliminary review of the bills includes the following policy issues which may be of interest:

MWBE: Calls for one-year extender of the current law.

DESIGN/BUILD: Would make the Infrastructure Investment Act permanent, and expand the set of authorized entities that may utilize design-build contracts to include all state agencies, authorities, and counties outside of New York City. The bill would expand the provisions of the Act to enable all State agencies and public authorities, as well as counties outside of New York City, to award a contract to a single entity for both the design and construction (design-build) aspects of a project to optimize quality, cost and efficiency. The types of capital projects for which design-build contracts can be used would be amended to be consistent with the existing definition of "capital asset" in State Finance Law. These are defined as fixed assets and infrastructure assets, including but not limited to roads, bridges, facilities, mass transportation facilities, and water, sewer and drainage systems.

DORMITORY AUTHORITY-DESIGN/BUILD: The bill would permanently authorize the Dormitory Authority of the State of New York (DASNY) to enter design and construction management agreements with the Department of Environmental Conservation (DEC) and the Office of Parks, Recreation and Historic Preservation (OPRHP). DASNY is currently authorized to enter management agreements with DEC and OPRHP to provide design and construction services until April 1, 2017. This bill would make such authorization permanent.

EMERGENCY CONTRACTS AND SECURE FACILITIES: This bill would extend, by two years, the authority of OGS to enter certain emergency construction contracts, up to a value of \$600,000, without formal competitive bidding. It also creates a list of eligible bidders to perform work at secure facilities operated by the Department of Corrections and Community Supervision (DOCCS), the Office of Mental Health (OMH), the Office of Children and Family Services (OCFS), and the Office for People with Developmental Disabilities (OPWDD) and limits the accessibility to drawings and specifications of secure facilities. The emergency contracting authority granted by Public Buildings Law § 9 allows OGS to respond quickly to damage sustained by buildings and facilities on State property resulting

from fire, explosion, equipment failure, or similar emergencies. A new section would also be added to Public Buildings Law § 8, allowing OGS to establish a list of eligible bidders to perform work at secure facilities operated by DOCCS, OMH, OCFS, and OPWDD. Contractors in secure facilities need to be familiar with security procedures, including accounting for all tools and equipment, cell phones, and employees at each secure facility, and requiring appropriate background checks for the contractor's employees. Having a list of eligible bidders familiar with the specialized nature of secure facilities would allow projects to run more efficiently and reduces risk to the State.

Finally, this bill would authorize the OGS Commissioner to determine that certain drawings and specifications for construction projects at secure facilities would not be open to public inspection and be made available only to contractors on the list of eligible bidders. These provisions would increase safety in secure facilities by ensuring that drawings and specifications are not inadvertently provided to unauthorized individuals.

BUY AMERICAN ACT: The bill would expand the contract and procurement provisions of State Finance Law and Public Authorities Law to require State agencies and authorities to give preference to American-made products when issuing a procurement and entering contracts. Current State procurement regulations place little emphasis on ensuring State government spending power is leveraged to support American manufacturing jobs and industry. New York State currently has a Buy American provision, yet it applies solely to the State's procurement of structural steel, reinforcing steel and other major steel in contracts greater than \$100,000. This bill would amend the State Finance Law and the Public Authorities law to include Buy American preference requirements for all contracts and procurements more than \$100,000. Contractors would be required to certify whether the products are American made.

Contracts and procurements for energy, electricity, fuel and other petroleum products, software products such as software, microprocessors, computers, microcomputers, and other such products used for processing or storing data would be excluded. The bill would also provide for exemptions based upon an immediate or emergency need for certain products, or for health, safety, or welfare reasons; or if a product is manufactured in America by only one manufacturer and a foreign-made product is less expensive and of equal or better quality. Additional exemptions would include: (i) products subject to a reciprocal trade agreement or treaty that has been negotiated by the State or by the United States government on behalf of or including this State with a foreign nation or government for nondiscriminatory governmental procurement practices or policies with such foreign nation or government; (ii) the State contract is subject to federal funding and the requirements of such federal funding supersede this section; (iii) the specified Products are not manufactured in America in sufficient quantities or quality to meet the State entity's requirements or cannot be manufactured in America or within the necessary time in sufficient quantities to meet the agency's requirements; (iv) obtaining the specified Products manufactured in America or would increase the cost of the contract by an unreasonable amount, as such is determined by the executive; or (v) the specified Products are necessary for the operation of or repairs of critical infrastructure that is necessary to avoid a delay in the delivery of critical services that could compromise the public welfare.

CAPITAL PROPOSALS: The budget also contains significant infrastructure capital. Among the highlights:

- Construction funding for transportation, transit, MTA, affordable housing, Gateway Tunnel Project, JFK and LaGuardia master plans, New New York Broadband initiative Modernize health regulations to speed up construction of health facilities
- \$500 million for the Buffalo billion phase 2
- Life services initiative \$650 million
- Empire State \$700 million to rebuild the Farley building
- SUNY/CUNY 2020 \$110 million
- Kingsbridge ice Center 108 million

The legislature will begin a series of public hearings on the budget and will formulate their own one-house budget bills which will lead to the negotiations of the final budget hopefully being adopted by April 1.

On the legislative side, since it's a new term all bills need to be reintroduced. To date 600 bills have been introduced and are being reviewed. Significant bills will be submitted for your review. Most of the focus over the next few months, however, will be on the budget.

2017 promises to be a challenging year.
