



## LEGISLATIVE UPDATE APRIL 2017

### ADOPTED NYS EXECUTIVE BUDGET

On April 9 the Senate gave final passage to the 2017-2018 New York State budget.

The highlights include:

- State Operating Funds spending \$98.1 billion in FY 2018 – an increase of 2 percent. (State Operating Funds exclude Federal funds and capital).
- All Funds spending is \$153.1 billion for FY 2018.
- Increases Education Aid by \$1.1 billion, including a \$700 million increase in Foundation Aid, bringing the new Education Aid total to \$25.8 billion or an increase of 4.4 percent.
- Extends tax rate on millionaires, preserving as much as \$4.5 billion in annual revenue – 45,000 taxpayers impacted, 50 percent non-residents.
- Begins Middle Class Tax Cut – saving taxpayers \$250 on average next year, and 6 million New Yorkers \$700 annually when fully effective.
- Invests \$163 million to make college tuition free for middle-class families at SUNY and CUNY, and an additional \$8 million to increase access to e-books statewide.
- Supports New York’s middle-class families by doubling New York State Child and Dependent Care Tax Credit.
- Raises the Age of criminal responsibility so that 16- and 17-year-olds are no longer prosecuted as adults.
- Supports and expands New York State’s historic \$100 billion infrastructure program.
- Delivers \$2.5 billion in funding to advance the creation or preservation of 100,000 affordable and 6,000 supportive housing units.
- Invests \$2.5 billion in the Clean Water Infrastructure Act.
- Invests \$750 million for the Regional Economic Development Councils Round VII.
- Includes \$70 million for I Love New York to promote statewide tourism.

A preliminary review of the issues we have been involved in:

**MWBE:** Governor’s bill calls for one-year extender of the current law.

Senate: Rejected but will study.

Assembly: Extends for 2 years.

**Enacted:** 2-year extender to 4/15/18 subject to completion of disparity study by 6/30/17, otherwise expires 12/31/18.

**DESIGN/BUILD:** Governor 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.

Senate: Rejected and wants to study prior authorization for design-build. Additionally, they would repeal the NYS Design and Construction Corporation which was enacted last year 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

Assembly: Rejected

**Enacted:** The Legislature modifies the Executive proposal to re-authorize and expand the use of Design-Build. The current authorization of five state agencies, the Department of Transportation, the New York State Thruway Authority, the Department of Environmental Conservation, the Office of Parks, Recreation, and Historic Preservation, and the New York State Bridge Authority is extended for two years along with increased transparency measures and an increase in the minimum threshold for design build projects, from \$1.2 million to \$10 million. The law also authorizes the use of design build for the following eight specific new projects:

- Frontier Town
- Life Sciences Laboratory
- Whiteface Transformative Projects
- Gore Transformative Projects
- Belleayre Transformative Projects
- Mt. Van Hoevenberg Transformative Projects
- The State Fair Revitalization Projects
- The State Police Forensic Laboratory.

**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.

Senate: Extends for 2 years.

Assembly: Rejected.

**Enacted: Extended for 2 years.**

**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.

Senate: Accepts the proposal to extend the emergency contract provision but rejects creation of a list of eligible bidders and the rest of the secure facility provisions.

Assembly: Accepts the proposal with some modifications.

**Enacted: 2-year extension of current law. All other proposals were rejected.**

**UNION DUES DEDUCTION:** The Legislature includes language to allow for the tax deduction of union dues.

**421-A TAX EXEMPTION:** The Legislature concurs with the Executive proposal to reinstate the 421-a tax exemption program, which:

- Provides three new affordability options for new residential construction with 300 units or more below 96th Street in Manhattan and along portions of the waterfront in Brooklyn and Queens
- Requires developers to pay an average hourly wage, including benefits and employer-sided taxes to construction workers of \$60 in Manhattan and \$45 in Brooklyn and Queens. The hourly wage shall be increased by five percent every three years
- Proposes 100% exemption from real property taxation, other than assessments for local improvements, for a period of 35 years. All affordable units in a project must remain affordable for 40 years
- A large development outside of the enhanced affordability area may elect to opt in to receive the enhanced abatement by meeting the new requirements
- Applicants and contractors must submit certified payroll reports to the New York City Comptroller (Fiscal Officer), and if delinquent will be subject to a fine of \$1,000 per week up to a maximum of \$75,000

- In the event that the average hourly wage is less than fifteen percent below the required wage, then the applicant must pay the deficiency. If the average hourly wage is more than fifteen percent below the required wage, the applicant must pay the deficiency and the Fiscal Officer shall impose a penalty in an amount equal to 25% of the amount of the deficiency

**ECONOMIC DEVELOPMENT REPORT:** The Legislature provides language that requires the Department of Economic Development to prepare an annual comprehensive economic development report. This report will include economic development assistance provided by the Urban Development Corporation (aka Empire State Development Corporation) and the Department of Economic Development, including, but not limited to, tax expenditures, marketing and advertising, grants, awards and loans. The report will also include data on each economic development program. The Department of Economic Development will post this report on its website no later than January 1 of each year.

**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 over \$100,000. Contractors would be required to certify whether 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.

Senate: Has their own version.  
Assembly: Has their own version.  
**Enacted: Was not included.**

**WORKER'S COMPENSATION:** The Senate included language expressing a desire to reform the workers compensation system to reduce the unsustainable cost increases for employers. The final budget included significant workers comp reform:

- 130 week general rules on the periods of time it takes to reach maximum medical improvement for the purpose of being classified for permanent partial disability awards, and to provide a safety valve for injured workers who have not actually reached maximum medical improvement within 130 weeks
- Removes the requirement that injured workers remain attached to the workforce after being classified with a permanent disability
- Expands the safety net threshold from above 80 percent to above 75 percent, to allow the most seriously injured workers to petition to continue receiving benefits after the permanent partial disability caps have expired
- Moves the responsibility for annual safety net reporting from the Department of Labor to the Workers Compensation Board
- Provides for a statutory mechanism to require release and implementation of updated impairment guidelines reflective in advances in modern medicine
- Provides for a comprehensive prescription drug formulary
- Authorizes the Workers Compensation Board to implement administrative efficiencies related to billing and periodic reporting
- Authorizes the Workers' Compensation Board to execute assumption of liability policies for the special disability fund and the reopened cases fund
- Extends the New York Compensation Insurance Rating Board (NYCIRB) for ten years and requires the public actuary to issue a report regarding the savings associated with the reforms herein, on an annual basis for the next ten years
- Requires that a study of independent medical examinations be conducted by the Workers Compensation Board and that a report be submitted to the Legislature and the Governor
- Prohibits the Board from disallowing certain claims by police or firefighters that are related to job stress.
- Provides for a reduction in the maximum fund balance from ten to five percent, that can be retained by the Board from the administrative assessment levied pursuant to subdivision three of section 151 of the workers' compensation law and creates a fiduciary fund to transfer such excess fund balance into for the purpose of rate stabilization.

**CAPITAL:** The 2018 Budget continues to revitalize New York State's infrastructure, and in partnership with public authorities, and local and federal governments, the state is investing \$100 billion in transformative projects across New York.

- Downtown Revitalization Initiative Round II: The FY 2018 State Budget includes \$100 million for Round II of the successful Downtown Revitalization Initiative. The Initiative was created last year to support transformative housing, economic development, transportation, and community projects to attract and retain residents, visitors, and

businesses to downtowns. The first round awarded \$100 million last year to ten communities that are currently experiencing population loss or economic decline to develop revitalization plans for their downtown area, developed in collaboration with policy and planning experts.

- **Life Sciences Investment:** The FY 2018 Budget invests \$620 million to grow a new, world-class life science research cluster in New York and expand the state's ability to commercialize research and grow the economy.

- **Regional Economic Development Councils:** Since 2011 the REDCs have awarded nearly \$4.6 billion in state funding to over 5,200 projects through a competitive process to spur job creation based on regional priorities. Projects receiving funding through the REDC initiative are expected to create and retain 210,000 jobs in New York. The Budget includes \$750 million in core capital and tax-credit funding that will be combined with a wide range of existing agency programs for REDC Round VII.

- **I Love New York Welcome Centers:** Modeled after the successful Long Island Welcome Center, the state will establish welcome centers – one in each region of the state – that feature an array of experiences including Taste NY, Path Through History, I Love New York and State Parks that highlight each region's tourism assets.

- **JFK Transformation:** The FY 2018 State Budget invests \$564 million to reconfigure the Grand Central/Van Wyck interchange and the Van Wyck itself, saving motorists a combined travel time of 7.4 million hours annually going to and from JFK. The transformation of this vital artery is an essential component of the Port Authority's JFK Master Plan, which is reimagining JFK International Airport for the next century of growth and provides the impetus for private sector investment, driving the total investment potential as high as \$10 billion.

- **Bruckner-Sheridan Interchange Reconstruction:** The FY 2018 State Budget transforms the South Bronx by investing \$700 million toward the \$1.8 billion plan to realize the long-sought reconstruction of the Bruckner-Sheridan Interchange.

- **Moynihan Train Hall at the New Penn-Farley Complex:** The FY 2018 State Budget commits \$700 million to advance Governor Cuomo's sweeping plans to transform the historic James A. Farley Post Office into a world-class transportation hub. The Moynihan Train Hall will have more space than Grand Central's main concourse, housing both Amtrak and LIRR ticketing and waiting areas, along with state-of-the-art security features and a modern, digital passenger experience. The train hall will also feature 112,000 square feet of retail space and over 500,000 square feet of office space and connect to the new MTA LIRR Concourse connecting Penn Station to Moynihan Train Hall. The Budget makes a multi-year commitment totaling \$700 million to support this development.

- **Kosciuszko Bridge Replacement:** The FY 2018 State Budget invests \$270 million to construct the Kosciuszko Bridge Phase II, which is a new westbound (Brooklyn-bound) main span. The State is replacing the 77-year-old bridge with two new state-of-the-art bridges, one Queens-bound and one Brooklyn-bound.

- **\$1.4 Billion for Vital Brooklyn:** The Budget advances the \$1.4 billion Vital Brooklyn initiative. Under the Governor's plan, the State is targeting and investing in eight integrated areas, establishing a national paradigm for addressing chronic disparities, like systemic violence and entrenched poverty in high-need communities. The comprehensive plan includes a focus on increasing access to open spaces and healthy food and create a stronger, more sustainable Central Brooklyn by prioritizing strategic investments in resiliency and affordable housing, as well as job creation, youth development, and community violence prevention.

- **Buffalo Billion Phase II:** The Budget allocates \$500 million for the Buffalo Billion Phase II, building on the success of the past six years of development with a focus on

revitalization and smart growth efforts, improvements to workforce development and job training, growing advanced manufacturing, tourism and life sciences, and connecting communities to foster growth through rail expansion.

- **State Fair Modernization:** The Budget also provides \$70 million in capital funding to continue modernizing the State Fair, which saw record attendance levels in 2016. Phase Two includes \$50 million to continue building the new New York State Fairgrounds and \$20 million to construct a new on-ramp to I-690 West and other improvements to the State Fairgrounds' Orange parking lot.

- **Town of Woodbury Transit and Economic Development Hub:** The Budget supports the acceleration of the \$150 million reconstruction project to build the Town of Woodbury Transit and Economic Development Hub. The project, which will create nearly 600 jobs, will overhaul a highly congested corridor that feeds the Woodbury Common Premium Outlets, a regional economic engine.

- **Eliminate the Cap on Industrial Hemp:** The FY 2018 State Budget eliminates the cap on New York's burgeoning industrial hemp industry, authorizing farmers to research, grow and process hemp as an agricultural commodity. To accelerate the industry's growth, the state will host the first-ever Industrial Hemp Summit in the Southern Tier – bringing manufacturers, farmers, researchers and other stakeholders together to identify challenges and opportunities to grow the industry and boost the agricultural economy throughout the state.

- **Photonics Venture Challenge in Rochester:** New York State will establish a \$10 million, multi-year Photonics Venture Challenge in Rochester. This business competition aims to support start-up companies that commercialize these rapidly developing technologies through a business accelerator program. It includes a top award of \$1 million to the most promising start-up company. There are currently no accelerator programs in the world with a photonics focus and the Rochester region is uniquely positioned to build a nationally recognized program.

- **\$120 million to Strengthen the LIRR:** An investment of \$80 million will be made to enhance 16 Long Island Rail Road stations. These improvements will optimize system connectivity and enhance the overall passenger experience. The Budget also includes \$20 million to develop a direct LIRR connection to MacArthur Airport. Additionally, the Budget includes \$20 million to build a stop on the LIRR Ronkonkoma Branch at the center of Long Island's innovation corridor at Brookhaven National Laboratory.

- **Extreme Weather Hardening of the Nassau Expressway:** The Budget includes an additional \$130 million in new transportation funding to accelerate the reconstruction and elevation of a segment of the Nassau Expressway (Route 878) in Nassau County. The planned work will mitigate flooding and improve existing drainage, enhancing the safety and reliability of this busy stretch of road that carries 56,000 vehicles each day and serves as an Emergency Storm Evacuation Route for more than 400,000 people.

- **Upstate Airport Economic Development and Revitalization Competition:** In FY 2017, the Governor established the \$200 million Upstate Economic Development and Revitalization Competition. In Round II, Plattsburgh International Airport will receive \$38.1 million to jumpstart the airport's \$43 million overhaul and Syracuse Hancock International Airport will receive \$35.8 million towards their \$48.8 million transformation. The bold plans and designs developed by these airports will enhance safety, improve operations and access, reduce environmental impact, and create a better passenger experience.

- **Amtrak Station in Schenectady Construction:** The Budget includes \$15 million for the construction of a new passenger rail station, and improving the parking, lighting and landscaping, as well as the walkways leading to the Bus Rapid Transit areas on State Street and the new parking area on Liberty Street.

- Master Plan to Redevelop Frontier Town into the “Gateway to the Adirondacks” at Northway Exit 29 in North Hudson: The FY 2018 State Budget includes funding for the \$32 million public private partnership to create a world-class tourism destination at the site of Frontier Town in the Adirondacks. The Master Plan for the Gateway to the Adirondacks includes:
  - A DEC campground and day use area along the Schroon River
  - Equestrian camping and trail riding area
  - Visitor Information Center to introduce visitors to the world class recreation destinations in the Adirondack Park
  - Event center with tourist accommodations
  - Interactive exhibits in historic structures highlighting the past, present, and future of the Adirondack forest products and local food industries
- Olympic Regional Development Authority Capital Improvements: The FY 2018 Budget includes \$28 million in new capital funding to transform ORDA facilities. This includes \$20 million enhance the current facilities at Gore and Whiteface Mountains, as well as \$8 million in upgrades at Belleayre Mountain Ski Center, to create state-of-the art skiing, lodging, dining and retail opportunities and year-round activities.
  - \$300 Million for Utica Hospital: New York State is investing \$300 million to build a modern and efficient hospital in downtown Utica.
  - Upgrades to Drinking Water Systems in Owasco and Auburn: The FY 2018 Budget includes \$2 million toward the design, engineering, and construction of upgrades to the drinking water treatment systems in the City of Auburn and Town of Owasco. Both systems draw water from Owasco Lake, which recently has been impaired by cyanotoxins produced by harmful blue-green algae blooms.

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