



## LEGISLATIVE UPDATE SEPTEMBER 2017

The 2017 legislative session got off to a dismal start.

You need to go back to November 15, 2016 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 ethics reform, legislative term limits, 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 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 concerned that he would get a very troubling reception. Most of the action this session took place during the budget negotiations. On January 17th, the Governor sent his budget to the Legislature.

While the budget is supposed to deal with fiscal issues, the bills included many policy issues which are of interest:

**MWBE:** Called for one-year extender of the current law. Ultimate agreement was a 2-year extender to 4/15/18 subject to completion of disparity study by 6/30/17, otherwise the law expires on 12/31/18.

**DESIGN/BUILD:** Governor's proposal made the Infrastructure Investment Act permanent, and expanded 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.

The agreement modified 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 was 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 Governor 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). Final agreement extended current law for 2 years.

**EMERGENCY CONTRACTS AND SECURE FACILITIES:** The Governor’s 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. He argued that 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. The final budget rejected all of these proposals and extended the current law for 2 years.

**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.

No agreement was reached during the budget process but in June they passed a bill which requires American made iron and steel products for New York's road and bridge construction.

**WORKER'S COMPENSATION:** The most significant issue that was addressed this year was not in the Governor's budget but was added to the budget discussion as a priority of the Senate Republicans. The final deal included Workers Comp reforms which have already resulted in a reduction in premiums. NYS Compensation Insurance Rating Board, a non-governmental rate service organization has submitted an overall workers' compensation rate decrease of approximately 4.5 percent, which they claim will save New York employers about \$400 million this year in workers' compensation premiums. In its rate filing, CIRB attributed the reduction in premium rates to certain cost savings measures passed as part of the 2018 budget

- Establishes a 130-week general rule on the period 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

- 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.

## POST BUDGET

Very little of substance was addressed after the budget. There were virtually no three-way negotiations until the last few weeks of the scheduled session. In fact, the Governor was noticeably absent from Albany.

**S6686(Ranzenhofer)/A7945A(Kim)** The primary issues that we were focused on included damages for delay which would provide that all public works contracts shall contain a clause which allows a contractor or subcontractor to make claim for additional costs due to excusable delays which are the result of actions or omissions by a public owner or any of its representatives. **Passed Senate Only**

**S4267(DeFrancisco)/A6572(Cusick)** We also focused on “substantial completion” legislation which would establish a new comprehensive definition of “substantial completion” for public construction projects. Would define substantial completion as when the work required by the contractor with the public owner is sufficiently completed so that the public owner may occupy or utilize the work for its intended use. **Passed Senate Only**

After a flurry of activity both Houses left Albany on June 21 without having addressed some big issues including NYC mayoral control of schools and many local sales and hotel taxes extenders. A week later the Governor called a special session to take up some of these issues. The Assembly took up the bill sent by the Governor which included those issues and a number of others such as renaming the Tappan Zee bridge the Governor Mario Cuomo bridge. A day later the Senate passed it and adjourned.

Neither house is expected back barring something unforeseen until January. Since we are in the middle of a two year term all bills remain alive and can be taken up starting when they return.

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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