



LEGISLATIVE UPDATE

End of Session Recap

August 2019

In 2017 and 2018 the Senate was jointly ruled by a coalition of thirty-two Republicans and eight Democrat Senators who had formed the Independent Democrat Conference. In April of 2018 however, the Governor brokered a deal to allow the IDC Democrats to go back to the Democrat conference which left the Senate with thirty-two Republicans and thirty-one Democrats. Three weeks before the scheduled end of session in June, one of the Republican Senators was called to active duty resulting in a virtual tie as the session closed. Only non-controversial items were taken up.

After the legislature adjourned in June of 2018 the focus was exclusively on the primaries and general election in November. All 213 members of the Assembly and Senate faced re-election as well as all four statewide officers.

Part of the deal to abolish the IDC was that they would not be primaried. It didn't turn out that way and all eight were primaried by other Democrats-- only two survived.

With a very contentious presidential election in 2016, many predicted that the New York State Senate Republican majority was in jeopardy due to the controversy surrounding Donald Trump and the fact that five Republican Senators retired.

When the dust settled, a blue wave hit and eight Republican seats, mostly downstate, were taken by Democrats. The result is that the Senate Democrat Majority now has forty members and the Minority Conference has twenty-three. Thirty-two are needed for a majority. This is a sea change which has probably never happened before.

The Governor and other statewide offices stayed Democrat and in the Assembly, the majority remains comfortably in the hands of the Democrats.

The Governor cancelled his traditional State of the State speech to the legislature and opted instead to do a combined State of the State and public budget presentation on January 15, 2019. Afterward, he sent his budget to the Legislature which called for spending \$175 billion.

Most of the proposals that were of concern to the Electrical Industry were rejected by the Legislature.

MWBE

While MWBE was rejected as part of the Budget, it was taken up at the end of session. The agreed upon bill which was signed by the Governor on July 11, 2019 includes:

- Increasing the "Personal Net Worth" cap from \$3.5 million to \$15 million, thereby minimizing an unnecessary barrier to participation while also allowing for regulations to raise the cap above \$15 million on an industry by industry basis;
- Requiring contractors to make a good faith effort to retain an MWBE subcontractor before they are able to apply for a waiver;
- Requiring waivers to be reported quarterly at a minimum, and in some cases monthly, to the Division of MWBE;
- Requiring waivers to be posted on the websites of contracting agencies to promote greater transparency;
- Requiring increased annual reporting by the State Division of MWBE and the contracting agencies regarding expenditures by the state that are exempt from program goals, four year growth plans by agencies, annual participation rates for each agency, total number of MWBEs in the reporting year, and total dollar value spent on MWBE contracts and subcontracts;
- Establishing new goals for the program based on the results of the 2016 disparity study;
- Increasing the period of time that businesses are certified from three to five years;
- Increasing the discretionary threshold from \$200,000 to \$500,000;
- Requiring contracting agencies to establish four-year growth plans regarding the utilization of MWBEs;
- Authorizing the Division of MWBE to establish outreach events, training seminars and educational opportunities throughout the state; and
- Establishing a "Workforce Diversity Program" which would require state agencies doing construction projects to meet aspirational goals for a diverse workforce.

The bill takes effect on January 11, 2020 and extends the program until December 31, 2024.

DESIGN-BUILD

For a number of years, the Governor has attempted to greatly expand the use of design-build rather than traditional competitive bidding. This year he proposed to:

- Permanently authorize the Dormitory Authority of the State of New York (DASNY) to enter into design and construction management agreements with the Department of Environmental Conservation (DEC) and the Office of Parks, Recreation and Historic Preservation (OPRHP). A 2-year extension was enacted.
- Expand the law to cover a number of other agencies and more importantly adding buildings to the types of projects that would be eligible. The Legislature rejected everything but did add the Olympic Regional Development Authority to the list.

Post budget, both Houses passed a bill which would authorize design-build by many NYC agencies and applies to any public work undertaken pursuant to a project labor agreement that has an estimated total cost of no less than 10 million dollars. The bill (S6293A) has not yet been sent to the Governor for his consideration.

CONGESTION TOLLING/ MTA CAPITAL

The MTA funding agreement includes a Central Business District tolling program, the first program of its kind in the nation. This will include the installation of electronic tolling devices on the perimeter of the Central Business District, defined as streets south of 60th Street in Manhattan. The program will be established, operated, and maintained by the TBTA, working closely with the New York City Department of Transportation for installation. A six-member Traffic Mobility Review Board will be established by the TBTA to advise on tolls, exemptions, and credits to ultimately be determined by the TBTA based on recommendations from the Board. Tolls will be variable and passenger vehicles will only be charged once per day. The implementation date will not be before December 31, 2020. This tolling program will leverage \$15 billion, which will be dedicated to MTA capital needs.

WORKERS COMP PROVIDERS

The budget amended the workers' compensation law to extend workers' compensation board (WCB) authority to resolve medical bill disputes, simplify the dispute process, and expand the list of authorized providers for workers' compensation claimants (nurse practitioners, acupuncturists, and licensed clinical social workers) supposedly to reduce costs.

MTA PROCUREMENT

Certain procurement provisions were extended and the threshold for contracts requiring full Board approval was increased from \$400,000 to \$1million. In addition, the threshold requiring competitive bidding on contracts for supplies, materials and equipment was increased from \$400,000 to \$1 million.

Design-Build is required for all MTA projects in excess of \$25 million unless there is a written waiver by the State Budget Director.

*The budget also added a provision which allows the MTA to **debar** any contractor that exceeds 10% of the contract cost or time on a capital construction project.

The Legislature got off to a fast start and passed a number of high-profile bills as part of their so-called progressive agenda including:

- The Dream Act,
- Campaign finance and voting reforms,
- Reproductive health act,
- The Child Victims Act,
- Equal Rights amendment,
- Rent regulation reform,
- Green Light law which allows undocumented immigrants to get a driver's license,
- Wage theft,
- Workplace harassment reforms,
- Bail reform,
- Safe storage of guns,
- Decriminalization of marijuana,
- Farm Laborer fair labor protections,
- Domestic Violence survivor's justice act,
- Ban on off-shore drilling,
- Banning single use plastic bags,
- Expanding school zone speed cameras (now 750 in NYC)

The Governor has signed or is expected to sign all of these since he is the self-proclaimed progressive.

On a number of difficult issues where they have acted, the Governor and the Legislature chose to punt as to details and established so-called independent commissions to not only implement these laws but to decide on the details. In all cases the Governor has the majority of appointments.

The congestion tolling law allows a committee to determine almost all of the details including the amount of tolls, exemptions and credits.

Even more significant is the campaign finance reform law which gives broad authority to a commission to implement public financing of campaigns, end fusion voting and make other election reforms. In all of these situations the recommendations of the commissions become law unless the Legislature acts to reject them in a short period of time which is unlikely.

Bills that have been signed into law by the Governor to date:

- Prohibit employers from seeking salary histories from prospective employees. (Chapter 94)
- Prohibit discrimination against religious attire. (Chapter 154)
- Establish penalties for discrimination or retaliation against immigrant employees. (Chapter 126)
- Increase protections to employees that have been subject to discrimination and harassment in the workplace.(Chapter 160)
- Extend time for commencing criminal and civil proceedings for sexual offenses committed against children.(Chapter 11)
- Prohibit wage differentials based on protected class status.(Chapter 93)
- Remove gravity knives as a dangerous weapon.(Chapter 34)

Among the bills of interest that passed both houses post-budget which have not yet been sent to the Governor for his consideration:

- S2844B Creation of an Employees lien for wages similar to a mechanics lien against the employer's assets and would make the top 10 owners personally liable.
- S5679A Requires contractors on public works projects to notify upon hire all laborers, workers and mechanics of the amounts paid per hour for each supplement provided. The amounts paid for each supplement would have to be in the original payroll and transcript and submitted to the Commissioner of Labor within 30 days of first payroll and annually thereafter.

- S4888 Requires the Commissioner of Economic Development to announce the award of all contracts in the procurement opportunities newsletter.
- S5933 Once again, the Legislature passed a bill requiring that all public works contracts contain a provision as to damages for delay. Similar bills have been vetoed by the Governor.
- S232 Establishes a small business energy assistance program.

We were successful in stopping a bill which would have required contractors performing work for a state agency with the use of a computer to use software to track the computer usage to verify work hours performed. The sponsor agreed to hold the bill once we pointed out all of the unintended consequences. (S5398)

There clearly has been a change in priorities with the new Democrat-controlled Senate. Where there was a backstop for anti-business proposals there no longer is. The focus is much more consumer oriented and primarily on social issues. There was very little discussion on economic development, job creation, reducing taxes and changing the business climate in the State. This is not likely to change anytime soon, and it will be interesting to see how they will pay for all of the social programs which were enacted this year.
