



LEGISLATIVE UPDATE

March 2021

NYS EXECUTIVE BUDGET PROPOSALS

On Monday, March 15, 2021, both houses of the legislature passed their own versions of the budget for fiscal year 2021-22. These one-house budgets are essentially the wish list of the members of the majority conferences and their response to items contained in the Governor's executive budget which was presented on January 12, 2021. Negotiations will now proceed with the goal of having an agreed upon budget by April 1, the first day of the fiscal year.

The following is the position (in italics) of each House as to items which are of interest in the Governor's budget:

Education, Labor and Family Assistance Article VII (S2506A/A3005A)

PART T – Encourage Part-Time Work through Partial Unemployment Insurance Benefits

Purpose: This bill would change the calculation for Unemployment Insurance (UI) benefits paid to claimants who work part-time while they seek full-time employment.

Summary of Provisions and Statement in Support: New York State's current unemployment system discourages claimants from supplementing their income by working part-time while collecting benefits. Currently, a claimant's weekly UI benefit is reduced by 25 percent for each day worked, regardless of the amount paid or hours worked. As a result, there is a disincentive for workers to try to return to the workforce through part-time work which can otherwise serve as a bridge to full-time employment. This proposal would permit a claimant who is partially unemployed and eligible for benefits to be paid a reduced benefit amount equal to the difference between the 24 claimant's benefit amount and that part of the claimant's wages for such week in excess of one hundred dollars or forty percent of the claimant's weekly benefit amount, whichever is greater. If the partial benefit amount is not a multiple of one dollar, the amount would be reduced to the nearest lower full dollar amount.

Budget Implications: Enactment of this bill is necessary to implement the FY 2022 Executive Budget as it will allow the Department of Labor to create systems changes to enact a partial unemployment system to continue to incentivize unemployed New Yorkers to assume a part-time job as they search for full-time work.

Effective Date: This bill would take effect one year from the date of enactment.

Both Houses have passed legislation to deal with this issue. It has not yet been sent to the Governor for his consideration. (S1042A/A2355A)

PART W – Provide Paid Leave for COVID-19 Vaccination

Purpose: This bill would require public and private employers to provide up to four hours of paid leave for up to two COVID-19 vaccinations for each employee.

Summary of Provisions and Statement in Support: The COVID-19 vaccine will protect New Yorkers and allow them to safely return to the workforce, which will help grow the economy of the State. Employers must provide paid time off to employees to obtain the critical COVID-19 vaccine. This proposal would require all public and private employers to provide up to four hours of paid leave, at the employee's regular rate of pay, for up to two COVID-19 vaccinations for each employee. An employer that provides or arranges to provide a COVID-19 vaccination at the employee's workplace would need only to provide sufficient time for an employee to obtain the vaccine. Employers would be prohibited from taking retaliatory actions against any employee who would utilize this leave, but they may request relevant documentation from an employee.

Budget Implications: Enactment of this bill is necessary to implement the FY 2022 Executive Budget as it will create an incentive for New Yorkers to promptly obtain a COVID-19 vaccination and fully return to the workforce, making workplaces safer and healthier while moving the economy of the State forward.

Effective Date: This bill would take effect immediately.

A bill dealing with this issue has been signed into law. (Chapter 77 of the laws of 2021)

PART AA – Extend Prevailing Wage to Covered Renewable Energy Projects

Purpose: This bill would create prevailing wage requirements for covered renewable energy projects, defined as construction work and engineering and consulting services performed in connection with either the installation of a renewable energy system, as such term is defined in section 66-p of the public service law, with a capacity over 25 megawatts alternating current and with a total project cost of over ten million dollars; or the installation of a solar energy system with a capacity over 5 megawatts alternating current and with a total project cost of over five million dollars.

Summary of Provisions and Statement in Support: The transition to the green economy and creating good paying jobs is a priority for New York State. In order to make this transition and achieve the ambitious goals set forth in the Climate Leadership and Community Protection Act, a focus on renewable energy sources is necessary. A commitment to workers who will build the infrastructure of the green economy must be

paramount. Setting clear standards for job quality will ensure the creation of good jobs, protect workers in the ongoing transition of our energy sector, and result in positive economic impacts. This bill would mandate prevailing wage for construction work and engineering and consulting services performed in connection with the installation of renewable energy systems.

Budget Implications: Enactment of this bill is necessary to implement the FY 2022 Executive Budget as it will ensure good paying jobs for workers constructing alternative energy projects as New York State makes the transition to the green economy.

Effective Date: This bill would take effect on January 1, 2022. The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.

Both Houses have accepted this with modifications. (S2506B, A3006B)

Part CC-Unemployment Ratings

Added a provision in relation to prohibiting the inclusion of claims for unemployment insurance arising from the closure of an employer due to COVID-19 from being included in such employer's experience rating charges.

Assembly: Rejected

Senate: Accepted

The Senate added language clarifying the obligation for public workforce engineers to review projects procured through design-build procurements conducted by State agencies and authorities, consistent with standards that already apply to New York City's design-build projects.(S2506B)

Public Protection and General Government Article VII (S2505A/A3005A)

Part GG – Standard Clauses and Authorized Signatories Act

Purpose: This act would limit unfavorable terms in State contracts, disallow unauthorized obligations, and ensure transparency concerning who may bind State agencies to contracts.

Summary of Provisions and Statement in Support: This bill requires that each State department post the listings of their authorized signatories on file with the Office of State Comptroller to the specific State department website. This will alert vendors and other third parties as to whom the department has authorized to sign contracts on its behalf and prevent unauthorized employees from entering into binding agreements. The bill also limits unfavorable terms in State contracts, including indemnification and limitation of liability provisions and binding arbitration clauses. Additionally, vendors would be prohibited from unilaterally changing terms and conditions without the State's consent, thereby increasing transparency into terms and conditions changes.

Budget Implications: This bill requires signatory information to be posted online and addresses unfavorable terms in State contracts but does not result in a cost to the State.

Effective Date: This bill would take effect immediately.

Both Houses rejected this proposal (S2505B, A3005B)

Transportation and Economic Development Article VII (S2508A/A3005A)

PART F – MTA Procurement Reform

Purpose: This bill reforms the MTA and NYCT's bidding processes; eliminates redundant approvals for design-build contracts; alters advertisement procedures for bids; permits the use of existing contracts awarded by governments; allows for a once-yearly review of the Qualified Products Lists; and makes permanent certain existing procurement provisions.

Summary of Provisions and Statement in Support:

- Allows NYCT and the MTA to use the request for proposal process for design build pursuant to a process established by the MTA Board
- Allows NYCT and the MTA to use electronic bidding and eliminates the requirement of soliciting bids in the newspaper
- Permits MTA and NYCT to use existing contracts awarded by states, municipalities, and the federal government
- Allows MTA and NYCT to review its Qualified Products List (QPL) once per year, rather than twice
- Makes permanent certain provisions currently subject to sunset in April 2021 and eliminates the dormant provisions that would have replaced them.

Budget Implications: Enactment of this bill is necessary to implement the FY 2022 Executive Budget by providing procurement reforms that will allow the MTA to operate more effectively and efficiently, including delivery of their 2020-2024 Capital Plan.

Effective Date: This bill would take effect immediately.

Assembly: rejected this provision (A3008B)

Senate: rejected but wants to hold hearings on MTA and Thruway Authority bidding practices. (S2508B)

PART II – DASNY Design and Construction Services Extender for DEC and OPRHP

Purpose: This bill would extend DASNY's authorization to provide design and construction services for the Department of Environmental Conservation (DEC) and the Office of Parks, Recreation, and Historic Preservation (OPRHP) for 3 years.

Summary of Provisions and Statement in Support: Extends the sunset for DASNY's ability to provide services to DEC and OPRHP to April 1, 2024.

Budget Implications: Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it allows DASNY to continue to provide services to DEC and OPRHP.

Effective Date: This bill would take effect immediately.

Assembly: Accepted the Governor's proposal. (A3008B)

Senate: One year extension to April 1, 2022. (S2508B)

PART RR – Expands DASNY's design and construction and loan services to Not for Profits and School Districts

Purpose: This bill would make not for profits and school districts eligible to utilize DASNY's loan, design and construction services for capital projects over \$5 million. Further extends DASNY's loan services for working capital to not for profits and school districts for the duration of the COVID-19 pandemic.

Summary of Provisions and Statement in Support: Amends Section 1678 of the public authorities law to give DASNY authority to offer loan, design and construction services to not for profits and school districts for capital projects greater than \$5 million. Further authorizes DASNY to provide loans for working capital to not for profits and school districts for the duration of the COVID-19 pandemic. Enactment of this bill allows DASNY to expand its ability to provide capital construction services and financing to local governments and not for profits. 40

Budget Implications: This bill is necessary to implement the FY 2022 Executive Budget as it would provide low-cost financing options for not-for-profits and school districts impacted by the COVID-19 pandemic.

Effective Date: This bill would take effect immediately

Both Houses rejected (A3008B, S2508B)

Revenue Article VII (S2509A/A3009A)

Part G – Increase Wage and Withholding Filing Penalty

Purpose: This bill would increase the maximum penalty imposed on employers for failure to provide complete and accurate wage reporting and withholding reports. Furthermore, it would increase the penalty calculation from \$50 per employee to \$100 per employee with a maximum of \$50,000.

Summary of Provisions and Statement in Support: Each year the Department must reconcile over 200,000 discrepancies between the withholding reported by employees on their personal income tax returns and the withholding reported by employers on their quarterly combined withholding, wage reporting and unemployment insurance returns (the NYS-45 form). An analysis into the cause of these discrepancies has revealed that well over half of these discrepancies are caused by late or erroneous employer filings. These errors require significant Department resources to resolve and unnecessarily delay taxpayer refunds. Increasing the penalty for failure to timely and correctly file withholding returns would provide a financial incentive for employers to correctly and timely file, increasing tax

compliance and improving the Department's ability to issue refunds to taxpayers in a timely manner.

Budget Implications: Enactment of this bill is necessary to implement the FY 2022 Executive Budget because it would increase All Funds revenue by \$2 million annually beginning FY 2022.

Effective Date: This bill would take effect immediately and apply to returns filed on or after June 1, 2021.

Assembly: Accepted but changed maximum penalty to \$20,000. (A3009B)
Senate: Rejected. (S2509B)
