



This Week in New York

Covering New York State and City Government

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April 5, 2019 Edition



In the News – State



**2020
BUDGET**

“On Time” Budget

New York State’s \$175.5 billion spending was enacted just after 7 a.m. on Monday, April 1st, following Assembly passage of the last bill (the Legislative and Judiciary budget) in the 10 bill budget package.

Under the State Constitution, the portions of the appropriation bills included in the 2019-2020 Executive Budget (including 21-day amendments) that were not altered by the Legislature become law upon passage by the Legislature. The Governor does have an opportunity to line item veto any addition to his appropriations.

Legislative sticklers questioned whether the Legislature missed the budget deadline because the plan was not in place before 12:01 a.m. on the state of the new fiscal year. Comptroller Thomas DiNapoli quelled the debate by asserting “... I conclude that legislative passage of the budget ... has occurred, and legislative paychecks will not be withheld.” His approval also met the criteria for the next phase of the Legislature’s scheduled salary increase.

Governor Andrew Cuomo, who also saw his salary increase in the closing minutes of the Assembly session, commended the Legislature for its work.

"This is the broadest, most sweeping state budget that we have done and for the ninth straight year it was both timely and fiscally responsible," Governor Cuomo said. "We are not here to do the easy issues - we are here to do the hard ones, the ones that gave you unease in the pit of your stomach, because those are the ones that need to be achieved."

The budget included many of the thorny issues that the leaders sought to enact: criminal justice reform, environmental initiatives (plastic bag ban), congestion pricing, and Metropolitan Transportation Authority (MTA) reform. It increased education aid and extended Mayoral control in New York City.

It also included 11th hour proposals, one of which will undoubtedly impact the state’s financial dealings going forward. The revenue bill’s final provision included new language about how the Public Authorities Control Board (PACB) will function in relation to its financial review. Specifically, it gives the Governor the ability to remove any PACB appointee if the member votes against an issue because of “personal objections.”

The provision, put forth by the Governor, was founded in the recent Amazon pull-out as a means of giving stability to future deals.

"It cost us 25,000 jobs, and it also cost us credibility," Governor Cuomo told a gathering of the Association for a Better New York, according to published reports. "I can't tell you how many businesses that I'm trying to bring to New York now say to me, Am I going to get Amazoned? Are they going to do to me what they did to Amazon, where we had a full agreement, and an agreement signed, and then it became a political hot potato because some politicians thought they could score political points?"

Other provisions of the budget include:

Criminal Justice

Criminal Justice Reform: The FY 2020 Enacted Budget includes:

- **Reforms Bail and Arrest Procedures to Reduce Pretrial Incarceration:** Cash bail will be eliminated for misdemeanors and non-violent felonies, alongside a new requirement that police officers must issue desk appearance tickets to most people charged with misdemeanors and Class E felonies, rather than making a custodial arrest.
- **Ensures the Right to a Speedy Trial:** The FY 2020 Enacted Budget includes legislation that requires courts to reduce delays and ensuring all parties are prepared for trial.
- **Transforms the Discovery Process:** Legislation included in the FY 2020 Enacted Budget will require that both prosecutors and defendants share all information in their possession well in advance of trial. Defendants will also be allowed the opportunity to review whatever evidence is in the prosecution's possession prior to pleading guilty to a crime. Prosecutors will be required to provide the defense with discoverable information and materials within 15 days of arraignment.

Brings Transparency and Accountability to Civil Asset Forfeiture: The FY 2020 Enacted Budget will require all seized assets to be held in an independently overseen and administered account from which detailed records regarding each disbursement must be maintained. Law enforcement will also be prohibited from freezing a person's cash during a prosecution unless a connection between that money and the alleged illicit conduct can be shown.

Increases Public Trust in New York's Law Enforcement Agencies: The FY 2020 Enacted Budget includes reforms to use-of-force policies and reporting. Specifically, this legislation will now require that law enforcement agencies have a use-of-force policy, with minimum standards, implemented and report all use-of-force incidents, particularly those incidents resulting in death or serious injury. These measures apply to both New York's police and peace officers.

Transforms the Use of Solitary Confinement in State Prisons: The Governor is directing the Department of Corrections and Community Supervision to develop limits to the length of time spent in separation, expanding dedicated housing units for rehabilitation and integration following a disciplinary sanction, and enhancing therapeutic programming to reinforce positive social behavior.

Enacts a Comprehensive Re-entry Package to Improve Outcomes for Formerly Incarcerated Individuals: The FY 2020 Budget includes legislation to eliminate blanket statutory bans on occupational licenses; remove the mandatory six-month suspension of driver licenses for drug offenses, unless the crime involved driving; prevent the release of mugshots that do not have a specific law enforcement purpose; revise criminal history reporting to prevent past arrest information from being used against someone for civil purposes, such as employment, housing, and licensing; and bans housing discrimination based on arrests not leading to a conviction.

Closes Additional State Prisons: The FY 2020 Enacted Budget authorizes the Department of Corrections and Community Supervision to close up to three prisons on an expedited schedule.

Election

The enacted budget includes \$14.7 million in capital funds and \$10 million to implement early voting in New York. These funds will enable local and state boards of elections to carry out several reforms including:

- Authorizing counties to use computer generated voter registration lists (electronic poll books).
- Providing uniform polling hours for primary elections across all counties.
- Enacting the Voter Enfranchisement Modernization Act, allowing the State Board of Elections to establish an online voter registration system.

Public Campaign Finance: The FY 2020 Enacted Budget establishes a public financing commission that will have the binding power to implement public campaign financing for legislative and statewide offices, authorizing up to \$100 million annually in public funds. The commission will determine specific aspects of the public financing system, including eligibility thresholds, public financing limits, and contribution limits for participating candidates. The commission's findings will be due in a report by December 1, 2019 and will be binding unless modified by law within 20 days.

Health

Makes Substance Use Disorder Treatment More Accessible: The Enacted Budget requires minimum coverage standards of health plans; prohibits the denial of medically necessary treatment; prohibits multiple co-payments per day and requires behavioral health co-payments to be equal to primary care co-payments.

Targets Lead Poisoning in Children: The Enacted Budget reduces the healthcare and environmental action levels for blood lead levels in children to five micrograms per deciliter.

Safe Staffing: The Adopted Budget requires the Department of Health to conduct a study to examine how staffing enhancements could be used to improve patient safety and healthcare services in hospitals and nursing homes, including a determination of costs associated with these strategies.

ACA: The enacted budget codifies in state law the benefits provided under the Affordable Care Act's Essential Plan.

Immigrant Rights

Ensures a Fair Justice System for New York's Immigrants: The FY 2020 Enacted Budget includes a measure to protect immigrants from deportation. Under federal law, any immigrant who is convicted of a crime punishable by a sentence of a year or more may be deported. The enacted budget reduces the maximum sentence for misdemeanors by one day from 365 to 364 days.

Provides Legal Services to New York's Immigrant Communities: The enacted budget provides \$10 million to support the Liberty Defense Project (LDP). The LDP expansion includes Project Golden Door, which will provide services to immigrant children and families, and a Regional Rapid Response program to quickly respond with legal services, including in response to raids and arrests by ICE.

Taxes

Makes Permanent the Property Tax Cap: The budget makes the current 2% property tax cap permanent. The cap was first implemented in 2012.

Extends the Millionaire's Tax: The budget includes a five-year extension of the current tax rate on millionaires. The tax levies an 8.82% rate on single filers earning more than \$1 million and married couples earning more than \$2.1 million.

Internet Sales Tax: The enacted state budget includes a new online “marketplace provider” tax, effective June 1st. The new law requires sales tax to be collected by any business that ships at least \$300,000 worth of goods into the state or completes at least 100 transactions with New Yorkers annually. It is expected to generate \$160 million in new revenue for local governments and \$320 million for the MTA capital plan lockbox.

Mansion Taxes: To supplement funding for the MTA, the budget implements a supplemental “mansion tax” starting on properties valued at more than \$2 million at an additional 0.25 percent and ending at a top rate of 2.9 percent for properties in excess of \$25 million. The mansion tax is projected to raise \$243 million. Additionally, the budget creates a supplemental Real Estate Transfer Tax of 0.25 percent for residences above \$3 million and commercial properties over \$2 million to raise \$122 million. Together they will raise \$365 million for the MTA capital lockbox.

Transportation

MTA Reform and Funding: The FY 2020 Enacted Budget includes MTA reforms and new dedicated funding streams to the MTA.

MTA Reforms

It requires the MTA to develop a reorganization plan by June, modifies MTA Board appointments to align with appointing authority, requires the MTA to undergo an independent forensic audit and efficiency review, calls for a major construction review unit made up of outside experts to review major projects, implements a 20-year capital needs assessment beginning in 2023, increases the competitive procurement threshold from \$100,000 to \$1 million, establishes a 30-day review notice for comptroller contract approval, and requires public reporting on MTA performance metrics. The budget will also allow the MTA to debar any contractor that exceeds 10% of the contract cost or time on a capital construction project. The Enacted Budget requires any MTA capital project over \$25 million to use design-build.

MTA Funding

- **Central Business District Tolling:** The MTA funding includes a Central Business District tolling program. 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 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 day will not be before December 31, 2020. This tolling program will leverage \$15 billion, which will be dedicated to MTA capital needs.
- The Enacted Budget creates a dedicated lockbox to ensure that 100% of this revenue goes to the MTA capital budget and prohibits the use of these revenues for non-capital spending.
- **Progressive Mansion Tax:** This structure raises \$365 million from high-end property transfers that will be deposited into the MTA's Central Business District tolling capital lockbox and will be used to support up to \$5 billion in financing for MTA projects. The new rates go into effect on July 1, 2019.
- **Eliminate the Internet Tax Advantage:** As noted previously, the enacted budget will require the collection of sales taxes by internet marketplace providers and will allocate \$320 million of this funding for the MTA capital plan lockbox.

Regulates Limousines: Enacts new regulations for the limo industry making it a Class E felony for knowingly operating a limo where such operation causes the death of another person, creating heightened civil penalties - including higher fines - for operating without State Department of Transportation operating authority or violating DOT safety regulations. Additionally, State Police and DOT will have explicit authority to retrieve vehicle plates when limos are out of compliance. The Department of Motor Vehicles will be able to refuse and revoke registrations for limos that do not meet federal safety standards. Stretch limos will be prohibited from making U-turns. Commercial vehicles with a seating capacity of eight or more passengers will be required to carry increased insurance of at least \$1.5 million in coverage.

Workforce

Launches the \$175 Million Workforce Initiative: The Enacted Budget supports a \$175 million investment and a new Consolidated Funding Application for workforce investments to meet workforce needs, improve regional talent pipelines, expand apprenticeships, and address growing industries such as clean energy, health technology, and computer science.

Expands Janus Protections: The Enacted Budget provides new safeguards for public sector unions and goes further by extending Janus protections to all local governments in New York and guaranteeing the right to organize and collectively bargain.

Expands Access to Medical Providers for Injured Workers: The Budget adds three new types of medical professionals as care providers under the workers compensation system: nurse practitioners, acupuncturists, and licensed clinical social workers.

Wage Increases for Direct Support and Clinical Staff

The approved budget would direct funding to support salary increases for direct support professionals (DSPs), direct care worker and clinical staff employed by the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Office for People with Developmental Disabilities (OPWDD). DSP's and direct care workers would receive a two percent increase on January 1, 2020 and direct care workers, direct support professionals and clinical staff would receive another two percent increase on April 1, 2020 for a total of \$80 million dollars.

Cost of Living Increase Deferred

The Adopted Budget defers the Human Services COLA for another year.



Bills Passed by Both Houses



A112A (Sponsored by M of A Buchwald / Senator Myrie) -- Relates to ballot proposals.

A558A (Sponsored by M of A Rosenthal L / Senator Savino) -- Increases the age to purchase tobacco products from 18 years old to 21 years old.

A3425 (Sponsored by M of A Dilan / Senator Mayer) -- Relates to expanding the scope of unlawful discriminatory practices to include public educational institutions.

A5615 (Sponsored by M of A Weinstein / Senator Montgomery) -- Provides for the regulation of distressed home loans.

A6965 (Sponsored by M of A Abbate / Senator Gounardes) -- Relates to the collective bargaining agreement between the state of New York and the Police Benevolent Association of the New York State Troopers, Inc.

In the News – City



Mayor de Blasio Announces Expert Panel to Evaluate Reconstruction of Brooklyn-Queens Expressway

Mayor Bill de Blasio this week announced the formation of a new panel to evaluate options for the replacement of the Brooklyn-Queens Expressway (BQE) from the Atlantic Avenue interchange to Sands Street in Brooklyn.

The new panel will be chaired by Carlo Scissura, President & CEO of The New York Building Congress, and includes a range of leaders in the fields of urban planning, engineering, construction, traffic modeling and historic preservation (list below).

The panel will begin meeting this month and is expected to present their conclusions by this summer. The formal environmental process for the BQE reconstruction will take these recommendations into consideration when it begins at the end of 2019. In addition to the chair, the membership includes:

- Rohit Aggarwala, Sidewalk Labs
 - Vincent Alvarez, New York City Central Labor Council
 - Kate Ascher, BuroHappold Engineering
 - Elizabeth Goldstein, Municipal Arts Society
 - Henry Gutman, Brooklyn Navy Yard Development Corp./Brooklyn Bridge Park
 - Kyle Kimball, Con Edison
 - Mitchell Moss, NYU Wagner Graduate School of Public Service
 - Kaan Ozbay, NYU Tandon School of Engineering
 - Hani Nassif, Rutgers School of Engineering
 - Benjamin Prosky, American Institute of Architects
 - Denise Richardson, General Contractors Association
 - Ross Sandler, New York Law School
 - Jay Simson, American Council of Engineering Companies of New York
 - Tom Wright, Regional Plan Association
 - Kathryn Wylde, Partnership for NYC
- *Additional panelists may be announced

According to the Mayor, an evaluation by outside consultants hired by the New York City Department of Transportation (DOT) concluded in 2016 that if the road is not reconstructed by 2026, weight restrictions may need to be added to the structure – including diverting all truck traffic to local roads. In 2018, the State approved legislation to allow the BQE project to be constructed using the Design-Build method, which is expected to save time and money.

Briefs

State Assembly Plans Rent Regulation Hearings

The State Assembly will hold two hearings on rent regulations, which sunset in June, according to Speaker Carl Heastie. The first hearing will be held on Thursday, May 2nd in the Assembly Hearing Room 1923, 19th Floor 250 Broadway in Manhattan. The hearing will have two sessions: 11 a.m. to 5 p.m. and 6 p.m. to the completion of the witness list. A second hearing will be held on May 9th.

"Now that the budget has been passed, as I've said before, we are ready to move forward in holding hearings and passing the strongest rent regulations EVER in NY," Speaker Heastie tweeted.

This week Assemblyman Kevin Cahill (D-Kingston) and Sen. Neil Breslin (D-Albany) introduced legislation that would allow upstate localities to opt into rent regulations like those that apply to New York City. Current law allows the city as well as Rockland, Westchester, and Nassau counties to apply the regulations if the vacancy rate falls below 5 percent. The bill would extend that authority to every county in the state.

New York Teachers are Highest Paid in U.S.

Teachers in New York State are paid the highest salaries in their field in the United States, according to a new report by the Rockefeller Institute of Government. The average teacher salary in New York is about \$79,588.

Alaska teachers were in second place at \$78,670, followed by Connecticut teachers at \$77,717. The lowest average teacher salaries in the United States were South Dakota teachers at \$42,450, followed by Oklahoma teachers at \$43,192.

Comptroller Audit Reveals Inadequate Oversight of DOB Amusement Park Inspections, Highlighting Widespread Inconsistencies

New York City's Department of Buildings (DOB) failed to properly account for its inspections of amusement devices and rides often found at street fairs and in New York City's amusement parks and public parks, according to an audit report by City Comptroller Scott Stringer.

The audit identified widespread inconsistencies in inspection records, reflecting deficient oversight at the DOB, the Comptroller asserted. In one example, the audit found that 86 percent of the random spot checks of these devices reportedly performed by the DOB Elevator Unit were not recorded on the rides' DOB-issued compliance certificates, known as "green cards." Further, DOB inspection records indicate that hundreds of inspections were made on devices that other DOB records stated were no longer in operation, suggesting that these records are inaccurate and unreliable.

Following the Comptroller's audit, DOB has agreed to integrate inspection results into DOB NOW, an updated system for tracking inspections, which could strengthen the oversight process.

Amusement devices include permanent, temporary, and portable rides – all of which must pass an initial inspection performed by DOB's Elevator Unit before receiving a license for public use at a street fair, carnival, or amusement park. While permanent devices must receive an inspection roughly every 120 days, temporary devices, often seen at street fairs, receive an inspection every time they are set up at a location and are approved for a period of not more than two weeks at a time.

The Comptroller's audit surveyed nine locations across all five boroughs and reviewed 1,857 spot checks reportedly made by DOB's Elevator Unit between January 1, 2016 through July 25, 2018, and reviewed DOB's checklists of 242 periodic inspections of permanent amusement park devices, to determine the accuracy and reliability of the inspection process.

Moody's: Congestion Pricing Plan a "Credit Positive"

Following the passage of the State's fiscal plan, Moody's called New York's congestion pricing initiative a "credit positive" for the Metropolitan Transportation Authority (MTA) and state and city of New York.

"In addition, approval of the congestion pricing plan is a key step in resolving uncertainty over the MTA's funding future, which has been a looming fiscal challenge for all three entities. Questions remain, however, about funding for the rest of the MTA's estimated \$40 billion capital plan, which will be released in the second half of 2019," Moody's found in a report released Tuesday.

The tolling component is supported by a plan that would collect sales tax on out-of-state internet purchases as well as a surcharge on real estate transfers worth \$3 million and above.

"If congestion pricing successfully discourages vehicular traffic, the MTA's transit services will benefit from reduced competition, improved bus service and higher ridership," the report found. "The MTA's ridership has declined for four consecutive years, despite population and job growth, because of weak service performance and competition from ride-sharing services and other alternatives."

Vicki Been New Deputy Mayor for Housing and Economic Development

Former Commissioner of the Department of Housing Preservation and Development Vicky Been will serve as the new Deputy Mayor for Housing and Economic Development. Mayor Bill de Blasio made the announcement this week. Her first day as Deputy Mayor will be May 6.

Ms. Been is currently the Director of NYU's Furman Center for Real Estate and Urban Policy, the Boxer Family Professor of Law at NYU School of Law, and an Affiliated Professor of Public Policy of the NYU's Robert F. Wagner Graduate School of Public Service. She served as HPD Commissioner from 2014 to 2017.

Ms. Been graduated from Colorado State University and received her J.D. from New York University School of Law. Been has served as a Visiting Professor of Law at Harvard Law School, and an Associate Professor of Law at Rutgers, The State University of New Jersey. She clerked for Judge Edward Weinfeld of the Southern District of New York and Justice Harry Blackmun of the Supreme Court of the United States.

Coming Up

New York State

The Legislature is in session Monday April 8th through Wednesday April 10th

Wednesday April 10th

To explore ways to review oversight over for-profit schools in order to better inform students, parents and consumers about for-profit education schools

Senate Standing Committee on Higher Education

Van Buren Hearing Room A, Legislative Office Building, 2nd Floor, Albany, 10 a.m.

New York City

Monday April 8th

Committee on Youth Services, Committee Room – 250 Broadway, 16th Floor, 10 a.m.

Committee on Aging, Council Chambers – City Hall, 10 a.m.

Committee on Mental Health, Disabilities and Addiction, Council Chambers – City Hall, 10 a.m.

Committee on Public Safety, Committee Room – City Hall, 11 a.m.

Committee on Health, Committee Room – City Hall, 11:30 a.m.

Committee on Civil and Human Rights, Committee Room – City Hall, 2 p.m.

Tuesday April 9th

Committee on Criminal Justice, Committee Room – City Hall, 10 a.m.

City Council State Meeting, Council Chambers – City Hall, 1:30 p.m.

Wednesday April 10th

Committee on Health, Council Chambers – City Hall, 10 a.m.

Committee on General Welfare, Council Chambers – City Hall, 10 a.m.

Committee on Hospitals, Council Chambers – City Hall, 1 p.m.

Committee on Immigration, Committee Room – City Hall, 1 p.m.

Committee on Justice System Committee Room – City Hall, 1 p.m.

Thursday April 11th

Committee on Consumer Affairs and Business Licensing, Council Chambers – City Hall, 10 a.m.

Committee on Housing and Buildings, Committee Room – City Hall, 10 a.m.

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To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or regarding any legislative, government relations or political or consulting or related issues in general, please contact the Pitta Bishop & Del Giorno LLC professional with whom you usually work.

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