



# This Week in New York

**Covering New York State and City Government**

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*February 16, 2018 Edition*



## *In the News – New York State*



### **Governor Beats the Clock: 30-Day Amendments Come in Under the Wire**

In the closing minutes of February 15<sup>th</sup>, the Cuomo Administration released the 30-day amendments to the 2019 Executive Budget, beating the statutory deadline by 32 minutes.

The amendments included proposals to re-work the State tax code (see page 3), strengthen the disciplinary process for corrections workers (see page 2), prohibit sexual contact between police officers and their detainees, allow the Department of Health to stop physicians accused of felony misconduct from practicing, add \$7 million to fund early voting, add 36 different chemical compositions to the state's controlled substances list, and allow the State Dormitory Authority to assist with construction related to Related to Raise-the-Age.

With respect to congestion pricing, the amendments begin the process to implement the preliminary recommendations of the FixNYC panel. Specifically, the amendments (as outlined in the 30-day narrative):

- Empower the City of New York to adopt a demonstration program involving the installation and operation of cameras at intersections below 60th street in the Borough of Manhattan, the purpose of which is to enforce section 1175 of the vehicle and traffic law which prohibits a vehicle's entry into an intersection when there is inadequate space on the opposite side of the intersection to accommodate the vehicle.
- Empower the Fix NYC Panel to review and make recommendations regarding uniform standards and equipment to be installed in all taxicabs and for for-hire vehicles, including in-vehicle geo-location technology, for the purposes of collecting a surcharge within an established geographic area in the Borough of Manhattan, which may be made in consultation with the Taxi and Limousine Commission.
- Empower the Fix NYC Panel to review and make recommendations regarding official vehicle parking placards issued by the city of New York, which may be made in consultation with any issuing agency or department.

- Empower the Department of Transportation and the Department of Motor Vehicles to jointly perform a comprehensive study and make recommendations regarding the impact on congestion in the Borough of Manhattan from the operation of commuter, intercity, charter and sightseeing buses.

Although the Governor did not include specifics of the actual plan in the Executive Budget, he did this week begin to lay out the political ground rules.

Speaking at a Crain's event, Counsel Alphonso David, downplayed the role of the locality.

"Congestion pricing is really ... a matter of state concern," Mr. David said, according to published reports. "And in many cases, where it's an issue of state concern, you do not need a home rule message from the municipality."

Over the next six weeks the Governor and the legislative leaders will negotiate the 2019 spending plan which is due April 1<sup>st</sup>.



## **Governor Cuomo Seeks to “Strengthen” the Disciplinary Process for Prison Employees**

Governor Andrew Cuomo's 30-day amendments to the Executive Budget included legislation that will “strengthen” the Department of Corrections and Community Supervision's ability to discipline employees “who have jeopardized the safety and security of their co-workers, inmates and parolees by committing serious acts of misconduct.”

The bill will grant the Commissioner the ability to terminate employees for crimes committed while executing official duties, and it will revise Departmental procedures to prevent bad actors from being promoted or hired.

"New York's correction officers work day in and day out ensure the security of our communities," Governor Cuomo said. "The current system, however, makes it difficult to hold bad actors fully accountable. The bottom line is that those who break the law and abuse their positions of power must be held responsible for their misconduct, and this proposal will help to ensure accountability and promote safety in the correctional system."

Under the current process, when an employee is alleged to have committed a serious act of misconduct, the Department and the employee engage in an arbitration process. In these cases, an independent arbiter makes the final determination with regards to discipline.

Specifically, the proposal:

- **Revises Employee Disciplinary Process** - Under the Governor's proposal, the arbiter would issue a disciplinary recommendation, however the Commissioner would make the final determination in certain cases involving acts of serious misconduct. These acts include:
  - The excessive use of force;
  - The false reporting regarding one or more acts of excessive use of force;
  - The failure to report an excessive use of force occurrence;
  - The use or possession of controlled substances;
  - The introduction of controlled substances into a department facility;
  - Or an inappropriate sexual relationship or contact with an inmate or a parolee.
  
- **Revises Hiring Process** - Along with removing duplicative language from the law which has complicated the hiring process, the legislation lays out the minimum requirements for being hired as a correction officer, institution safety officer, parole officer and warrant and transfer officer. Additionally, the legislation states that no individual with a felony conviction may be hired and gives the Commissioner discretion regarding misdemeanor convictions and the moral character of applicants. Existing civil service employees who have been disciplined would also be removed from any promotional list they may currently be on.



## Governor Gives Specifics on NY Tax Relief Proposal

The Cuomo Administration's plan to "thwart" the federal tax missile took shape this week, as the 30-day amendments included language to enact three tax proposals.

Specifically, the legislation would: (1) allow employers to opt-in to a new payroll tax system to protect their employees from Federal tax increases; (2) create two new funds to accept donations to fund health care and education programs, allowing taxpayers who itemize their deductions to deduct those donations from their federal taxes; and (3) decouple the state tax code from the Federal tax code so that State taxpayers do not see increased state taxes because of Federal tax increases.

The legislation builds on the preliminary report released in January by the Department of Taxation and Finance. Details of the tax proposals include:

- **Creating a new Employer Compensation Expense Tax (ECET):** While Federal tax reform eliminated full State and local tax deductibility for individuals, businesses were not impacted. Under 30-day legislation, employers would be able to opt-in to a new ECET system. Employers that opt-in would be subject to a five percent tax on all annual payroll expenses in excess of \$40,000 per employee, phased in over three years beginning on January 1, 2019.

The progressive personal income tax system would remain in place, and a new tax credit corresponding in value to the ECET would cut the personal income tax on wages and ensure that State filers subject to the ECET would not experience a decline in take-home pay. Overall, the proposal is designed to be revenue neutral for the state while giving employers the opportunity to reduce their employees' federal taxes.

Under the legislation, the deadline for the first annual election for employers to opt-in to this alternative system will be on October 1, 2018, for the 2019 tax year. A new tax credit would be available to employers to offset administrative costs. For those who opt-in, the new payroll tax on wages over \$40,000 would be phased in over three years: 1.5 percent in first year, 3 percent in second year, 5 percent in third year.

- **Charitable Contributions to Benefit New Yorkers:** The legislation creates two new state-operated Charitable Contribution Funds to accept donations for the purposes of improving health care and education in New York. Taxpayers who itemize deductions could claim these charitable contributions as deductions on their Federal and State tax returns. Any taxpayer making a donation could also claim a State tax credit equal to 85 percent of the donation amount for the tax year after the donation is made. In addition, the amendment authorizes school districts and other local governments to create charitable funds for education and health care. Donations to these funds would provide a reduction in local property tax bills (via a local credit) equal to a percentage of the donation.
- **Decoupling from federal tax code:** This legislation decouples the state tax code from the federal tax code, where necessary, to avoid more than \$1.5 billion in State tax increases brought by increases in Federal taxes. Federal tax reform capped the itemized deduction for State and local taxes (SALT) at \$10,000. The Governor proposes to decouple from this cap so New York taxpayers are not subjected to a \$441 million State tax increase from the flow through of this cap to State income tax returns. The legislation also decouples from other Federal deduction changes, saving State taxpayers \$269 million annually beginning in FY 2020. The 30-day amendments will also maintain the State standard deduction for single filers. Without this change, single filers would not be able to take the standard deduction on their State return, and New York taxpayers would have been subjected to an \$840 million annual State tax increase beginning in FY 2020.

## *In the News – New York City*



### **Mayor & City Council Reach Agreement to Replace Rikers Island with Community-Based Facilities**



Mayor de Blasio and Speaker Corey Johnson announced an agreement this week to move forward on closing Rikers Island and creating a borough-based jail system. Together with the Council Members representing these areas, the Mayor and Speaker have agreed to a single public review process for four proposed sites in Manhattan, Brooklyn, the Bronx, and Queens. These sites together will provide off-Island space for 5,000 detainees, and will include the three existing DOC facilities in Manhattan, Brooklyn and Queens, as well as a new site in the Bronx located at 320 Concord Avenue in Mott Haven.

“This agreement marks a huge step forward on our path to closing Rikers Island,” said Mayor de Blasio. “In partnership with the City Council, we can now move ahead with creating a borough-based jail system that’s smaller, safer and fairer. I want to thank these representatives, who share our vision of a more rehabilitative and humane criminal justice system that brings staff and detainees closer to their communities.”

With the support of Speaker Johnson and Council Members Margaret Chin (Manhattan), Stephen Levin (Brooklyn), Karen Koslowitz (Queens) and Diane Ayala (Bronx), the City has identified four sites to hold new, modified or renovated facilities. These include:

- Manhattan Detention Center, 125 White Street, Manhattan, 10013
- Brooklyn Detention Center, 275 Atlantic Avenue, Brooklyn, 11201
- Queens Detention Center, 126-01 82nd Avenue, Kew Gardens, 11415
- NYPD Tow Pound, 320 Concord Avenue, Bronx, 10454

“...The New York City Council is proud to have spearheaded the historic Close Rikers movement by creating the Lippman commission and passing legislation enacting many of its recommendations. The Council has also funded innovative programming to keep cases out of the criminal justice system altogether, such as the CLEAR and HOPE programs, which provide treatment instead of incarceration to those with substance abuse issues. We all know that closing jails on Rikers means opening more humane, community-based facilities elsewhere,” said Speaker Corey Johnson.

All of the sites will go through the Uniform Land Use Review Procedure (ULURP) – which includes hearings and recommendations by the local community board, borough president, the City Council, and the City Planning Commission. The Mayor and Speaker will consolidate the proposal into a single ULURP process. An application could be submitted for certification as early as by the end of 2018, and the design process could begin as early as next summer.

In January, the City selected a vendor, Perkins Eastman, to identify sites to replace the jails on Rikers Island. Perkins Eastman and its subcontractors are creating a master plan with recommendations for how to maximize capacity at each of the sites and design jails that best meet the needs of inmates, staff and communities. They will also carry out a public engagement process with local communities and stakeholders, and incorporate the feedback and needs of communities into the planning process. In order to expedite the pre-ULURP process, the City will simultaneously carry out environmental reviews.

Existing borough-based facilities have the capacity to house only approximately 2,300 people. There is now an average of around 9,000 people per day on Rikers Island.

In recent months, the City has introduced a number of programs aimed at reducing the jail population. These include a new program that replaces short jail sentences for minor, low-level offenses (typically under 30 days) with services that help prevent recidivism. In addition, the Administration announced that every person in the Department of Correction's custody will receive re-entry services to help connect them with jobs and opportunities outside of jail.



## Comptroller Stringer: City Dragging its Feet on Over 1,000 City-Owned Properties, Despite Housing Crisis

New York City Comptroller Scott Stringer this week again called on the City to begin developing the more than 1,000 city-owned properties—most of which the agency earmarked for residential development. Citing that Department of Housing Preservation and Development (HPD) is “moving at a glacial pace,” the Comptroller pointed to 900 empty lots that City has owned for at least 20 year.

“New Yorkers are struggling in an affordability crisis that touches us all. We’re no longer just a tale of two cities – we’re becoming a tale of two blocks, with luxury towers on one corner and struggling families on another...,” Comptroller Stringer said. “Two years ago, as rents were skyrocketing, we counted vacant properties and gave the world a blueprint for what to do with them. HPD promised the public that hundreds of those properties would be developed in two years. Now, we’ve come back two years later, and we’ve uncovered that the agency’s promises were as empty as these vacant lots.”

This week’s report is a follow-up to a 2016 audit by the Comptroller’s Office on vacant lots owned by HPD, which found more than 1,100 City-owned properties. The new review found, between September 2015 and September 2017:

- Nearly 90 percent—of the vacant lots that were in its inventory two years ago remain undeveloped.
- 1,007 lots in the audit sample have remained in HPD’s inventory, and have not been transferred to developers.

- HPD transferred only 64 of the 1,125 lots for development.
- HPD transferred only 54 of the 1,125 lots to other City agencies for use.

According to the Comptroller, while HPD has previously claimed it had plans to develop several hundred lots, the agency did not meet its own target dates for nearly 80 percent of the properties that it projected would be transferred to developers through June 2017. Instead, it pushed most of the target dates for development further into the future.

Comptroller Stringer cited that this directly contradicts the agency's response to Comptroller Stringer's audit in 2016, in which HPD said, "approximately 670 of these properties are suitable and feasible for residential development. Roughly 400 of these have been designated or are earmarked for developer designation within the next two years."

Comptroller Stringer reiterated his recommendation from two years ago that HPD set realistic timeframes for the transfer of vacant land in its inventory for residential development and document any delays in their schedules. In addition, he recommended:

1. HPD should take into consideration the required interim steps and the time frames in which they should be completed when determining the time schedule for the transfers of the lots in its inventory. Those steps should include:
  - Selection of a developer for a specific site;
  - Submission of architectural plans by developer;
  - Approval of architectural plans;
  - Meeting with community representatives;
  - ULURP process;
  - Obtaining financing; and
  - Obtaining all necessary approvals from within HPD to proceed with the project and transfer the lots.
2. As it establishes a realistic schedule for the transfer and development of the vacant City-owned lots in its inventory, HPD should systematically track its progress in completing the required steps, document the reasons for deferrals of projected transfer dates, when applicable, and adjust the schedule based on the interim steps that remain to be completed and the time frames in which they should be completed.

## *Briefs*

### **Comptroller DiNapoli: Property Tax Exemptions Top \$450 Billion**

In 2016, 2.7 million properties in the state outside of New York City (58.3 percent) were eligible for some type of tax exemption, according to a report by State Comptroller Thomas DiNapoli. The value of these exemptions totaled \$457 billion, approximately 30 percent of total property value (\$1.5 trillion). When compared to 2006, this represents a five percent decrease in both the number of properties eligible for exemptions (2.9 million in 2006) and their total value (\$479 billion).

The state's School Tax Relief program (STAR) represents the majority share of residential exemptions. STAR accounted for 2.4 million partial exemptions in 2016, worth \$141 billion, or 31 percent of all exempted value. However, unlike other exemptions, STAR creates no direct additional burden on other local property taxpayers, since the school tax on the exempt amount is reimbursed by the state.

The next largest categories of exemptions are for local government and school district exemptions (\$103.6 billion, 23 percent of all exemptions); non-profit organizations such as hospitals, education institutions and churches (\$66.1 billion, 14 percent); and state-owned property (\$44.8 billion, 10 percent).

## **NYS Common Retirement Fund Announces Third Quarter Results**

### ***Estimated Value Reaches \$209.1 Billion***

The New York State Common Retirement Fund's (Fund) overall return in the third quarter of the state fiscal year 2017-2018 was 4.12 percent for the three-month period ending Dec. 31, 2017, with an estimated value of \$209.1 billion, according to Comptroller Thomas DiNapoli. The Fund's audited value as of the March 31, 2017 end of the state fiscal year was \$192.4 billion.

As of Dec. 31, 2017, the Fund had 40 percent of its assets invested in publicly traded domestic equities and 18.1 percent in international public equities. The remaining Fund assets by allocation are invested in cash, bonds and mortgages (23.7 percent), private equity (7.6 percent), real estate (6.5 percent), absolute return strategies (2.6 percent) and opportunistic alternatives and real assets (1.5 percent).

## **PA James, District Attorneys Calls on ICE to Rescind New Courthouse Arrest Policy**

Public Advocate Letitia James this week called on U.S. Immigration and Customs Enforcement (ICE) to rescind a new policy that allows ICE to detain any undocumented immigrant inside of courthouses. The policy, implemented on February 1st, gives ICE the authority to detain anyone present in court including victims, witnesses, or even family members. Many of these individuals are at the courts to report crimes, testify, or support others, but themselves are not being charged with a crime.

Public Advocate James was joined by Bronx District Attorney Darcel Clark, Brooklyn District Attorney Eric Gonzalez, Manhattan District Attorney Cyrus Vance, Council Member Carlos Menchaca, the Legal Aid Society, Make the Road, and the Bronx Defenders.

# Coming Up

## New York State

*The State Legislature is not in session the week of February 19<sup>th</sup>.*

### Friday February 23rd

*New York State's BitLicense in the state of New York, Senate Independent Democratic Conference, Senate Hearing Room, 250 Broadway, 19th Floor, New York, 12 p.m.*

## New York City

*The City Council has no meetings scheduled for the week of February 19<sup>th</sup>.*

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