



# This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop & Del Giorno LLC

April 27, 2018 Edition



## *In the News – New York State*



### **State Comptroller Urges DOL to Improve Investigations of Hours Worked by Nurses**

***DOL Commissioner Asserts Comptroller's audit does not account for the "unique nature" of nurse overtime investigations***

New York State Comptroller Thomas DiNapoli called out the State Department of Labor (DOL) this week, charging DOL does not investigate overtime complaints by nurses in a consistent or timely basis.

"Patients need care around the clock, and nurses are often required to stay and work extra hours," Comptroller DiNapoli explained. "Chronic overtime and longer shifts for nurses need to be watched closely by the state so patient care is not jeopardized, nurses are not overworked and employers are complying with the law. The Department of Labor needs to do a better job investigating complaints from nurses about working overtime to keep patients safe."

Comptroller DiNapoli's auditors found DOL lacked effective policies and procedures for investigating complaints. For example, DOL does not have set time frames for investigating complaints and it is DOL's practice to combine complaints and investigate them together as a single case.

In response to the Comptroller's audit, DOL Commissioner Roberta Reardon countered that the Comptroller's office "attempted to audit timeliness without an understanding of the unique nature of nurse overtime investigations." She also explained that the Comptroller's audit did not "capture" the impact of the Department's working relationship with organized labor, as well as the potential benefit of aggregating complaints in identified facilities or across state agencies.

The Restrictions on Consecutive Hours of Work for Nurses Law was established to protect the public health and quality of patient care by limiting consecutive hours of work for registered nurses and licensed practical nurses in nonemergency situations. It does not preclude nurses from volunteering to work overtime.

The Law requires health care employers to establish coverage to address typical patterns of staff absenteeism due to illness, leave, bereavement, and other similar factors; and identify alternate staffing methods to avoid the use of mandatory overtime. Employers must document their attempts to seek alternative staffing before resorting to mandatory overtime.

If nurses feel that their employers violated the Law, they may file a complaint with the Department's Division of Labor Standards. In turn, the Division initiates cases to investigate single or multiple complaints against employers to determine compliance with the Law.

The audit covered the period of January 1, 2015 to June 30, 2017 and examined whether DOL was adequately enforcing the law. Between January 1, 2015 and May 23, 2017, DOL closed 186 cases regarding 540 complaints.

Auditors found that DOL's lack of uniform procedures resulted in inconsistencies in investigations and differing outcomes based on the same or similar sets of circumstances. Specifically, auditors selected a sample of investigations to review and found in 128 of 207 complaints that DOL did not contact the complainants after the investigation was concluded. For 33 of 165 complaints about state agency facilities, DOL took the word of the facilities that no mandatory overtime occurred without any supporting documentation. In 10 of 23 cases, there was no record of DOL making a decision about the complaint.

In addition, the auditors questioned DOL's lack of set time frames for investigating complaints and its practice of combining complaints. Auditors found this practice resulted in significant delays in initiating and completing investigations. In a sample of cases reviewed, the auditors cited that it took about 57 days before complaints about state agencies overtime practices were investigated compared to 42 days for private or local facilities. To complete an investigation, DOL averaged 351 days for state facilities and 138 days for private or local facilities.

In relation to the Comptroller's questions regarding investigation strategies, Commissioner Reardon explained that the DOL evaluates the total compliance picture at a identified facility.

"The Department's experience with these cases is that a single allegation almost always leads in quick succession to other cases," she detailed in her letter to the Comptroller's office. "Some time is then used to aggregate the multiple complaints at a given facility and produce a regulatory response that works for the entire worksite. That OSC confuses this effort with a lack of timeliness is an error on its part."

Also, the Commissioner asserted that the audit did not consider the impact of employee organizations in its case count.

"...the department works closely with employee representatives, including labor unions, that closely monitor overtime and other workplace conditions facing nurses," Commissioner Reardon explained. "...Overtime issues are worked out through Department investigations and through grievance and arbitration provisions in collective bargaining agreements. This working relationship with employee representatives was not captured in OSCs case court, yet it accounts for an appreciable part of the enforcement approach."

Commissioner Reardon acknowledged that the audit process and the Comptroller's recommendations have resulted in adoption of new practices including:

- Designate specialized staff to investigate complaints.
- Initiate investigation for each complaint to improve tracking and communicate with complainants and education for the regulated community.
- Designate managers to centralize reporting on Nurse Overtime cases pending improved technology for case tracking.



## **Governor Proposes Banning Single-Use Plastic Bags in New York State**

Governor Andrew Cuomo this week proposed a program bill that would ban all single-use, plastic carryout bags at any point of sale in New York State.

"The blight of plastic bags takes a devastating toll on our streets, our water and our natural resources, and we need to take action to protect our environment," Governor Cuomo said. "As the old proverb goes: 'We did not inherit the earth, we are merely borrowing it from our children,' and with this action we are helping to leave a stronger, cleaner and greener New York for all."

The Governor launched the New York State Plastic Bag Task Force in March 2017 to develop a comprehensive solution to the use and disposal of plastic bags and how best to deter their environmental impact. The Task Force is led by State Department of Environmental Conservation Commissioner Basil Seggos along with co-chairs Senator Thomas O'Mara and Assemblyman Steve Englebright. The full report is available [here](#).

Based on recommendations included in the report, the Governor is introducing a program bill that would ban the provision of single-use, plastic carryout bags at any point of sale. In addition, it would provide the Department of Environmental Conservation with exclusive jurisdiction over all matters related to plastic bags and film plastic recycling. The bill exempts garment bags, trash bags and any bags used to wrap or contain certain foods, such as fruits and sliced meats. The bill would go into effect on January 1, 2019.

In addition to the legislation, the state will undertake an education and outreach campaign to increase consumer awareness of single-use bags and their impact on the environment. Education efforts will also seek to educate consumers of the impact plastic bags have on the environment and the waste stream, and promote use of reusable bags.

Currently, 10 cities, towns, and villages in New York have enacted plastic bag bans. One municipality has a plastic bag ban with a fee on single-use paper bags and bags that qualify as reusable, including 2.25 mil flexible plastic bags. The City of Long Beach has a single-use plastic bag fee in place and Suffolk County's single-use plastic bag fee took effect on January 1, 2018.

The U.S. Environmental Protection Agency estimates that 80 percent of plastic pollution in the ocean originated on land, which includes plastic bags, and in New York, residents use 23 billion plastic bags annually.



## Bills Signed by the Governor

**Chapter 11 – Sponsored by Senator Robach / M of A Hevesi** -- Relates to conditional renewal notices to policyholders; provides that a contract of insurance shall remain in full force and effect subject to the same rates as the expiring contract of insurance rates.

**Chapter 17 – Sponsored by Senator Hannon / M of A Gunther** -- Directs the director of classification and compensation of the department of civil service to study and publish a report on nurse practitioners.

**Chapter 18 – Sponsored by Senator Peralta / M of A Dinowitz** -- Relates to lead paint remediation reporting for the metropolitan transportation authority's and the New York city transit authority's aboveground transit infrastructure.

**Chapter 19 – Sponsored by Senator Alcantara / M of A Hyndman** -- Relates to opportunities in the city of New York for minority and women-owned business enterprises.

**Chapter 23 – Sponsored by Senator Hamilton / M of A Rodriguez** --Relates to directing the department of financial services to submit a report concerning licensure, limits on fees and interest and disclosure practices of businesses engaged in pension loan advancements on or before January 1, 2019.

**Chapter 27 – Sponsored by Senator Helming / M of A Benedetto** -- Mandates testing in the event of a motor vehicle collision resulting in injury or death.

**Chapter 31 – Sponsored by Senator Peralta / M of A Dinowitz** -- Relates to the frequency of inspections of articles of bedding.

**Chapter 38- Sponsored by Senator Murphy / M of A Bronson** -- Relates to reciprocity of debarments imposed under the federal Davis-Bacon Act; bars a substantially owned-affiliated entity from submitting a bid or being awarded any public work contract in the state.

**Chapter 47 – Sponsored by Senator Murphy / M of A Peoples-Stokes** -- Provides that each state agency that maintains a website shall ensure its website provides for online submission of requests for records subject to FOI.

# In the News – New York City

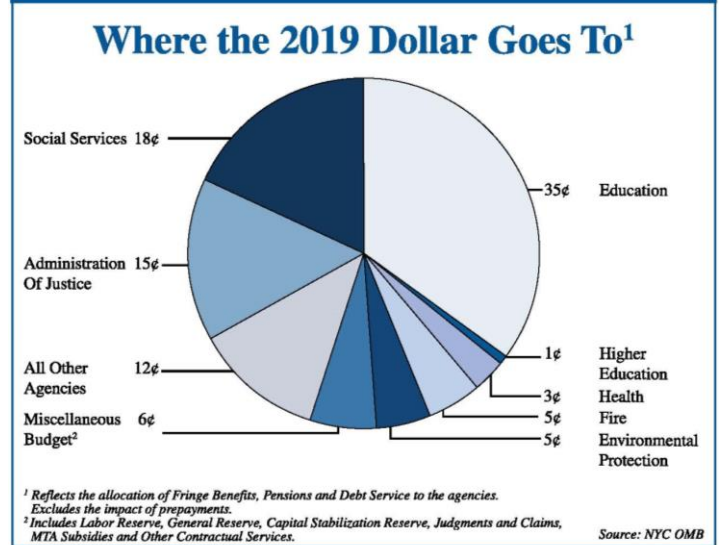
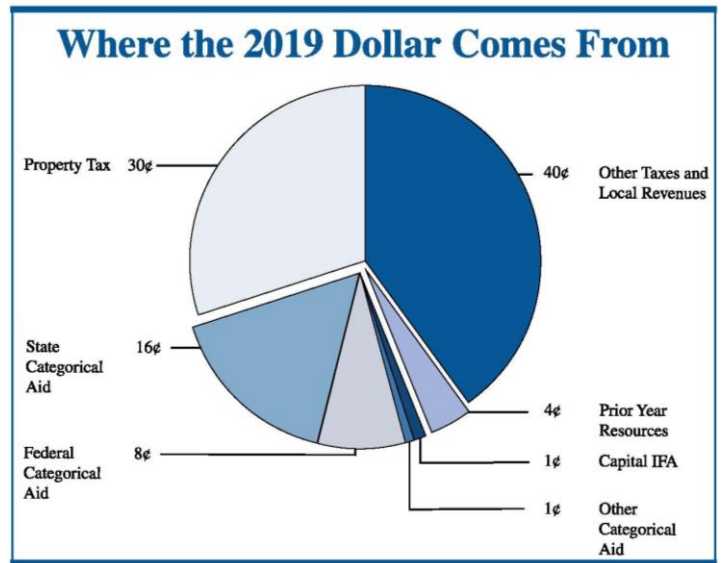
## Mayor Releases FY2019 Spending Plan

Mayor Bill de Blasio this week presented New York City’s Executive Budget for Fiscal Year 2019 (FY19) totaling \$89.06 billion.

The budget includes \$754 million in savings – made up of partial hiring freezes, agency efficiencies and debt service re-estimates. The General Reserve is at \$1 billion in FY19 and every year of the financial plan. The Capital Stabilization Reserve is at \$250 million in FY19 and every year of the financial plan. The Retiree Health Benefits Trust Fund is at \$4.25 billion.

Funding highlights include:

- **Fair Student Funding** floor increased from 87 percent to 90 percent (\$125 million).
- **Cybersecurity** investments increased to ensure the city’s systems are defended (\$41 million).
- **Security:** Further protecting New Yorkers with over 3,000 permanent security barriers (\$103 million in capital).
- **Equity and Excellence Universal Literacy** programs expanded so that all kids read on grade level by 3<sup>rd</sup> grade (\$30.5 million).
- **NYCHA:** Eliminating work-order backlog at NYCHA and cutting down wait times (\$20 million over FY19 and FY20).
- **Online parking permit system** to enable better enforcement and curb placard abuse (\$2 million).
- **Mobile Trauma Response Unit** in every borough to help disrupt violence in real time (\$1.8 million).
- **Supporting students in shelters** by hiring more social workers (\$12 million).
- **Career Pathways** initiatives to connect New Yorkers with career opportunities (\$7.1 million).







## \$1.4 Billion Vital Brooklyn: Phase 2

Governor Andrew Cuomo this week announced the launch of Phase 2 of the Vital Brooklyn initiative, which is addressing chronic social, economic, and health disparities in Central Brooklyn.

The Governor announced five RFPs to construct more than 2,000 affordable homes on parcels of land controlled by the state or owned by Brookdale University Hospital, and the state-owned Brooklyn Developmental Center. These solicitations will advance the Vital Brooklyn initiative's \$563 million commitment to build 3,000 units of affordable housing in Central Brooklyn. Additionally, the Governor announced awards and RFPs to improve access to open space, recreation, and healthy food; expand education and economic empowerment initiatives; improve community-based violence prevention; and enhance resiliency.

"Every New Yorker deserves equal access to health care, quality housing, outdoor recreation, and opportunities to earn a decent wage for a fair day's work, but for too long Central Brooklyn has lacked the attention and investments needed to deliver equity for residents," Governor Cuomo said. "The launch of phase two builds on progress already made by continuing to invest in the holistic Vital Brooklyn Initiative to ensure men and women are provided fair housing opportunities within the growing community, as New York works to transform the region into a better, brighter Brooklyn for generations to come."

The release of the five affordable housing RFPs and other programs follow the Governor's award of \$664 million in funding to create a sustainable healthcare system that expands access to care throughout Central Brooklyn. The Governor launched the Vital Brooklyn initiative in spring 2017

### **Affordable Housing**

#### **Create More Than 2,000 Units of Affordable Housing on Five Underutilized Hospital Sites**

New York State Homes and Community Renewal is issuing a Request for Proposals for four of the five Vital Brooklyn sites in the first round of the Central Brooklyn affordable housing initiative. In conjunction with HCR, New York State Empire State Development is issuing a Request for Proposals for the fifth site. The developments together will create more than 2,000 affordable homes, advancing the initiative's \$563 million goal to create 3,000 units of affordable housing.

The housing units covered by the RFPs will be developed on state-and hospital-controlled sites including three on the grounds of New York State-owned Interfaith Hospital; another owned by Brookdale University Hospital and Medical Center; and one located on Brooklyn Developmental Center property. Each location will host a new ambulatory care center, which are among 32 being advanced through the previously described \$664 million healthcare transformation investment by the state.

HCR is asking that proposals also incorporate other elements that benefit the surrounding community, including retail and/or community facilities, green building practices, and public and health and wellness-oriented amenities such as open space. Proposals are due by July 13, 2018.

In Summer 2018, HCR will solicit proposals for additional state- and hospital-owned development sites for mixed-use, affordable housing that integrates open space, provides affordable space for community-based organizations, and inspires an active and healthy lifestyle. Additionally, HCR will also launch a healthy home preservation program, which will impact 500+ homes.

**Open Space and Recreation**

**Partnership with National Park Service and City of New York to Open Largest State Park in NYC:** In his 2018 State of the State address, Governor Cuomo announced a partnership with the National Park Service and the City of New York to establish a new 407-acre state park on Jamaica Bay in Brooklyn. In the first phase, the state will invest up to \$15 million to open the property, making available 3.5 miles of waterfront, miles and miles of paths and trails, and a coastal highland.

**\$10.6 Million to Transform Schoolyards into Community Playgrounds and Open Space:** The Office of Parks, Recreation and Historic Preservation, in partnership with the Trust for Public Land, is transforming 8 asphalt schoolyards into playgrounds and community gathering spaces.

**\$1.8 Million to Enhance Recreation Centers:** The Office of Parks, Recreation and Historic Preservation will award grants in the next few months to fund physical improvements to the following four local recreation centers to better serve their communities: Madison Square Boys and Girls Club Thomas Murphy Clubhouse, North Brooklyn/Twelve Towns YMCA, Bedford Stuyvesant YMCA, and Flatbush YMCA.

**Community-Based Violence Prevention**

**\$800,000 to Integrate Social and Mental Health Services within Street Outreach Programs:** This pilot program will enhance outreach efforts to prevent gun violence by connecting social workers with existing violence reduction programs, specifically the city's SNUG/Cure Violence sites.

**\$500,000 to Provide Programming for Young People:** This funding will be used to connect the existing violence reduction programs with community-based organizations that provide programs outside of school for youth. These programs range from athletics, such as midnight basketball, to academic support, creative arts, and vocational training. These programs will be geared toward young people between the ages of 14 and 24.

**Resiliency**

**\$825,000 to Expand Outreach on Clean Energy and Efficiency Programs:** NYSERDA awarded the Center for New York City Neighborhoods \$825,000 to help build clean energy awareness and connect underserved communities with cost-saving opportunities. Under this contract, the Center's community energy advisors will work with residents, small businesses, and multifamily building owners.

## **New York City Transit Bus Plan**

The Metropolitan Transportation Authority (MTA) this week unveiled its "Bus Action Plan," which includes measures to modernize the city's network of buses. The plan is the result of an expansive review by NYC Transit President Andy Byford, who declared improving bus service as one of his top four priorities.

"We needed to look at the whole journey experience end to end," Mr. Byford said, according to published reports. "We needed to look at root causes of delays and find out why in recent years people have been deserting the bus network."

Specific elements of the NYC Transit Bus Plan include:

***A completely redesigned bus route network.*** NYC Transit is performing a top-to-bottom, holistic review and redesign of the entire city's bus route network based on public input, demographic changes and travel demand analysis. Route changes will provide better connectivity and more direct service in every neighborhood, with updated stop spacing and the expansion of off-peak service on strategic routes.

***Enhancing NYC Transit's world-class fleet of buses.*** The NYC Transit Bus Plan will also focus on enhancing the bus fleet using zero-emission, all-electric buses as well as double-decker buses. A pilot test of 10 electric buses began earlier this year, while a double-decker express bus will be tested on a Staten Island route starting this spring. The rest of the fleet is being upgraded with digital displays to show real-time route, stop and service update information, as well as traffic signal priority and new fare payment technology. The bus fleet is also being outfitted with new safety technologies such as turn warnings for pedestrians, and security cameras.



***Speeding up boarding by using all doors.*** NYC Transit is pursuing new approaches to speed up bus boarding, particularly using upcoming electronic tap-to-pay readers to facilitate all-door boarding. The new fare payment system being developed by the MTA will explore cashless options to speed up boarding time in select circumstances. Purchasing fare media with cash will always be an option, according to the MTA

***Collaboration with NYCDOT, NYPD, & local communities.*** NYC Transit will collaborate with NYCDOT to expand the implementation of bus lanes, exclusive busways, queue jumps, bus stop arrival time displays and bus priority technology on traffic signals and buses known as "traffic signal priority." Many of these changes will also require robust community outreach. NYC Transit will also advocate for strengthened NYPD enforcement of bus lanes, dedicated transit-priority traffic teams, and legislative approval to expand bus-mounted cameras beyond 16 existing routes to help enforce bus lane rules in more locations.



***Improving customer service and the customer experience.*** Bus customers will benefit from technological advancements like digital information screens providing bus route, next stop and real-time service advisories. Seat availability information on express buses will become available via a mobile application. NYC Transit will also develop simpler and more helpful bus route maps – including customizable and location-specific maps – and work with NYCDOT to have more bus shelters equipped with real-time bus arrival info displays.

***Proactive management to improve service delivery.*** NYC Transit is opening a new Bus Command Center and upgrading dispatch and operations support technology. According to the MTA, GPS-based displays of bus locations to help bus operators and dispatchers work together to reduce “bunching,” the uneven spacing of buses that can often lead to multiple buses arriving at a stop at once. Reorganization and updated training will also streamline operations and the strategic sharing and deployment of resources. NYC Transit will work with supervision and the workforce to explore how to better use buses that sometimes travel empty as they return to depots.

The MTA runs the largest public bus system in North America, about 40 percent larger than the next-largest, Los Angeles. Each weekday, the MTA provides more than 2 million rides, across 54,000 trips on 326 routes, with a fleet of more than 5,700 buses.



## **District Council 9 Members Give Back to Staten Island's Snug Harbor Cultural Center & Botanical Garden at Annual Community Day of Action**

On Saturday, April 21st, the members of District Council 9 lent their time and skills during the District Council's Annual Community Day of Action. Union leadership joined members to spend the day volunteering at non-profits across the state of New York, including volunteering at Snug Harbor Cultural Center & Botanical Garden in Staten Island.

Some two dozen apprentice bridge painters turned out to scrape and prime a portion of the historic fence that serves as the front door to the grounds. The cumulative value of work hours and supplies donated by DC 9 members in Staten Island totaled over \$5,510.

Saturday's Community Day of Action was the just the beginning. DC 9 has made a long term commitment to restore the fence.

"Snug Harbor's elegant Greek Revival iron fence is like the front door to our grounds. Our fence was designed by Frederick Diaper, one of the founding members of the American Institute of Architects, and is almost as old as the magnificent Greek Revival buildings it protects on our front lawn," said Aileen Fuchs, president and CEO of the cultural center.

"This fence represents a rare surviving example of monumental ironwork by early New York craftsmen, and we are so grateful that today's craftspeople and apprentices in District Council 9 are volunteering their time in this day of community service to re-paint and restore this beautiful landmark."



Congressman Dan Donovan and DC 9 volunteers

Staten Island Congressman Dan Donovan stopped by to thank the workers and offer his encouragement. "These guys have already worked all week -- this was their chance for a day off or maybe even some overtime," Donovan told the Staten Island Advance. "But no, here they are, scraping this beautiful fence."

Vincent Pitta, was among the many Snug Harbor supporters and passers-by who offered encouragement. The firm, which first partnered with Snug Harbor in 2015, helped coordinate the event.

Business Manager/Secretary Treasurer of District Council 9, IUPAT Joseph Azzopardi, explained the importance of community action. "This annual event is our way to give back to the communities where we've lived and worked for more than one hundred years," said Azzopardi. "DC 9 and its members don't only refinish your bridges, tunnels, and large-scale buildings – we are also the coach of the local little league team, sitting next to you at church, or shoveling your neighbor's sidewalk."

## **Briefs**

### **JCOPE Approves Regulations**

The Joint Commission on Public Ethics (JCOPE) this week approved comprehensive regulations that will govern New York's lobbying industry. In a statement, JCOPE Chair Michael Rosen said:

"Today's vote by the Joint Commission on Public Ethics to adopt New York State's first comprehensive lobbying regulations marks an important step in the Commission's efforts to ensure public transparency regarding who spends money to influence government, and where and how lobbyists and their clients spend that money.

To that end, there are three important take-aways from the lobbying regulations, each of which sheds light on the influence of money in government decision-making:

- First, the "true" clients — the real parties seeking to influence government – must be identified and follow the source of funding reporting rules;
- Second, the public will see broader and more specific information on lobbying activities, as well as the targets of lobbyists and their clients; and,
- Third, the public will see when and how grassroots lobbying, including paid lobbying through social media, occurs and who is paying for it."

According to published reports, the regulations will take effect in 2019.

## State Launches Multi-Agency Amtrak Rail Safety Exercises

New York this week launched "Operation NY S.E.C.U.R.E." (Securing the Empire Corridor by Unifying Regional Efforts), a multi-agency effort on Amtrak's Empire Line to promote better cooperation between law enforcement agencies and improve the state's ability to respond to emergencies on rail lines. Participating agencies include the Division of Homeland Security and Emergency Services, State Police, Metropolitan Transit Authority, Amtrak Police, and several local law enforcement agencies.

Officers will perform counter terrorism and incident response exercises at passenger train stations and along the right-of-way in Amtrak's Empire Corridor and on Metro-North's Hudson Line. This involves heightened platform patrols, increased security presence onboard trains, explosives detection canine sweeps, and counter-surveillance measures. According to the Governor, the goal of this operation is to improve coordination and response between the railroad police agencies that are responsible for each station, and the state and local law enforcement agencies that will be responding to emergencies at those locations.

Operation NY Secure will take place on Amtrak's Empire Line and Metro-North's Hudson Line from the Albany/Rensselaer station to New York City's Penn Station at the following passenger train stations:

- Penn Station
- Yonkers Station
- Croton Harmon
- Peekskill
- Poughkeepsie
- Hudson
- Rhinecliff
- Albany/Rensselaer

## Mayor de Blasio and Speaker Johnson Announce \$125 Million Investment to Ensure all Schools Receive at Least 90 Percent "Fair Student Funding"

Mayor Bill de Blasio and Speaker Corey Johnson this week announced an additional \$125 million annual investment in "Fair Student Funding" (FSF) for New York City public schools, starting in the 2018-19 school year. FSF provides the majority of most individual schools' budgets, and is used at the principal's discretion, mostly to hire teachers and staff, as well as to purchase materials and educational resources and support student and family activities. With this investment:

- The FSF "floor" will increase to 90 percent – no school will be receiving less than 90 percent of their FSF, up from the current floor of 87 percent. This impacts 854 schools and 588,285 students that are currently below the 90 percent floor.
- The current FSF average across all schools will increase to 93 percent, compared to 91 percent currently.

## PA James Legislation Pushes City to Provide Child Care Access for City Employees

Public Advocate Letitia James announced a bill to explore providing on-site, subsidized child care for New York City's municipal workers. The bill, which requires a study of potential spaces, environmental impact, and costs of such programs, would culminate in a pilot program for one or more City agencies. The legislation is co-sponsored by Council Members Ben Kallos, Stephen Levin, and I. Danee Miller.

## Coming Up

### New York State

*The Legislature is in session Monday, April 30<sup>th</sup> through Wednesday, May 2<sup>nd</sup>*

#### *Thursday May 3<sup>rd</sup>*

*Medical Aid in Dying*, Assembly Standing Committee on Health, Assembly Hearing Room, 250 Broadway, Room 1923, New York City, 10 a.m.

### New York City

#### *Monday April 30<sup>th</sup>*

*Committee on Fire and Emergency Management*, Committee Room, 250 Broadway, 9:30 a.m.

*Committee on For-Hire Vehicles*, Council Chambers – City Hall, 9:30 a.m.

*Committee on Parks and Recreation*, Committee Room, 14<sup>th</sup> Floor – 250 Broadway, 1 p.m.

*Committee on Education*, Committee Room – City Hall, 1 p.m.

*Committee on Civil Service and Labor*, Committee Room – City Hall, 1 p.m.

#### *Tuesday May 1<sup>st</sup>*

*Subcommittee on Zoning and Franchises*, Committee Room, 16<sup>th</sup> Floor – 250 Broadway, 9:30 a.m.

*Subcommittee on Landmarks, Public Sitting & Maritime Uses*, Committee Rm, 250 Broadway, 12 p.m.

*Subcommittee on Planning, Dispositions and Concessions*, Committee Room, 250 Broadway, 2 p.m.

## **Wednesday May 2<sup>nd</sup>**

**Committee on Standards and Ethics**, Committee Room, 16<sup>th</sup> Floor – 250 Broadway, 10:30 a.m.

**Committee on Land Use**, Committee Room – City Hall, 11 a.m.

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

**Committee on Consumer Affairs and Business Licensing**, Committee Room – City Hall, 1 p.m.

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