



This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop & Del Giorno LLC

August 28, 2020 Edition



“Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, every statue and street building has been renamed, every date has been altered. And the process is continuing day by day and minute by minute. History has stopped. Nothing exists except an endless present in which the Party is always right.”
-George Orwell, 1984-

In the News – State



Comptroller DiNapoli: New Law Helps Local Governments Weather COVID-19 Pandemic

Legislation, introduced at the request of the State Comptroller and signed into law this week, will help ease the financial difficulties facing local governments and school districts and give them greater fiscal flexibility amid the COVID-19 pandemic.

“Local governments across New York are facing dire financial consequences from the coronavirus global pandemic as sales tax revenues shrink and state aid is in jeopardy,” Comptroller Thomas DiNapoli said. “This legislation, proposed by my office, will help ease the burdens they will face until our economy fully recovers.”

Chapter 157 of the Laws of 2020, sponsored by Senator Liz Krueger and Assemblyman Fred Thiele, provides financial and budgetary flexibility to local governments and school districts by: 1) extending the "rollover" period for bond anticipation notes issued in calendar years 2015 through 2021; 2) providing additional options to spend or temporarily transfer moneys in reserve funds for pandemic-related expenses; and 3) permitting the repayment of inter-fund advances made for those expenses by the end of the next succeeding fiscal year, rather than the end of the current fiscal year. Various local government organizations gave the Comptroller’s office input in the development of this legislation.

“This package of local fiscal flexibility measures will help city and village officials work their way through these extraordinary fiscal times without unnecessary reliance on the property tax,” Peter A. Baynes, Executive Director of the New York State Conference of Mayors (NYCOM) said.



Chapters of the Laws of 2020

Chapter 144 - Sponsored by M of A Davila/Senator Montgomery - Relates to allowing a court to waive certain surcharges and fees; authorizes a court to waive certain surcharges and fees for a defendant under the age of 21 under certain circumstances.

Chapter 148 - Sponsored by M of A Rosenthal L/Senator Harckham - Adds restaurants, bars, and retail establishments to the list of entities protected from legal liability in relation to the use of opioid antagonists for overdose prevention.

Chapter 157 - Sponsored by Rules Committee (M of A Thiele)/Senator Krueger - Allows local governments budgetary flexibility to address financial needs during the COVID-19 pandemic including 1) extending the "rollover" period for bond anticipation notes issued in calendar years 2015 through 2021; 2) authorizing the expenditure and temporary transfer of reserve funds for expenses related to COVID-19; and 3) allowing the extension of repayment of inter-fund advances made for expenses related to COVID-19.

Chapter 167 - Sponsored by Senator Lui/M of A Magnarelli - Allows a tax preparer to file a client's NYS tax return with an electronic signature.

In the News – City

NYC Council Considers Amendment to “Diaphragm Law”

The New York City Council this week began formal consideration of legislation amending the New York City “diaphragm compression” law (2020/066).

According to documentation from the Council legislative summary, “The bill would amend Local Law 66 of 2020 to provide that restraining an individual in a manner that restricts the flow of air or blood by sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm is a misdemeanor under such law if the restraint is performed recklessly and causes injury due to asphyxiation.” It is sponsored by Council Members: Donovan J. Richards, Vanessa L. Gibson, Diana Ayala, Rafael Salamanca, Jr., Andy L. King, Eric A. Ulrich, Mark Gjonaj, and Ruben Diaz, Sr.

The bill was introduced at Thursday's Stated Council Meeting. The bill text follows:

Int. No. 2060

By Council Member Richards, Gibson, Ayala, Salamanca, King, Ulrich, Gjonaj and Diaz

A Local Law to amend the administrative code of the city of New York, in relation to restraints that compress the diaphragm

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 10-181 of the administrative code of the city of New York, as added by local law 66 of 2020, is amended to read as follows:

a. Unlawful methods of restraint. In the course of effecting or attempting to effect an arrest, [No] no person shall restrain an individual in a manner that restricts the flow of air or blood by: (i) compressing the windpipe or the carotid arteries on each side of the neck, or (ii) recklessly sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm and causes injury due to asphyxiation [, in the course of effecting or attempting to effect an arrest].

§ 2. This local law takes effect immediately.

The five New York Police Department unions and several other unions have filed a lawsuit in NYS Supreme Court in New York County, challenging the local law as preempted by State Law and so vague and ambiguous as to be unconstitutional. The City law is modeled after the New York State "Eric Garner" law, which bans chokeholds during an arrest. It further bans the compression of a person's diaphragm during the arrest process and, in its current form, requires no intent nor injury. Violation is a misdemeanor punishable by a one-year jail sentence.

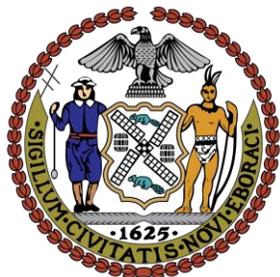
50a Litigation Update

Second Circuit Court of Appeals Grants Request for Stay

The Second Circuit Court of Appeals this week granted the New York City law enforcement unions' request for a stay of the federal District Court's order lifting the Temporary Restraining Order (TRO) in their lawsuit challenging the City's proposed release of officers' disciplinary records.

On August 21, 2020, United States Southern District Judge Katherine Polk Failla denied the unions' motion for a preliminary injunction and lifted the TRO which had been preventing the New York Police Department (NYPD) and Civilian Complaint Review Board (CCRB) from releasing pending, as well as exonerated and unsubstantiated, allegations against law enforcement. She stayed her decision until Monday to allow parties to appeal. The unions immediately appealed the Court's order and asked for a stay pending that appeal.

On Wednesday, the Second Circuit granted the request for a stay. The Court set a briefing schedule and will soon set a date for oral arguments. The stay remains in place until then. This stay does not apply to information released before the commencement of litigation.



Bills Approved by the City Council

Small Business & Restaurants

Introduction No. 1470-B - sponsored by Council Member Mark Levine - Codifies the Commercial Lease Assistance Program, which is operated by the Department of Small Business Services (SBS).

Introduction No. 1958-A - sponsored by Council Member Donovan Richards - Requires the Department of Small Business Services (SBS) to report on businesses that received a grant or loan from the New York City Employee Retention Program or New York City Small Business Continuity Loan Fund, which were created in response to the devastating impact of COVID-19 on small businesses in the city.

Introduction No. 2043-A - sponsored by Council Member Mark Gjonaj – Extends the prohibition on third-party delivery platforms charging restaurants for telephone calls that did not result in an actual transaction during the call (Local Law 51 of 2020). This law would be in effect as long as restaurants are restricted from operating at maximum indoor capacity, plus 90 days thereafter.

Introduction No. 2054-A - sponsored by Council Members Francisco Moya and Mark Gjonaj - Extends the fee cap for third-party delivery platforms (Local Law 52 of 2020) until restaurants can operate at maximum indoor capacity plus an additional 90 days. The bill also adjusts the fee cap so that the delivery platforms may charge restaurants for fees they incur from third parties for processing the customer's transaction. A delivery platform can charge a restaurant no more than the actual cost to the platform for processing the transaction.

Environmental Protection

Proposed Introduction No. 1851 - sponsored by Council Member Costa Constantinides - Reduces the flow of storm water and waterborne pollutants into sewers that empty directly into the waters of the state or overflow into such waters due to rain or snow melt events that exceed the capacity of the wastewater treatment plants.

Proposed Introduction No. 1946-A - sponsored by Costa Constantinides - Requires the Department of Buildings (DOB) to annually distribute information to buildings of all sizes, including those connected to gas lines, regarding making energy efficiency improvements and complying with existing energy regulations.

Proposed Introduction No. 1982-A - sponsored by Costa Constantinides - Provides that fuel cells that are operational before January 1, 2023 will be credited compared to the electricity grid marginal emissions factor published by the New York State Energy Research and Development Authority. Fuel cells that are operational after January 1, 2023 will be credited compared to an electricity grid marginal emissions factor decided by rule by the Department of Buildings.

Transportation

Proposed Introduction No. 1865-A - sponsored by Council Member Ydanis Rodriguez - Creates a task force to study the challenges to the viability of the livery and black car industries and make recommendations for legislation to address these challenges. Among other issues, the task force would study the impacts of advertising on for-hire vehicles and its potential as an additional revenue source for for-hire vehicle drivers.

Housing & Buildings

Introduction No. 2059-A - sponsored by Public Advocate Jumaane D. Williams - Extends the compliance deadline for workers to complete the required site safety training courses to obtain a “Full Site Safety Training (SST) Card” from September 1, 2020 to March 1, 2021.

Technology

Proposed Introduction No. 1297-A - sponsored by Council Member Ritchie Torres – Codifies the Charter the Office of Cyber Command.

Briefs

State Legislation to Hold Utilities Accountable for Failure to Effectively Respond to Power Outages

In response to the “unacceptable performance” of multiple electric and telecom service providers during tropical storm Isaias, Governor Andrew Cuomo will propose legislation to hold utilities accountable for failures to effectively respond to future power outages. The legislation will increase the current legal limits on penalties and create a streamlined process for revocation of a utility's operating certificate for recurring failures. Specifics of the legislation are under consideration.

Currently, penalties related to reliability and continuity of electric service, including restoration following a major outage or event, start at \$100,000 or .02 of 1% of annual intrastate gross operating revenue, whichever is greater, for each separate and distinct offense. Penalties rise to \$500,000 or .04 of 1%, whichever is greater, for combo gas and electric utilities in the restoration of electric service following a major outage event or emergency.

In addition, franchise revocation procedures will address questions including the ownership and transfer of assets such as substations, cables and trucks to ensure that the ratepayers who funded them are not charged again in the event of a new operator taking them over.

Governor Cuomo Issues Executive Order to Support New Yorkers' Right to Vote

Governor Andrew Cuomo this week issued an Executive Order to require county boards of elections to take steps to inform voters of upcoming deadlines, be prepared for upcoming elections, and help ensure absentee ballots can be used in all elections.

The Executive Order requires county boards of elections to take the following actions:

1. Send a mailing outlining all deadlines for voters by Tuesday, September 8.
2. Send staffing plans and needs to the New York State Board of Elections by September 20 so BOE can assist in ensuring adequate coverage.
3. Adopt a uniform clarified envelope for absentee ballots and require counties to use it.
4. Count votes faster: require all objections to be made by the county board in real time, make sure that boards are ready to count votes and reconcile affidavit and absentee ballots by 48 hours after elections.

In addition, the Executive Order provides an option for New Yorkers to vote absentee in village, town, and special district elections.

Attorney General James Announces Settlement with Honda Over Airbag Failures

New York Attorney General Letitia James this week announced a \$85 million multistate settlement with American Honda Motor Co., Inc. and Honda of America Mfg., Inc. (Honda), over allegations that Honda concealed safety failures in the airbags of certain Honda and Acura vehicles sold in the United States.

The settlement - reached between a coalition of 48 attorneys general and Honda - concludes a multistate investigation into Honda's alleged failure to inform regulators and consumers of issues related to the significant risk of rupture in the frontal airbag systems installed in certain model cars, which could cause metal fragments to fly into the passenger compartments of many Honda and Acura vehicles. The ruptures have resulted in at least 14 deaths and over 200 injuries in the United States alone. Since 2008, Honda has recalled approximately 12.9 million Honda and Acura vehicles equipped with the defective inflators.

Honda also agreed to pay the participating 48 attorneys general a total of \$85 million in fines, of which New York's share is \$3,385,945.

Comptroller DiNapoli: NYC's Shelter Repair Process Needs Fixing

New York State Comptroller Thomas DiNapoli this week released an audit of the New York City Department of Homeless Services' (DHS) efforts to make capital improvements to shelters. The audit found that "badly-needed" shelter repairs are too often delayed with little or no explanation, allowing conditions to deteriorate further and, in some cases, forcing residents to relocate.

As of April 2019, there were 415 homeless shelters in the city, including 53 owned by the city, subject to DHS oversight. Comptroller DiNapoli's audit examined nine improvement projects of the city 69 projects in fiscal years 2014 to 2018,

Among its findings, the audit determined that DHS had failed to set clear priorities on its 10-year capital plan. Projects lingered, for years sometimes, before work began, with no assurance that other projects moving forward were in fact more critical.

In response to the audit, DHS did not agree that it lacked an appropriate process for planning and prioritizing projects, but did agree to create specific written policies to support them. The agency also agreed to develop procedures for monthly reporting on projects and systems to track their progress.

New York Fashion Week to Take Place in September with Limited or No Spectators

New York Fashion Week will take place September 13-17, 2020 featuring a mix of live and virtual fashion shows, presentations, and programming including live-streamed runway shows, exclusive designer-related content, and cultural programming. Outdoor events are capped at 50 persons and indoor events at 50 percent capacity and no spectators.

IMG, the owner and producer of NYFW: The Shows, is working with New York State officials and event stakeholders to ensure full compliance with all applicable health and safety requirements. There will be no spectators for any NYFW-affiliated indoor events; and a limited number of private events held outdoors on the Spring Place rooftop will adhere to reduced capacity guidelines of no more than 50 people.

NYC Partners With New York Yankees to Fight COVID-19 and Get More New Yorkers Tested

The New York Yankees will partner with the NYC Test & Trace Corps to promote free COVID-19 testing across the City, becoming the first corporate sponsor of the City's "Get Tested Tuesday" Day of Action.

The Yankees will also air a public service announcement with Manager Aaron Boone and a lineup of star players Masahiro Tanaka, Gio Urshela, Aaron Hicks and Luke Voit that promotes a new "Core Four" to fight the virus (wash hands, social distance, cover face, stay home if sick) and urges New Yorkers to get tested for COVID-19. The PSA will air on the YES Network.

“Get Tested Tuesday” is a promotion between NYC Test & Trace Corps community-based organization grantees, NYC Health + Hospitals and NYC agencies to focus outreach in target communities and get more New Yorkers tested.

MTA Officials Warn of Major Layoffs and Service Cuts Without Federal Aid

The Metropolitan Transportation Authority (MTA) issued a warning about the financial condition of the Authority, announcing plans to lay off 7,200 employees and cut New York City subway and bus service by 40% in the absence of federal funding.

The MTA is seeking \$12 billion through 2021 offset its financial losses caused by months of historically low ridership. Ridership dropped 90% in April due to the COVID-19 pandemic.

“Without this additional federal funding, we will be forced to take draconian measures, the impact of which will be felt across the system and the region for decades to come,” said MTA Chairman Pat Foye.

The MTA is also considering fare and toll hikes, reducing commuter rail service by 50%, and pausing capital projects. The MTA received \$3.9 billion in federal stimulus money in March, but faces a projected \$16.2 billion deficit through 2024.

Coming Up

New York State

No meetings scheduled.

New York City

Thursday, September 3rd

Committee on Education, Remote Hearing, 10 a.m.

Res 1410-2020 - DOE to delay the reopening of public schools until each school meets the safety standards children and school staff require.

**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”
-Mario M. Cuomo-**

Disclaimer: The materials in this *This Week in New York* report are provided for informational purposes only and are not intended to be a comprehensive review of legislative or governmental or political developments, to create a client-consultant/lobbyist relationship, or to provide consulting, lobbying or political advice. Readers are cautioned not to attempt to solve specific problems on the basis of information contained in this *This Week in New York*. If consulting, lobbying or government relations advice is required, please consult a professional expert in such matters. The information contained herein, does not necessarily reflect the opinions of Pitta Bishop & Del Giorno LLC, or any of its members or employees or its clients. Neither Pitta Bishop & Del Giorno LLC, nor its members or employees make any warranty, expressed or implied, and assume no legal liability with respect to the information in this report, and do not guarantee that the information is accurate, complete, useful or current. Accordingly, Pitta Bishop & Del Giorno LLC is not responsible for any claimed damages resulting from any alleged error, inaccuracy, or omission. This communication may be considered an advertisement or solicitation.

To request that copies of this publication be sent to a new address or fax number, to unsubscribe, or to comment on its contents, please contact Theresa Cosgrove at tcosgrove@pittabishop.com or at (518) 449-3320.

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.

This Week in New York is a publication of Pitta Bishop & Del Giorno LLC.

120 Broadway, 28th Floor
New York, New York 10271
Telephone (212) 652-3890
Facsimile (212) 652-3891

111 Washington Avenue, St. 401
Albany, New York 12210
Telephone (518) 449-3320
Facsimile (518) 449-5812

25 Hyatt Street, St. 202
Staten Island, New York 10301
Telephone (718) 943-1050
Facsimile (718) 943-1051