



This Week in New York

Covering New York State and City Government

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In the News – New York State

2018 State of the State Address: Governor Vows to Protect Organized Labor

"New York has a long and proud tradition of fighting for union workers' rights. At a time of stagnant wages, evaporating pensions, and swelling household debt, unions offer a pathway to the middle class and create economic growth that reaches all Americans"

*Governor Andrew Cuomo
2018 State of State Address*



Governor Andrew Cuomo opened the 2018 New York State legislative session with a pledge to do “everything in his power to preserve workers’ rights and protect the right to organize and collectively bargain.”

“Public-sector labor unions are under attack on the national level, facing legal challenges to their very core,” Governor Cuomo said in his 2018 State of the State Address.

In his Annual Message, Governor Cuomo explained that the United States Supreme Court will soon hear a case, *Janus v. American Federation of State, County, and Municipal Employees*, which seeks to “effectively end public labor unions.” The Court will determine whether fee arrangements like those permissible under the Taylor Law violate the First Amendment.

“As the nation waits for a decision in the *Janus* case, Governor Cuomo stands beside public labor unions in their fight for survival and will do everything in his power to preserve workers’ rights and protect the right to organize and collectively bargain,” according to the Annual Message.

With respect to his state agenda, the Governor highlighted his previously released plan to examine eliminating the Minimum Wage Tip Credit. In the coming weeks, State Labor Commissioner Roberta Reardon will schedule public hearings to examine industries and evaluate the possibility of ending minimum wage tip credits in New York State.



Governor Looks to Strengthen New York's MWBE Program

Calls for Common Retirement Fund Investment in Firms with Adequate Minority & Women Management Representation

With New York's Minority and Women-Owned Business Enterprise (MWBE) program set to expire in April, Governor Andrew Cuomo used his State of the State Address to assure stakeholders that he has a plan for a bigger and better program.

Citing the findings of the 2016 Minority and Women-Owned Business Enterprise Disparity Study (Study), the Governor asserted that there is "very much still need" for the program and called for expansion to include all state-funded projects. In addition, Governor Cuomo is seeking to direct the State's Common Retirement Fund investments in firms with adequate minority & women management representation.

Last year, the Governor released the Study, which evaluated the participation of MWBEs in State contracts from April 1, 2010 through March 31, 2015. The Study found statistically-significant evidence of underutilization of MWBEs in State contracting in both the prime contract and subcontract levels in the construction, construction-related services, non-construction related services, and commodities industries.

In conjunction with initiatives to extend the MWBE program authorization, Governor Cuomo will propose legislation that will expand the MWBE Program to more contracts entirely funded by the State. Under current State law, MWBE goals only apply to State-funded contracts issued by State agencies and authorities. This does not include contracts issued by localities and other entities which are funded by the State. The legislation will require MWBE goals on State funds used for contracting purposes on the local level.

The MWBE extension initiative will also revisit the program's personal net worth requirements. In December, Governor Cuomo vetoed legislation (Veto #251 of the laws of 2017) which would have removed the owner's net worth determinant in relation to MWBE status. The Governor asserted that by removing the net worth determinant from the statute, the legislation would open New York's program to constitutional challenges. He indicated that "the determination of PNW is an important component to the reauthorization of the entire MWBE program, [and that] discussions regarding this issue should be considered in a comprehensive manner during the 2018 legislative session."

With his Annual Message, Governor Cuomo expanded the scope of New York's MWBE policy by looking into the business management and corporate board composition of the State's investments. He asserted that women and minorities remain severely underrepresented in business ownership, in management roles and on corporate boards. For example, while women make up over half of the U.S. population and nearly half of the corporate workforce, they make up only about 20 percent of corporate boards.

"A company cannot have good management, by definition, if that management is not representative of its employees, its customers, and society more broadly," Governor Cuomo explained. To this end, the Governor will work with Comptroller Thomas DiNapoli to "invest in companies that invest in women and minority leadership."

Governor Continues New York's Path of Criminal Justice Reform

Building upon last year's Raise the Age and Innocence Project reforms, Governor Andrew Cuomo's blueprint for 2018 includes initiatives to further restore fairness in New York's criminal justice system.

"The Empire State has always served as a beacon of equality and social justice, and with these actions New York is once again showing the nation the way forward," Governor Cuomo said. "For too long, our antiquated criminal justice system has created a two-tiered system where outcomes depend purely on economic status - undermining the bedrock principle that one is innocent until proven guilty. This sweeping overhaul will transform our criminal justice system by removing critical barriers, reaffirming our beliefs in fairness, opportunity and dignity, and continue our historic progress toward a more equal society for all."



Governor Cuomo

The Governor's proposal includes:

Bail Reform: To address this, the Governor will advance legislation to accomplish the following:

- First, the law will create a presumption that people facing misdemeanor and non-violent felony charges must be released, and they must be released without cash bail. People will be released either on their own recognizance or with non-monetary conditions imposed by the court, such as reporting to a pretrial services agency.
- Second, monetary bail would be permitted, but not required, in remaining cases, after an individualized assessment of the nature of the case and the defendant's personal and financial circumstances. If a judge does set bail, the court must give the defendant a choice between cash or bail industry bonds and an alternative form of bail that the judge will set, such as an unsecured or partially secured bond.

- Third, in cases involving domestic violence or other serious violence, or if, while on pretrial release, a defendant commits a crime or willfully fails to come to court, a judge could order a defendant to be held in jail pretrial if the court finds, after due process, that the defendant poses a high risk of not returning to court or poses a current threat to the physical safety of a reasonably identifiable person or persons.

Discovery Reform: Under Governor Cuomo's plan, prosecutors and the defense will have to share information in a multi-stage time frame including disclosure of evidence and information favorable to the defense; intended exhibits, expert opinion evidence, witnesses' criminal history information, and search warrant information will be made available to defendants in a timely and consistent manner. Doing so ensures attorneys have the tools necessary to adequately represent their clients.

Speedy Trial Reform: The Governor will introduce legislation to codify the waiver process, require court reviews of statements of readiness, and prevent undue delay by last-minute motion practice.

Civil Asset Forfeiture Reform: The Governor will advance legislation to ban all asset seizure unless an arrest is made and require a criminal conviction before property can be forfeited. Also, the Governor will direct the Division of Criminal Justice Services to require law enforcement agencies to report demographic information of the individual from whom a seizure is made, including gender, age, race/ethnicity, and geographic location of the seizure, to ensure this practice is being carried out fairly and consistently.

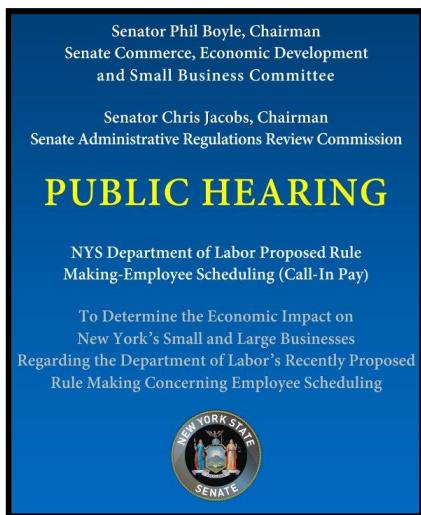
Re-entry Proposals:

- The Governor will advance legislation to:
 - Remove mandatory suspensions of driver's licenses for people convicted of drug crimes as long as the crimes did not involve driving.
 - Remove statutory bans on occupational licensing for professions outside of law enforcement and instead require agencies to assess applicants on an individualized basis.
 - Expand opportunities for release from prison through geriatric release consideration for people over the age of 55 with debilitating conditions exacerbated by age, by expanding the type and variety of programming that will make people eligible for merit release and limited credit time allowances, and studying whether people eligible for limited credit time allowances can safely take part in educational and work release.
 - Remove the parole supervision fee, and have local child support enforcement offices review child support orders of people incarcerated for over six months, and, if warranted, adjust the orders downward so that unpayable child support debt does not accumulate during a person's incarceration.
- Direct the Council on Community Re-entry and Re-integration, the Board of Parole, and the Department of Corrections and Community Supervision to undertake a comprehensive review of parole revocation guidelines and practices to determine appropriate alternatives to incarceration for those who violate technical parole conditions but pose no risk to public safety.

Raise the Age: To successfully implement the Raise the Age legislation, Governor Cuomo proposes to invest \$100 million over the next fiscal year to support a continuum of effective prevention, diversion, treatment, re-entry and supervision services at the state and local level.

Solitary Confinement: The Governor will direct the Department of Corrections and Community Supervision to close more than 1,200 SHU beds throughout New York State's correctional facilities.

Local Facilities: State Commission of Correction will undertake a comprehensive review of facilities throughout New York that have failed to meet standards of safety, security, and service. This review will include an analysis of reportable incidents, deaths in custody, and physical facility conditions. Upon the Commission's determination, local jails with persistent, pervasive problems will be required to create and adhere to a corrective action plan to either improve their facilities—or close them in an expedited manner—to ensure the safety for both staff and incarcerated individuals.



Upstate Businesses Decry Governor's "Call-in" Scheduling Regulations

Upstate businesses including car washes and landscape companies called Governor Andrew Cuomo's "call in" regulations "job killers" that will "add to the skyrocketing costs of doing business."

"I'm happy to provide youngsters with first jobs," Ron Benderson, President of Delta Sonic Car Wash explained at the Senate Committee hearing on Employee Scheduling (Call-In Pay) regulation proposed by the Department of Labor (DOL). ".....this propose regulation could cost us \$3-15 million annually...We might have to change to automated car wash...It could end 1200 jobs and up to 3700 not created."

Published is the *State Register* on November 22nd, the proposed regulation requires:

- Employers throughout the state provide 2 hours of call-in pay to employees who reports to work for any shift not scheduled at least 14 days in advance.
- Employers to pay 4 hours of call-in pay to employees whose shift was cancelled within 72 hours of their scheduled shift start. The call-in rate would be calculated at the employee's regular rate or overtime rate of pay.
- Any employee who must be on call for any shift to be paid at least 4 hours of call-in pay.
- Any employee who must be in contact with their employer within 72 hours of a shift to confirm their shift must be paid 4 hours of call-in pay as well.

The regulations include an exemption for employees under a collective bargaining agreement. The comment period on the regulation ends Monday, January 8th.

Thomas Hoffman, CEO of Hoffman Car Wash who employs 700 employees at 23 locations, echoed Mr. Benderson's reservations and asserted that New York City car washes operate on a different business model and "regulations based around them do not fit to car washes outside NYC." Both Mr. Hoffman and Mr. Benderson employ primarily high school and college students.

James Homung, President, Elbers Landscaping, detailed the impact of the regulations on seasonal businesses, including snowplowing.

"When the first flake falls people expect us...our staff is on call all the time," he explained. "We would have had to spend additional \$3k to call in for a surprise blizzard or tell people to go home when it was sunny after prediction of snow....we would seriously consider getting out of the business...I can't pass all these costs on to consumers."

According to the Senate, representatives of the State Department of Labor and organized labor declined invitations to testify at the hearing. Representatives of the National Federation of Independent Business, Capital Region Chamber of Commerce, Unshackle Upstate, the Long Island Association and the Business Council of New York State testified.

Jason Hecker contributed to this report.

2018 State of the State Address: Links

Annual Message: <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>

Transcript of Speech: <https://www.governor.ny.gov/news/video-audio-rush-transcript-governor-cuomo-outlines-2018-agenda-realizing-promise-progressive>

Video of Address: <https://www.youtube.com/watch?v=N4SVFp8EFXw&feature=youtu.be>

Audio of Address: <https://soundcloud.com/nygovcuomo/2018-state-of-the-state-address>

In the News – New York City

New York City Council Speaker Corey Johnson

Manhattan City Council Member Corey Johnson was elected Speaker of the New York City Council this week in a 48-1 vote. Speaker Johnson succeeds Melissa Mark-Viverito.



Speaker Johnson

A native of Beverly, Massachusetts, Speaker Johnson was first elected to the Council in 2013 with 86% of the vote, replacing then-Speaker Christine Quinn. Prior to his election, he was the chairman of Manhattan Community Board 4. As a representative of the Council's 3rd District -- which includes Manhattan's Hell's Kitchen, Chelsea and West Village neighborhoods, the Speaker has focused on strengthening rent regulation and tenant protections, enhancing services for New Yorkers with HIV and AIDS, and health-related issues. Previously, he served as Chairman of the Council's Health Committee.

In his acceptance speech, the Speaker acknowledged that "the problems and challenges we continue to face are of historic proportions." He noted overflowing homeless shelters, local businesses being unable to compete with chain stores, and a failing transit system as areas of specific concern.

According to published reports, Speaker Johnson plans to make the City Council an independent body, indicating a willingness to pass legislation over the objections of the Mayor.

"As I've said to the mayor, it's not personal," Speaker Johnson said, as published in the *Wall Street Journal*. "We will not flinch, nor hesitate to do so."

With respect to the Council's operations, Speaker Johnson called for re-creating the Council's Investigations Division, bolstering the Council's land use staff, and offering Council members the opportunity to pursue their interests and priorities. Speaker Johnson tapped Council Member Rory Lancman to head the Rules Committee, which will help establish the new Council's rules and appoint the chairs of the other Council committees.

During the Council's meeting, the Speaker named each member individually, pledging his support.

"I want you to know that in good times and in bad, through thick and thin, I will always have your back," Speaker Johnson said, according to the *Gotham Gazette*. "Those of you who supported me, those who didn't support me, those who ran for speaker and those who have been here in this body and those who are new, I will have your back."

Below is a sampling of the enacted initiatives sponsored by Speaker Johnson:

Health

- Prohibits the use of smokeless tobacco products at sports stadiums and arenas.
- Requires transparency regarding health services administered at Rikers Island.
- Requires automated external defibrillators to be present at public ball fields in New York City.

Education

- Requires the Department of Education (DOE) to report on the use of disciplinary measures in public schools.
- Requires the DOE to regularly report on student health services in public schools.

Animal Welfare

- Regulate breeders, combat overpopulation, provide for the safe accounting of animals, ensure that known animal abusers are unable to obtain animals.
- Mandates that either fire sprinklers or supervision be present in all establishments that house animals for more than 24 hours.
- Bans the use of wild animals in circuses.

Briefs

State of State Election Law Reform Proposals

Governor Andrew Cuomo's 2018 State of the State Address included a number of reforms aimed at strengthening New York's election law. The initiatives, many of which require State legislation, include:

- Expand New York State's definition of political communication to include paid internet and digital advertisements.
- Require digital platforms to maintain a public file of all political advertisements purchased by a person or group for publication on the platform.
- Require online platforms to make reasonable efforts to ensure that foreign individuals and entities are not purchasing political advertisements in order to influence the American electorate.
- Provide Cyber Risk Vulnerability Assessments and Support for Local Boards of Elections.
- Require Counties to Report Data Breaches to State Authorities.
- Early Voting: The proposal requires every county to offer residents access to at least one early voting poll site during the 12 days leading up to Election Day. Voters will have at least eight hours on weekdays and five hours on weekends to cast early ballots.
- Automatic Voter Registration: New York would implement automatic voter registration. New Yorkers who do not wish to register to vote would check an "opt out" box.
- Same-Day Voter Registration: New Yorkers would be allowed to register and vote on the same day.

Cashless Tolling Going Statewide

As part of Governor Andrew Cuomo's infrastructure program, New York State will implement cashless tolling across the New York State Thruway. The Governor outlined his plan in the State of the State Address. Additionally, the Governor has urged the Port Authority of New York and New Jersey (PANYNJ) to study the possibility of installing cashless toll collection on all PANYNJ operated Bridges and Tunnels.

According to the Governor, the project will utilize Design-Build construction to "reduce costs and accelerate" the construction schedule. Cashless tolling throughout the Thruway system will be operational in 2020.

Fix NYC Panel Recommendations Coming Soon

Governor Andrew Cuomo's Fix NYC Panel, charged with developing a plan to address the City's subway and traffic challenges, will be releasing its recommendations soon. Addressing the Legislature in his Annual Message, Governor Cuomo alluded to the need for an equitable congestion pricing plan to help fund the City's transit system and the forthcoming Panel recommendations.

De Blasio Administration Expands NYPD-DHS Joint Homeless Outreach Efforts

The de Blasio Administration this week announced a series of enhancements to interagency homeless outreach efforts. The Department of Homeless Services and the New York City Police Department are expanding joint canvassing and outreach operations in Midtown, Manhattan from two days per week to seven days per week, focusing on engaging homeless New Yorkers residing on the streets between 30th Street and 60th Street in Manhattan. Additionally, the City is committing to opening an additional 250 Safe Haven beds within the next two years, in areas where outreach teams are actively engaged with known homeless individuals who would be most effectively served by a community- and borough-based Safe Haven placement.

New York City to Close First Jail on Rikers Island by Summer 2018

The de Blasio Administration announced this week that it will close its first jail on Rikers Island this summer as part of Mayor de Blasio's plan to close Rikers Island. The DOC will close the George Motchan Detention Center, which currently houses about 600 men in custody. Its closure will bring the total number of operational Rikers Island facilities from nine to eight and it will not result in layoffs or a reduction in DOC uniformed staff. Instead, it will help DOC reduce overtime, provide important training and support, and strengthen staff in other key areas. In the coming months, DOC will develop plans on the transfer of uniformed staff and detainees to other facilities.

Coming Up

New York State

State Legislature is in session Monday, January 8st through Tuesday, January 9th.

Wednesday January 10th

Examination of Interactive Fantasy Sports in New York State

Assembly Standing Committee on Racing and Wagering

Roosevelt Hearing Room C, Legislative Office Building, 2nd Floor, Albany, 10 a.m.

Annual Budget Oversight Hearing on funding of libraries in NYS for fiscal year 2017-2018.

Assembly Standing Committee on Libraries and Education Technology

Hamilton Hearing Room B, Legislative Office Building, 2nd Floor, Albany, 10:30 a.m.

Thursday January 11th

Marijuana Decriminalization and Regulation

Joint Assembly Committees on Codes, Health, & Alcoholism and Drug Abuse

Assembly Hearing Room, 250 Broadway, Room 1923, 19th Floor, New York, 10:30 a.m.

Friday January 12th

The Excelsior Scholarship and the Enhanced Tuition Awards Program

Assembly Standing Committee on Higher Education

Roosevelt Hearing Room C, Legislative Office Building, 2nd Floor, Albany, 10 a.m.

New York City

There are no meetings scheduled next week for the City Council

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