



# This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop & Del Giorno LLC

September 29, 2017 Edition



## *In the News – New York State*

### New York's Constitutional Convention Process

Article 19, Section 2 of the state constitution requires a referendum be held every 20 years on whether to call a Constitutional Convention. This method of voting on the question began in 1957, although multiple conventions have been called by other means before then since its original ratification in 1777. The state legislature is still authorized to call for a convention outside the twenty-year cycle. The next vote on the question will be held this November.

If voters approve a convention, 3 delegates from each state senate district will be elected in November 2018, with an additional 15 at-large delegates elected statewide, for a total of 204 elected delegates. The convention will then open on the first Tuesday of April 2019. Once convened, the convention selects its own officers, determines its own procedures, and staff to delegates are hired. The convention can then operate for as long as it needs to agree on revisions or amendments to the constitution. The conventions recommendations may be submitted to the final voter ratification as a single question or as a number of distinct questions. The vote to ratify or reject the convention's proposals would take place in November 2019. The constitution also gives the convention discretion in presenting its work at a time of its choosing (a special election is possible).

In summation – 3 votes must transpire before the constitution can be changed by referendum: the first vote to call a convention, a second one to elect delegates, and a third to ratify the results of the convention.

#### Labor's Rationale for Opposing a Constitutional Convention

Organized labor views this convention process as a danger to constitutional protections for collective bargaining and unionization, prevailing wages, pensions, and other protections like the Wicks Law and Scaffold Law. Public employees and retirees especially stand to lose a great deal from a convention. *This article focuses on some of the risks a convention poses for the rights and benefits of these employees.*

Once a convention is approved and under way, there's nothing to prevent the convention's scope from being sweeping. It would place the constitutional rights and protections of public employees at risk of being impaired. The 1894 convention of the Grover Cleveland era included the establishment of the civil service system. Besides the right to organize and collectively bargain, the state constitution also makes public employee pension benefits contractual and protects them from diminishment. Unlike some state charters, New York's protects both accrued and future benefits. It guarantees a fixed rate of return from the Tax-Deferred Annuity Program, providing a critical fourth pillar of retirement security, along with Social Security, a defined benefit pension and health insurance. The constitution also protects public employee pension benefits from state taxation.

Other public employee protections not found in the constitution are in jeopardy if a convention is opened. For example, the Triborough Amendment to the Taylor Law preserves salary and benefit levels when public employee contracts expire without renewal. Delegates to a convention could insert a provision in the constitution banning collective bargaining for public employees – in essence abolishing the Taylor Law and the Triborough Amendment by constitutional means. This is just one of many similarly threatened rights achieved through the ordinary legislative process.

In March 2015, the New York State United Teachers issued a message to its membership arguing a convention is “akin to opening Pandora’s box” when it comes to these constitutional safeguards. For these reasons the union and many others representing public sector employees have mobilized voter outreach campaigns ahead of the November 2017 vote, urging active and retired members and their families to reject the Constitutional Convention question and vote “No”.

### **Developments Since the 1967 Convention**

In the last 50 years since a convention was held, anti-union sentiment has grown sharply among the public – including states like Wisconsin and Michigan with long-established histories of union membership. Well-financed anti-union interest campaigns have positioned themselves to take advantage of mechanisms supported by the *Citizens United* Supreme Court decision to influence the convention process with dark money in the hopes of later dominating delegate selection procedures, and subsequently the convention’s work, recommendations, and ratification. A loophole in the state’s campaign finance rules creates a situation whereby campaign contributions made during the last 19 days before a referendum election are exempt from disclosure laws.

A recent WSJ/NBC News Survey found political divisions in the country are widening and becoming more difficult to bridge with individual views of the economy and broader national outlook closely aligned with feeling about the current president. The poll found deep splits along geographic and educational lines. Rural Americans and people without 4-year degrees were notably more pessimistic about the economy and more conservative on social issues than others. As noted above, the politics of the current socioeconomic environment – with the U.S. Supreme Court recently granting certiorari in the Janus v. AFSCME Council 31 case to reconsider public employee dues collection – is not favorable to public sector unions.

### **Summary**

The stakes are too high for public employees to vote to open a potentially unwieldy and devastating constitutional convention. It is an unnecessary risk and expenditure and viable alternatives to enact change – while protecting hard-earned rights and benefits in the process – already exist.

While convention proponents correctly argue that New York constitutional conventions have added, not taken away, rights, they lack a unifying argument affecting all citizens to justify opening a convention that puts so much at risk of great harm in today’s environment.

The current constitutional amendment mechanism is satisfactory, making a convention unnecessary. Our duly-elected state legislators are already empowered to address the structural issues motivating convention proponents.

According to Ballotpedia, the state legislature referred 19 constitutional amendments to the ballot between 1996 through 2016. The state legislature has done so hundreds of times during the last century. In fact, this year's general election ballot contains two proposed amendments developed through the normal amendment process.

Next week's issue will review some of the potential ramifications of a constitutional convention for members of the building and construction trades in New York State.

**New York State Office of the State Comptroller**

Thomas P. DiNapoli • State Comptroller



**Fiscal Stress Monitoring System**

### ***State Comptroller Releases 2016 Locality Fiscal Stress Scores***

State Comptroller Thomas DiNapoli's Fiscal Stress Monitoring System has designated 27 municipalities across the state as fiscally stressed. The list, which includes eight counties, eight cities and 11 towns, marks the fewest number of municipalities listed in stress since Comptroller DiNapoli implemented his early-warning system in 2013.

"Although the number of local governments designated as fiscally stressed has declined noticeably, there are still too many communities struggling with chronic budget strain," said Comptroller DiNapoli in releasing the report based upon 2016 financial information.

The counties of Broome and Monroe, and the cities of Albany and Watervliet have received the highest designation of "significant fiscal stress." Thirteen communities have been listed in the second-highest category of "moderate fiscal stress." This includes: Erie, Franklin, Nassau, Suffolk and Westchester counties; the cities of Fulton, Glen Cove, Niagara Falls, Ogdensburg and Poughkeepsie; and the towns of Cherry Valley, Oswego and Parish.

An additional 10 municipalities have been listed as "susceptible to fiscal stress." This includes: St. Lawrence County; the city of Port Jervis; and the towns of Colonie, Constable, Elmira, Evans, German Flatts, Mansfield, Oxford and Saugerties.

Comptroller DiNapoli's monitoring system evaluates local governments on nine financial indicators and creates a fiscal stress score. Indicators assess fund balance, cash-on-hand and patterns of operating deficits. The system also evaluates information such as population trends, poverty and unemployment to help describe the environment in which these local governments operate. Each municipality receives a separate "environmental" score based on this assessment.

In an accompanying report that examines fiscal stress trends over the past four years, Comptroller DiNapoli noted that 117 municipalities have been designated as fiscally stressed at least once during the period and 11 of those have been designated as stressed in each of the four years. Monroe County is the only municipality listed in "significant" stress each year.

Other findings in the report include:

- Eight local governments were newly classified as in stress in 2016 while 27 moved out of a stress category.
- Sixty-one entities have appeared on the fiscal stress list only once during the four-year period.
- More than one-third of all municipalities in a fiscal stress category are located in the downstate regions of Long Island and the Mid-Hudson Valley.



## **Governor Cuomo: Washington Tax Plan Imposes Double-Tax on New Yorkers**

### ***Plan Would Cost 3.3 Million New York Taxpayers \$17.5 Billion***

Governor Andrew Cuomo this week released an analysis outlining the impact of the Republican proposal to eliminate the federal deduction for state and local taxes paid. The analysis shows that the elimination of state and local tax deductibility would increase the tax liabilities of 3.3 million New York taxpayers by \$17.5 billion. On average, New York taxpayers will have to pay \$5,300 more in federal income taxes.

According to the Department of Taxation & Finance, the deduction for state and local taxes paid is also the most widely used benefit in the tax code. Governor Cuomo explained that the allowance is a "long-standing historical right" of state and local governments to raise revenues and taxpayers not to be double taxed. He asserted that the elimination is not 'closing a loophole', it would double tax the taxpayer, and undermine state's rights.

**Federal Tax Increase on New Yorkers from Repeal of State and Local Tax Deduction - by Income**

<b><u>FedAGI Range</u></b>	<b><u># of Taxpayers</u></b>	<b><u>Tax Increase (in millions)</u></b>	<b><u>Average Tax Increase</u></b>
Less than \$50,000	649,718	\$275	\$423
\$50,000 to \$100,000	1,158,013	\$1,504	\$1,299
\$100,000 to \$150,000	686,506	\$1846	\$2,688
\$150,000 to \$200,000	319,016	\$1,372	\$4,300
\$200,000 to \$300,000	244,592	\$1,699	\$6,944
\$300,000 to \$500,000	130,149	\$1,660	\$12,753
\$500,000 to \$1 million	68,239	\$1,878	\$27,519
\$1 million to \$2 million	26,459	\$1,510	\$57,066
\$2 million to \$5 million	13,352	\$1,675	\$125,481
Greater than \$5 million	6,206	\$4,077	\$656,988
<b>Total</b>	<b>3,302,250</b>	<b>\$17,495</b>	<b>\$5,298</b>

Source: New York State Department of Taxation and Finance analysis of 2010 Federal Statistics of Income (SOI)

The elimination of this tax deduction would hit every region in New York. New York City would bear the largest burden, seeing taxes increase by more than \$7.1 billion for more than 1.1 million taxpayers. Nearly a million taxpayers on Long Island would see an average Federal tax increase of more than \$4,500, and almost 600,000 taxpayers in the Mid-Hudson region would see an average increase of nearly \$5,600.

**Regional Impact of Proposed Repeal of State and Local Tax Deduction**

<b><u>Region</u></b>	<b><u># Taxpayers Impacted</u></b>	<b><u>Millions \$</u></b>	<b><u>Average Increase</u></b>
Western New York	134,192	\$398.15	\$2,967
Finger Lakes	152,067	\$467.71	\$3,076
Southern Tier	56,403	\$164.80	\$2,922
Central New York	88,650	\$266.24	\$3,003
Mohawk Valley	37,647	\$96.12	\$2,553
North Country	26,298	\$66.79	\$2,540
Capital Region	164,649	\$508.39	\$3,088
Mid-Hudson	597,952	\$3,346.94	\$5,597
New York City	1,100,432	\$7,850.01	\$7,134
Long Island	943,959	\$4,329.84	\$4,587
<b>Total NYS:</b>	<b>3,302,250</b>	<b>\$17,495</b>	<b>\$5,298</b>

Source: New York State Department of Taxation and Finance analysis of 2014 Personal Income Tax Population File

The Cuomo Administration contends that an increase in Federal taxes as a result of the elimination of the federal deduction would further harm New York including thousands of lost jobs and multibillion dollar loss in gross state product, economic activity and personal income.

## *In the News – New York City*



### **Council Approves Bill to Establish Construction Safety Training Requirements**

The New York City Council this week approved legislation (Introduction 1447-C) to establish construction safety training requirements and programming.

The legislation, sponsored by Council Members Jumaane Williams and Carlos Menchaca, would establish site safety training requirements for workers at most construction sites. Specifically, it requires workers to undergo between 40-55 hours of safety training. These hours will be specified by the Department of Buildings (DOB) and will be phased in over time.

Workers would be allowed to fulfill their training requirement by completing an alternative training program, such as an apprenticeship program, but only if DOB determines that that program is equivalent to, or more extensive than, the standard safety training requirements.

“The wellbeing of all New Yorkers is paramount, and legislation to ensure safety on and around the hundreds of construction sites that operate each day in our city has been long overdue,” said Speaker Melissa Mark-Viverito. “I thank Council Member Williams and Council Member Menchaca for their dedication to making construction sites safer for everyone – from the people who live and work near them, to the workers who build them. The Council will continue to look for productive ways to improve safety standards and protect workers and the public.”

According to the de Blasio Administration, the would costs an estimated cost of \$1,000 per worker, or about \$4 million in FY 2018. An additional \$1 million would be reserved to cover administrative costs of the program.

The bill would also include provisions to aid laborers in receiving sufficient site training:

- The bill allows laborers to continue working while they complete training. After completing 10 hours of initial training, workers will be eligible for temporary cards that will authorize them to work on construction sites while they complete the rest of the required training.
- The Department of Small Business Services will also develop a program to help ensure that all workers have equal access to training resources, particularly workers who may have a harder time having the costs of training covered by their employers – for example, day laborers and workers employed by small MWBE contractors.

“This vote means that New York City hard hats will get the safety training they need for one of our city’s most dangerous jobs, and that will help get them home to their families at night and keep construction sites safe for everyone,” Mayor Bill deBlasio said. “My administration has worked closely with the City Council on this legislation, and together we are committed to building programs that ensure all workers – including day laborers and employees of small and MWBE construction firms – can access the training they need.”



## **Dr. Mitchell Katz to Head NYC Health+Hospitals**

Dr. Mitchell Katz will be nominated to the NYC Health + Hospitals Board of Directors for appointment as President and CEO of the public healthcare system, according to Mayor Bill deBlasio. Dr. Katz takes over for Stanley Brezenoff who served as interim head following the departure of Dr. Ramanathan Raju in November.

“With renewed attacks on our healthcare by Republicans in Washington, it is now more important than ever to put stable leadership in place as we make progress on our plan to expand access to quality, community-based care throughout the city. I thank Stanley Brezenoff not only for his decades of service to the City, but also for preserving Health + Hospitals' as our safety net,” said Mayor de Blasio. “Dr. Mitchell Katz’s vast experience as physician and public health executive will be an invaluable asset as we work to modernize and save our treasured public hospital system.”

Dr. Katz is currently the Director of the Los Angeles County Health Agency, a newly created agency that combines the Departments of Health Services, Public Health, and Mental Health into a single entity. The Agency has a budget of 7 billion dollars and 28,000 employees. For the past five years Dr. Katz served as the Director of the Los Angeles County Department of Health Services (DHS), the second largest public safety net system in the United States. In addition, he continues to see patients every week as an outpatient physician at Edward R. Roybal Comprehensive Health Center and sees patients on the inpatient medicine service at LAC+USC, Harbor-UCLA, and Olive View-UCLA Medical Centers.

Prior to his positions in Los Angeles, Dr. Katz was the Director and Health Officer of the San Francisco Department of Health for 13 years. He is a graduate of Yale College and Harvard Medical School. He completed an internal medicine residency at UCSF Medical School and was an RWJ Clinical Scholar.

“Under Mayor de Blasio's leadership, NYC Health + Hospitals has made progress in expanding primary care and addressing immediate fiscal challenges,” said Dr. Mitchell Katz. “I'm committed to continuing these critical efforts to help preserve Health + Hospitals’ essential safety net mission and improve access to healthcare services for all New Yorkers.”

NYC Health + Hospitals is the largest public healthcare system in the nation, with a \$7.2 billion budget and serving more than a million New Yorkers annually in more than 70 patient care locations across the five boroughs. Its network of primary and specialty care centers, trauma centers, nursing homes, post-acute care centers, home care agency, and MetroPlus health plan are supported by 11 hospitals.

Dr. Katz was welcomed by members of organized labor.

“I want to welcome Dr. Mitch Katz back to Brooklyn. His impressive experience leading the second largest hospital system in the nation should prepare him well for taking charge of NYC Health + Hospitals. I look forward to partnering with him,” said Jill Furillo, Executive Director of New York State Nurses Association.

## Bills Approved by the Council

**Introduction 1359-A, sponsored by Council Member Stephen Levin,** would require the Department of Housing Preservation and Development (HPD) to audit buildings receiving benefits under the 421-a tax exemption program to determine whether such buildings are complying with the applicable affordability requirements.

**Introduction 139-C, sponsored by Council Member Vincent Gentile,** would prohibit the opening of new hookah bars by eliminating the non-tobacco shisha exemption in the Smoke Free Air Act. It would allow existing hookah bars that earn more than half of their revenue from hookah-related sales to continue to operate by creating a new permitting system operated by the Department of Health and Mental Hygiene. These establishments would not be permitted to expand, and would have their permit revoked if they were found to be in violation of the law prohibiting the sale of tobacco.

**Introduction 934-A, sponsored by Council Member Stephen Levin,** would create a Real Time Enforcement Unit (RTEU) in the Department of Buildings (DOB).

**Introduction 1031-A, sponsored by Council Members Mark Levine and Ydanis Rodriguez,** would require the Department of Transportation (DOT) to conduct a study of traffic congestion resulting from truck deliveries in Manhattan below 59th Street and in downtown Brooklyn. The bill would require the study to include traffic congestion from truck deliveries at all hours of the day, night and overnight, and to include an analysis of the feasibility and necessity of implementing measures to reduce traffic congestion resulting from truck deliveries. The bill would require DOT to implement those feasible measures deemed necessary, and the study would be due no later than June 30, 2018.

**Introduction 1075-C, sponsored by Council Member Ydanis Rodriguez,** would add a signage requirement to hookah bars permitted to operate under the permitting scheme created by Introduction 139-C. It would require that hookah bars post a prominent sign at their entrance, and in any area in which smoking occurs, warning of the health risks associated with smoking.

**Introduction 1076-C, sponsored by Council Member Ydanis Rodriguez,** would set the minimum age for the purchase of non-tobacco shisha, rolling papers, and pipes to 21, bringing them in line with tobacco products and e-cigarettes. With the passage of this bill, all smoking products would have a minimum purchase age of 21.

**Introduction 1292-A, sponsored by Council Member Costa Constantinides,** would require the Procurement Policy Board (PPB) to promulgate rules to facilitate the development and implementation of agency programs to accept electronic procurement vouchers, and each city agency to develop and implement programs to accept procurement vouchers electronically, to the extent practicable and consistent with operational and fiscal needs.

**Introduction 1366-A, sponsored by Council Member Jumaane Williams,** would require the Department of Housing Preservation and Development (HPD) to audit buildings receiving benefits under the 421-a tax exemption program to determine whether such buildings are in compliance with applicable rent registration requirements.

**Introduction 1375-A, sponsored by Council Member Steven Matteo,** would require the Department of Transportation (DOT) to provide electronic notification to affected Council Members, Borough Presidents, and community boards upon its approval of a permit application to open a street segment or intersection that has been reconstructed or resurfaced within the previous five years.

**Introduction 1539-A, sponsored by Council Member Rafael Espinal,** would mandate that used car dealers disclose certain information to consumers, including: the price of each requested add-on product; the total cost of the vehicle, broken down by monthly payments and with or without any add-ons; the lowest interest rate (APR) offered to the consumer by a finance company; and any other financing-related disclosures the Commissioner prescribes by rule. It also requires used car dealers to offer a two-day contract cancellation option whereby consumers may cancel their vehicle purchase and any related financing contract within two days, subject to certain conditions.

**Introduction 1540-A, sponsored by Council Member Dan Garodnick,** would require secondhand automobile dealers to conspicuously post and provide prospective buyers with a consumer bill of rights.

## **Briefs**

### **All MTA Bridges and Tunnels to be Cashless**

The installation of Cashless Tolling at all MTA Bridges and Tunnels will be completed this weekend as the last two crossings to implement Cashless Tolling, the Bronx-Whitestone and Throgs Neck Bridges will no longer be accepting cash beginning at 3 a.m. on Saturday, September 30.

At all MTA bridges and tunnels, sensors and cameras suspended over the roadway on structures, known as "gantries," read E-ZPass tags and take license plate images, so vehicles no longer have to stop and pay tolls. Vehicles with E-ZPass tags are automatically charged. Vehicles without E-ZPass have their license plate recorded and a bill is mailed to the registered owner of the vehicle. E-ZPass tags should be mounted inside the vehicle's front windshield.

Customers who do not pay their tolls are subject to violation fees, registration suspensions, and other enforcement actions. Late fees accrue if an initial toll bill is unpaid, and if a second notice is also ignored, violation fees of up to \$100 per toll violation may be imposed.

The New York State Department of Motor Vehicles has enacted regulation that allows suspension of the vehicle registration of motorists with three or more unpaid tolls, violation fees and other charges resulting from violations on different days, as well as registration suspension of commercial vehicle owners with \$200 or more in unpaid tolls and violation fees within a period of five years. Repeated notices are sent before eligibility for suspension.

## **New Assembly Chairs Tapped**

Assembly Speaker Carl Heastie on Thursday tapped six new committee chairs following the recent retirement of Assemblyman Denny Farrell.

- Ways & Means Chair - Assemblymember Helene Weinstein.
- Judiciary Committee Chair - Assemblyman Jeffrey Dinowitz.
- Corporations, Authorities & Commissions Committee Chair – Assemblymember Amy Paulin.
- Energy Committee Chair – Assemblyman Michael Cusick.
- Elections Committee Chair - Assemblyman Charles Lavine.
- Ethics and Guidance Chair – Assemblymember Aravella Simotas.

## **State and City Task Force Announce Settlement With Major NYC Landlord To End Tenant Harassment And Hazardous Living Conditions**

Governor Andrew Cuomo, Attorney General Eric Schneiderman, and Mayor Bill de Blasio this week announced a settlement between the Tenant Harassment Prevention Task Force (Task Force) and ICON Realty Management (ICON). This settlement requires the landlord remediate violations and adopt new policies in buildings owned and managed by ICON. The settlement also requires ICON to pay \$300,000 to the State of New York (on behalf of the Task Force) and over \$200,000 in penalties, fees, and costs to New York City's Housing Preservation & Development and Department of Buildings.

According to the Task Force, tenants in several ICON-owned rent-regulated buildings in the East Village, the Lower East Side, and Brooklyn were forced to live in adverse conditions, enduring excessive dust and debris from construction in the building common areas and apartments, inconsistent and irregular heat and hot water, and lack of cooking gas and elevator service for extended periods. The Task Force investigation found that, on multiple occasions, ICON failed to obtain Department of Buildings (DOB) work permits, performed construction outside the scope of permits issued, and failed to appropriately clean or maintain the construction work areas. The Task Force investigation also found that ICON ignored tenants' requests for repairs, failed to timely correct housing and building code violations, and subjected tenants to long-lasting interruptions of heat, hot water, and cooking gas services.

The Assurance of Discontinuance (AOD), executed by the Attorney General's office, requires ICON to adopt policies and procedures to prevent future violations and safety risks; corrects all outstanding housing, maintenance, and building code violations; establishes safe construction practices; provides rent abatements to tenants during disruptions of essential services; appoints a tenant liaison to immediately address tenant concerns; and establishes an independent monitor to ensure ICON's compliance with the agreement.

## ***Coming Up***

### ***New York State***

#### ***Monday October 10<sup>th</sup>***

*To hear from stakeholders on the implementation of Plan 2014*

Joint - Senate Standing Committee on Environmental Conservation, Mexico High School, Mexico, NY, 4 p.m.

#### ***Wednesday October 12<sup>th</sup>***

*Oversight of the SFY 2017-2018 State Budget for the New York State Department of Agriculture and Markets*

Assembly Standing Committee on Agriculture, Roosevelt Hearing Room C, Legislative Office Building, 2<sup>nd</sup> Floor, Albany, 11 a.m.

### ***New York City***

#### ***Monday October 2<sup>nd</sup>***

*Committee on Veterans, Committee Room, City Hall, 1 p.m.*

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