



This Week in New York

Covering New York State and City Government

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October 20, 2017 Edition



In the News – New York State

New York Constitutional Convention Ballot Proposition

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 of the mandated 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. There are challenges to meeting this high bar for success, which is by design. Amending the constitution, especially one like New York's which enumerates many "positive rights", is not supposed to be something that can be done with ease or in haste.

This note brings together two earlier articles on the threat a Constitutional Convention poses for public employee protections and wage and hour protections in public works.

Labor's Rationale for Opposing a Constitutional Convention

Public Employee Perspectives

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 substantial enumerated rights and benefits during a convention.

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 also 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 public employee protections 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 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”.

Skilled Tradesperson Perspectives

The constitution also establishes, in its Bill of Rights, certain protections for labor; hours and wages in public work; and the right to organize and bargain collectively. This note will focus on the threat a Constitutional Convention poses for wage and hour protections in public works.

In government contracting, a prevailing wage is generally defined as the hourly wage, usual benefits and overtime, paid to the majority of workers, laborers, and mechanics within a particular area for performance of public work. Prevailing wages are established by regulatory agencies for each trade and occupation employed in the performance of public work, as well as by state Departments of Labor or their equivalents. New York first passed a prevailing wage requirement for public works projects in 1894. Today in New York, prevailing wage schedules are issued separately for “General Construction Projects” and “Residential Construction Projects” on a county-by-county basis.

Article 1, Section 17 of the state constitution specifies:

“Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed. No laborer, worker or mechanic, in the employ of a contractor or sub-contractor engaged in the performance of any public work, ...shall...be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected, or used.”

This guiding principle enshrined at the 1938 Constitutional Convention was intended to prevent government from using the power of its purse to suppress wages.

As currently written, however, neither the provision nor the labor law underlying it include a clear definition of “public work,” a significant designation that triggers the prevailing wage requirement. As a result, the protection has been attacked and diminished ever since by court cases challenging the public work status of certain construction projects and diminished even further by administrative rule interpretations of the constitutional and statutory language regulating the performance of the work. This well-intended provision, which trade unions still hold sacred, proved too ambiguously drafted to live up to its intent. The result is workers’ basic constitutional rights to receive the prevailing wage when working on government-funded projects have been gradually, but substantially, narrowed. There is some irony in this - “yes” proponents of a convention argue judicial reforms and consolidation are needed to accelerate the time it takes for courts to reach decisions and streamline administrative “inefficiencies”.

The constitution’s public work provision needs to be reinforced rather than threatened with repeal. The last two state legislative sessions have seen well-organized and sustained efforts by labor to reinforce this constitutional language. By defining “public works”, again - through the standard legislative process, the legislation would restore the constitution to its intended meaning to fulfill the promise of a prevailing wage to laborers in the performance of such work.

A Constitutional Convention would no doubt be influenced by interests, including fiscal conservatives and anti-union forces, who have spent years attacking this labor protection.

Recent Developments Could Influence Convention Outcomes

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 in the public sector. A recent WSJ/NBC News Survey found 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. 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 dues collection from public employees who are not union members – is already trending against public sector unions.

Over the past decade, the economic development trend in New York has been to attract private investment by leveraging public money. These economic development initiatives often result in construction projects that benefit from monetary grants, subsidies, abatements, or transfers of state land to private vehicles. The trend includes the erosion of Wicks Law protections meant to encourage transparency and accountability in the award of publically-funded construction contracts, in favor of other “alternative procurement mechanisms” such as “design-build” and other “public-private partnerships” that integrate wages into the bidding equation for work that is no longer classified as “public work”. Expanding these alternative procurement mechanisms would create further environments where contractors, absent further public intervention, are forced to lower their pay scale in order to compete for contracts.

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 New York'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.

Summary

The stakes are too high for workers 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. . 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.

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 many enumerated rights at risk of great harm in today's environment. The strongest argument proponents can muster – that a convention would lead the way towards improving the state's legal system for the benefit of its citizens – can be achievable through the normal amendment process. A referendum proposal for court reorganization was passed by the state legislature in 1986, but failed to pass the legislature a second consecutive time as required.

Fast policy is bad policy – on November 7th voters should oppose Proposal No. 1 and once again defeat the prospect of a Constitutional Convention.



A.G. Report Details Red Light Camera Violations By School Buses

A.G. Calls for Legislative Changes as Investigation Found Nearly 1,500 Red Light Camera Violations By Westchester And Suffolk County School Bus Companies

A State Attorney General school bus investigation released this week found nearly 1,500 red light camera violations by school bus companies in Westchester and Suffolk Counties between 2014 and 2016.

The report, *Wrong on Red: Report on School Bus Traffic Light Violations*, details the findings of his investigation and calls for changes to state law to close the safety loophole by requiring bus

companies to report red light camera violations to the state and school districts, and use those violations in their assessments of drivers.



“Bus companies can rack up red light camera violations – yet have no legal obligation to report them to the state, or even use them as part of their evaluation of drivers,” Attorney General Schneiderman explained.

The Attorney General’s office collected and analyzed data from 15 randomly selected school bus companies operating in Suffolk counties and Westchester counties. The investigation found that in Suffolk County, the nine subpoenaed companies received nearly 1,200 red light camera ticket violations from 2014 through 2016. Within those nine companies, there were 154 bus drivers who were repeat offenders. In Westchester County, the sampling of five school bus companies subpoenaed by the Attorney General received almost 300 red light camera ticket violations in 2016. There were twenty drivers who were repeat offenders.

The State’s Vehicle and Traffic Law (Article 19-a) provides State oversight of school bus companies, yet it does not require school bus companies to report any information relating to tickets issued for red light camera violations. The law states that upon request by the DMV, school bus companies are required to submit driving reports that include miles traveled, convictions and accidents, and the number of convictions and accidents per ten thousand miles traveled. School bus companies are also required to review employees’ driving records at least once every 12 months, and consider any evidence that the bus driver violated applicable provisions of the vehicle and traffic law.

According to the Attorney General, the language does not mandate that school bus companies report red light camera tickets to the DMV. Under existing law, he asserted, a bus driver can receive an infinite number of red light camera tickets and remain as a school bus driver.

Based upon the findings, Attorney General Schneiderman is proposing the following changes in state law:

- School bus companies should be required by law to maintain copies of all red light camera violations received by the school bus companies and its school bus drivers.
- School bus companies should be required by law to report the number of red light camera violations in the annual affidavit of compliance filed with the DMV.
- School bus companies should be required by law to consider red light camera violations in its annual assessment of its drivers; and drivers who accumulate three red light camera violations should be disqualified from driving for a one-year period.
- School bus companies should be required by law to provide an annual report to the school districts that they service of their driver’s records, including a record of the red light camera violations issued and who was driving.

In the News – New York City

NYC to Crack Down on Improper Use of Electric Bikes

City to fine businesses that operate illegal bikes

The City will take heightened enforcement action against electric bicycles, “e-bikes,” with a focus on the hazardous operation of e-bikes and businesses who use them or permit employees to ride them, according to Mayor Bill de Blasio.

Currently, E-bikes are illegal to operate on New York City streets. According to the City Administrative Code, an “e-bike” constitutes a “motorized scooter” and “no person shall operate a motorized scooter in the City of New York” (19-176.2.(b)).

To date, the NYPD has seized 923 e-bikes compared to the 341 it confiscated this time last year. Nearly 1,800 civil and moving summonses have been issued to e-bike operators year-to-date.

According to the Mayor, businesses that enable e-bike use and turn a blind eye to employees who operate them are also at fault. City law states that “a business using a bicycle for commercial purposes shall not possess any motorized scooter and shall not permit any person to operate a motorized scooter on behalf of such business” (10-157-(k)).

Beginning in 2018, the NYPD will issue a new department directive and provide officers with the necessary forms and training to execute civil enforcement against businesses much more efficiently.

Currently, riders caught operating an e-bike are subject to a civil summons, confiscation and fines of up to \$500. Beginning next year, businesses that utilize e-bikes or allow employees to operate them will receive a civil summons and a \$100 fine for a first offenses and a \$200 fine for each subsequent offense (10-157-(g)).

Bills Signed by the Mayor

Introduction 139-C, sponsored by Council Member Vincent Gentile, adds non-tobacco shisha to the City’s Smoke-Free Air Act.

Introduction 934-A, sponsored by Council Member Stephen Levin, which creates a real-time enforcement unit within DOB.

Introduction 1031-A, sponsored by Council Member Mark Levine, requires DOT to study specific traffic congestion.

Introduction 1075-A, sponsored by Council Member Ydanis Rodriguez, requires hookah bars to post signage warning of the dangers of hookah smoking.

Introduction 1076-A, sponsored by Council Member Ydanis Rodriguez, raises the minimum age for purchasing shisha.

Introduction 1292-A, sponsored by Council Member Costa Constantinides, requires all city agencies, to accept electronic invoices.

Introduction 1359-A, sponsored by Council Member Stephen Levin, requires HPD to audit buildings receiving tax-exemptions to ensure compliance with affordability requirements.

Introduction 1366-A, sponsored by Council Member Jumaane Williams, requires HPD to audit certain buildings receiving tax-emptions to ensure compliance with rent-registration requirements.

Introduction 1375-A, sponsored by Council Member Steven Matteo, requires DOT to notify certain stakeholders when it issues a permit to open any street or intersection that has been reconstructed or resurfaced within the previous 5 years.

Introduction 1447-C, sponsored by Council Member Jumaane Williams, which increases safety training requirements for construction workers.

Introduction 1539-A, sponsored by Council Member, Rafael Espinal, establishes additional rights and protections for customers who are purchasing second-hand automobiles.

Introduction 1540-A, sponsored by Council Member Daniel Garodnick, requires second-hand automobile dealers to display and provide consumers with a bill of rights.

Bill Passed by the City Council

Introduction 336-A, sponsored by Council Member Brad Lander, would require the Department of Housing Preservation and Development (HPD) to report on the amount and location of affordable housing provided through its inclusionary housing programs (including the mandatory inclusionary housing program).

Introduction 622-A, sponsored by Council Member Elizabeth Crowley, would require the Department of Homeless Services (DHS) to provide information to all new recipients of shelter on domestic violence.

Introduction 942-A, sponsored by Council Member Ydanis Rodriguez, would require HPD to provide housing development project information in a non-proprietary format that permits automated processing.

Introduction 1313-A, sponsored by Council Member Julissa Ferreras-Copeland, would expand Chapter 8 of title 20 of the code, the Earned Sick Time Act, which would be renamed the “Earned Sick and Safe Time Act.” The law would be expanded to allow victims of family offense matters, such as disorderly conduct and harassment, sexual offenses, such as sexual misconduct, forcible touching and sexual abuse, stalking and human trafficking to use earned “safe” hours in connection with overcoming such abuse.

Introduction 1404-A, sponsored by Council Member Jumaane Williams, would increase the minimum civil penalties and fines for violations of the site safety provisions of the New York City Building Code and the Administrative Code of the City of New York. Immediately hazardous violations for site safety are being increased from \$1000 to \$2000, and major violations are being increased from no minimum to \$1,000.

Introduction 1429-A, sponsored by Council Member Julissa Ferreras-Copeland, would require that workers at construction sites that require a site safety manager, site safety coordinator, or a construction superintendent, receive pre-shift instructions, including a discussion of safety concerns regarding the tasks and activities to be performed during that shift.

Introduction 1437-A, sponsored by Council Member Carlos Menchaca, would double the civil penalties for construction sites with excessive violations.

Introduction 1444-A, sponsored by Council Member Mark Treyger, would expand the requirement that workers at construction sites that require a site safety manager, site safety coordinator, or a construction superintendent, receive site-specific safety orientations and periodic refreshers to all construction sites.

Introduction 1460-A, sponsored by Council Member Stephen Levin, would amend the provisions of the Administrative Code enacted by Local Law 51 of 1993 establishing a homeless services Advisory Board and an Interagency Coordinating Council..

Introduction 1509-A, sponsored by Council Member Robert Cornegy, would require the Commissioner of Small Business Services to post on the City’s website online business tools and resources, such as accounting, recordkeeping, and bookkeeping services.

Introduction 1510-A, sponsored by Council Member Robert Cornegy, would require the Commissioner of Small Business Services to create a comprehensive workforce development plan based, to the extent practicable, on the results of the state of small business survey. The plan would be due no later than June 1, 2019.

Introduction 1511-A, sponsored by Council Member Robert Cornegy, would require the Commissioner of Small Business Services to prepare and disseminate a state of small business survey by September 1, 2018, which would collect information from small businesses, including but not limited to, hiring needs, workforce development needs, barriers to growth, and the need for additional tools and resources.

Introduction 1517-A, sponsored by Council Member Ben Kallos, would amend the date on which candidate financial disclosure reports are due to 25 days after the last day for filing a designating or independent nominating petition. It would similarly provide a 25-day filing period for write-in candidates in primary elections and a 20-day filing period for candidates designated to fill a vacancy.

Introduction 1645-A, sponsored by Council Member Donovan Richards, would require HPD to annually report on contributions to the affordable housing fund.

Introduction 1720-A, sponsored by Council Member Mark Treyger, would establish a Hurricane Sandy Recovery Task Force to analyze the recovery efforts in New York City in response to Hurricane Sandy and make specific recommendations for preparing the City for future recovery efforts.

Briefs

Counties Release Shared Service Plans

County governments estimated savings of \$208 million in 2018 through the use of shared services, according to proposals that were unveiled this week in Albany. Thirty-four counties out of 57 have adopted a plan by September 15. The remaining counties will adopt plans by September 15 of next year, under legislation approved as part of the 2017-2018 state budget.

The counties with the highest savings for the first year include Broome County - \$20.3 million; Suffolk County - \$16.5 million; Dutchess County - \$15.2 million; and Nassau County with \$13.5 million.

Cruise Automation Applying to Begin First Fully Autonomous Vehicle Testing in NYC

General Motors and Cruise Automation are applying to begin the first sustained testing of vehicles in fully autonomous mode in New York City in early 2018. The Level 4 test is slated to begin in Manhattan, where mapping has begun in a geofenced area.

Level 4 autonomous vehicles are considered “high automation” vehicles that can operate without human intervention, but only within certain parameters, according to the Society of Automotive Engineers. These vehicles are one step below the Level 5 autonomous vehicles which are capable of navigating roads without any driver input and may have no steering wheel or brakes.

All testing will include an engineer in the driver's seat to monitor and evaluate performance, and a second person in the passenger seat. The Department of Motor Vehicles and State Police will work with Cruise and GM to ensure all testing meets relevant safety, vehicle and insurance requirements, according to Governor Andrew Cuomo.

The announcement was met by initial reluctance from local officials, including Mayor Bill de Blasio.

Judge Paul Feinman Sworn in to Court of Appeals

Judge Paul Feinman took the oath of office this week as the newest member of the state's highest court. He was nominated by Governor Andrew Cuomo to replace Judge Sheila Abdus-Salaam and confirmed by the State senate earlier this year.

The Court of Appeals now has a full complement of seven members. All have been appointed by Governor Cuomo due to either deaths of sitting judges or the court's mandatory retirement age.

New York Promotes Organ Donation

New York State launched a series of measures this week aimed at increasing organ donation. These actions include Governor Andrew Cuomo's Executive Order that directs the State Health Department to work with all state agencies to promote the newly expanded Donate Life Registry and enactment of legislation to make the State Department of Motor Vehicle organ donation designation permanent.

The Executive Order directs the Department of Health to work with the Transplant Council, New York Alliance for Donation, providers, and hospital systems licensed to provide organ transplant services, to develop opportunities to increase the number of registered organ donors in the state. In addition, the order directs state agencies to work with the Department of Health to provide opportunities for individuals to enroll in the New York State Donate Life Registry when applying for government benefits, services, and licenses.

Governor Cuomo also signed legislation (S01206/A05179) removing the expiration language from the statute which requires New Yorkers to either opt in or out of organ donation when applying for a driver's license.

New York Proposes New Regulations to Enhance Oversight of Solitary Confinement in All Local Jails

The State Commission of Correction will issue new regulations to enhance the State's oversight of how solitary confinement is used in all local jails. The regulations and corresponding reporting guidelines will require jails to provide individuals in solitary confinement with at least four hours of time outside of their cell each day and report the following to the Commission: any decision that places an individual in solitary confinement for more than a month; if an individual younger than 18 is placed in restrictive housing; and if certain services are restricted or denied by the facility.

The Commission of Correction is a state agency governed by a three-member board appointed by the Governor and confirmed by the Senate. It sets minimum standards for the management of local correctional facilities and evaluates, investigates, and oversees local and state correctional facilities and police lock-ups to ensure compliance.

The new regulations will be published in the *State Register* to allow for public comment, after which time they are subject to adoption.

New York Creates Capital Fund for Animal Shelter Improvements

The New York State Companion Animal Capital Fund will provide \$5 million in 2018 to support improvement projects at New York's non-profit and municipal animal shelters, humane societies, and societies for the prevention of cruelty to animals. According to Governor Andrew Cuomo it is the first state-funded program of its kind in the nation. It will allow eligible organizations to make updates to their facilities to enhance animal care and health, as well as to support companion animal adoptions.

Administered by the New York State Department of Agriculture and Markets, the Companion Animal Capital Fund is available to not-for-profit pounds, shelters and humane societies that are operated by or are under contract with a municipality.

The Companion Animal Capital Fund will provide competitive matching grants to offset the costs associated with capital projects, such as renovating dog kennels, improving medical facilities, or building more efficient shelters to reduce the cost of operation. Funds can be used to construct, renovate, rehab, or acquire buildings or equipment needed to house, treat, and care for sheltered dogs and cats.

Eligible organizations that serve a single municipality with a population of less than two million people may apply for grants of \$50,000 to \$200,000. The awarded funding may not exceed 50 percent of the proposed project cost and applicants are required to match 50 percent of the grant total.

All applicants must apply by January 10, 2018. More details on eligibility and the application process are available on the Division of Animal Industry webpage at https://www.agriculture.ny.gov/AI/small_animals.html. For questions, contact Alexandra Chiusano at Alexandra.Chiusano@agriculture.ny.gov.

Coming Up

New York State

Wednesday October 25th

Examine the issues facing communities in the wake of increased heroin abuse

Senate Joint Task Force on Heroin and Opioid Addiction, Auditorium, Cortland County Office Building, 60 Central Avenue, Cortland, New York, 4:00 p.m.

Monday October 30th

Healthcare in New York Correctional Facilities

Joint Assembly Standing Committee on Agriculture and Committee on Correction, Roosevelt Hearing Room C, Legislative Office Building, 2nd Floor, Albany, 11 a.m.

New York City

Monday October 23rd

Committee on Education, Council Chambers – City Hall, 10 a.m.

Committee on Higher Education, Council Chambers – City Hall, 10 a.m.

Committee on Contracts, Committee Room, 14th Floor – 250 Broadway, 1 p.m.

Tuesday October 24th

Committee on Health, Committee Room - City Hall, 10 a.m.

Committee on Public Housing, Committee Room, 16th Floor – 250 Broadway, 10 a.m.

Committee on Aging, Committee Room, 16th Floor – 250 Broadway, 10 a.m.

Subcommittee on Landmarks, Public Siting and Maritime Uses, Committee Room, 14th Floor – 250 Broadway, 11 a.m.

Subcommittee on Zoning and Franchises, Council Chambers – City Hall, 1 p.m.

Subcommittee on Planning, Dispositions and Concessions, Committee Room, 14th Floor – 250 Broadway, 1 p.m.

Wednesday October 25th

Committee on Fire and Criminal Justice Services, Council Chambers – City Hall, 10 a.m.

Committee on Cultural Affairs, Libraries and International Intergroup Relations, Council Chambers – City Hall, 1 p.m.

Committee on Sanitation and Solid Waste Management, Committee Room 14th Floor – 250 Broadway, 1 p.m.

Committee on Housing and Buildings, Committee Room 16th Floor – 250 Broadway, 1 p.m.

Thursday October 26th

Committee Juvenile Justice, Committee Room 16th Floor – 250 Broadway, 10 a.m.

Committee on Transportation, Committee Room – City Hall, 10 a.m.

Committee Land Use, Council Chambers – City Hall, 11 a.m.

Committee on Economic Development, Council Chambers – City Hall, 11 a.m.

Committee on Recovery and Resiliency, Committee Room 16th Floor – 250 Broadway, 1 p.m.

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