

This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop Del Giorno & Giblin LLC

April 12, 2013 Edition



In the News – New York State



MTA Veteran Tapped to Lead Authority

Thomas F. Prendergast Nominated to Serve as Chairman and CEO of the MTA

Governor Andrew M. Cuomo today nominated Thomas F. Prendergast to serve as Chairman and Chief Executive Officer of the Metropolitan Transportation Authority (MTA). Mr. Prendergast has served more than three years as president of MTA New York City Transit, which runs the subway and bus system in New York City, and has served as the MTA Interim Executive Director since January 1, 2013. He replaces Joseph Lhota.



Mr. Prendergast

Mr. Prendergast is a career public transit officer and former MTA executive who was appointed President of MTA New York City Transit in November 2009. Prendergast, then the CEO at TransLink in Vancouver, B.C., returned to New York and took office December 1, 2009.

A native of Chicago with a systems engineering degree from the University of Illinois, Mr. Prendergast began his career at the Chicago Transit Authority in 1975. He then joined the U.S. Department of Transportation in Washington, DC and moved to the New York City Transit Authority in 1982 as Assistant Director of System Safety. In 1984, he was named Chief of the TA's System Safety Department. In 1987 he became Staten Island General Manager, and in 1989, the agency's Chief Electrical Officer. Mr. Prendergast was named Senior Vice President of the Department of Subways in 1991.

In 1994, Mr. Prendergast left Subways' SVP office at Jay Street in Brooklyn to become President of the Long Island Rail Road. He left the public sector in 2000 to work as a consultant in transportation. Over the next eight years, he worked on numerous project and program management assignments in the UK, North America and Asia. He returned to the public sector in 2008 with his move to TransLink, Vancouver's public transportation system.

The Governor's appointment of an MTA chairman and CEO is subject to Senate confirmation.

Governor Begins the Rebuilding Process



Public Trust Act Would Establish a New Class of Public Corruption Crimes, New Penalties on Offenders, Require Public Officials to Report Bribery

Governor Andrew Cuomo this week began to outline New York's plan to root out government corruption, placing reform on the top of his end of session to-do list. The first part of the Governor's reform agenda – The Public Trust Act, would create a new class of public corruption crimes and expand the current definitions of public corruption offenses.

In addition, the legislation would also impose stricter jail sentences on individuals that misuse public funds and permanently bar those convicted of public corruption offenses from holding any elected or civil office, lobbying, contracting, receiving state funding, or doing business with the state, directly or through an organization.

"Preventing public corruption is essential to ensuring that government works and can effectively keep the public's trust," Governor Cuomo explained.

The Governor's proposal did not include some of the key areas he noted since last week's scandals, including the campaign finance and lobbying reform. It is anticipated that the Governor will weigh in on these issues in the coming weeks. Meanwhile, Independent Democratic Caucus Leader Jeff Klein yesterday released a comprehensive proposal that would limit individual contributions and implement a system of matching funds. It would also end cross-endorsement by political parties.

Specifics of the Governor's Public Trust Act include:

New Crimes for Violating Public Trust

The new class of Public Corruption Crimes would include the following crimes: bribing a public servant, corrupting the government, and failing to report a bribe or a bribe attempt.

- **Bribery of a Public Servant:** The proposed legislation would expand the current state bribery statute. Under current state law, a prosecutor has to prove that there was a corrupt agreement or understanding between the person paying the bribe and the person receiving the bribe. This is not required under federal law.

Under the new Public Servant Bribery provision, a prosecutor would only have to prove that the person paying the bribe "intended" to influence the public official or that the person receiving it intended to be so influenced, bringing state law in line with the federal standard. Bribery penalties would be increased, lowering the threshold for a Class C felony from \$10,000 to \$5,000, the amount of money used to bribe, and to \$10,000 and above for a Class B felony.

- **Corrupting the Government:** The proposed legislation would hold an individual accountable – private citizen or public official – who is found to have engaged in defrauding the government. The legislation also increases penalties for all offenders convicted of defrauding the government through the crime of Corrupting the Government. Under the new law, individuals, whether acting in concert with a public servant or not, who engages in a course of conduct to defraud a state or local government would be guilty of a crime ranging from the fourth degree (class E felony) to the first degree (class B felony), depending on the amount defrauded.
- **Failure to Report Public Corruption:** The proposed legislation would make it a misdemeanor for any public official or employee to fail to report bribery.

Penalties for Misuse of Funds

- **New Penalties for Public Corruption:** The proposed legislation would create new penalties for offenses such as any kind of fraud, theft, or money laundering offense involving state or local government property. The sentence would be one level higher than for the underlying offense. For example, if the underlying offense (e.g. larceny) was a class D felony, then the involvement of state or local government property would increase the sentence to the class C felony. The specific existing crimes affected are those defined by the following provisions of the Penal Law: petit larceny, grand larceny, unauthorized use of a computer, unauthorized use of a vehicle, and money laundering.
- **Increased Penalties for Official Misconduct:** Under current law, Official Misconduct is a misdemeanor. The proposed legislation creates three new degrees of Official Misconduct: a Class E felony (maximum penalty 4 years), Class D felony (maximum penalty 7 years) and Class C felony (maximum penalty 15 years).

Limitations on Government Activity

The new class of felony public corruption crimes would impose additional penalties, apart from jail sentences and criminal fines, including:

- Permanently barring all those convicted of public corruption felonies from holding any elected or civil office, serving as a registered lobbyist, or doing business with the state, including through an organization.
- Barring individuals from bidding on or obtaining state contracts.
- Barring individuals from receiving numerous tax credits.
- Prohibiting individuals from serving as a Medicaid, employment insurance or workers' compensation provider.
- Providing judges the option of requiring payment of up to three times the amount of the profit or gain made from an illegal transaction.
- Creating an automatic set off for any fines or other penalties imposed against any State tax refund.

Revises the Statute of Limitations

According to the Governor, the Public Trust Act provides that the same tolling or suspension of the statute of limitations of five years after leaving office will apply to both public servants and those persons acting in concert with a public servant to commit misconduct in public office. Currently, the statute of limitations for public officials is in effect for five years after they have left office, but not those acting in concert who are not themselves public officials.

Conforms State and Federal Prosecutorial Practices:

Under the Governor's proposal, a witness who testifies before a grand jury investigating fraud on the government or official misconduct will receive only "use" immunity, not "transactional" immunity for statements that witness may give under oath. Therefore, the witness, who may or may not also be part of the criminal transaction under investigation, may still be prosecuted for his or her role if the prosecutor develops evidence other than, and independent of, the evidence given by the witness. This revision conforms New York practice to federal practice in this area.

Pact Between NYSDOT & MTA Releases Federal Money

NYSDOT Covers Matching Funds for MTA to Leverage \$1 Billion in Federal Funds for Sandy Recovery and Rebuilding

An agreement between the New York State Department of Transportation (NYSDOT) and the Metropolitan Transportation Authority (MTA) will provide the MTA with \$111 million in Transportation Development Credits to leverage \$1 billion in federal disaster relief funding for Superstorm Sandy recovery and rebuilding efforts.

The Federal Transit Administration (FTA) awarded the MTA \$1 billion on March 29 as a reimbursement for the costs of recovering from Superstorm Sandy and rebuilding damaged elements of the MTA's subway, bus, and commuter rail system. The \$1 billion in federal funding requires a 10 percent local match. To relieve the MTA of this cost, NYSDOT approved a MTA request to use \$111 million in Transportation Development Credits to meet the local match requirement. Transportation Development Credits are a funding tool that allows states to fund a project without the requirement of a local match. Credits are earned by states based on revenues generated by toll authorities that are used to build, improve or maintain highways, bridges or tunnels that serve interstate commerce, including MTA Bridges and Tunnels.

The MTA system sustained an estimated \$4.755 billion worth of damage as railroad and subway lines, vehicular tunnels, subway stations and power and signal equipment were inundated with corrosive salt water during Sandy. In addition to the \$1 billion funding, the federal government has allocated more than \$193 million in initial reimbursement allocated last month to MTA New York City Transit, MTA Metro-North Railroad and MTA Long Island Rail Road, and \$3 million from the Federal Emergency Management Agency (FEMA) for MTA Bridges and Tunnels.

The MTA's transit projects will be eligible in the coming months for additional funds for critical repair and restoration projects, as well as mitigation and resiliency measures from the FTA's Emergency Relief program. The MTA will also apply to FEMA for additional federal funding for recovery work at its seven bridges and two tunnels.

In the News – New York City

City Council Weighs in on NYCHA Land Lease Proposal

The City Council this week weighed in the New York City Housing Authority's (NYCHA) proposal to lease housing development land to private developers by adopting a resolution calling upon NYCHA to engage its residents, increase the percentage of affordable units, and delay the release of the RFP until progress is made on these and other important principles.

“Passage of this resolution sends a strong and unwavering signal to NYCHA that they must do substantially better in terms of meaningfully addressing the concerns of residents throughout the Infill process,” Council member Rosie Mendez, sponsor, said. “We strongly urge NYCHA to opt into the ULURP process... Only through these actions can NYCHA demonstrate that the voices and priorities of residents are of the utmost importance and will be heard.”



According to NYCHA, the proposed plan would lease 14 parcels of land located within eight developments to private developers who would finance, construct, and operate the new residential buildings. The income generated through land leases would be dedicated to building improvements at the eight developments and other public housing properties citywide. Approximately 80% of the apartments would be market rate and no less than 20% of apartments would be permanently affordable to low-income residents.

NYCHA asserts the plan will not increase rent for NYCHA residents; demolish public housing apartments; displace NYCHA families; privatize any NYCHA public housing; or result in job losses or increased work requirements for NYCHA personnel.

The Authority estimates that the plan would generate between \$30 million-\$50 million on a yearly basis. The proceeds would fund critical capital improvements that would enhance quality-of-life for NYCHA residents. Additionally, this initiative would generate approximately 800 permanently low-income housing units for eligible low-income New Yorkers. NYCHA residents would receive a preference for the low-income units.

The proposal has been the subject of numerous community-based presentations, as well as formal hearings by the City Council and New York State Assembly. NYCHA anticipates releasing the developer RFP later this week.

The recently adopted resolution calls on NYCHA to:

- Enter into meaningful consultation with residents and other stakeholders, which would include several rounds of public meetings on NYCHA's land-lease plans.
- Ensure that all affected Resident Associations and residents have adequate time to review the proposed lease plan and secure independent legal and technical assistance to formulate informed opinions on the land-lease plans.
- Respond to resident and other stakeholder comments concerning land-lease plans, and post those comments and responses thereto online.
- Provide a method for residents and other stakeholders without internet access to submit comments concerning land-lease plans.
- Give residents the opportunity to develop, review, and comment on draft RFPs prior to release and to participate in the selection of developers post-release.
- Require that money generated from land-lease plans be dedicated to making repairs and capital upgrades to existing public housing developments.
- Recognizing the need for affordable housing in the city and in the communities where NYCHA is currently considering leasing, require that any new residential development created on NYCHA-owned land be comprised predominantly of permanently affordable units.
- Require that any long-term ground leases (1) include employment and job training opportunities for residents both during construction and for permanent jobs thereafter; (2) specify the number of apartment units created by the developer that will be made permanently affordable and prioritize residents at affected developments for those apartments; (3) require the developer to commit to open space, local investment, security, and other community benefits; and (4) ensure that all parking spaces, yards, playgrounds, community centers, and any other facilities or spaces that would be leased are replaced in a manner that allows residents to receive uninterrupted services.

City Council Considers Industry MWBE Advisory Board

Council Member Leticia James this week introduced legislation to establish an industry-based Minority and Women-Owned Business Enterprise advisory board. The advisory board would be charged with assessing and making recommendation to the Mayor and City Council to improve the program to enhance participation by minority-owned and women-owned business enterprises in City procurement.

Under the bill, the advisory board would have 12 members, nine of which must be minority business enterprise owners or women-owned business enterprise owners that have experience advocating on behalf of MBEs or WBEs. Five members would be appointed by the Mayor and four by the Speaker. The Director, the City Chief Procurement Officer, and the Commissioner (or their respective designees) would serve as ex officio members. A chairperson would be chosen from among the members by a majority vote of the advisory board.

Members of the board would serve with compensation. At the end of each two year term, the advisory board would issue a report to the Mayor and the City Council.

Briefs

Moody's: Pension Smoothing Plan "A Stopgap with Long-Term Risks"

Moody's Investors Services this week issued a report warning that the state's new pension-smoothing plan is a "a stopgap with long-term risks" that could endanger the state's pension fund and the credit of local governments. Enacted as part of the 2013-2014 state budget, the plan allows for local governments and schools to pay a flat rate for pension costs over 12 years, avoiding any spikes in the costs.

"The deferral of pension contributions would increase the unfunded pension liabilities of participating local governments, a credit negative," the report said. "The positive short-term budgetary relief will outweigh the cost of increasing unfunded pension liabilities for only the most financially stressed local governments."

Moody's indicated that the flat-rate payments could underfund the state's \$150 billion pension fund, which provides benefits to 1 million retirees and current local and state workers. Underfunding could lead to higher costs for municipalities and schools in future years.

“For example, a local government with \$100 million in ERS salaries would have to pay \$20.9 million in pension contributions for 2014. If the local government opts into the plan, it will gain \$8.9 million in budgetary relief, but also create an unfunded liability of the same amount. This unfunded liability will grow in each successive year that the local government is part of the new deferral program, which will have to be met with future contributions,” Moody’s report says.

“Participating local governments exacerbate their risks if investment returns are below projections. In addition, unfunded liabilities could increase above expectations if more local governments participate than the state currently anticipates,” the report said.

NYC Pilot Program to Pay Parking Meters Remotely and Launch Real-Time Parking Availability Map

The Bloomberg Administration this week announced two pilot programs allowing motorists to pay parking meter remotely via smartphone apps and to view real-time curbside parking availability within the Belmont Business Improvement District in the Bronx. The parking maps are available now, while the meter app will be available later this month.

The parking payment pilot allows motorists to pay for metered parking via a smartphone app, the internet or by telephone for 264 spaces along 18 block faces, as well as at the Department’s Belmont Municipal Parking Field. This system, comes with no additional fees for drivers or changes to parking rates, and allows motorists to forego credit card or coin payments at meters as well as the use of paper receipts. The technology also will warn motorists when their time is about to expire via e-mail or text messages, and allow them to pay for additional time easily and quickly, up to the posted time limit. Interested motorists can sign up for the service for free on the PayByPhone website and register their license plate numbers and credit card information on encrypted servers and download the PayByPhone app.

The parking availability pilot, a partnership between the Department of Transportation and vendors Streetline, IPsens and Xerox, uses innovative sensors embedded in the roadway to produce a real-time parking availability map viewable on the internet, smartphones and tablet devices. After reviewing the map before starting their trips or working with a passenger, motorists can head directly toward blocks with available spaces, reducing the time needed to hunt for spaces and the associated congestion as drivers circle for parking.

Cautious Relief After OPWDD Outlines Savings Proposals

Nonprofit disability service providers and advocates were reportedly "cautiously optimistic" this week after the New York State Office for People with Developmental Disabilities (OPWDD) outlined preliminary plans for achieving \$90 million in savings during FY2013-14, according to published reports.

Following passage of the budget, which called for a \$90 million cut in funding due to federal rate reductions, OPWDD engaged the provider community to discuss the reduction plan. Budget estimates indicated the cuts would result in a 4.5% reduction in provider funding. However, during its briefings, OPWDD indicated that the across-the-board provider cuts may be in the 1% to 2% range.

According to the *NonProfit News*, OPWDD reportedly plans to achieve almost half the savings -- \$40 million in State funds, \$80 million all funds – through audit recoupments by the NYS Office of the Medicaid Inspector General (OMIG) and/or self-disclosure payments made by provider agencies themselves based upon their own internal compliance review. In addition, approximately \$30 million in State fund savings are being projected from the transition of consumers from higher cost residential programs to lower cost services. The State also expects to save \$3 million from transitioning consumer participants now in sheltered workshops to integrated community employment. Additional savings were anticipated from enrollment of older consumers in Medicare, thereby reducing State expenditures for medical services currently funded through Medicaid.

"We don't know the details yet, or whether this is the final plan," said one provider agency executive director. "There is a lot that we still need to learn about how this is going to work."

Governor Vetoes Reappropriations

“Seven years is more than enough time to fund and implement services”

Governor Andrew Cuomo this week vetoed 202 line items of the recently enacted 2013-2014 State Budget. The vetoes dealt primarily with the reappropriation of previously allocated funding. According to a Budget Division spokesman, the vetoes included 120 member items that were fully cashed out, ten vetoes were for items for which the federal money had expired, four vetoes were of new member items, three vetoes were of items the Governor believed were improperly reinserted, and there was one duplicate item. Also, 45 vetoes were for reappropriations where no money has been paid since 2005.

Below is the veto message that accompanied the unspent funding:

This item passed by the Legislature, to which I object and do not approve, is a reappropriation that is more than seven years old and no State funding has been disbursed over the most recent seven year period. In general, seven years is more than enough time to fund and implement services. Accordingly, this item is disapproved.

Coming Up

New York State

Monday April 15th

New York State Legislative Session Day

Tuesday April 16th

New York State Legislative Session Day

Wednesday April 17th

New York State Legislative Session Day

Friday April 19th

The accuracy and use of consumer credit reports

Assembly Committees on Banks & Consumer Affairs and Protection

Assembly Hearing Room, 250 Broadway- Room 1923, 19th fl, New York, 1 p.m.

New York City

Monday April 15th

Committee on Aging, 250 Broadway– Committee Rm, 14th fl, 10 a.m.

T2013-6039- Oversight - Harassment of Elderly Tenants.

Committees on Juvenile Justice, Public Safety, and Education, City Hall- Council Chambers, 1 p.m.

T2013-6043- Oversight - Examining School Climate and Safety.

Committee on General Welfare, 250 Broadway– Committee Rm, 14th fl, 1 p.m.

T2013-6096- Oversight - Examining HRA's Public Assistance Enrollment.

Tuesday April 16th

Subcommittee on Zoning and Franchises, 250 Broadway – Committee Rm, 16th fl, 9:30 a.m.

Committees on Community Development and Youth Services, 250 Broadway, 14th fl, 10 a.m.

T2013-6041- Oversight - DYCD's Neighborhood Development Area Concept Paper.

Subcommittee on Landmarks, Public Siting, and Maritime Uses, 250 Broadway, 16th fl, 11 a.m.

Subcommittee on Planning, Dispositions, and Concessions, 250 Broadway, 16th fl, 1 p.m.

Wednesday April 17th

Committees on Transportation and Health, 250 Broadway – Committee Rm, 16th fl, 10 a.m.
Int 1025-2013- in relation to creating designated mobile food truck locations.

T2013-6075- Oversight - Food Truck Vendors: Examining an Emerging Industry.

Committee on Contracts, 250 Broadway – Committee Rm, 14th fl, 1 p.m
T2013-6093- Oversight: Revisiting Vendex

Thursday April 18th

Committee on Land Use, 250 Broadway – Committee Rm, 16th fl, 10 a.m

Committee on Consumer Affairs, 250 Broadway – Committee Rm, 14th fl, 10 a.m
Int 1035-2013 - in relation to the mandatory license revocation of an amusement arcade or gaming cafe license for offering cash prizes or engaging in other unlawful gambling activity.

T2013-6076- Oversight - Preventing Illegal Gambling in New York City's Gaming Cafes .

Committee on Transportation, City Hall – Council Chambers, 1 p.m
Int 0433-2010 - in relation to requiring that all newly manufactured taxicabs be accessible to people with disabilities.

Friday April 19th

Committee on General Welfare, 250 Broadway – Committee Rm, 16th fl, 10a.m

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 & Giblin LLC, or any of its members or employees or its clients. Neither Pitta Bishop Del Giorno & Giblin 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 & Giblin 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 & Giblin LLC professional with whom you usually work.

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

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

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

50 Main Street, 10th Floor
White Plains, NY 10606
Telephone (914) 682-2632
Facsimile (914) 663-5180

191 Grand Central Ave.
Amityville, NY 11701
Telephone (516) 742-8930
Facsimile (516) 742-8937