This Week in New York

Covering New York State and City Government

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In the News – New York State

Proposed Constitutional Amendments

On November 5th, New York voters will be asked to consider a number of Constitutional amendments, two of which (Casino Gaming and the Mandatory Retirement Age for Judges) have attracted a great deal of media attention.

A total of six proposals are on the ballot. Below is a listing, put together by the State Board of Elections, of the statewide ballot proposals which will be voted on at the General Election. A summary of each of the proposed amendments to the State Constitution appears below. BOE's webpage detailing the proposal are available at http://www.elections.ny.gov/ProposedConsAmendments.html.

Proposal One - Authorizing Casino Gaming

Abstract: The purpose of the proposed amendment to section 9 of article 1 of the Constitution is to allow the Legislature to authorize and regulate up to seven casinos for the legislated purposes of promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated.

Proposal Two – Additional Civil Service Credit for Veterans with Disabilities Certified Post-Appointment

Abstract: The purpose of the proposed amendment to section 6 of article 5 of the Constitution is to grant additional civil service credit to veterans who are certified as disabled after they have been appointed or promoted to a civil service position.

The State Constitution currently grants veterans additional credit on civil service exams (5 points for an original appointment and 2½ points for a promotion). Disabled veterans are entitled to additional credit (10 points for an original appointment and 5 points for a promotion). Veterans are eligible for only one grant of additional credit, and so a veteran who is appointed or promoted before being certified as disabled currently is not eligible for the higher amount of credit he or she would have received if he or she had been certified as disabled before his or her appointment or promotion.

This amendment would create an exception to the one-time-only additional credit rule. It would permit veterans who are certified disabled after having already received credit at one appointment or promotion, because of their status as veterans, to receive additional credit one more time after certification of their disability. After being certified disabled, a veteran would be entitled to an additional grant of credit equal to the difference between 10 and the number of points received at the initial appointment or promotion. This would bring the total additional points of civil service credit such a veteran can receive to 10 for either an appointment or a promotion.

Proposal Three – Exclusion of Indebtedness Contracted for Sewage Facilities

Abstract: The purpose of the proposed amendment to section 5 of article 8 of the Constitution is to continue to allow counties, cities, towns, and villages to exclude from their constitutional debt limits indebtedness incurred for the construction or reconstruction of sewage facilities.
The State Constitution currently provides that indebtedness contracted on or after January 1, 1962 and before January 1, 2014, for the construction or reconstruction of facilities for the conveyance, treatment, and disposal of sewage shall be excluded from the constitutional debt limits of counties, cities, towns, and villages. The effect of the proposed amendment would be to extend for ten years, until January 1, 2024, the period during which sewer debt will be excluded from the constitutional debt limits of counties, cities, towns, and villages.

Proposal Four – Settling Disputed Title in the Forest Preserve

Abstract: The purpose of the proposed amendment to section 1 of article 14 of the Constitution is to resolve competing claims of title between the State and private parties to land located in the forest preserve, in the town of Long Lake, Hamilton County.
The State Constitution generally forbids the lease, sale, exchange, or taking of any forest preserve land. The proposed amendment would allow the Legislature to settle 100-year-old disputes between the State and private parties over ownership of certain parcels of land in the forest preserve by giving up the State's claim to disputed parcels. In exchange, the State would get land to be incorporated into the forest preserve. The land exchange would occur only if the Legislature determines that the land to be conveyed to the State would benefit the forest preserve more than the disputed parcels do.

Proposal Five – In Relation to a Land Exchange in the State Forest Preserve with NYCO Minerals, Inc.

Abstract: The purpose of the proposed amendment to section 1 of article 14 of the Constitution is to allow NYCO Minerals, Inc., a private company, to continue its mining operations in the town of Lewis, Essex County. The State Constitution generally forbids the lease, sale, exchange, or taking of any forest preserve land. The proposed amendment would allow the State to convey approximately 200 forest preserve acres to NYCO Minerals for mining. In exchange, NYCO Minerals would give the State at least the same amount of land of at least the same value, with a minimum assessed value of $1 million. This land would be added to the forest preserve. When NYCO Minerals finishes mining, the company would restore the condition of the land it received in the exchange and return it to the forest preserve.

The proposed amendment also would allow NYCO Minerals to test to determine the quantity and quality of the mineral to be mined on the land to be exchanged before the exchange occurs. It would require NYCO Minerals to give the State its test results so that the State can use them to determine the value of the land to be conveyed to NYCO Minerals. The proposed amendment also would require that if, after testing, NYCO Minerals does not want the forest preserve land, NYCO Minerals still must give the State at least the same amount of land of at least the same value of the land that was disturbed by the testing. This land would be incorporated into the forest preserve.

Proposal Six – Increasing Age until which Certain State Judges Can Serve

Abstract: The purpose of the proposed amendment to sections 2 and 25 of article 6 of the Constitution is to increase to the age of 80 the maximum age until which Justices of the Supreme Court and Judges of the Court of Appeals may serve in the following circumstances: (a) Justices of the Supreme Court are currently required to retire in the year they turn 70 years old, but are eligible to continue to perform the duties of a Justice of the Supreme Court for three additional two-year terms upon a certificate that their services are needed by the courts and that they are competent to perform the full duties of the office. The proposed amendment would make them eligible for two additional such two-year terms, upon the same certification of need and competence; (b) Judges of the Court of Appeals are currently required to retire in the year they turn 70 years old. The proposed amendment would permit a Judge who reaches the age of 70 while in office to remain in service on the Court for up to 10 additional years in order to complete the term to which that Judge was appointed.

Actions by the Governor

Late last week, Governor Andrew Cuomo acted upon a number of bills that were sent for his consideration following two-house legislative passage. To follow please find a select list of actions:

Bills Signed by the Governor

Chapter 343 (sponsored by M of A Gunther /Senator Hannon) --Authorizes pharmacies to take back controlled substances.

Chapter 349 (sponsored by M of A Weisenberg /Senator Golden) --Appropriates money to the office for people with developmental disabilities for the funding of various programs.

Chapter 350 (sponsored by M of A Weisenberg /Senator Skelos) --Authorizes counties in the Hurricane Sandy federal disaster area to grant exemptions to filing fees related to federal Small Business Administration Disaster Loans.

Chapter 359 (sponsored by Senator Martins /M of A Dinowitz) --Prohibits the retail sale, distribution or offer to sell at retail to any person in the state, novelty lighters.

Chapter 361 (sponsored by Senator Carlucci /M of A Galef) --Requires boating safety certificates of all persons operating a mechanically propelled vessel.

Chapter 369 (sponsored by Senator Hoylman /M of A Gottfried) --Enacts the "health care delivery models study act."

Chapter 376 (sponsored by Senator Golden /M of A Abbate) --Provides additional credits allowed the children of police, firefighters, emergency medical technicians and paramedics killed in the line of duty.

Chapter 380 (Sponsored by Senator Golden /M of A Weinstein) --Authorizes a city of one million or more in population in the Hurricane Sandy federal disaster area to grant exemptions to filing fees related to federal Small Business Administration Disaster Loans.

Chapter 382 (sponsored by Senator Serrano /M of A Barrett) --Requires the placement of the "I Love NY" logo and website link on websites maintained by and advertisements or public service announcements disseminated by certain agencies, departments and authorities.

Bills Vetoed by the Governor

Veto 211 (sponsored by M of A Farrell /Senator DeFrancisco) -- Establishes a special commission on compensation for state employees designated managerial or confidential and provides for its powers and duties.

Veto 215 (sponsored by M of A Bronson / Senator Martins) --Authorizes the care and treatment of injured employees by duly licensed or certified acupuncturists under the workers' compensation program.

Veto 216 (sponsored by M of A Abbate /Senator Golden) --Provides that the board of any deferred compensation plan established by NYC shall include an equal number of employer and union representatives.

Veto 221 (sponsored by Senator DeFrancisco /M of A Cusick) --Creates the New York state governor's council on physical fitness, sports and health; establishes a fund for the council.

NYS Division of the Budget Releases Gaming Revenue Estimate

The New York State Division of the Budget this week detailed the estimated fiscal impact of the Upstate New York Gaming and Economic Development Act. The Statewide estimate is $430 million annually for additional school aid, property tax relief, and local government aid.

The Act authorizes up to four destination gaming resorts in Upstate New York and provides additional revenues from existing Native American gaming facilities to local governments, contingent on voter approval. The Act also authorizes 2,000 Video Lottery Terminals (VLTs) at Off-Track Betting facilities on Long Island. The $430 million must be used for additional school aid, property tax relief, and local government aid.

A referendum to amend the New York State Constitution to permit destination gaming resorts will go before voters on November 5th. If Referendum #1 is approved, the State Gaming Commission will oversee regulation and evaluation of destination gaming resort applications. The evaluation will be based on specific criteria, including economic activity and business development factors, local impact and siting factors, and workforce factors.

Also, this week, a coalition of business leaders, labor unions, economic development professionals, and educators announced the formation of NY Jobs Now in support of Referendum #1. NY Jobs Now has registered with the New York State Board of Elections to actively support the initiative.

"Still in formation and expected to grow", according to its inaugural press release, the leadership of the NY Jobs Now coalition is:

- J. Patrick Barrett, CEO of CARPAT Investments
- Steve Bellone, Suffolk County Executive
- Heather C. Briccetti, Esq., President and CEO of The Business Council of NYS
- Byron W. Brown, Mayor of Buffalo
- James W. Cahill, President of the NYS Building & Construction Trades Council
- Mario Cilento, President of the New York State AFL-CIO
- Michael J. Falcone, Chairman Emeritus & Founder, The Pioneer Companies
- Gary LaBarbera, President of the Building and Construction Trades Council of Greater New York
- Kevin S. Law, President and CEO of the Long Island Association
- Richard S. Lefrak, Chairman, President and CEO of the LeFrak Organization
- Adam E. Madkour, CEO of the Saratoga Spring Water Company
- Michael Mulgrew, President of the United Federation of Teachers
- Thurman Thomas, President and CEO of Thurman Thomas Sports Training, Hall of Fame former Buffalo Bills running back
- William C. Thompson, Former New York City Comptroller, former Chief Administrative Officer &Senior Managing Director at Siebert, Brandford, Shank & Co.
- Peter Ward, President of the New York Hotel Trades Council

According to published reports, the coalition hired Neal Kwatra, a political strategist and former chief of staff to state Attorney General Eric Schneiderman, as its chief strategist. It also has retained Jefrey Pollock, president of consulting firm Global Strategy Group, to conduct its polling.

The Division of the Budget projects the Upstate New York Gaming and Economic Development Act will produce $238 million, annually, in additional aid for education or property tax relief across the entire State, plus an additional $192 million in annual local government aid. These estimates are based on an average of the different siting scenarios possible under the Act. The estimates also include revenue from two new VLT facilities operated by the Nassau and Suffolk OTBs, which are expected to achieve results roughly similar to the VLT facility at the Yonkers raceway on a per machine basis.

Under the Act, every county in an Indian exclusivity zone will share in Indian gaming facility revenues. Ten percent of the net gaming revenue retained by the State from Native American gaming facilities will be distributed to the counties in each respective exclusivity zone, and existing tribal payments will be preserved. Western New York/Finger Lakes counties in the Seneca exclusivity zone will receive $50.4 million annually in local government aid. North Country counties in the Niagara Mohawk exclusivity zone will annually receive $8.9 million. Counties in the Central New York/Mohawk Valley region will annually receive $23.5 million as a result of the Act and the recent settlement with the Oneida Indian Nation of New York.

The regional fiscal impacts of the Act are as follows:

- Western New York/Finger Lakes: $93.1 million annually
- North Country: $16.8 million annually
- Central New York/Mohawk Valley: $44.2 million annually
- Eastern Southern Tier: $20.1 million annually (includes $6.4 million in host county aid)
- Capital Region: $35.5 million annually (includes $11.4 million in host county aid)
- Catskill/Hudson Valley: $51.0 million annually (includes $13.7 million in host county aid)
- New York City: $94.4 million annually
- Long Island: $63.3 million annually
- A potential fourth destination gaming resort would provide an additional $11.7 million annually to counties in one of the eligible Upstate gaming regions.

Meanwhile, State Comptroller Thomas DiNapoli has expressed caution about the proposal.

"My overall view would be one of caution, and not to put too high expectations if it passes," Comptroller DiNapoli said Wednesday in an interview with the Syracuse Media Group. "If the revenues come in as strong as the proponents argue, then great. Then we can figure out how to work that into our long-term plan. But in the short run I'd be very cautious before I would consider that to be a solid source of significant revenue."

In the News – New York City

Legislators Urge Passage of Legislation to Protect Whistleblowers in the Financial Industry

Senator Diane J. Savino (D-Staten Island) and Assemblyman Tom Abinanti (D-Westchester) urged the State Legislature to pass legislation (A.815/S.4453) to protect whistleblowers in the financial industry from employer retaliation.

Speaking at a press conference today, the legislators noted this week's five-year anniversary of President George Bush's Troubled Asset Relief Program (TARP) and called for support of employees willing to report and object to illegal and unethical behavior.

In 2013, the bill was reported favorably by Senate Labor Committee, which Senator Savino chairs, but died on the Senate calendar. It was not considered by the Assembly Labor Committee. Proponents hope the bill will gain traction when the Legislature returns to Albany in January.

According to the sponsors, the legislation was drafted in response to the May 2012 New York Court of Appeals decision in *Sullivan v. Harnisch*. The Court rejected a wrongful discharge case brought by a compliance officer, represented by Daniel Felber, Esq, who claimed that he was terminated for questioning the personal stock trades of the company's president and ruled that current law did not prohibit such discharge. Mr. Felber joined Senator Savino and Assemblyman Abinanti at the press conference.

The legislation prohibits an employer from taking any retaliatory personnel action against an employee who discloses, or threatens to disclose illegal activities, financial or accounting fraud, or misappropriation or misuse of funds of a financial institution, a hedge fund or private equity firm, or of the clients or customers of such organizations; or which constitutes bribery of a public official.

It defines financial institution as an insured bank; a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; any credit union; a thrift institution; a broker or dealer registered with the Securities and Exchange Commission; a broker or dealer in securities or commodities; an investment banker or investment company; a currency exchange; an issuer, redeemer, or cashier of traveler's checks, checks, money orders, or similar instrument's; an operator of a credit card system; an insurance company; a dealer in precious metals, stones, or jewels; a pawnbroker; a loan or finance company; a travel agency; a licensed sender of money or any other person who engages as a business in the transmission of funds; a telegraph company; a business engaged in vehicle sales; persons involved in real estate closings and settlements;

the Unites States Postal Service; an agency of the United States government or of a state or local government carrying out a duty or Power of a business; and an Indian casino, or other gaming operation.

The State Department of Financial Services' 2013 legislative agenda also included legislation to address financial services whistleblowers. DFS's program bill provided a mechanism for rewarding employees of financial services providers who disclose information of wrongdoing to DFS that forms the basis for a successful DFS enforcement action against institutions.

The legislation (S4362) was introduced by Senate Insurance Chair James Seward (R Oneonta) and Senate Banks Chair Joseph Griffo (R Utica). The legislation was not considered in the Senate and was not introduced in the Assembly.

Mayor Bloomberg Signs Legislation to Strengthen Building Standards After Hurricane

Mayor Michael Bloomberg this week signed a six-bill package promoted by the City's Building Resiliency Task Force, a panel convened after Hurricane Sandy to outline steps to fortify New York City's buildings and strengthen building standards.

The report included 33 recommendations that address resiliency in a wide range of buildings – including commercial buildings, multi-family residences, hospitals and 1- to 3-family homes. The Task Force offered options to both help existing buildings become more resilient and strengthen the City's Building Code and Zoning Resolution to ensure future construction meets the high levels of resilience.

The bill package included:

- *Introductory Number 1086-A, sponsored by Council Member Filder et al.*
  This legislation requires that new toilets and faucets in buildings be able to operate without an external supply of electrical power. These buildings will be required to have at least one lavatory faucet in a bathroom or toilet room that can operate normally with an internal power source for at least two weeks. It can be powered either through manual operation or built in battery backup.

- *Introductory Number 1088-A, sponsored by Council Member Gennaro et al*.
  This legislation requires a study and pilot program on the possible use of permeable materials on roadways and sidewalks to be followed by a report to the City Council on the results of the pilot within one hundred twenty days following the conclusion of the pilot.

- *Introductory Number 1090-A, sponsored by Council Member Ignizio et al.*
  This legislation requires the Office of Long Term Planning and Sustainability to conduct a study in consultation with the Department of Buildings on the effects of wind on

existing buildings. A report will be submitted to the Mayor and Speaker of the City Council within two years.

- *Introductory Number 1095-A, sponsored by Council Member Nelson et al.*
  This legislation requires the creation of a manual on flood construction and protection standards. The Department of Buildings will create a manual explaining in detail the flood construction and protection requirements and standards applicable in the City. The manual shall include a description and explanation of material requirements; specifics on what equipment must be protected from flooding; and the application of the flood construction and protection requirements.

- *Introductory Number 1098-A sponsored by Council Member Richards et al.*
  This legislation requires that buildings in flood-prone areas be equipped with devices to prevent the intrusion of sewage from the public sewer system. Additionally new systems and components, including plumbing fixtures, will be required to be elevated above the flood elevation specifications.

- *Introductory Number 1105-A, sponsored in conjunction with the Mayor by Council* Members Gennaro et al. This bill assigns to the Office of Long Term Planning and Sustainability the responsibility of planning for resiliency and climate change and beginning in 2015, and every four years thereafter, OLTPS will include in their plan that is submitted to the Mayor and the Speaker of the City Council a list of policies, programs and actions that the City will undertake relating to resiliency issues.

Briefs

Governor Cuomo Announces Over 20 Percent Utilization of MWBEs in State Contracting – Meets Executive Goal

Governor Andrew M. Cuomo this week announced that utilization of minority –and women – owned businesses in state contracts reached a record 21.06 %. In all, $1.48 billion in contracts from a total of 97 public agencies and authorities were awarded to Minority- and Women Owned- Business Enterprises (MWBEs) in FY 2012-1013.

In 2011, Governor Cuomo established by executive order a statewide team to explore ways to eliminate barriers and expand the participation of MWBEs in state contracting. Two years later, a number of initiatives pushed forth by the team, including an improved online reporting system, a streamlined certification process and increased outreach initiatives, have helped increase MWBE utilization beyond the 20 percent goal that the Governor set in his first State of the State address.

Governor Calls NYC Deferred Compensation Board Bill "Unnecessary"

Governor Andrew M. Cuomo this week vetoed legislation to give the City's organized labor equal representation on the New York City's Deferred Compensation Plan Board. The board manages over 10 billion dollars which is contributed and owned by the employees of the city of New York. The legislation was introduced by Senator Marty Golden (R Brooklyn) and Assemblyman Peter Abbate (D Brooklyn) at the request of Municipal Labor Committee (MLC) President Harry Nespoli. The MLC asserted that despite a mayoral Executive Order, which provides for nominal employee representation, the current law does not require representatives from the parties directly impacted by any board decision - the employees, whose deferred compensation monies are subject to the board's stewardship. The Mayor has resisted efforts to increase employee representation.

"By Mayoral Executive Order, two union members have been added to the board; more can be added in such manner," Governor Cuomo explained. "For this reason, at this time, this legislation is unnecessary."

According to the Board's website, the current members includes Mayor of the City of New York; Comptroller of the City of New York; Commissioner, Office of Labor Relations (Chair); Director, Office of Management & Budget; Commissioner of Finance; Commissioner, Citywide Administrative Services; Police Commissioner; Fire Commissioner; Uniformed Firefighters Association; Corporation Counsel, Counsel to the Board; as well as representatives from the Uniformed Firefighters Association; and District Council 37, AFSCME. The current configuration gives the City an 8 to 2 edge, according to the MLC.

Mayor Bloomberg Signs Legislation Requiring Employers to Provide Reasonable Accommodation for Pregnant Employees

Mayor Michael Bloomberg this week signed Introduction 974-A, sponsored by Council Member Vacca et al, enacting the Pregnant Workers Fairness Act. The bill requires employers to provide a reasonable accommodation to the needs of an employee for her pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential duties of the job. A "reasonable accommodation" for this purpose is an accommodation that can be made without causing undue hardship in the conduct of the employer's business. Aggrieved employees can seek relief in court or through the City's Commission on Human Rights.

In addition, this bill requires the Commission on Human Rights to create a written notice regarding employees' rights related to pregnancy, for employers to post in the workplace.

Coming Up

New York State

Tuesday October 8th

Military related suicides and the role of the State in reducing the rate among veterans
Assembly Committees on Veterans' Affairs, Mental Health, & Subcommittee on Women Veterans
Legislative Office Building, Roosevelt Hearing Room C, 2nd fl, Albany, 10 a.m.

Insurance Regulatory Reform Forum
Senate Majority Coalition
250 Broadway, Senate Hearing Room, 19th fl, New York, 10 a.m.

Banking Regulatory Reform Forum
Senate Majority Coalition
250 Broadway, Senate Hearing Room, 19th fl, New York, 1 p.m.

Thursday October 10th

To provide the Committee with an update of the Metropolitan Transportation Authority's (MTA) Capital spending plan and operating budget as it pertains to each agency
Senate Standing Committee on Transportation
250 Broadway, Suite 2034, New York, 11 a.m.

New York City

Monday October 7th

Committee on Health, 250 Broadway-Committee Rm, 14th fl, 1 p.m.
Int 1129-2013- in relation to creating a food service establishment inspection ombuds office within the New York city department of health and mental hygiene.

Int 1132-2013- in relation to requiring the department of health and mental hygiene to develop and disseminate a food service establishment inspection code of conduct.

Int 1134-2013- in relation to the creation of a Food Service Establishment Advisory Board.

Int 1141-2013- in relation to Food Service Establishment Sanitary Inspection Data.

Int 1146-2013 - in relation to requiring the department of health and mental hygiene to develop a consultative inspection program for food service establishments.

Wednesday October 9th

City Council Stated Meeting, City Hall –Council Chambers, 1:30 p.m.

Thursday October 10th

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

Int 0732-2011- in relation to requiring the installation of speed humps on streets adjacent to public schools.

Int 1155-2013- in relation to right turns from bus lanes.

Int 1163-2013- in relation to requiring the department of information technology and telecommunications to create and maintain an interactive website detailing traffic crash data.

Committee on General Welfare, 250 Broadway –Committee Rm, 14th fl, 1 p.m.
T2013-6910- Oversight - Examining the Use of Cluster Sites as Temporary Shelter for the Homeless.

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