



ALBANY LAW SCHOOL

CENTER FOR CONTINUING LEGAL EDUCATION

**COUNTY ATTORNEYS'
ASSOCIATION OF THE
STATE OF NEW YORK

2020 WINTER MEETING**

December 7, 2020

80 NEW SCOTLAND AVENUE
ALBANY, NEW YORK 12208-3494
TEL: 518-472-5888 FAX: 518-445-2303
WWW.ALBANYLAW.EDU/CLE

Virtual 2020 - CAASNY Winter Meeting

Monday, December 7, 2020
8:00am - Noon

Agenda

- | | |
|-------------------|---|
| 8:00pm – 8:05pm | Welcoming Remarks Stephen Louis, CAASNY President New York City Law Department |
| 8:05am – 9:55am | Municipal Cashflow Financing Vehicles, Their Limitations, and Relevant Legislation Douglas Goodfriend, Esq. Orrick (1 Hour Professional Practice) |
| 8:55am – 9:00am | Break |
| 9:00am – 9:55am | Juvenile Delinquency – Issues That Have Arisen Since Raise the Age David S. Meffert, Esq. Orange County Attorney's Office (1 Hour Professional Practice) |
| 9:55am – 10:00am | Break |
| 10:00am – 10:55am | Legislative Update Stephen J. Acquario, Esq., Executive Director New York State Association of Counties Patrick R. Cummings, Esq., Counsel New York State Association of Counties (1 Hour Professional Practice) |
| 10:55am – 11:00am | Break |
| 11:00am – 11:55am | Brownfield Development Jennifer C. Persico, Esq. Lippes Mathias Wexler Friedman LLP Ian A. Shavitz, Esq. Lippes Mathias Wexler Friedman LLP Michael L. Nisengard, Esq. Lippes Mathias Wexler Friedman LLP Martin Doster Lippes Mathias Wexler Friedman LLP |

**Virtual CAASNY 2020 Winter Meeting
December 7, 2020**

Speaker Biographies

STEPHEN J. ACQUARIO, ESQ., is Executive Director and General Counsel of the New York State Association of Counties (NYSAC). In this capacity, Mr. Acquario presents a single voice for the county governments of New York State. He is responsible for the overall direction of the association, and oversees the association's agendas to ensure a cohesive and coherent legal and legislative strategy on behalf of New York's 62 county governments. Mr. Acquario graduated magna cum laude from Albany Law School of Union University. He holds a bachelor's degree in Industrial and Labor Relations from the State University of New York College at Potsdam. In addition, he earned a graduate certificate in Industrial and Labor Relations from Cornell University.

PATRICK R. CUMMINGS, ESQ., is Counsel for the New York State Association of Counties (NYSAC). In this capacity, he works with the New York State legislature regarding pending legislation in order to help county government run more efficiently. Mr. Cummings also provides support, when requested, to county attorneys regarding laws, policies, and cases that impact counties. Prior to joining NYSAC in 2011, he was an Assistant County Attorney for Schenectady County.

MARTIN L. DOSTER, ESQ., is Senior Environmental Coordinator for the firm's Environment & Energy Practice Team at Lippes Mathias Wexler Friedman LLP, in Buffalo, NY. He advises clients on contamination issues, cleanup requirements, and cost-effective remedial strategies under state and federal Superfund and brownfields programs. Mr. Doster joined the firm in 2015 following a 32-year career with the New York State Department of Environmental Conservation, where he served as the Regional Remediation Engineer for Western New York. Mr. Doster has also served as an adjunct professor for the University at Buffalo, where he taught courses on hazardous waste remediation and environmental engineering design. He also serves as the firm's Chief Operating Officer and is responsible for overseeing employee relations and human resources issues, accounts receivable coordination, vendor relations, and coordinating the firm's strategic initiatives. Mr. Doster received a B.S. in chemical engineering from the University at Buffalo. He has received a number of awards, including the U.S. Environmental Protection Agency Environmental Quality Award; NYSDEC Region 9 Quality Award for Dedication and Leadership; NYSDEC Multi-Media Pollution Prevention Award; and Buffalo Niagara Riverkeeper Recognition Award for Ecological Stewardship.

DOUGLAS GOODFRIEND, ESQ., is a Bond Counsel Partner in the Public Finance Department of Orrick, Herrington & Sutcliff, the number one bond counsel firm in the nation for every year in the last ten years according to *The Bond Buyer*. Mr. Goodfriend has extensive experience in municipal general obligation financings. He has worked with counties on financing for capital. His specialized areas of New York municipal law interest include open spaces programs and financings; town and county improvement

district formation, consolidation, and improvement; innovative lease-purchase financings; bond resolution referendum law; village local improvement programs; and the drafting of local laws and propositions, as well as state legislation on behalf of clients. Mr. Goodfriend holds memberships in the American Bar Association, the New York State Bar Association, and the National Association of Bond Lawyers. He is a Harlan Fiske Stone Scholar, a Fulbright Scholar, and a Social Science Research Council Fellow. He was the topical issue editor for the *Columbia Journal of Transnational Law*. Mr. Goodfriend received a JD from Columbia Law School, an MA from the University of Chicago, an MTS from Harvard University, and a BA from the New College of the University of South Florida. He is one of the authors of *Bond Basics for Counties in New York State*, the only primer on the subject, and numerous articles and essays. Mr. Goodfriend is admitted to practice in New York.

DAVID S. MEFFERT, ESQ., is a Senior Assistant County Attorney serving in the Family Court Unit of the Orange County Department of Law, where he handles JD and PINS cases. He received a BS from the University of Texas at Austin, a JD from St. Mary's University School of Law in San Antonio, Texas, and was admitted to the Texas bar in 1995. Mr. Meffert was a solo practitioner in San Antonio, practicing in the areas of adult and juvenile criminal defense, divorce, custody and child support. In 1999, Mr. Meffert became a prosecutor for the Office of the City Attorney for the City of San Antonio, initially in their domestic violence unit, and eventually taking over the prosecution of environmental and quality of life cases for the city. In 2001, he and his wife relocated to Orange County. Mr. Meffert joined the Orange County District Attorney's Office as an Assistant District Attorney, working in the Local Court Unit, Grand Jury Unit and Investigations Unit, where he handled various white-collar crimes. In 2006, Mr. Meffert moved to the Orange County Department of Law. In addition to his duties with the Department of Law, he also serves as the Special District Attorney for Orange County, handling cases that the District Attorney's Office was unable to prosecute due to conflicts. Mr. Meffert is certified by the DCJS Municipal Police Training Council as a General Topics Instructor and has spoken on various topics relating to juvenile delinquency and PINS law at the Orange County Police Academy and various police departments within the County.

MICHAEL L. NISENGARD, ESQ., is a Senior Associate at Lippes Mathias Wexler Friedman LLP, in Buffalo, NY. Mr. Nisengard has over ten years of experience in commercial real estate law representing owners, landlords, tenants, buyers, sellers, borrowers, lenders, and investors in purchases, sales, leases, financing, and title and due diligence review. He also handles a variety of real property title matters, including negotiating and finalizing easements, covenants, restrictions, rights of way, and other matters granting or restricting land rights as well as any disputes related to these matters. Mr. Nisengard handles residential real estate matters and has experience with condominium and owners associations. He also assists with structuring and negotiating all phases of real estate development projects throughout New York State and the country, and across many classes of property (both vacant and improved), including office, medical, residential, retail, manufacturing, warehouse, and industrial uses. Mr. Nisengard represents individuals, small businesses, not-for-profit organizations, and

national/international companies. Prior to joining Lippes Mathias Wexler and Friedman, Mr. Nisengard worked with the New York State Senate and as a legislative analyst with a lobbying firm. He received a JD cum laude from the University at Buffalo School of Law; an MS in Natural Resources Management from SUNY College of Environmental Science and Forestry at Syracuse University, and a BA from Binghamton University. Mr. Nisengard is admitted to practice in New York.

JENNIFER C. PERSICO, ESQ., is a Partner and Litigation Practice Team Co-Leader with Lippes Mathias Wexler Friedman LLP. She has extensive experience in business disputes and commercial litigation matters, including contract claims on behalf of both plaintiffs and defendants. She also has significant experience in municipal law. Ms. Persico's practice includes assisting municipalities in defending 1983 claims, resolving land use issues, drafting local laws and governance issues. She has extensive experience in resolving complex disputes on behalf of her clients using both litigation and non-litigation methods. Each year since 2015, she has been named one of the Legal Elite of WNY by Business First of Buffalo and Buffalo Law Journal and has been named to the prestigious The Best Lawyers in America © list since 2018. Ms. Persico previously served as Majority Counsel to the Erie County Legislature and was a long-time member of the Board of Directors of the Western New York Trial Lawyers Association. Ms. Persico is vice chair and chair-elect of the Board of Directors of the Erie County Medical Center, and has engaged in many other community initiatives. She received a JD from the University at Buffalo School of Law and a BS from the University at Buffalo.

IAN A. SHAVITZ, ESQ., is the Team Leader of the Environment and Energy Practice Team at Lippes Mathias Wexler Friedman LLP. Mr. Shavitz has more than 20 years of experience counseling and advocating for clients on environmental and land use issues associated with developing large-scale infrastructure, energy, and commercial projects; securing federal, state and local governmental permits and approvals; advising sellers, purchasers, lenders, and investors on environmental issues associated with corporate, real estate and energy transactions; and advocating for favorable policy decisions and legislation before Congress. Mr. Shavitz's clients have included corporations, municipalities, developers, investors, state and local governments, private equity funds, and Indian tribes. While Mr. Shavitz's practice is national in scope, he has particular expertise advising clients on projects, transactions and legal issues in New York State, where he has practiced for his entire career, and on federal issues in Washington, D.C.

Municipal Cash Flow Financing Vehicles, Their Limitations and Relevant Legislation

Douglas E. Goodfriend, Esq.

Municipal Cash Flow Financing Vehicles, Their Limitations and Relevant Legislation

Douglas E. Goodfriend, Esq., Partner
Bond Counsel

Orrick, Herrington & Sutcliffe LLP

51 West 52nd Street, New York, New York 10019-6142

Email: dgoodfriend@orrick.com

2020 CAASNY Winter Meeting

December 7, 2020



**Declining Revenues and Increasing Operating
Expenses:
Current Borrowing Options**

Financing Options

Revenue Anticipation Notes (RANs)

Tax Anticipation Notes (TANs)

Deficiency Notes

Budget Notes

Revenue Anticipation Notes (RANs) and Tax Anticipation Notes (TANs)

Temporary Revenue Shortfalls

RANs or TANs can help with cash flow for anticipated delays in receipt of revenue in the current or succeeding fiscal year.

RANs - Issued in anticipation of the receipt of a specific revenue (most commonly State/Federal aid or sales tax) when expenditures do not align with the receipt of such revenues

- May be issued for one year and renewed if revenue for which the RAN was issued against was not received by the maturity of the RAN; however, RAN cannot be renewed beyond the close of the second fiscal year succeeding the fiscal year of the original issuance date.
- When initially issued for the succeeding fiscal year's revenues, RANs can be issued within fourteen days prior to the commencement of the succeeding fiscal year.

TANs - Issued in anticipation of the receipt of property taxes (not sales or other taxes).

- May be issued for one year and renewed to the extent that property taxes are not received by the maturity of the TAN and must be fully paid off within five years after their original date of issue.
- When issued for the succeeding fiscal year's taxes, TANs can be issued within ten days prior to the commencement of the succeeding fiscal year.

Revenue Anticipation Notes (RANs) and Tax Anticipation Notes (TANs)

RAN and TAN Borrowings

- Estimated Cash Flow statement to be provided to bond counsel and included in Official Statement or offering document showing the month or point in time when the deficit is expected to occur to justify the need for the RAN or TAN issuance .
- Cash Flow statement should also include the repayment of borrowing and also provide the actual cash flow of the prior fiscal year.
- Revenue/Tax Anticipation Note resolution to be adopted by the governing board by simple majority vote. No estoppel period is required. Resolution is effective immediately, not subject to public referendum.
- Consult with Bond Counsel & Municipal Advisor on appropriate timing and sizing of issuance.

Limitations

- (1) If it has been determined that the revenue or taxes in the budget will not, in fact, be received at all during the fiscal year, then a RAN or TAN cannot be issued in anticipation of receipt.
- (2) When issuing ahead of a fiscal year in anticipation of next year revenues, it is for that next year's initial cash flow problem, not to fill current fiscal year shortfall.

Deficiency Notes

Non-Temporary Revenue Shortfalls

- Deficiency notes may be issued to finance a deficiency of funds caused by revenues which were less than the estimated amount budgeted in the current fiscal year (up to five percent of the budget) .
- Deficiency note resolution to be adopted by the governing board by simple majority vote. No estoppel period is required. Resolution is effective immediately, not subject to public referendum.

Limitations

- (1) Must be paid off in next fiscal year unless issued after adoption of next fiscal year budget (if so, two (2) years total to pay off).
- (2) No authority to “bond out” the revenue loss over a longer period of time.

Budget Notes

Unanticipated Operational Expenses

- The COVID-19 Pandemic has caused fiscal stress to local governments and school districts with unexpected increased operating expenses (often not offset by any revenue savings due to suspended programs).
- Local governments may issue budget notes in any fiscal year to provide funding for unexpected expenditures for which insufficient or no provision was made in the budget (up to five percent of the budget) or for necessary expenditures resulting from an unforeseen public emergency.
- May be issued to cover expenses related to unforeseen public emergencies, however, there is no authority to issue budget notes for a revenue shortfall.
- Budget notes may be renewed but must not mature later than the close of the fiscal year succeeding the fiscal year in which the budget notes were originally issued.
- To be redeemed in full at maturity with taxes or assessments levied for the fiscal year in which the budget notes mature or revenues legally available during the fiscal year in which the budget note was issued.
- Budget note resolution to be adopted by the governing board by simple majority vote. No estoppel period is required. Resolution is effective immediately, not subject to public referendum.

Limitations

- (1) Must be paid off in next fiscal year unless issued after adoption of next fiscal year budget (if so, two (2) years total to pay off).
- (2) No authority to “bond out” the expenses over a longer period of time.

Draft New Financing Legislation

SECTION 29.20 DEFICIENCY NOTES



a. Any municipality, school district or district corporation may issue deficiency notes during any fiscal year to finance a deficiency in any fund or funds arising from revenues being less than the amount estimated in the budget for such current fiscal year. Such notes may be issued in such amount as the finance board shall determine to be necessary, but not to exceed five per centum of the amount of the annual budget of such municipality, school district or district corporation.

b. Deficiency notes may be renewed from time to time, but such notes, including the renewals thereof, shall mature not later than the close of the fiscal year succeeding the fiscal year in which such notes are issued. However, such notes, including the renewals thereof, may mature not later than the close of the second fiscal year succeeding the fiscal year in which such notes are issued, when authorized and issued during a fiscal year at a time subsequent to the date of the adoption of the annual budget for the next succeeding fiscal year, by a municipality, school district or district corporation in which the total amount of taxes or assessments levied for a fiscal year is determined pursuant to an annual budget adopted during the fiscal year preceding such fiscal year.

DEFICIENCY NOTES

| Provision | Current Law | Proposed Law |
|--|--|---|
| Maximum Maturity of Notes | Must pay off in next fiscal year unless issued after adoption of next FY budget (then 2 years total) | Authorizes renewal for period up to 5 years from original issuance date if issued for budget deficiency resulting from unforeseen public emergency including epidemics (with annual principal installments) |
| Borrowing Size Limitation | 5% of annual budget | CFO certified amount |
| Conversion To Bonds; Original Bond Issuance | Not authorized | Authorizes issuance of bonds for this purpose either initially or to redeem notes, subject to OSC review of budget deficit |
| Period of Probable Usefulness For Bond Issuance (Maximum Maturity of Bonds) | Not authorized | Deficit of 2% or less of annual budget: 10 years Deficit exceeds 2% of annual budget: 15 years |
| Private Sale Marketing of Bonds | Not authorized | Authorizes subject to OSC approval of terms and conditions |
| Applicability to Type of Local Government Unit | Municipality, School District, District Corp. | Municipality, School District, District Corp., BOCES |
| Method(s) of Authorization | Note resolution of board | 1. Note resolution of board 2. Bond resolution of board (not subject to mandatory or permissive referendum or prior public vote) |

SECTION 29.00 BUDGET NOTES



a. 1. Any municipality or district corporation, other than a fire district, may issue budget notes during any fiscal year for any unforeseeable public emergency during such year such as epidemic, conflagration, riot, storm, flood, earthquake or other unusual peril to the lives and property of the citizens of such unit of government in such amount as the finance board shall determine to be necessary, but no municipality may issue such notes for emergencies in behalf of any local improvement district. Any school district may issue budget notes during any fiscal year to provide temporary school buildings or facilities in such year when such buildings or facilities are necessitated because of an unforeseeable public emergency during such year such as epidemic, conflagration, riot, storm, flood, earthquake or other unusual circumstance preventing the use in whole or in part, of the buildings or other facilities used by such school district.

2. Any municipality or district corporation which adopts an annual budget may issue budget notes during any fiscal year for expenditures for which an insufficient or no provision is made in the annual budget for such fiscal year in an amount not to exceed five per centum of the amount of such annual budget.

Notwithstanding the foregoing limitation, any fire district may issue budget notes pursuant to this subdivision in the amount of at least one thousand dollars. In addition, any county which adopts an annual budget may issue budget notes pursuant to this subdivision without limitation as to amount for necessary expenditures for the apprehension and prosecution of persons charged with the commission of crime and for which an insufficient or no provision has been made in the annual budget for such fiscal year.

SECTION 29.00 BUDGET NOTES (CONTINUED)



If, however, any such municipality or district corporation may issue budget notes for any such expenditures pursuant to the provisions of any other paragraph of this section, such municipality or district corporation shall not issue budget notes for any such expenditures pursuant to this subdivision. Any town, and any county, in computing “the amount of the annual budget” for the purposes of this subdivision shall not include any amounts which are to be paid in the first instance from improvement district assessments.

3. A school district may issue budget notes during the last nine months of any fiscal year for expenditures for which an insufficient or no provision is made in the annual budget for such fiscal year in an amount not to exceed five per centum of such annual budget. The foregoing limitation shall not be applicable in any case in which a budget note resolution has been adopted by the finance board of a school district and has been approved by a majority of the qualified voters of the school district present and voting at any annual or special meeting of the school district held pursuant to the provisions of the education law during the last nine months of such fiscal year. The notice for any such meeting, in addition to complying with applicable provisions of the education law, must state that such budget note resolution will be submitted for approval by the voters at such meeting; the purpose for which moneys are proposed to be borrowed under such resolution; the total amount proposed to be borrowed, and the fiscal year in which taxes are required to be levied for the payment of the budget note proposed to be issued. The vote at any such meeting on such proposition shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such meeting.

SECTION 29.00 BUDGET NOTES (CONTINUED)



3-a. Notwithstanding any other provisions of this section, where a school district can demonstrate to the satisfaction of the commissioner of education extenuating circumstances that a waiver is warranted for the adoption of a budget note resolution by its finance board, upon certification by the chief executive officer to the commissioner of education, in such form as the commissioner of education shall determine pursuant to guidelines developed, for the purpose of making additional accruals requirements in the two thousand four--two thousand five or two thousand five--two thousand six school years associated with changes in accounting methodologies for liabilities for employer and employee contributions due and payable to a public retirement system that will result in a tax increase to the residents of the district in the following school year, a school district may issue budget notes during the last nine months of the school year in which such resolution is adopted, or during the first three months of the following school year, in an amount not to exceed the amount of such additional accruals for public pension liabilities. The limitation on the amount of budget notes contained in subdivision three of this paragraph shall not be applicable to notes issued pursuant to this section and the amount of budget notes issued pursuant to this section shall not be included in the computation of such limitation.

j. Except as otherwise provided in paragraph d of this section, budget notes may be renewed from time to time but such notes, including the renewals thereof, shall mature not later than the close of the fiscal year succeeding the fiscal year in which such notes are issued. However, such notes, including the renewals thereof, may mature not later than the close of the second fiscal year succeeding the fiscal year in which such notes are issued, when authorized and issued during a fiscal year at a time subsequent to the date of the adoption of the annual budget for the next succeeding fiscal year, by a municipality, school district or district corporation in which the total amount of taxes or assessments levied for a fiscal year is determined pursuant to an annual budget adopted during the fiscal year preceding such fiscal year.

| BUDGET NOTES | | |
|---|--|---|
| Provision | Current Law | Proposed Law |
| Maximum Maturity of Notes | Must pay off in next fiscal year unless issued after adoption of next FY budget (then 2 years total) | Authorizes renewal for period up to 5 years from original issuance date if issued for budget deficiency resulting from unforeseen public emergency including epidemics (with annual principal installments) |
| Borrowing Size Limitation | Not limited to 5% of annual budget if due to unforeseen public emergency | Unchanged |
| Conversion To Bonds; Original Bond Issuance | Not authorized | Authorizes issuance of bonds for this purpose either initially or to redeem notes |
| Period of Probable Usefulness For Bond Issuance (Maximum Maturity of Bonds) | Not authorized | 5 years unless: <ul style="list-style-type: none"> Amount exceeds 1% but does not exceed 2% of annual budget: 10 years Exceeds 2%: 15 years |
| Private Sale Marketing of Bonds | Not authorized | Authorizes subject to OSC approval of terms and conditions |
| Applicability to Type of Local Government Unit | Municipality School District (restricted uses) Fire District (restricted uses) | Municipality School District Fire District BOCES |
| Method(s) of Authorization | Note resolution of board | 1. Note resolution of board 2. Bond resolution of board (not subject to mandatory or permissive referendum or prior public vote) |

BAN EXTENSION AND RESERVE FUND USE LEGISLATION



- In Local Finance Law, the general rule is a local government can issue BANs and renew them annually four (4) times (with principal paydowns).
- Unless the BAN is for an “assessable improvement”, like town improvement district projects, the remaining outstanding principal must be “bonded out” by the fifth anniversary of the first borrowing.
- Issuers with BANs issued in 2015, if not paid off this year, would be compelled to issue bonds in the current choppy municipal bond market. This condition may also continue next year.
- Legislation signed into law as Chapter 157, as amended by Chapter 126 of the Laws of 2020 now (1) permits BANs issued in 2015 through 2021 to remain in notes up to seven (7) years from original date of issuance, (2) permits temporary use of reserve fund monies for COVID-19 pandemic expenses to be reimbursed over maximum five subsequent fiscal years, and (3) interfund loans for that purpose to be repaid by close of next fiscal year.

PENDING LEGISLATION



- In Legislative Bill Drafting Commission:
 1. Deficiency notes expansion (16455-04-0)
 2. Budget notes expansion (16459-03-0)

Juvenile Delinquency – Issues That Have Arisen Since Raise the Age

David S. Meffert, Esq.

ISSUES THAT HAVE ARISEN WITH RTA SINCE ITS IMPLIMENTATION (WE HOPED FOR THIS↓)



INSTEAD WE GOT THIS↓





- **STEVE NEUHAUS**
COUNTY EXECUTIVE
- **LANGDON C. CHAPMAN, ESQ.**
COUNTY ATTORNEY

WWW.ORANGECOUNTYGOV.COM

PRESENTED/PREPARED BY:

DAVID S. MEFFERT

SENIOR ASSISTANT COUNTY ATTORNEY
ORANGE COUNTY ATTORNEYS' OFFICE
845-291-2650

ADDITIONAL MATERIALS PROVIDED BY:

VICTOR CIVITILLO, ESQ, DUTCHESS COUNTY ATTORNEY'S OFFICE
ILENE KASS, NEW YORK CITY LAW DEPARTMENT

WITH SPECIAL THANKS TO:

LINDA FAKHOURY, ESQ. DUTCHESS COUNTY ATTORNEY'S OFFICE
KRISTIN GUMAER, ESQ. ULSTER COUNTY ATTORNEY'S OFFICE
CHRISTOPHER MULLER, ESQ.: COLUMBIA COUNTY ATTORNEY'S OFFICE

CAVEAT

- SOME OF THE SLIDES ARE ADAPTATIONS OF SLIDES USED BY MYSELF AND VIC CIVITILLO FOR A NOVEMBER 2017 CLE.

GOALS

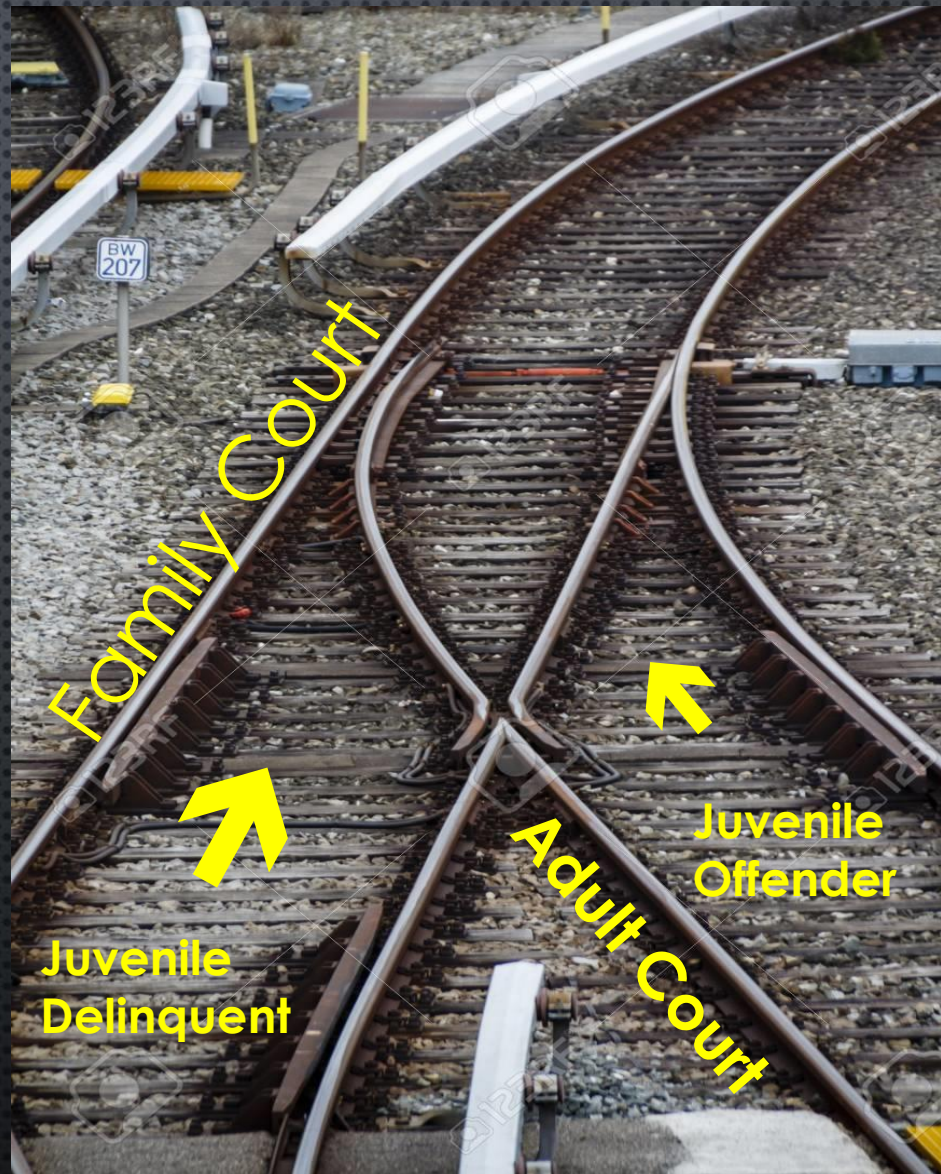
- YOU WILL HAVE A BRIEF OVERVIEW OF THE CHANGES MADE TO JUVENILE JUSTICE BY THE RTA LEGISLATION AND HOW CASES INVOLVING OLDER YOUTH ARE NOW HANDLED.
- LEARN ABOUT CHANGES MADE TO THE CPL AND FCA BY THE RTA LEGISLATION THAT HAVE AFFECTED THE PRESENTMENT AGENCY AND VICTIMS OF JUVENILE CRIME.
- YOU WILL LEARN ABOUT GAPS IN THE RTA LEGISLATION THAT NEED TO BE WATCHED FOR.
- YOU WILL SEE THE POTENTIAL PITFALLS THAT COULD WHEN YOUR CASE IS TRANSFERRED FROM THE YOUTH PART.
- YOU WILL LEARN WHAT CONVERSATIONS TO START HAVING IN YOUR COUNTIES TO PREVENT THIS FROM HAPPENING, IF YOU HAVEN'T ALREADY HAD THEM.

CHANGES MADE TO OUR WORLD BY THE RTA LEGISLATION

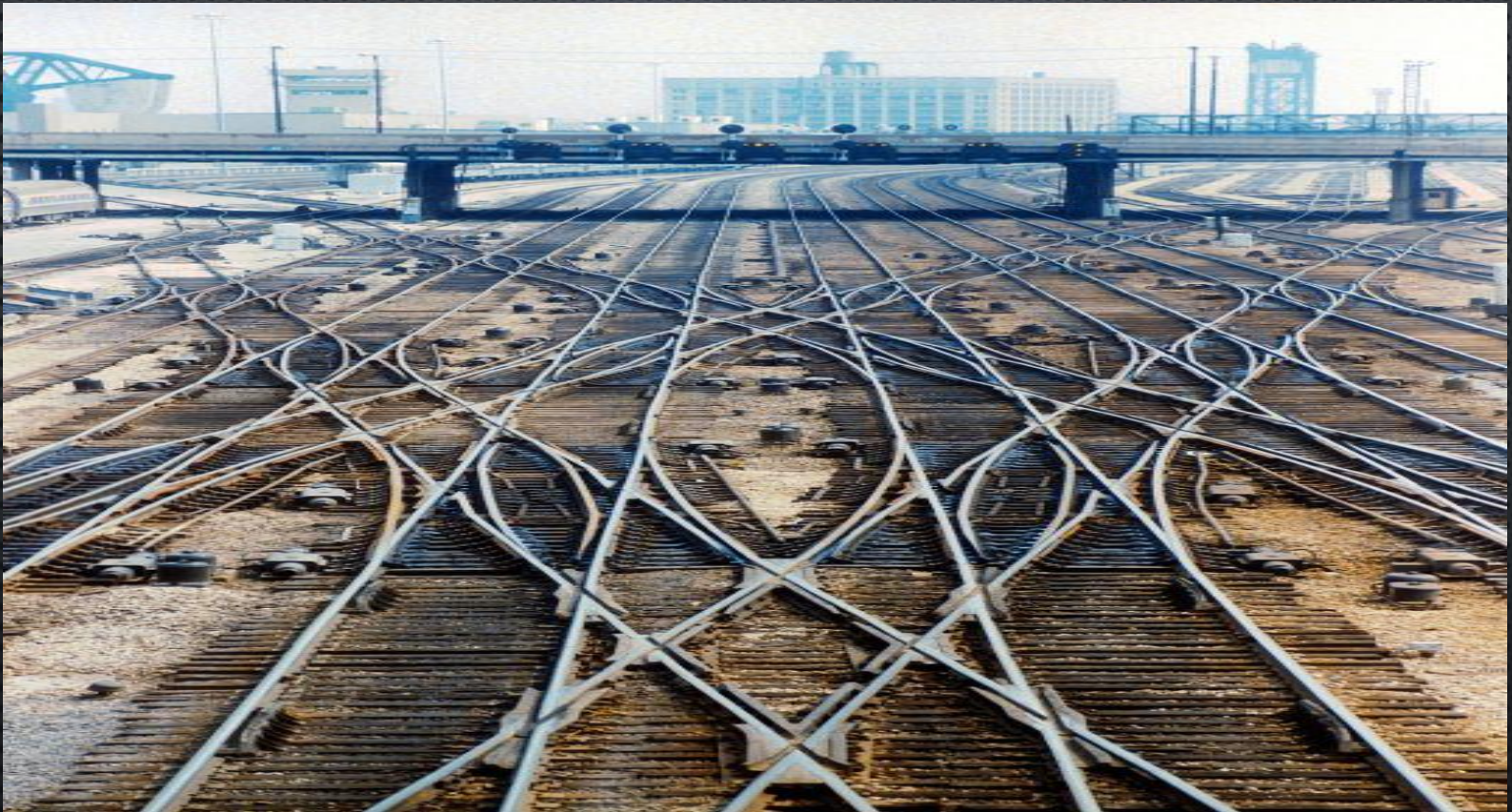
THIS IS WHAT I LOOKED
LIKE AFTER I READ THE
RTA SECTIONS OF THE
CPL AND FCA. ➡



JUVENILE PRACTICE BEFORE RAISE THE AGE



JUVENILE PRACTICE AFTER RAISE THE AGE



ADOLESCENT OFFENDERS

“RAISE THE AGE” CREATED A NEW CATEGORY OF DEFENDANTS WHO ARE 16 AND 17 YEARS OLD, CALLED “ADOLESCENT OFFENDERS” (AOs). CPL 1.20(44). THEY WERE PREVIOUSLY CONSIDERED ADULTS

JUVENILE OFFENDER

A JUVENILE OFFENDER IS A PERSON WHO, WHILE 13, 14 OR 15 YEARS OLD COMMITS A FELONY LISTED IN PL 10.00(18). THESE CRIMES ARE BOTH AGE DEPENDENT AND CRIME DEPENDENT. **THIS DID NOT CHANGE.**

YOUTH PART

THE “RAISE THE AGE” LEGISLATION CREATED A NEW TYPE OF COURT CALLED THE YOUTH PART.

THE YOUTH PART IS A SUPREME COURT/COUNTY COURT STAFFED BY A JUDGE THAT IS CROSS TRAINED IN JUVENILE JUSTICE WHO HEARS:

- FELONIES COMMITTED BY ADOLESCENT OFFENDERS (AO) (AND ANY MISDEMEANORS CHARGED AS PART OF THE SAME CRIMINAL TRANSACTION).
- JUVENILE OFFENDER (JO) CASES (AND NON-JO FELONIES AND MISDEMEANORS CHARGED AS PART OF THE SAME CRIMINAL TRANSACTION). *CPL 722.10(1)*
- THERE ARE NO LONGER JO OR AO REMOVALS FROM LOCAL CRIMINAL COURTS. ALL REMOVALS ARE FROM THE YOUTH PART.

LOCAL COURTS

LOCAL CRIMINAL COURTS RETAIN JURISDICTION OVER:

- VEHICLE AND TRAFFIC LAW MISDEMEANORS: DWI, AUO, RECKLESS DRIVING, ETC.

- TRAFFIC INFRACTIONS

- STAND ALONE VIOLATIONS COMMITTED WHILE A PERSON WAS 16 OR 17 WHEN THEY ARE THE ONLY CHARGE. *CPL 140.20(8)*

FAMILY COURT

- FAMILY COURT CONTINUES TO HAVE PRELIMINARY JURISDICTION OVER ALL JUVENILE DELINQUENCY CASES WHERE A PERSON WHO WHILE *UNDER* THE AGE OF 16 AND AT LEAST 7 COMMITTED AN ACT CONSTITUTING A MISDEMEANOR OR FELONY, WHEN IT IS NOT A JO CHARGE.
- NOW THEY HEAR MISDEMEANOR CASES (AND ANY NON-V & T VIOLATIONS AS PART OF THE SAME CRIMINAL TRANSACTION AS THE MISDEMEANOR CASE) COMMITTED BY A PERSON WHEN HE/SHE WAS 16 OR 17 IF NOT DIVERTED BY PROBATION.

DIVERSION SERVICES

- AOs REMOVED FROM THE YOUTH PART ARE ELIGIBLE FOR DIVERSION SERVICES, UNLESS THE AO HAS COMMITTED ONE OF THE DESIGNATED FELONY ACT OFFENSES UNDER FCA 301.2(8). CPL 722.21(2)(B); CPL 722.21(4).

JOs REMOVED FROM THE YOUTH PART ARE NOT ELIGIBLE FOR DIVERSION. FCA 308.1(13)

- ALL YOUTH PART DEFENDANTS (AO/JO) ARE ELIGIBLE FOR VOLUNTARY PROBATION-BASED SERVICES OR REFERRALS, WHICH MAY INCLUDE ALCOHOL, SUBSTANCE ABUSE, OR MENTAL HEALTH TREATMENT. THESE SERVICES SHALL CONTINUE IF CASE IS REMOVED TO FAMILY COURT. CPL 722.00(1),(2)



DESIGNATED FELONIES IN FAMILY COURT

- ALL DESIGNATED FELONIES LISTED IN FCA 301.2(8) REMAIN THE SAME, HOWEVER, THE AGE IS RAISED TO 16/17
- DESIGNATED FELONIES COMMITTED BY 16 OR 17 YEAR OLDS MUST ORIGINATE IN THE YOUTH PART AND THEN BE TRANSFERRED TO FAMILY COURT. (BECAUSE NO FELONY ACT COMMITTED BY A PERSON AT AGE 16 OR 17 MAY BE INITIATED IN FAMILY COURT.)

VIOLATIONS

- IF A 16/17 YEAR OLD (AT THE TIME THE ACT WAS COMMITTED) IS ADJUDICATED A JUVENILE DELINQUENT FOR A VIOLATION THEY MAY RECEIVE EITHER PROBATION OR A CONDITIONAL DISCHARGE FOR A DISPOSITION.

FCA 352.2(4)

- THIS APPLIES IN CASES WHERE A 16/17 YEAR OLD COMMITS A MISDEMEANOR AND A VIOLATION AS PART OF THE SAME CRIMINAL TRANSACTION AND ENTERS AN ADMISSION TO A VIOLATION OR IS FOUND TO HAVE COMMITTED A VIOLATION AFTER A FACT-FINDING HEARING.

PROBLEMS THAT HAVE ARISEN UNDER RTA



THE STATUTE OF LIMITATIONS

(OR HOW YOUR CASE CAN GO OFF THE RAILS IN A HURRY)



THE STATUTE OF LIMITATIONS FOR JUVENILE MATTERS

- A JUVENILE DELINQUENCY PROCEEDING IS ORIGINATED BY THE FILING OF A PETITION. *FCA 310.1(1)*
- THE STATUTE OF LIMITATIONS FOR JUVENILE DELINQUENCY MATTERS IS GOVERNED BY FCA 302.2. A DELINQUENCY PROCEEDING MUST BE COMMENCED WITHIN THE TIMEFRAME GIVEN IN CPL 30.10 OR BY:
 - 1. THE RESPONDENT'S 18TH BIRTHDAY OR
 - 2. THE RESPONDENT'S 20TH BIRTHDAY IF THE TOP COUNT OF THE PETITION IS A DESIGNATED FELONY AS DEFINED BY FCA 301.2(8).
- **WHICHEVER OCCURS EARLIER**

SO, WHAT'S THE PROBLEM?

RTA EXPANDS ARTICLE 3 OF THE FCA TO ADD 16 AND 17 YEAR OLD YOUTH.

BUT:

THEY NEVER AMENDED THE STATUTE
OF LIMITATIONS TO REFLECT THE
OLDER AGE OF THE YOUTH !



Even Rodney can see the problem, So why
didn't the Legislature?

WHAT ABOUT A.O. CASES REMOVED FROM THE YOUTH PART

- FCA 311.1(7) STATES THAT WHEN AN ORDER OF REMOVAL PURSUANT TO CPL 725 IS FILED WITH THE CLERK OF THE (FAMILY) COURT, IT IS DEEMED TO BE A PETITION AS IF IT WAS FILED UNDER FCA 310.1(1).
- IF THERE IS A YOUTH WHO TURNS EIGHTEEN PRIOR TO REMOVAL FROM THE YOUTH PART, WHEN THE CASE IS REMOVED, THE STATUTE OF LIMITATIONS HAS ALREADY EXPIRED, OR
- IF A CASE IS REMOVED FROM THE YOUTH PART AND REFERRED TO PROBATION FOR DIVERSION AND THE YOUTH TURNS 18 DURING DIVERSION, THE STATUTE EXPIRES.
- THERE ARE CONFLICTING DECISIONS FROM YOUTH PARTS IN THE CITY ABOUT THIS ISSUE. MOST OF THEM HOLD THAT THE FACT THAT THE STATUTE OF LIMITATIONS HAS EXPIRED FOR THE PURPOSES OF FAMILY COURT IS NOT A "SPECIAL CIRCUMSTANCE" THAT WOULD BE ABLE TO BE USED TO PROHIBIT REMOVAL (SEE YOUR MATERIALS).
- THIS DOES NOT INCLUDE YOUTH WHO ARE REMOVED WHO HAVE COMMITTED A DESIGNATED FELONY UNDER FCA 301.2(8). YOU HAVE UNTIL THEY ARE 20.

WHAT COURTS HAVE SAID ABOUT THIS: PEOPLE V. N.A., INDICTMENT 0204/20, SUP. CT., BRONX CO., SEPT. 25, 2020

A YOUTH PART IN BRONX COUNTY RECENTLY DECIDED THAT THE SOL ISSUE WITH THE FCA WAS NOT A "SPECIAL CIRCUMSTANCE" THAT COULD BE USED TO KEEP AN AO IN THE YOUTH PART. THE COURT ACKNOWLEDGED THE ISSUE BUT ORDERED REMOVAL ANYWAY.

"IN ANY EVENT, IN MY VIEW, EVEN IF THE APPARENT CONSEQUENCE OF REMOVAL TO THE FAMILY COURT IN THIS CASE WAS NOT THE INTENT OF THE NY LEGISLATURE, IT IS NOT FOR THIS COURT TO FILL IN AN ARGUABLE LEGISLATIVE GAP OR OVERSIGHT..."

"TO CONCLUDE OTHERWISE WOULD BE TO ACCEPT THE ANOMALOUS SITUATION WHERE CASES INVOLVING AOs INVOLVING SUBSTANTIALLY LESS SERIOUS CIRCUMSTANCES THAN OTHERS, WOULD REMAIN IN THE YOUTH PART AND BE SUBJECT TO THE SENTENCING PROVISIONS FOR FELONIES UNDER THE PENAL LAW, THAN OTHER CASES OF MORE SERIOUS CIRCUMSTANCES BECAUSE OF THE STATUTE OF LIMITATIONS CONTAINED IN THE FCA."

WHAT COURTS HAVE SAID ABOUT THIS: PEOPLE V. J.S., INDICTMENT NO. 70367-20, SUP. CT. NEW YORK CO., OCT. 2, 2020

- A YOUTH PART IN NEW YORK COUNTY RECENTLY DECIDED THAT THE SOL ISSUE WITH THE FCA WAS A “SPECIAL CIRCUMSTANCE” THAT COULD BE USED TO KEEP AN AO IN THE YOUTH PART.

“BECAUSE THE DEFENDANT TURNED 18 BEFORE A PETITION COULD BE FILED IN FAMILY COURT ON THIS CASE, HIS CASE WOULD HAVE HAD TO BE DISMISSED ...WITHOUT THE POSSIBILITY OF THE DEFENDANT EVEN BEING CHARGED FOR THESE ALLEGED SERIOUS AND VIOLENT ACTS.”

“SUCH A RESULT WOULD IMPEDE JUSTICE AND WOULD INSTILL LITTLE CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM.”

THE SOLUTION

- THE LEGISLATURE NEEDS TO MAKE THIS LOGICAL AND NECESSARY CHANGE.
- WE AS A GROUP NEED TO CONTINUE RAISING THIS ISSUE TO THE LEGISLATURE UNTIL IT IS RESOLVED.
- IN THE MEANWHILE, YOU WILL HAVE TO COME UP WITH A DIFFERENT SOLUTION TO KEEP A CASE FROM BEING DOA WHEN IT ARRIVES ON YOUR DESK.

COMMUNICATION

THE PRACTICAL(AND MOST LIKELY THE ONLY) SOLUTION

- **PROBATION:** SET UP A LINE OF COMMUNICATION WITH YOUR PROBATION DEPARTMENT TO NOTIFY YOU OF WHEN A YOUTH WHO IS CLOSE TO THEIR 18TH BIRTHDAY IS ARRESTED.
- **POLICE DEPARTMENTS:** REACH OUT TO YOUR LOCAL POLICE DEPARTMENTS ESPECIALLY THE YOUTH OFFICERS AND SRO'S TO EDUCATE THEM ABOUT THE ISSUE AND TO SET UP A PROCEDURE FOR THEM TO NOTIFY YOU WHEN THEY ARREST OR ARE INVESTIGATING A YOUTH WHO IS CLOSE TO THEIR 18TH BIRTHDAY.
- **DISTRICT ATTORNEY'S OFFICE:** ESTABLISH A RELATIONSHIP WITH THE ADAs WORKING IN YOUR YOUTH PART SO YOU KNOW WHEN THEY GET A YOUTH THAT IS CLOSE TO THEIR 18TH BIRTHDAY IN THE YOUTH PART.
- **YOUTH PART:** ATTEND THE YOUTH PART SESSIONS TO MONITOR THE CASES, SINCE THEY ARE ALL MOST LIKELY GOING TO COME BACK TO YOU ANYWAY.
- **GET THE DISCOVERY FROM THE DA'S OFFICE IN ADVANCE OF THE REMOVAL.**

VICTIM'S RIGHTS UNDER RTA (OR LACK THEREOF)



VICTIM'S RIGHTS

- CHANGES MADE TO THE FCA BY THE RTA LEGISLATION DRASTICALLY AFFECTED THE RIGHTS OF A VICTIM IN A DELINQUENCY MATTER.
 1. VICTIMS NO LONGER HAVE THE RIGHT TO INSIST ON PROSECUTION.
 2. THE REMOVAL OF 16 AND 17 YEAR OLDS FROM ADULT COURT LIMITS THE AMOUNT OF RESTITUTION THAT COULD HAVE BEEN ORDERED AGAINST AN OLDER YOUTH
 3. VICTIMS ARE NO LONGER ABLE TO BE TOLD THE OUTCOME OF THE CASE.
 4. STATUTE OF LIMITATIONS ISSUE COULD DEPRIVE VICTIMS OF THE ABILITY TO GET JUSTICE IF THE RESPONDENT IS AN OLDER YOUTH

VICTIM'S RIGHT TO CHOOSE PROSECUTION RATHER THAN DIVERSION

- PRIOR TO RTA, THE FCA FCA 308.1 (8) ALLOWED FOR THE VICTIM TO DEMAND THAT THEIR CASE BE PROSECUTED RATHER THAN DIVERTED.
- **PRE RTA:**

“THE PROBATION SERVICE MAY NOT PREVENT ANY PERSON WHO WISHES TO REQUEST THAT A PETITION BE FILED FROM HAVING ACCESS TO THE APPROPRIATE PRESENTMENT AGENCY FOR THAT PURPOSE.”
- **POST RTA:**

“THE PROBATION SERVICE SHALL CONSIDER THE VIEWS OF THE COMPLAINANT AND THE IMPACT OF THE ALLEGED ACT OR ACTS OF JUVENILE DELINQUENCY UPON THE COMPLAINANT AND UPON THE COMMUNITY IN DETERMINING WHETHER ADJUSTMENT UNDER THIS SECTION WOULD BE SUITABLE.”


SHOW ME THE MONEY, OR NOT.

RESTITUTION UNDER FCA 353.6(1)A

- FCA 353.6(1)A AUTHORIZES THE COURT TO ORDER A RESPONDENT WHO IS OVER THE AGE OF 10 YEARS OLD TO PAY RESTITUTION TO THE VICTIM TO REPLACE PROPERTY, REPAIR DAMAGE OR TO COMPENSATE FOR UNREIMBURSED MEDICAL EXPENSES. THERE IS A CAP OF \$1500.00 PER INCIDENT.
- THE ADULT SYSTEM HAS MUCH HIGHER LIMITS ON THE AMOUNT OF RESTITUTION THAT CAN BE ASSESSED BY THE JUDGE
 - \$10K FOR A MISDEMEANOR AND \$15K FOR A FELONY
 - THE COURT CAN ORDER MORE TO COMPENSATE FOR REPLACEMENT OF PROPERTY OR FOR MEDICAL EXPENSES.
- 16 AND 17 YEAR OLD YOUTHS, WHO CAN GET AN ACTUAL JOB NOW HAVE THE SAME LIMITATION ON RESTITUTION AS A MUCH YOUNGER CHILD.

VICTIMS' RIGHTS AT DISPOSITION IN DELINQUENCY CASE

- PRIOR TO RTA, VICTIMS COULD BE IN COURT DURING A DISPOSITIONAL HEARING, OR WE COULD INFORM THEM AFTERWARDS OF WHAT WAS DONE AT THE DISPOSITION.
- RTA ADDED *FCA 350.3(4)*. THIS ADDITIONAL SUBSECTION STATES THAT THE VICTIM HAS THE RIGHT TO MAKE A STATEMENT IN COURT AT THE DISPOSITIONAL HEARING BUT....



... "THE VICTIM SHALL
NOT BE MADE AWARE
OF THE FINAL
DISPOSITION OF THE
CASE."

Even
Rodney
sees the
absurdity
of this

- THIS SECTION COULD BE UNCONSTITUTIONAL TO THE EXTENT THAT IT COULD BE INTERPRETED TO ALLOW THE FAMILY COURT TO EXCLUDE THE VICTIM FROM THE COURTROOM. SEE *IN RE M.F.*, 12 MISC.3D 1164(A) (FAM. CT., BRONX CO. 2006) AND *MATTER OF M.S.*, 173 MISC.2D 656 (FAM. CT., WESTCHESTER CO. 1997).
- I HAVEN'T HAD A VICTIM ASK TO BE PRESENT AT A DISPOSITION YET, SO THIS ISSUE HASN'T BEEN SOMETHING I HAVE HAD TO ARGUE.



SUFFICIENCY OF THE REMOVAL
PAPERWORK, LOST PAPERWORK AND TIME
CONSTRAINTS UNDER THE FCA

(OR HOW TO AVOID GETTING **BURNED**
WHEN THE CASE COMES BACK)

REMOVAL PROBLEMS UNDER RAISE THE AGE

- INSUFFICIENT PAPERWORK FROM THE YOUTH PART.
- FAILURE TO MARK DESIGNATED FELONY PETITIONS.
- FAILURE TO HAVE SUFFICIENT PAPERWORK TO ENHANCE A YOUTH PART REMOVAL TO A DESIGNATED FELONY ACT PETITION.
- INCOMPLETE OR MISSING PAPERWORK COMING FROM POLICE.
- MISSING DISCOVERY MATERIALS.
- CASES FAIL TO BE TRANSFERRED FROM THE YOUTH PART TO THE FAMILY COURT CLERK.
- WHAT DO YOU DO WITH THE VTL MISDEMEANORS IF ONE GETS REMOVED BACK TO FAMILY COURT?

WHAT IF THE REMOVAL ORDER IS INSUFFICIENT AS A PETITION

- THE REMOVAL ORDER IS SUPPOSED TO ACT AS THE PETITION FOR A CASE INVOLVING AN AO OR JO WHO HAS BEEN REMOVED FROM THE YOUTH PART BACK TO FAMILY COURT.
- IF THE REMOVAL ORDER DOES NOT HAVE SUFFICIENT NON-HEARSAY DEPOSITIONS, IT IS JURISDICTIONALLY INSUFFICIENT AND IS SUBJECT TO DISMISSAL.
- AT THE INITIAL APPEARANCE, THE PRESENTMENT AGENCY MUST MOVE TO ADD DEPOSITIONS TO THE REMOVAL ORDER TO CURE THE DEFECT. *MATTER OF DESMOND J.*, 93 NY2D 949(1999).
- DESMOND J DOES NOT ADDRESS WHETHER WE CAN MOVE TO ADD THE DEPOSITIONS AT ANY OTHER TIME.
- THE RESPONDENT'S FAILURE TO OBJECT TO THE INSUFFICIENT REMOVAL ORDER DOES NOT CURE THE DEFECT, AND THE DEFECT MAY BE RAISED AT ANY TIME, INCLUDING ON APPEAL. *MATTER OF MICHAEL M.*, 3 NY3D 441 (2004).



SPEEDY FACT
FINDING TIME
CONTINUES TO
RUN IF AN
INSUFFICIENT
PETITION IS
DISMISSED, SO
SPEEDY RE-FILEING
IS NECESSARY!

REMOVAL AFTER PRELIMINARY HEARING OR UPON GRAND JURY ACTION

- IN *MATTER OF MICHAEL M.*, 3 NY3D 441 (2004), THE COURT, IN DICTA, INDICATED THAT IF A CASE IS REMOVED TO FAMILY COURT AFTER A PRELIMINARY HEARING, OR UPON ACTION OF THE GRAND JURY, TESTIMONY TAKEN IN THESE PROCEEDINGS MAY BE A SUFFICIENT SUBSTITUTE FOR NON-HEARSAY DEPOSITIONS.
- IF A CASE IS REMOVED FROM THE YOUTH PART POST INDICTMENT, THE INDICTMENT IS SUFFICIENT AS IT HAS THE SAME NON-HEARSAY PRIMA FACIE CASE SUFFICIENCY REQUIREMENTS AS A PETITION.
- **REMEMBER! GRAND JURY MINUTES MUST BE SENT OVER TO FAMILY COURT WITHIN 30 DAYS OF REMOVAL. FCA 311.4(7)**

REMOVAL OF A CHARGE THAT WOULD BE A DESIGNATED FELONY UNDER THE FCA

- IF A DESIGNATED FELONY IS REMOVED FROM THE YOUTH PART TO FAMILY COURT, THE FAMILY COURT CLERK MUST **PROMINENTLY** MARK THE REMOVAL PETITION WITH A STATEMENT MARKING IT TO BE A DESIGNATED FELONY.
- FAILURE TO DO SO WILL PREVENT THE RESPONDENT FROM BEING ABLE TO RECEIVE A DESIGNATED FELONY DISPOSITION, INCLUDING:
 - A. LEAST RESTRICTIVE STANDARD DOES NOT APPLY AT DISPOSITION;
 - B. 3 OR 5 YEAR RESTRICTIVE PLACEMENTS;
 - C. FUTURE INELIGIBILITY FOR YO STATUS IN A CRIMINAL MATTER.

MATTER OF WARREN W., 216 AD2D 225(1ST DEPT. 1995)

WHAT DO YOU DO IF THE CLERK FAILS TO MARK THE PAPERWORK?

- IF THE CASE IS REMOVED WITHOUT THE MARKING AND THE FAMILY COURT CLERK FAILS TO MARK IT, THE PRESENTMENT AGENCY MAY MOVE TO HAVE IT SO MARKED AT THE INITIAL APPEARANCE IN FAMILY COURT, OR AT SOME LATER POINT.
- MUST BE DONE PRIOR TO FACT FINDING.
- THE EARLIER THE BETTER, TO GIVE THE RESPONDENT PROPER NOTICE IN ADVANCE OF THE HEARING.

ENHANCING AN AO REMOVAL TO A DESIGNATED FELONY (OR HOW TO DEAL WITH YOUR FREQUENT FLIERS)

- WE ARE NOW DEALING WITH OLDER JUVENILES. SOME OF THESE YOUTHS MAY HAVE BEEN THROUGH YOUR COURT BEFORE AND HAD PRIOR FELONY ADJUDICATIONS.
- JUVENILES WHO HAVE PRIOR FELONY FINDINGS CAN HAVE THEIR NEXT FELONY CHARGE ENHANCED TO A DESIGNATED FELONY IF:
 1. THE JUVENILE HAS A PREVIOUS FINDING OF ASSAULT IN THE SECOND DEGREE(PL120.05), ROBBERY IN THE SECOND DEGREE(PL160.10) OR ANY DESIGNATED FELONY FINDING. FCA 301.2(8)v, OR;
 2. THE JUVENILE HAS TWO PRIOR FELONY FINDINGS. FCA 301.2(8)vi.

DEALING WITH YOUR FREQUENT FLIERS, CONT.

- THE DA'S OFFICE IS NOT GOING TO KNOW ABOUT AN AO'S PRIOR JD CASES BUT YOU DO!
- KNOW THE CIRCUMSTANCES WHEN YOU CAN DO THIS. SEE *FCA 301.2(8) v* AND *FCA 301.2(8)vi*.
- FOR THE REMOVAL ORDER TO BE SUFFICIENT, ALONG WITH MARKING THE ORDER AS A DESIGNATED FELONY ACT PETITION, CERTIFIED COPIES OF THE PRIOR CERTIFICATES OF DISPOSITION MUST ALSO BE ATTACHED.
- EITHER THE ADA MUST SUBPOENA THE CERTIFICATES OF DISPOSITION FROM THE FAMILY COURT CLERK AND ATTACH THEM PRE-REMOVAL (NOT LIKELY), OR IF THE PRESENTMENT AGENCY ATTORNEY MUST MAKE SURE THIS IS DONE AT THE PRELIMINARY APPEARANCE IN FAMILY COURT.

HUMAN ERROR

WHAT TO DO WHEN THE BACK
OFFICE LOOSES YOUR FILE.



SOMETIMES CASES GET LOST BETWEEN
THE TWO CLERKS OFFICES
OR
DON'T GET SCHEDULED PROPERLY

- IF THIS HAPPENS, THE FCA TIMELINES STILL APPLY.
 1. SPEEDY INITIAL APPEARANCE (FCA 320.2(1))
 2. SPEEDY FACT-FINDING (FCA 340.1)

FCA TIMING REQUIREMENTS CONTINUED

- THE DATE THE ORDER OF REMOVAL UNDER CPL 725.05 IS FILED WITH THE FAMILY COURT BECOMES THE DATE THE PETITION IS FILED.
- IF THE RESPONDENT IS DETAINED, THE ORDER OF REMOVAL MUST SPECIFY AN APPEARANCE DATE NOT LATER THAN THE NEXT DAY THAT FAMILY COURT IS IN SESSION. *CPL 725.05(7)*.
- IF THE RESPONDENT ISN'T DETAINED, THE ORDER OF REMOVAL MUST SPECIFY A DATE WITHIN 10 DAYS FROM THE DATE OF REMOVAL FOR THE RESPONDENT TO APPEAR IN FAMILY COURT. *CPL 725.05(7)*

SPEEDY INITIAL APPEARANCE ISSUES

- SPEEDY INITIAL APPEARANCE TIME BEGINS TO RUN UPON FILING THE ORDER OF REMOVAL IN FAMILY COURT.
- IF THE CLERK FORGETS TO SCHEDULE THE APPEARANCE, OR SCHEDULES IT OUTSIDE OF THE WINDOW, FAILURE TO CONDUCT A TIMELY INITIAL APPEARANCE COULD RESULT IN THE DISMISSAL OF THE REMOVAL PETITION, WITHOUT PREJUDICE TO RE-FILE. *MATTER OF ROBERT O.*, 87 NY2D 9(1995)

REMEMBER!

- SPEEDY FACT FINDING TIME CONTINUES TO RUN EVEN WHEN THE PETITION IS DISMISSED WITHOUT PREJUDICE. *MATTER OF WILLIE E.*, 88 NY2D 205 (1996), *MATTER OF TOMMY C.*, 182 AD2D 312(2D DEPT. 1992)

HOWEVER...

- CASES REMOVED FROM THE YOUTH PART AND SENT TO DIVERSION ARE NOT BOUND BY THESE TIMELINES.
- THERE IS NOW CASE LAW THAT HOLDS THAT A ONCE A CASE HAS BEEN REMOVED FROM THE YOUTH PART FOR DIVERSION SERVICES, IT ARRIVES AT THE PROBATION DEPARTMENT AS IF IT WAS A NEW ARREST. *MATTER OF JEREMY H. FAM. CT. QUEENS CO. 03/26/2019* (THE COURT DISCUSSES HOW BADLY THE LEGISLATION IS WRITTEN).
- IF THE CHILD IS DEEMED TO BE INELIGIBLE FOR DIVERSION OR FAILS AT THE PROGRAM AND PROBATION FORWARDS IT TO THE PRESENTMENT AGENCY, IT STARTS OUT LIKE ANY OTHER CASE.
- IF YOU HAVEN'T ALREADY DONE IT, GET THE DISCOVERY FROM THE DA'S OFFICE WHILE THE CASE IS WITH PROBATION, JUST IN CASE.

FIX THE PROBLEM BEFORE IT STARTS: COMMUNICATION IS THE KEY

- IF YOU HAVEN'T DONE IT, MEET WITH YOUR DA'S OFFICE AND THE SUPREME/COUNTY AND FAMILY COURT CLERK TO ESTABLISH PROTOCOLS FOR PASSING THE CASES BETWEEN THE OFFICES AND COURTS.
- STAY INFORMED ABOUT THE CASES IN THE YOUTH PART THAT ARE GOING TO HEAD YOUR WAY (OR SIMPLY ATTEND THE YOUTH PART SESSIONS).
- ESTABLISH PROTOCOLS WITH THE LOCAL POLICE DEPARTMENTS TO MAKE SURE THAT SUFFICIENT SUPPORTING DEPOSITIONS ARE OBTAINED **BEFORE** THE CASES ARE REMOVED SO YOU AREN'T SCRAMBLING TO OBTAIN THEM AT THE LAST MINUTE.
- BE PROACTIVE ABOUT GETTING THE DISCOVERY MATERIALS!

VTL MISDEMEANORS

- THERE ARE NUMEROUS MISDEMEANOR OFFENSES UNDER THE VEHICLE AND TRAFFIC LAW
- **DWI**- VTL SECTIONS 1192.2 & 2(A), 1192.3, 1192.4
- **AGGRAVATED UNLICENSED OPERATION**- VTL SECTIONS 511.1(AUO 3RD) & 511.2(AUO 2ND)
- **RECKLESS DRIVING**- VTL SECTION 1212

VTL MISDEMEANORS, CONT.

YOUTH UNDER 16 WHO GET INTO TROUBLE WHILE OPERATING MOTOR VEHICLES CAN BE CHARGED WITH VTL MISDEMEANORS IN FAMILY COURT.

16 AND 17 YEAR OLD YOUTH OFTEN HAVE DRIVERS LICENSES AND LEGAL ACCESS TO CARS, AND THEY OFTEN GET INTO TROUBLE WITH THE VTL.

WHAT HAPPENS TO THE VTL MISDEMEANORS WHEN IF AN ADOLESCENT OFFENDER IS CHARGED WITH THEM AS PART OF THE CRIMINAL TRANSACTION?

THIS IS AN INTERESTING QUESTION, AND HINGES ON YOUR INTERPRETATION OF THE LANGUAGE OF RTA SECTIONS IN PENAL LAW 30.00(3)D(I) AND CPL 722.21(6)E AND 722.23(1)H.

PENAL LAW 30.00(3)(D)(I) AND (III)

- A PERSON SIXTEEN...OR SEVENTEEN YEARS OF AGE IS CRIMINALLY RESPONSIBLE FOR ACTS CONSTITUTING:
- (D) A MISDEMEANOR AS DEFINED IN SUBDIVISION FOUR OF SECTION 10.00 OF THIS CHAPTER, BUT ONLY WHEN SUCH CHARGE IS:
- (I) ACCOMPANIED BY A FELONY CHARGE THAT IS SHOWN TO HAVE BEEN COMMITTED IN THE SAME CRIMINAL TRANSACTION...
- (III) A MISDEMEANOR THAT IS DEFINED IN THE VEHICLE AND TRAFFIC LAW

CPL SECTION 722.23(1)A

- “FOLLOWING THE ARRAIGNMENT OF A DEFENDANT CHARGED WITH A CRIME COMMITTED WHEN HE OR SHE WAS SIXTEEN, OR ...SEVENTEEN YEARS OF AGE, OTHER THAN A CLASS A FELONY EXCEPT THOSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW(DRUG CASES), A VIOLENT FELONY DEFINED IN SECTION 70.02 OF THE PENAL LAW OR A FELONY LISTED IN PARAGRAPH ONE OR TWO OF SUBDIVISION FORTY-TWO OF SECTION 1.20 OF THIS CHAPTER(J.O. CRIMES), OR AN OFFENSE UNDER THE VTL, THE COURT SHALL ORDER THE REMOVAL OF THE ACTION TO THE FAMILY COURT...”
- OBVIOUSLY, IT WAS INTENDED THAT ANYTHING VTL RELATED WILL REMAIN IN THE YOUTH PART.

PURPOSE

THE PURPOSE OF THIS AWKWARD LANGUAGE IS TO ENSURE THAT 16 AND 17 YEAR OLDS WHO COMMIT A DWI WILL HAVE IT AS A PREDICATE FOR ENHANCEMENT TO A FELONY ON THEIR SECOND DWI.

CPL SECTION 722.23(1)H

- OBVIOUSLY, STANDALONE VTL MISDEMEANORS ARE GOING TO THE LOCAL COURT TO BE HANDLED BY THE DA'S OFFICE.
- HOWEVER, WHAT DO YOU DO IF YOU HAVE A CASE THAT INVOLVES MISDEMEANORS THAT WOULD COME TO YOU, TIED UP WITH A VTL MISDEMEANOR, OR A FELONY IN THE YOUTH PART THAT IS ELIGIBLE FOR REMOVAL TIED UP WITH A VTL MISDEMEANOR?
- CPL 722.23(1)H STATES THAT THE YOUTH PART CAN REMOVE ANY CASE TO THE FAMILY COURT ON CONSENT OF THE PARTIES, SO YOU COULD GET A VTL MISDEMEANOR ON A REMOVAL IF THE DA AND THE DEFENSE ATTORNEY CONSENT TO IT.

HOW TO HANDLE THIS SITUATION

- IF YOU GET MISDEMEANOR CHARGES AGAINST A 16/17 YEAR OLD RESPONDENT AND YOU SEE THAT A VTL MISDEMEANOR WAS FILED IN THE LOCAL COURT, REACH OUT TO THE ADA IN THE PART AND CO-ORDINATE WHAT YOU ARE DOING.
- LEARN THE CHARGES SO THAT YOU ARE READY FOR THEM IN THE EVENT YOU GET ONE BACK FROM THE YOUTH PART.

THANK YOU!



ISSUES THAT HAVE ARISEN WITH RTA SINCE IT'S IMPLIMENTATION

Definitions:

“Adolescent offender means a person charged with a felony committed on or after October first, two thousand eighteen when he or she was sixteen years of age or on or after October first, two thousand nineteen, when he or she was seventeen years of age.”

“Juvenile offender means (1) a person, thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of the penal law, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.”

Relevant Statutes:

Youth Part: “CPL 722.10 (1):The chief administrator of the courts is hereby directed to establish, in a superior court in each county of the state, a part of the court to be known as the youth part of the superior court for the county in which such court presides. Judges presiding in the youth part shall be family court judges, as described in article six, section one of the constitution. To aid in their work, such judges shall receive training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct by youths, and shall be authorized to make appropriate determinations within the power of such superior court with respect to the cases of youths assigned to such part. The youth part shall have exclusive jurisdiction in all proceedings in relation to juvenile offenders and adolescent offenders, except as provided in this article or article seven hundred twenty-five of this chapter.”

Statute of Limitations: FCA 302.2 : "A juvenile delinquency proceeding must be commenced within the period of limitation prescribed in section 30.10 of the criminal procedure law or, unless the alleged act is a designated felony as defined in subdivision eight of section 301.2, commenced before the respondent's eighteenth birthday, whichever occurs earlier. When the alleged act constitutes a designated felony as defined in subdivision eight of section 301.2 such proceeding must be commenced within such period of limitation or before the respondent's twentieth birthday, whichever occurs earlier."

Restitution: FCA 353.6(1)a: "At the conclusion of the dispositional hearing in cases involving respondents over ten years of age the court may:

(a) recommend as a condition of placement, or order as a condition of probation or conditional discharge, restitution in an amount representing a fair and reasonable cost to replace the property, repair the damage caused by the respondent or provide the victim with compensation for unreimbursed medical expenses, not, however, to exceed one thousand five hundred dollars. In the case of a placement, the court may recommend that the respondent pay out of his or her own funds or earnings the amount of replacement, damage or unreimbursed medical expenses, either in a lump sum or in periodic payments in amounts set by the agency with which he or she is placed, and in the case of probation or conditional discharge, the court may require that the respondent pay out of his or her own funds or earnings the amount of replacement, damage or unreimbursed medical expenses, either in a lump sum or in periodic payments in amounts set by the court;"

Victim at the Dispositional Hearing: FCA 350.3(4): "The victim has the right to make a statement with regard to any matter relevant to the question of disposition. If the victim chooses to make a statement, such individual shall notify the court at least ten days prior to the date of the dispositional hearing. The court shall notify the respondent no less than seven days prior to the dispositional hearing of the victim's intent to make a statement. The victim shall not be made aware of the final disposition of the case."

Designated Felony Act Petitions: FCA 311.1(5): "If the petition alleges that the respondent committed a designated felony act, it shall so state, and the term "designated felony act petition" shall be prominently marked thereon. Certified copies of prior delinquency findings shall constitute sufficient proof of such findings for the purpose of filing a designated felony petition. If all the allegations of a designated felony act are dismissed or withdrawn or the respondent is found to have committed crimes which are not designated felony acts, the term "designated felony act petition" shall be stricken from the petition."

Speedy Arraignment: FCA 320.2(1): "If the respondent is detained, the initial appearance shall be held no later than seventy-two hours after a petition is filed or the next day the court is in session, whichever is sooner. If the respondent is not detained, the initial appearance shall be held as soon as practicable and, absent good cause shown, within ten days after a petition is filed."

Speedy Fact Finding: FCA 340.1(1) & (2): "1. If the respondent is in detention and the highest count in the petition charges the commission of a class A, B, or C felony, the fact-finding hearing shall commence not more than fourteen days after the conclusion of the initial appearance except as provided in subdivision four. If the respondent is in detention and the highest count in such petition is

less than a class C felony the fact-finding hearing shall commence no more than three days after the conclusion of the initial appearance except as provided in subdivision four.

2. If the respondent is not in detention the fact-finding hearing shall commence not more than sixty days after the conclusion of the initial appearance except as provided in subdivision four.”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART YP32
-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

Indictment Number: 0204/20

N.A.,

Defendant.

-----X
Denis J. Boyle, J.:

The defendant, an Adolescent Offender, stands charged upon the instant indictment with Attempted Assault in the First Degree (Penal Law section 110/120.10(1)); and related charges.¹ The People have moved pursuant to Criminal Procedure Law sections 722.23(1)(b) and (d), to prevent removal of this action to the Family Court on the ground that "extraordinary circumstances exist that should prevent the transfer of the action to family court" (Criminal Procedure Law section 722.23(1)(d)). Upon consideration of the People's motion to prevent removal and the defendant's written opposition thereto, pursuant to Criminal Procedure Law section 722.23(1)(e), I now make the following findings of fact and reach the following

¹ The instant indictment charges the defendant and the co-defendant with Attempted Assault in the First Degree (Penal Law section 110/120.10(1)), under Count Three, on the theory that the defendant and the co-defendant attempted to inflict serious physical injury upon the complainant by the use of a dangerous instrument, that being shoes. The defendant and his co-defendant stand charged additionally under Count Five with Assault in the Second Degree (Penal Law section 120.05(2)) and with related charges including separate counts of Grand Larceny in the Fourth Degree (Penal Law sections 155.30(4) and (5)). The defendant's father stands separately charged with multiple theories of Robbery (Penal Law sections 160.10(1) and (2)(a)); with Assault in the Second Degree under Penal Law section 120.05(6)) and Criminal Possession of a Weapon (Penal Law section 265.01(2)) (see People's Exhibit One attached in support of the People's Affirmation to Prevent Removal Pursuant to C.P.L. section 722.23).

conclusions of law.

Findings of Fact:

The People allege that on December 28, 2019, at approximately 2:40 a.m., the complainant, in a state of intoxication, walked into an ATM inside a Kennedy's Chicken restaurant located at 1893 Andrews Avenue. As depicted on video surveillance footage, the complainant struggled to use the ATM for approximately five minutes. While the complainant was engaged in this process, the defendant's now co-defendant father watched the complainant's efforts to retrieve money from the ATM. The defendant's father is further depicted on the video surveillance walking over to the complainant and standing directly next to the complainant at the ATM. At one point when the complainant looked at the co-defendant, the co-defendant turned his head away from the complainant.

At length, the complainant left the commercial premises at which point the defendant's father had remained, waiting outside the restaurant. The defendant's father then punched the complainant in the face with such force that the complainant stiffened, fell backwards and struck his head on concrete. The co-defendant father then stomped twice on the complainant's face and began to rummage through the complainant's pockets. The co-defendant proceeded to remove the complainant's credit card, money, a gold necklace and airpod headphones from the complainant. He then grabbed the complainant by the belt as complainant remained lying on the ground, and dragged the complainant across the sidewalk to a nearby parked vehicle.

As further depicted on video surveillance, at that point, the defendant ran up to the complainant and kicked him twice in the face. Both the defendant and his father, the co-defendant, then entered the Kennedy's Chicken restaurant together. While inside the restaurant,

the defendant's father handed the defendant various items of the personal property the father had removed from the complainant's person moments before, including the airpod headphones and money. The People further allege that the defendant then used money which had been taken from the complainant to purchase food for himself and his father. Meanwhile, the complainant was rolling around on the ground amongst garbage and struggling to stand. After some difficulty, the complainant was able to stand and began walking away from the scene. The defendant's father then ran over to the complainant and removed the complainant's cell phone from complainant's back pants pocket. Both the defendant and his co-defendant father then walked from the scene together.

The defendant's date of birth is January 4, 2002. He was arrested in the instant matter on January 10, 2020 upon his surrender to the police. Accordingly, although an Adolescent Offender at the time of the alleged crimes charged in this case, he was eighteen years of age at the time of his arrest for the present charges. He has no prior Family Court history and no prior contacts with the Criminal Justice system (Defense Motion in Opposition to People's Motion to Prevent Removal Pursuant to CPL section 722.23(1), pg.3; People's Affirmation to Prevent Removal Pursuant to C.P.L. 722.23, pg.11).

Conclusions of Law:

The basis for the People's contention that extraordinary circumstances are presented in this case such as would warrant retaining the action in the Youth Part of the Supreme Court requires reference to certain provisions in the Family Court Act. Family Court Act section 301.2 defines the term Juvenile Delinquent, insofar as is pertinent to this case, as "a person over seven and ... less than eighteen years of age, who, having committed an act that would constitute a crime, ..., if

committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law."² Pursuant to the statute of limitations provided for under Family Court Act section 302.2, a "juvenile delinquency proceeding must be commenced within the period of limitation prescribed in section 30.10 of the criminal procedure law or, unless the alleged act is a designated felony as defined in subdivision eight of section 301.2, commenced before the respondent's eighteenth birthday, whichever occurs earlier. When the alleged act constitutes a designated felony as defined in subdivision eight of section 301.2 such proceeding must be commenced within such period of limitation or before the respondent's twentieth birthday, whichever occurs earlier."

In this case, as indicated supra, the instant Adolescent Offender stands charged with Attempted Assault in the First Degree (Penal Law section 110/120.10(1)), under count three of the indictment; Assault in the Second Degree (Penal Law section 120.05(2)), under count five; Attempted Assault in the Second Degree (Penal Law section 110/120.05(1)), under count seven; separate counts of Grand Larceny in the Fourth Degree (Penal Law sections 155.30(4) and (5)), under counts eight and nine; a single count of Criminal Possession of Stolen Property in the Fourth Degree (Penal Law section 165.45(2)), under count ten; and various misdemeanors under

² In seeking to interpret the application of Family Court Act section 301.2 to the case at hand, and in consideration of what conclusion follows, for purposes of disposition of the instant People's motion to prevent removal, I am mindful of the Supplemental Practice Commentaries to McKinney's Family Court Act section 301.2. Definitions, incident to which the Practice Commentaries from 2017, state, in part, "[S]ection 301.2 has been significantly amended as part of the 'raise the age' Act, effective largely in October 2018 and October 2019 [L. 2017, c. 59]. The Act basically raises the age of criminal responsibility from sixteen to eighteen. However, the provisions are extremely complicated, and in several respects are needlessly convoluted."

counts eleven, twelve and thirteen. As the People argue, none of the counts with which the Adolescent Offender before me stands charged are, under the circumstances, designated felonies within the scope of Family Court Act 301.2(8). It follows, as argued by the People, that because the instant Adolescent Offender "turned himself into law enforcement after his eighteenth birthday, the statute of limitations has already expired prior to the ability of the Family Court to hold a juvenile delinquency proceeding" (People's Affirmation to Prevent Removal Pursuant to C.P.L. section 722.23, pg.12). That is, because the Adolescent Offender has turned eighteen years of age since the commission of the charged crimes in this case, and prior to his arrest, the Family Court, would, by virtue of the terms of Family Court Act 302.2, be without jurisdiction to commence a juvenile delinquency proceeding against the instant defendant.³ It further follows, for reasons amplified upon by the People in their written motion, that extraordinary circumstances are therefore presented within the meaning of Criminal Procedure Law section 722.23(1)(d), thereby requiring that the action remain in the Youth Part.

As fully developed in defendant's Motion in Opposition to the People's Motion to Prevent Removal Pursuant to CPL section 722.23(1), the defendant does not differ with the People as to the effect of Family Court Act section 302.2, on the instant action, should it be removed to Family Court. However, for the reasons argued by the defendant in defendant's motion in opposition, defendant maintains that, nevertheless, extraordinary circumstances within the

³ As stated in McKinney's Practice Commentaries for McKinney's Family Court Act section 302.2, Statute of Limitations, "since placement of a delinquent who has not committed a designated felony cannot be extended beyond his eighteenth birthday in the absence of consent (although an original placement may extend beyond age eighteen; see section 353.3), a prosecution might have little meaning unless commenced before age eighteen, or age twenty-one in the case of a designated felony."

meaning of Criminal Procedure Law section 722.23(1)(d) are not presented.

Consideration of the respective arguments by the People and the defense requires reference not only to the terms of Family Court Act 302.2, but to the New York State Legislature's intent in enacting that statute and to the legislative intent underlying Criminal Procedure Law section 722.23(1)(d) (People's Affirmation to Prevent Removal Pursuant to C.P.L. section 722.23, Memorandum of Law, pgs. 8-15; Defense Opposition to People's Motion to Prevent Removal Pursuant to CPL section 722.23(1), Memorandum of Law, pgs. 3-8).

In doing so, reference to the legislative history of Criminal Procedure Law section 722.23(1) is informative. In pertinent part, portions of the discussion at a session of the New York State Legislature on April 8, 2017, reflect that it was the expectation of the legislature that "in the overwhelming bulk of the cases that the matter will be promptly transferred from the adult court to the family court ... and .. Only one out of a thousand cases, ..., for example those extremely rare and exceptional cases, would remain in the Youth Part ..." (Transcript, New York State Assembly session, April 8, 2017, pgs. 37-38). The record of that proceeding further reflects that, under the statute, "it is intended that the exceptional circumstances requirement will be a high standard for the DA to meet. And under this bill, denial of transfer to the family court should be extremely rare Transfer to the family court should be denied only when highly unusual and heinous facts are proven and there is strong proof that the young person is not amenable or would not benefit in any way from the heightened services of family court" (Transcript, New York State Assembly Session, April 8, 2017, pgs. 39-40). Further reference to the legislative history of Criminal Procedure Law section 722.23(1) and to the large body of case law which has construed that statute since it became effective, makes clear that the application of

the extraordinary circumstances standard for the purpose of denying removal of actions to the Family Court has been reserved for rare cases and ones which, typically, are characterized by either repeated criminal conduct over time or the cruel and heinous conduct contemplated by the legislature (see *People v. A.G.*, 62 Misc3d 1210(A) [Supreme Court Queens County 2018]; *People v. K.F.*, 67 Misc3d 1215(A) [County Court Nassau County 2020]). The underlying factual allegations at issue here, do not, in themselves, rise to extraordinary circumstances within the meaning and intent of Criminal Procedure Law section 722.23(1)(d) (*People v. J.P.*, 63 Misc3d 635 [Supreme Court Bronx County 2019]).

The question becomes whether the consequences to this action which will follow in the event the matter is removed to Family Court warrant a finding of extraordinary circumstances under Criminal Procedure Law section 722.23(1)(d). I would note that Family Court Act 302.2 was in effect at the time that Article 722 of the Criminal Procedure Law was under consideration by the New York State Legislature, and accordingly, in effect at the time that Criminal Procedure Law section 722.23(1) was enacted. I find no basis for concluding as the People argue, that the impact of Family Court Act 302.2 on cases such as the instant one "was not foreseeable in the normal course of events" (*People's Affirmation to Prevent Removal Pursuant to C.P.L. 722.23*, Memorandum of Law, pg. 13).

In any event, in my view, even if the apparent consequence of removal to the Family Court in this case was not the intent of the New York Legislature, it is not for this Court to fill in an arguable legislative gap or oversight, be it in Criminal Procedure Law section 30.10, Article 722 of the Criminal Procedure Law or in the Family Court Act. As stated in *People v. Cristostomo* (95 AD3d 401 [1st Department 2012]), "[N]ew language cannot be imported into a statute to

give it a meaning not otherwise found therein.' ... Moreover, a court cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact' (Matter of Chemical Specialities Mfrs. Assn. v Jorling, 85 NY2d 382, 394, [1995], quoting McKinney's Cons Laws of NY, Book 1, Statutes section 94 at 190, section 363 at 525; see also People v Hill, 82 AD3d 77,80 [2011])" (id at pg. 402). As stated in Green v Potter (51 NY2d 627), "'courts cannot correct supposed errors, omissions or defects in legislation' (Matter of Koenigsberg, 302 NY 523, 525; McKinney's Cons. Laws, N.Y. Book 1, Statutes, s 573)" (id at pg. 629). Of additional relevance to the instant decision is the holding in People v Lopez (34 Misc3d 476 [Criminal Court Richmond County 2011]), and its underlying rationale, wherein the Court recognized, "'[I]t has long been held that when a statute describes the particular situations in which it is to apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded' (Golden v Koch, 49 NY2d 690, 697 [1980], citing McKinney's Cons. Laws of N.Y., Book 1, Statutes, section 240)" (id at pg. 480; see People v Swartz, 18 Misc3d 594 at pg. 598 [Supreme Court Chenango County 2007]). In the final analysis, "[R]egardless of whether" the arguable gap in the law presented in this case, "was an oversight, 'courts are not to legislate under the guise of interpretation' (People v Finnegan, 85 NY2d 53, 58 [1995], cert denied 516 U.S. 919; see also People v Tychanski, 78 NY2d 909 [1991])" (People v Feliz, 66 AD3d 503 at pg. 504 [1st Department 2009], app withdrawn 14 NY3d 800).

In this case, as discussed *supra*, the circumstances upon which the People rely in support of their motion to prevent removal, are largely circumstances attributed to the terms of the Family Court Act and attendant limitations on proceedings to be followed in the Family Court as regards

respondents who are eighteen at the time their action is removed to the Family Court.⁴ The actual or perceived shortcomings or even gaps in the Family Court Act with respect to actions to be taken in the Family Court with an eighteen year old individual respondent, do not operate to convert what otherwise would be a case that warranted removal to one that should be retained in the Supreme Court on the ground of extraordinary circumstances.⁵

Accordingly, I conclude that the People have not established extraordinary circumstances within the meaning of Criminal Procedure Law section 722.23(1)(d) in this record. The People's motion to prevent removal pursuant to Criminal Procedure Law section 722.23(1) is therefore denied.

This opinion constitutes the decision and order of the Court.

Date: *September 25, 2020*

DJB

Denis J. Boyle, A.J.S.C.

⁴ With respect to the potential outcome of further proceedings in Family Court in this particular case, the parties' attention is called to *People v M.R.*, (2020 N.Y. Slip Op. 20196 [Family Court Kings County, August 10, 2020]; see also, *Matter of Lelik*, [Family Court Oneida County, August 12, 2020]).

⁵ To conclude otherwise would be to accept the anomalous situation where cases involving Adolescent Offenders involving substantially less serious circumstances than others, would remain in the Youth Part and subject to the sentencing provisions for felonies under the Penal Law, than many other cases of more serious circumstances - and charges - because of the statute of limitations contained in the Family Court Act.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 73

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER

Docket # FYC-70226-20
Ind. # 70367-20

JAVON SANTIAGO,

Defendant.
-----X

Stephen Antignani, J.:

On August 21, 2020, the District Attorney filed a motion seeking an order preventing removal of this action to Family Court pursuant to CPL 722.23. The defendant filed an early response in opposition on September 16, 2020.¹ The court set the decision date for October 2, 2020.

The court makes the following findings of fact and conclusions of law.

The defendant was born on May 10, 2002. He was arraigned on May 13, 2020. He was charged with two counts of Burglary in the First Degree (PL § 140.30 [1], PL § 140.30 [2]); two counts of Criminal Possession of a Weapon in the Second Degree (PL § 265.03 [3], PL 265.03 [1] [b]); two counts of Assault in the Second Degree (PL § 120.05 [1], PL § 120.05 [2]), and one count of Attempted Assault in the First Degree (PL § 110/120.10 [1]) for an incident that occurred on March 21, 2020. Defendant was indicted for these charges on August 19, 2020.

CPL 722.23 provides in part:

(1) (a) ... the court shall order the removal of the action to the family court in accordance with the applicable provisions of article seven hundred twenty-five of this title unless, within thirty calendar days of ...arraignment, the district attorney makes a motion to prevent removal of the action

¹ The court set the Response date for September 28, 2020.

pursuant to this subdivision....

(b) A motion to prevent removal of an action in youth part [sic] shall be made in writing and upon prompt notice to the defendant. The motion shall contain allegations of sworn fact based upon personal knowledge of the affiant [emphasis supplied] and shall indicate if the district attorney is requesting a hearing. The motion shall be noticed to be heard promptly.

(c) The defendant shall be given an opportunity to reply. The defendant shall be granted any reasonable request for a delay. Either party may request a hearing on the facts alleged in the motion to prevent removal of the action. The hearing shall be held expeditiously.

(d) The court shall deny the motion to prevent removal of the action in youth part unless the court makes a determination upon such motion by the district attorney that extraordinary circumstances exist that should prevent the transfer of the action to family court.

(e) The court shall make a determination in writing or on the record within five days of the conclusion of the hearing or submission by the defense, whichever is later. Such determination shall include findings of fact and to the extent practicable conclusions of law.

The court finds that the District Attorney has demonstrated that extraordinary circumstances exist under the facts of this case which support a clear and compelling basis for overcoming the statutory preference that an adolescent offender have his case transferred to Family Court.

As correctly noted by the defense, the plain language of CPL 722.23 (1) (b) requires that a retention motion be in writing and contain allegations of sworn fact based upon personal knowledge of the affiant (*Matter of J.B.*, 2019 NY Slip Op 29051 [Westchester County Ct]; *People v C.M.*, FYC 70127-8/19 [Onondaga City Ct, Youth Pt, 9/25/19]; *People v Rivera*, Ind 70052/19 [Sup Ct, NY County, 5/8/19]; *People v Jaggernaut*, Ind 70052/19 [Sup Ct, NY County, 4/10/19]; *People v J.W.*, FYC-70022/19 [Sup Ct, Erie County Sup Ct, Youth Pt, 3/28/19]; *People v A.T.* [Sup Ct, Erie County, Youth Pt 3/25/19]; *People v T.R.*, 62 Misc3d 1219 [A] [Sup Ct, Erie County, Youth Pt, 2018]). The court is, therefore, only considering the portion of the District Attorney's motion that is in writing and that contains allegations of sworn fact based upon personal knowledge of the affiant (*id.*).

Attached to the District Attorney's submission is a copy of the felony complaint against this defendant (Exh 1); a copy of the felony complaint against co-defendant Devine Sweeper (Exh 2); a copy of the felony complaint against co-defendant Tyquan McClary (Exh 3); a copy of the felony complaint against co-defendant Richard Santiago (Exh 4); the Supplemental Affidavit of Det. Steven Stiller (Exh 5); a photograph of the defendant (Exh 6); video surveillance files (Exh 7a-g); a map of the Lower East Side (Exh 8); the NYPD Property Clerk Invoice (Exh 9); the victim's medical records (Exh 10); and a photo of the back of the defendant's navy blue vest with an eagle design (Exh 11).

All of the circumstances presented to the court must be considered in determining whether extraordinary circumstances exist which would override the preference for removal and justify retaining this matter in Supreme Court. The intent of the RAGE legislation was that the overwhelming bulk of cases would be removed to Family Court (see *People v. Kwesi P.*, Ind. No. 70282/19 [NY County, Hon. Gayle Roberts, 10/27/2019]). However, denial would be warranted where a young person was not amenable to or would not benefit in any way from the heightened services available in Family Court (*id.*)

The defendant is presently 18 years old. It is alleged that on March 21, 2020, the defendant and co-defendants Richard Santiago, Devine Sweeper, and Tyquan McClary unlawfully entered an apartment with intent to commit a crime (P's Mot, Exhs 1 – 4).² It is further alleged that one of the men fired multiple shots from a gun, thereby shooting the victim in the hand. Two bullets and other evidence were recovered from the apartment (P's Mot, Exh 9). Both the victim and co-defendant Sweeper were treated at the hospital (P's Mot, Exhs 5, 10). As a result of these alleged actions, the defendant was arrested, charged and

² The incident occurred when New York City was the epicenter of the coronavirus pandemic in the U.S. and its citizens were instructed by both the Mayor and the Governor to stay in their apartments to control the spread of the virus. One's apartment was one of the few places where New Yorkers believed that they were safest from the spread of the virus. By these alleged acts, the defendant and his cohorts potentially exposed the victim and others to the virus.

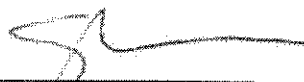
subsequently indicted with multiple violent felony charges.

Notwithstanding that the prosecutor relies on the felony complaint in her motion, there can be no dispute that the defendant had already turned 18 years old when he was arrested for this incident -- an incident that occurred prior to his 18th birthday. Because defendant turned 18 before a petition could be filed in Family Court on this case, his case would have to be dismissed in Family Court without the possibility of the defendant even being charged for these alleged serious and violent acts (FCA § 302.2). Such a result would impede justice and would instill little confidence in the criminal justice system. Moreover, the defendant would be unable to avail himself of any of the services offered in Family Court; services which form the foundation of New York State's Raise the Age legislation.

For this reason, the court concludes that extraordinary circumstances exist here that justify retaining this case where defendant is charged with serious and violent felonies in Supreme Court pursuant to CPL 722.23 (1) (d). The People's motion is granted.

This constitutes the Decision and Order of the Court.

Dated: New York, New York
October 2, 2020



Stephen Antignani
J.S.C.

HON. STEPHEN M. ANTIGNANI

Part 73 SEP 30 2020

Legislative Update

Stephen J. Acquario, Esq.
Patrick R. Cummings, Esq.

2020 New York State
Legislative Session Summary:
The Impact on New York's Counties

*An Interim Report on Bills the Legislature Passed
November 23, 2020*



NYSAC
— NEW YORK STATE —
ASSOCIATION OF COUNTIES

Stephen J. Acquario, Esq., General Counsel, Executive Director
Patrick Cummings, Esq., Counsel

Table of Contents

| | |
|---|----|
| Non-Budget Legislative Action: | 5 |
| Agriculture..... | 5 |
| Economic Development..... | 7 |
| Elections..... | 8 |
| Environment & Energy | 10 |
| General Government Operations..... | 10 |
| Housing..... | 10 |
| Judiciary | 11 |
| Local Government Finance | 11 |
| Public Employee Relations & Labor..... | 12 |
| Public & Mental Health | 13 |
| Public Safety | 14 |
| Transportation & Public Works..... | 17 |
| Veterans..... | 17 |

The mission of the New York State Association of Counties (NYSAC) is to represent, educate, advocate for, and serve the 62 counties of New York State, including the City of New York. During the 2020 Legislative Session, NYSAC staff, together with its membership, worked with the State Legislature and Governor in support or opposition to numerous legislative and budget items.

This year's state budget was enacted in one of the most difficult periods in our lifetimes, given the public health, social, and economic uncertainties of the COVID-19 pandemic and its impact on the state and our counties. The budget addresses the economic uncertainty through a combination of new authority to make mid-year cuts, expand the state's borrowing capacity, and accept federal funding.

While the continuity of county government operations is protected through the preservation of local Medicaid caps and the extension of local home rule revenue authority, there could be significant mid-year cuts associated with reductions in state reimbursement tied to the loss of state and local revenue. In addition, counties will contribute to a new fiscally distressed hospital and nursing home pool.

Some other key county priorities in the 2020-21 State Budget include:

- Securing an additional \$50 million for indigent defense,
- Securing an additional \$250 million for implementing the raise the age legislation,
- Increasing the CHIPS bidding threshold from \$250k to \$350k,
- Securing a continuation of \$15 million to address the unmet needs of seniors,
- Inclusion of all outstanding county home rule extender legislation,
- An additional \$13 million for Code Blue, and
- An additional \$75 million to administer Federal Families First Prevention Services Act.

Outside of these budget actions, Lawmakers have approved 185 matching bills as of June 12th that have been, or will be, sent to Governor Cuomo for his signature or veto before the end of 2020. These include several county home rule revenue bills for mortgage recording, hotel occupancy and sales tax, highlighted in the "Local Government Operations & Finance" section of this report.

What follows is a snapshot of the bills that passed both the Senate and Assembly that have a direct or indirect impact on counties. Each section provides the bill number (with direct links to the bill text via an electronic document), a brief description, and where it is in the legislative process, including:

- Chapter Number (signed) or Veto Message,
- "Delivered to the Governor" date (the Governor has 10 days to act not including Sundays),
- "Passed Both Houses" – Passed Assembly and Senate, awaiting the Governor's action.

2020 Legislative Session Overview

The 2020 Legislative Session that began on January 8th was more challenging and atypical than any in history, as the legislature convened remotely and reconvened to resume legislative activity for only a few days since the budget passed. Thus, legislative activity this year was dramatically lower than 2019, as well as most other years. During the initial period prior to budget, the legislature passed a series of minor technical corrections called chapter amendments. In the post-budget period, they reconvened to debate 30 bills addressing the COVID-19 pandemic, a series of legislation to reform police activity as well as a session to pass relatively non-controversial home rule measures. The State Legislature has passed a total of 964 bills to date, down from 1,719 bills last year, 413 of which were approved by both houses. Those 413 bills must be sent to the Governor by the end of 2020 to be signed into law or vetoed.

Non-Budget Legislative Action: **Legislation that Passed Both Houses of the Legislature**

NYSAC has identified the following pieces of legislation, categorized by issue area, that have or may have an impact on our county governments. These are bills that have passed both the State Senate and State Assembly.

Agriculture

Relates to the use of pesticides to protect livestock and farm property against Asian longhorned ticks

[S.6966 \(Metzger\) / A. 9742 \(Barrett\)](#)

This legislation amends the use of pesticides to protect livestock from an invasive species of Asian longhorned ticks and impede tick-borne diseases.

Status: Signed by the Governor, Chapter 67 of the Laws of 2020

The Excess Food Act – requiring supermarkets to make excess food available to non-profit food pantries

[S.4176-A \(Harckham\) / A.4398-A \(Abinanti\)](#)

This legislation amends the environmental conservation law, in relation to requiring supermarkets to make excess food available to qualifying entities. Qualifying entities are a non-profit or religious organization which provides food to needy individuals, such as a food pantry, food bank, soup-kitchen or community-based organization.

Status: Passed Both Houses

Authorizes and directs boards of cooperative educational services to establish an agriculture program for students

[S.3873A \(May\)/A.7104A \(Buttenschon\)](#)

This allows BOCES to establish and encourage young farmer apprentice programs.

Status: Passed Both Houses

Relates to the promotion of New York state farm products for holiday celebrations

[S.2069 \(Metzger\)/A.4153 \(Gunther\)](#)

The bill authorizes the Department of Agriculture and Markets to aid in the promotion of New York grown farm products for holiday celebrations by providing information about New York growers to vendors who sell such products and to municipalities where vendors sell them on sidewalks or lots or streets.

Status: Passed Both Houses

Establishes a New York food supply working group

[S.8561A \(Metzger\)/A.10607A \(Lupardo\)](#)

This bill authorizes the Commissioner of Agriculture and Market to hold roundtable meetings and develop a report with policy recommendations regarding the need for changes or new programs to strengthen the resiliency and self-reliance of the state's farm and food supply and related supply chain logistics, to prevent food shortages and food waste, and to overcome hurdles involved in getting agricultural products to markets and consumers.

Status: Passed Both Houses

COVID-19 EMERGENCY POWERS

Relates to issuing by the governor of any directive necessary to respond to a state disaster emergency; appropriation

[S.7919 \(Stewart-Cousins\) / A.9953 \(Ortiz\)](#)

This bill appropriates \$40 million in emergency public safety and health to combat the novel coronavirus.

Status: Signed by Governor, Chapter 23 of the Laws of 2020

- **Executive Order 202.01:** Expanding Health Care Options, Changing Public Meeting Laws, and Limiting Large Gathering and Business Capacity
- **EO 202.03:** Cancelling Large Events and Limiting the Power of Local Governments
- **EO 202.04:** Local Government Essential Employees Only in the Field/Office, Schools Close, and the Postponement of Village Election
- **EO 202.08:** Courts and DMV's are Closed, In-person Employment Falls to 0%

Requires public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease

[S.8617B \(Gounardes\)/A.10832 \(Abbate\)](#)

This bill endeavors to ensure that public employers are better prepared for the next global health pandemic by requiring the drafting and publication of a plan that will safeguard

employee's health and welfare. This would apply to the State of New York, counties, cities, towns, villages, and other public employers.

Status: Passed Both Houses

Economic Development

Relates to the study of future generation wireless network

[S. 7179 \(Parker\)](#) / [A. 8988 \(Vanel\)](#)

This legislation permits the implementation of fifth and future generation wireless network system technology across the state.

Status: Signed by the Governor, Chapter 32 of the Laws of 2020

Establishes a disaster emergency loan program

[S. 8181 \(May\)](#) / [A. 10294-A \(Stirpe\)](#)

This legislation provides for grants and in-kind donations from Industrial Development Agencies (IDAs) to small businesses or not-for-profits for purchasing personal protective equipment (PPE) and other fixtures needed to help prevent the spread of COVID-19.

This legislation also allows IDAs to make loans to small businesses and not-for-profit organizations up to \$25,000 with certain considerations. IDAs who choose to administer a State disaster emergency loan program will have to maintain records related to the program, and report to the Governor, Speaker of the Assembly and Temporary President of the Senate one year following the end of the State disaster emergency declaration.

Status: Signed by the Governor, Chapter 109 of the Laws of 2020

Relates to library construction

[S. 8410 \(Mayer\)](#) / [A. 10465 \(Ryan\)](#)

This bill provides public libraries with an additional 12 months to complete capital projects where such projects commenced between July 1, 2017 and July 1, 2019 and libraries were unable to complete projects within the three-year statutory time limit due to COVID-19.

Status: Signed by the Governor, Chapter 120 of the Laws of 2020

Public Service Commission study on broadband and fiber optic access across the state

[S. 8805 \(Metzger\)](#) / [A. 6679-C \(Ryan\)](#)

This legislation requires the PSC to study the availability, affordability, and reliability of high-speed internet and broadband access in NYS and produce a detailed access map on its website indicating internet service by location.

This PSC will be required to submit this report to the Governor and state legislature within a year and annually, thereafter. The PSC will also be required to hold at least four regional public hearings across the state.

Status: Passed Both Houses

Directs Empire State Development to publish and maintain a list of available programs to assist small businesses

[S.7350 \(Kaplan\)/A.10119 \(Stirpe\)](#)

This bill requires ESD to coordinate with other state agencies and authorities to collect information on programs offered by each agency and authority that assist small business. This information is to be organized and shared on the ESD website.

Status: Passed Both Houses

Relates to establishing a historic business preservation registry

[S.7274B \(Serrano\)/A.8873A \(O'Donnell\)](#)

The bill establishes a historic business preservation registry within the Office of Parks, Recreation and Historic Preservation that would include historic businesses that have operated for at least fifty years and that have contributed to their communities' history.

Status: Passed Both Houses

Requires the Commissioner of Economic Development to publicize certain information related to programs for small business enterprises and minority and women-owned business enterprises

[S.4429 \(Parker\)/A.4921 \(Blake\)](#)

This bill would require the Economic Development department to post the information so individuals can: (a) Search for featured minority and women-owned business enterprises and small businesses assistance programs; (b) Complete applications for assistance in obtaining bonding, as well as applications to any other programs providing financial assistance that the department deems feasible; and (c) Obtain access to Census data from the most recent United States census.

Status: Passed Both Houses

Elections

Permits electronic application for absentee ballots and removes requirement that such application be signed by the voter

[S.8130-D \(Myrie\) / A.10516-A \(Simotas\)](#)

This legislation amends Election Law 8-400(2)(c) to allow qualified voters to request an absentee ballot by electronic mail, an electronic transmittal system or a web portal established by the state board of elections or city or county board of elections and eliminates the requirement that ballots be signed by the voter no matter what method is used for the request.

Status: Signed by the Governor, Chapter 91 of the Laws of 2020

Establishes an electronic personal voter registration process

[S.8806 \(Gianaris\)/A.8280C \(Walker\)](#)

The "New York Automatic Voter Registration Act of 2020" implements a system of automatic voter registration within certain designated state agency applications, effective January 1, 2023.

Status: Passed Both Houses

Ballots dated postmark

[S.8799A \(Gianaris\)/A.10808A \(Bichotte\)](#)

This bill allows the Board of Elections to cause all absentee ballots that do not bear or display a dated postmark to be presumed to have been timely mailed or delivered if such ballot bears a time stamp of the receiving board of elections indicating receipt by such board on the day after the election.

Status: Passed Both Houses

Allows certain party designations and nominations to be made via video teleconference upon notice to the members of the respective committee

[S.8796A \(Stavisky\)/A.10733A \(Bichotte\)](#)

This bill allows all party designations and nominations, except for a primary election, to be made through virtual meetings via video teleconference.

Status: Passed Both Houses

Relates to requiring municipalities with the highest population in each county to have at least one polling place designated for early voting

[S.8782 \(Breslin\)/A.9610B \(McDonald\)](#)

This bill amends previously enacted early voting provisions to provide that, in each county, the largest municipality by population must contain at least one early voting polling location.

Status: Passed Both Houses

Relates to providing voters an opportunity to contest challenges to absentee ballots

[S.8370B \(Myrie\)/A.10830 \(Lavine\)](#)

This bill requires absentee voters to be notified of certain deficiencies with their ballot and be given the ability to cure such deficiencies by submitting an affirmation.

Status: Passed Both Houses

Relates to absentee voting

[S.8015D \(Biaggi\)/A.10833 \(Dinowitz\)](#)

This bill allows voters who are concerned about voting in-person due to an epidemic or disease outbreak to request an absentee ballot.

Status: Passed Both Houses

Relates to changes to the entrance and exit of polling places

[S.5188 \(Mayer\)/A.8257 \(Jacobson\)](#)

This bill provides that, while polling locations are open, the entrance to and exit from the locations are not to be altered except to increase access or to maintain public safety. Any alteration must be clearly marked with signage next to the former entrance or exit.

Status: Passed Both Houses

Relates to requests for absentee ballots

[S.8783A \(Myrie\)/A.10807 \(Taylor\)](#)

This bill temporarily allows absentee ballot applications to be submitted to boards of elections earlier than thirty days before the applicable Election Day.

Status: Passed Both Houses

Environment & Energy

Prohibits certain uses of trichloroethylene

[S.6829B \(Kaminsky\)/A.8829A \(Englebright\)](#)

This bill prohibits the most harmful uses of trichloroethylene, a toxic chemical and known human carcinogen that is used as an industrial cleaning and degreasing agent in manufacturing. TCE is one of the most frequently detected groundwater contaminants.

Status: Passed Both Houses

Relates to municipal sustainable energy loan programs

[S.6523A \(Parker\)/A.7805C \(Cusick\)](#)

This bill allows sustainable energy loan programs as authorized by the general municipal law to be used for new construction.

Status: Signed, Chapter 286 of the Laws of 2020

Relates to the disposal of construction and demolition waste and creates the crime of scheme to defraud by disposal of solid waste

[S.6758B \(Kaminsky\)/A.10803A \(Englebright\)](#)

This bill imposes stiffer penalties for the illegal disposal of waste. Large-scale illegal dumping has become a significant problem, especially on Long Island, with communities forced to pay for the costs rather than the responsible party.

Status: Passed Both Houses

General Government Operations

Relates to single-use bathrooms

[S.6479-A \(Salazar\) / A.5240-A \(O'Donnell\)](#)

This legislation requires all single-use public restrooms to be designated gender neutral. Meaning, if a county government building which is open to the public has a single-use bathroom, that facility would need to be converted to a gender-neutral facility allowing anyone to access that facility.

Status: Passed Both Houses

Housing

Authorizes local code enforcement officers to issue blanket orders extending the expiration date for all active building permits for a period of up to 120 days

[S.8236-A \(Gaughran\) / A.10409-A \(McDonald\)](#)

This legislation allows local governments to pass a resolution to extend the expiration of a building permit or local zoning boards of appeals' and local planning boards' active approvals issued before March 7, 2020.

Status: Signed by the Governor, Chapter 111 of the Laws of 2020

Emergency Rent Relief Act of 2020

[S.8419 \(Kavanagh\) / A.10522 \(Cymbrowitz\)](#)

The Emergency Rent Relief Act of 2020 would provide rental assistance vouchers to landlords on behalf of tenants who experienced an increase in rent burden because of a loss of income as a result of the COVID-19 pandemic through Homes and Community Renewal. The spending cap is up to \$100,000,000 for this program. The coverage period would be April 1 through July 31. A tenant has a rent burden if their rent is more than 30% of the household income. Households would be eligible if they make up to 80% Area Median Income (AMI) prior to March 7 and at the time of application; have a rent burden both prior to March 7 and at the time of application, and they have lost income during the covered period. The subsidy would be a voucher paid to the landlords for the gap between their pre-COVID rent burden and their new rent burden, up to 125% Fair Market Rent (FMR).

Status: Signed by the Governor, Chapter 125 of the Laws of 2020

Judiciary

Relates to the recipients of reports that were issued regarding the death of an inmate

[S.7182 \(Sepulveda\)](#) / [A.9062 \(Weprin\)](#)

This bill ensures that the reports that State Commission of Correction (SCOC) currently receives from the Medical Review Board are not impacted by the provisions of the underlying chapter.

Status: Signed by the Governor, Chapter 80 of the Laws of 2020

Authorizes former foster care youth to re-enter foster care during the COVID-19 state of emergency

[S.8834 \(Montgomery\)](#) / [A.10581B \(Wright\)](#)

This bill allows a former foster care youth who has been discharged from the foster care system the ability to re-enter without submitting a motion to the family court during a certain state of emergency.

Status: Passed Both Houses

Relates to requiring the video recording of interrogations of juveniles in juvenile delinquency proceedings in family court

[S.6533 \(Montgomery\)](#) / [A.7970 \(Frontus\)](#)

This bill amends sections 305.2 and 344.2 of the Family Court Act to require video recording of the entirety of interrogations in all juvenile cases, including the provision of Miranda warnings and the waiver, if any, of rights by the juveniles.

Status: Passed Both Houses

Local Government Finance

Relates to bond anticipation notes for 2015 through 2021

[S.8417 \(Kreuger\)](#) / [A.10492 \(Thiele\)](#)

This bill amends Local Finance Law ("LFL") §23.00(b) to allow bond anticipation notes issued originally during calendar years 2015 through 2021, inclusive, to extend up to seven years beyond their original date of issue. This legislation also authorizes local governments and school districts to spend moneys from capital reserve funds for capital costs attributable to the COVID-19 pandemic, without the referendum requirements that would otherwise apply.

Lastly, this legislation would authorize local governments and school districts to temporarily transfer moneys from any reserve fund to pay for operating costs or other costs attributable to the COVID-19 pandemic. The moneys that are transferred must be reimbursed from the fund into which they were transferred back into the reserve fund over a period of not more than five years, with at least 20% of the moneys reimbursed each year, with interest.

Status: Passed both Houses

Additional two-percent occupancy tax for Onondaga County

[S.7789 \(May\)](#) / [A.9738 \(Hunter\)](#)

This legislation, requested by the Onondaga County legislature, would raise the county occupancy tax (hotel/motel tax) by two percent from 5% to 7%.

Status: Passed both Houses

Additional two-percent occupancy tax for Otsego County

[S.7730 \(Seward\)](#) / [A.10016 \(Salka\)](#)

This legislation, requested by Otsego County, would raise the county occupancy tax (hotel/motel tax) by two percent from 4% to 6%.

Status: Passed both Houses

Public Employee Relations & Labor

Relates to establishing a coronavirus disease 2019 (COVID-19) public employee death benefit

[S.8427 \(Gounardes\)](#) / [A.10528 \(Abbate\)](#)

The bill provides protections for the statutory beneficiaries of public employees who died of COVID-19 after working in person on or after March 1, 2020.

The legislation specifies that the statutory beneficiary of any public employee enrolled in the New York State Employees' Retirement System (NYSERS) will receive an accidental death benefit with the following limited proof:

1. The employee worked on or after March 1, 2020.
2. The employee worked in person, whether at the normal place of work or at another assigned place of work.
3. The employee contracted COVID-19.
4. The employee died on or before December 31, 2020.
5. COVID-19 caused or contributed to the member's death.

Status: Signed by the Governor, Chapter 89 of the Laws of 2020

Relates to ensuring paid employees of a county airport or county aviation department which perform fire response or fire rescue duties are eligible for equal benefits as other paid firefighters

[S.6144-A \(Robach\)](#) / [A.7646-A \(Bronson\)](#)

This legislation amends the general municipal law to ensure that employees of a county airport or county aviation department which performs fire response or fire rescue duties are eligible for equal benefits as other paid firefighters.

Status: Passed Both Houses

Public & Mental Health

Relates to allowing donate life registration when applying for or renewing a hunting, fishing, or trapping license

[A.7915-A \(Magnarelli\) / S.4471 -A \(Antonacci\)](#)

This bill aims to increase enrollment in New York Donate Life Registry.

Status: Passed Both Houses

Requires that COVID-19 contact tracers be representative of the cultural and linguistic diversity of the communities in which they serve to the greatest extent possible

[S.8362-A \(Serrano\) / A.10447-A \(Joyner\)](#)

Requires New York City Department of Health and Mental Hygiene as well as New York City Health and Hospitals to hire contact tracers who are representative of the cultural and linguistic diversity of the communities in which they will serve to the greatest extent possible.

Status: Signed by the Governor, Chapter 115 of the Laws of 2020

Relates to establishing the frontline workers trauma informed care advisory council

[S.8608A \(Carlucci\)/A.10629A \(Gunther\)](#)

This bill establishes an advisory council within the Office of Mental Health that would ensure the trauma related behavioral health needs of essential workers during the COVID-19 pandemic are met.

Status: Passed Both Houses

Requires that COVID-19 contact tracers be representative of the cultural and linguistic diversity of the communities in which they serve to the greatest extent possible

[S.8829 \(Martinez\)/A.10567A \(Jean-Pierre\)](#)

This bill requires the NYS Department of Health, county departments of health, and other entities that hires persons to perform contact tracing pertaining to COVID-19 infections to hire contact tracers who are representative of the cultural and linguistic diversity of the communities in which they serve to the greatest extent possible. New York City is exempt from this legislation.

Status: Passed Both Houses

Relates to the confidentiality of contact tracing information

[S.8450C \(Rivera\)/A.10500C \(Gottfried\)](#)

This bill intends to ensure that information collected through contact tracing for COVID-19 is kept confidential by any contact tracer and contact tracing entity and may not be disclosed except as necessary to carry out contact tracing or a permitted purpose.

Status: Passed Both Houses

Public Safety

Directs the office of fire prevention and control to form a task force and issue a report relating to volunteer firefighter recruitment and retention

[S. 7589-B \(Gaughran\)](#) / [A. 9779-A \(Thiele\)](#)

This legislation was a priority bill for the association. This legislation mandates the state office of fire prevention and control within DHSES to form a task force and issue a report relating the volunteer firefighter recruitment and retention. The task force must review current training methods for volunteer firefighters and delivery methods of those trainings; creation of a dedicated bureau within the office of fire prevention and control responsible for the recruitment and retention of volunteer firefighters; analysis of current tax incentives and volunteer firefighter benefit programs and recommendations as to these or new programs; analysis of recruitment and retention programs being successfully utilized in other states and recommendations as to the adoption of similar programs in New York State; and identification of incentive programs that will assist in the recruitment of volunteer firefighters from underserved and/or at-risk populations.

Status: Passed Both Houses

Relates to the detention of individuals who are eighteen years of age or older in a county jail pending a first court appearance in an off-hour arraignment

[S. 7163 \(May\)](#) / [A. 9061 \(Weprin\)](#)

This legislation would authorize county jails to be designated as pre-arraignment detention centers for individuals eighteen and older under arrest pending their first court appearance in an off-hour arraignment.

Status: Signed by the Governor, Chapter 36 of the Laws of 2020

Relates to providing that no person sixteen years of age or older shall be a passenger in the back seat of a motor vehicle, unless such person is restrained by a safety belt.

[A. 6163 \(Mosley\)](#) / [S. 4336 \(Carlucci\)](#)

This legislation modifies the Vehicle and Traffic Law by requiring all occupants to wear a seat belt regardless of seating position.

Status: Signed by the Governor, Chapter 136 of the Laws of 2020

Relates to the determination of points for service award programs for volunteer firefighters and volunteer ambulance workers during a state disaster emergency

[S. 8251-B \(Kaminsky\)](#) / [A. 10438-A \(Thiele\)](#)

This legislation amends General Municipal Law § 217 relation to Length of Service Award Programs ("LOSAP's") in order to address the impact of the COVID 19 crisis on the ability of volunteer firefighter participants to achieve performance points under the program point system in light of changes to emergency response protocols and the cancellation of activities for which points can be earned.

Makes subsequent amendments to GML 219-e and 219-m, to allow volunteer ambulance workers to achieve performance points under the program.

Status: Signed by the Governor, Chapter 113 of the Laws of 2020

The Eric Garner Anti-Chokehold Act

[S.6670-B \(Benjamin\)](#) / [A.6144-B \(Mosley\)](#)

This bill is named after Eric Garner who died in 2014 after NYPD officer Daniel Pantaleo placed him in a chokehold. Garner also said the same phrase as George Floyd in Minneapolis, “I can’t breathe.” The officer, Pantaleo, did not face criminal charges and was fired five years later. This new legislation would allow police officers to be charged with a Class C felony if they use the chokehold and cause serious injury or death.

Status: Signed by the Governor, Chapter 94 of the Laws of 2020

The Right to Monitor Act

[S.3253-A \(Parker\)](#) / [A.1360-A \(Perry\)](#)

This bill would allow for officers arresting a person to be filmed by anyone in the vicinity not being arrested. It would also let this person keep their recording provided they are not physically getting in the way.

Status: Signed by the Governor, Chapter 100 of the Laws of 2020

Civil Penalty for Biased Misuse of Emergency Services

[S.8492 \(Parker\)](#) / [A.1531-B \(Richardson\)](#)

This bill would allow for a person to be sued if they falsely claim a person of a protected class is threatening them. A different version of this bill was proposed after the viral video of a white woman in Central Park called 9-1-1 on a black man claiming he was threatening her after he asked her to put her dog on a leash.

Status: Signed by the Governor, Chapter 93 of the Laws of 2020

Reporting Incidents of Discharged Weapons

[S.2575-B \(Bailey\)](#) / [A.10608 \(Perry\)](#)

This bill will require law enforcement officers, on or off duty, to report any incident where they discharged a weapon near where people could be hit. This does not include when they are at a shooting range. The officer will be required to immediately (within 6 hours) report the incident to their superior.

Status: Signed by the Governor, Chapter 101 of the Laws of 2020

The STAT ACT

[S.1830-C \(Hoylman\)](#) / [A.10609 \(Lentol\)](#)

This requires courts, statewide, to collect demographic data on a range of metrics including ethnicity, race, age and more. Courts will be required to compile and publish this data of all low-level offenses, including misdemeanors and violations. It also requires police departments to submit annual reports on arrest-related deaths to the Department of Criminal Justice Services and to the Legislature and Governor.

Status: Signed by the Governor, Chapter 102 of the Laws of 2020

Repealing Section 50-a of the Civil Rights Law

[S.8496 \(Bailey\)](#) / [A.10611 \(O'Donnell\)](#)

This bill would repeal Section 50-a and replace it with a statute that will allow for the release of police officers, firefighters, and correctional officers' personnel records, including disciplinary records. These records would be subject to FOIL, but all sensitive information would be redacted after personal information such as cell phone numbers, addresses and health

information. The 50-a statutory framework has been in effect for more than 40 years. It was created to keep law enforcement's personal information private during investigation. A judge can release these records if they are found to be relevant to a case or with the written consent of officers. However, for years this law has been used to prevent police departments from disclosing an officer's disciplinary records.

Status: Signed by the Governor, Chapter 96 of the Laws of 2020

Duty to Provide Medical Attention

[S.6601-B \(Bailey\)](#) / [A.8226-B \(Fernandez\)](#)

This bill would amend the Civil Rights Law to require law enforcement officers to provide medical and mental health attention to a person under arrest or in custody.

Status: Signed by the Governor, Chapter 103 of the Laws of 2020

Setting Up AG's Office as a Special Prosecutor

[S.2574-C \(Bailey\)](#) / [A.1601-C \(Perry\)](#)

This bill would create an Office of Special Investigation under the Attorney General which will investigate officer related deaths.

Status: Signed by the Governor, Chapter 95 of the Laws of 2020

Creation of An Oversight Office

[S.3595-B \(Parker\)](#) / [A.10002-B \(Taylor\)](#)

This bill would establish the Law Enforcement Misconduct Investigative Office and would review, study, audit and make recommendations regarding policies and practices of local police departments.

Status: Signed by the Governor, Chapter 104 of the Laws of 2020

Relates to review of policies and practices relating to infectious disease outbreaks in correctional facilities

[S.8315A \(Rivera\)](#) / [A.10463A \(Gottfried\)](#)

This bill expands the NYS Department of Health's review of health policies and practices in Department of Corrections and Community Supervision (DOCCS) and local correctional facilities in relation to emerging infectious diseases.

Status: Passed Both Houses

Real Property

Real property tax deferral – local option

[S.8138-B \(Martinez\)](#) / [A.10252-A \(Stern\)](#)

This legislation will allow a local taxing jurisdiction to defer property taxes due to the COVID-19 pandemic or separate property taxes into as many installment payments as necessary without liability to the county.

Status: Passed Both Houses

Establishes a real property tax exemption task force

[S.3679A \(Harckham\)](#) / [A.3330A \(Abinanti\)](#)

This bill establishes a real property tax exemption task force to examine the real property tax exemption laws and to recommend changes, if any, to those laws.

Status: Passed Both Houses

Relates to land used in agricultural production

[S.8464A \(Metzger\)/A.10464A \(Rules\)](#)

The purpose of this bill is to authorize the continuation of an agricultural assessment for property owners who are currently qualified for such assessment but may no longer be qualified for such assessment in 2021 because of the loss of sales due to the effects of the COVID-19 pandemic and related emergency declarations.

Status: Passed Both Houses

Transportation & Public Works

Relates to payment in construction contracts

[S.7664 \(Breslin\)/A.9117 \(Cusick\)](#)

This bill amends the state finance law and the general municipal law to clarify the meaning of substantial completion and to ensure a timely correspondence and finish of construction projects.

Status: Passed Both Houses

Veterans

Establishes the Outdoor Rx Act

[A.8094-A \(Barrett\) / S.6706 \(Benjamin\)](#)

This bill requires the division of veterans' services to review issues relating to veterans' accessibility to parks, land, and facilities.

Status: Passed Both Houses

Relates to the preparation and submission of a report regarding homeless persons who are veterans in the state of New York

[S.6938 \(Parker\) / A. 8969 \(Rozic\)](#)

This bill reduces the number of reports on the study of homeless persons who are veterans by limiting the report to five, one every three years.

Status: Signed by the Governor, Chapter 42 of the Laws of 2020

Requires local veterans' service agencies to provide information to the division of veterans' services on an annual basis

[S.6945 \(Kaplan\) / A.8968 \(Stern\)](#)

Mandates that local veterans' service agencies to proactively provide information to the division of veterans' services.

Status: Signed by the Governor, Chapter 48 of the Laws of 2020

Relates to costs associated with the establishment of New York state veterans cemeteries

[S.8791 \(Brooks\)/A.10782 \(Barrett\)](#)

New York State is one of only a few states which has yet to establish a state-run veterans' cemetery. The Department of Veterans Services has attempted to establish such a statewide

cemetery to honor our veterans but has found the current legal process arduous and detrimental to their efforts. This bill reforms the process to expedite and encourage the establishment of a state-run veterans cemetery.

Status: Passed Both Houses



NYSAC
— NEW YORK STATE —
ASSOCIATION OF COUNTIES

515 Broadway

Albany, NY 12207

518-465-1473

www.NYSAC.org

BILL NUMBER: S4176A

SPONSOR: HARCKHAM

TITLE OF BILL: An act to amend the environmental conservation law, in relation to requiring supermarkets to make excess food available to qualifying entities

PURPOSE:

This bill is designed to increase food donations to food banks and other providers who feed the needy and to help reduce dangerous emissions of methane from the decomposition of organic waste in landfills.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends environmental conservation law article 27 by adding a new title 28 to establish the "Excess Food Act." The Excess Food Act provides the following:

.Definitions: As used in this article shall have the following meaning:

(a)"Excess food" means edible food that is not sold or used by a supermarket and is still safe to be consumed but is being disposed of by the supermarket due to labeling, appearance, surplus or other similar conditions... Excess foods shall not include unpackaged fresh meat, fish, or poultry; food damaged by storage conditions, pests, mold, bacteria or other contamination; food which has been offered for sale from a hot, cold or prepared food bar; food subject to a governmental or producer recall; food returned to a supplier; food donated to a qualifying entity; food sold to a food remarketer or restaurant or other preparer of food for human consumption or sold to a farmer or other producer.

(b)"Qualifying entity" means a religious organization or other not-for-profit organization which provides food for free to needy persons, including by not limited to a food pantry, food bank, soup kitchen or community based organization that provides food for free to needy persons.

(c)"Supermarkets" means a physical retail store which has at the subject location more than ten thousand square feet devoted to offering food for human consumption for sale to the general public. Supermarket shall not include hotels, motels, restaurants and cafeterias, bakeries, caterers, hospitals, assisted living facilities, nursing homes, hospices, group homes, drug stores, educational institutions, and food courts in shopping malls, food retailers at airports and other transportation facilities, gas stations, sports arenas, movie theaters, or any other similar establishment.

2. Availability Requirement.

(a)Every supermarket shall from time to time make excess food available to qualifying charities.

(b)No supermarket shall be required to make available a particular quantity or level of excess food or to transport or distribute any excess

food.

(c)A supermarket shall be deemed in compliance with this section if it in good faith arranges with a qualifying entity that has requested in writing to collect excess food from the supermarket, for the collection of such excess food. A supermarket acting in compliance with this section shall have no liability for the food transferred in the absence of gross negligence or intentional misconduct.

(d)A Supermarket may impose reasonable restrictions as to the time and manner of collection by a qualifying entity so as not to interfere with its business operations.

(e)A supermarket may, in accordance with applicable laws, dispose of any excess food which is not picked up by a qualifying entity within a reasonable time.

3. Construction. Nothing in this title shall be construed to supersede any state or federal health laws or regulations regarding the handling of foods.

4. Enforcement. A supermarket that does not meet the requirements of this title shall not be subject to the penalties specified in title twenty-seven of article seventy-one of this chapter.

Section 2 is the effective date.

JUSTIFICATION:

Hunger in the U.S. and our state is a serious problem. An estimated 50 million Americans, including nearly 16 million children, do not have sufficient food. Meanwhile, 60-100 million tons of edible food is discarded in the United States, primarily to solid waste landfills. Decomposition of organic waste accounts for over 15 percent of our nation's emissions of methane, a potent greenhouse gas.

Hunger and food insecurity - the uncertainty of having, or inability to acquire, enough food to meet household food needs exists in every county in our state. An estimated 2.8 million New Yorkers (over 14%) are facing hunger and food insecurity. Moreover, a significant number of those households do not qualify for federal nutrition assistance.

As noted in the Food Bank for Westchester Food Dating Guide, the majority of food items that are close to or past the indicated date on their packages are still safe for consumption. This included items passed the "expiration date," "sell by date," "use by date" and "pack date." These codes are used by manufacturers to ensure that consumers receive their product in peak quality. Supermarkets regularly dispose of these unused food items and most are of good quality and safe to eat. This legislation will require supermarkets of a certain size to make available this excess food to entities that provide food for free to the needy.

While supermarkets of a certain size are required to participate, they are not required to provide a particular quantity of food or transport or distribute it. Qualifying entities must make a written request for the excess food and arrange to collect the food at a date and time arranged with the supermarket.

Not only should there be no cost to participating supermarkets - there may be savings - since supermarkets will not longer have to pay to have excess food collected and discarded. In addition, a supermarket in

compliance with this section shall have no liability for the food transferred in the absence of gross negligence or intentional misconduct.

Making excess food available to qualifying entities that feed the hungry will go a long way to help address food insecurity in our state without additional costs to participating supermarkets. In addition, the donation of excess food will also reduce food waste disposed of in solid waste landfills which create dangerous emissions.

LEGISLATIVE HISTORY:

2017-2018: A7936 referred to environmental conservation; same as S8993 (Alcantara) referred to rules

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

This act shall take effect on the one hundred eightieth day after it shall have become law. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.

STATE OF NEW YORK

4176--A

2019-2020 Regular Sessions

IN SENATE

March 4, 2019

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to requiring supermarkets to make excess food available to qualifying entities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 27 of the environmental conservation law is amended
2 by adding a new title 30 to read as follows:

3 TITLE 30

4 EXCESS FOOD ACT

5 Section 27-3001. Legislative intent.

6 27-3002. Definitions.

7 27-3003. Availability requirement.

8 27-3004. Construction.

9 27-3005. Enforcement.

10 § 27-3001. Legislative intent.

11 An estimated fifty million Americans, including nearly sixteen million
12 children, do not have sufficient food. An estimated 2.8 million New
13 Yorkers face hunger and food insecurity. This legislation is designed to
14 increase food donations to food banks and other providers who feed the
15 needy while reducing food waste in solid waste landfills which create
16 dangerous emissions.

17 § 27-3002. Definitions.

18 As used in this title, the following terms shall mean:

19 1. "Excess food" means edible food that is not sold or used by a
20 supermarket and is still safe to be consumed but is being disposed of by
21 the supermarket due to labeling, appearance, surplus or other similar
22 conditions. "Excess food" shall not include: unpackaged fresh meat,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD05200-06-9

S. 4176--A

2

1 fish, or poultry; food damaged by storage conditions, pests, mold,
2 bacteria or other contamination; food which has been offered for sale
3 from a hot, cold or prepared food bar; food subject to a governmental or
4 producer recall; food returned to a supplier; food donated to a qualify-
5 ing entity; food sold to a food remarketer or restaurant or other
6 preparer of food for human consumption or sold to a farmer or other
7 producer.

8 2. "Qualifying entity" means a religious or other not-for-profit
9 organization which provides food for free to needy persons, including,
10 but not limited to a food pantry, food bank, soup-kitchen or community-
11 based organization that provides food for free to needy persons.

12 3. "Supermarket" means a physical retail store which has at the
13 subject location more than ten thousand square feet devoted to offering
14 food for human consumption for sale to the general public. "Supermar-
15 ket" shall not include hotels, motels, restaurants and cafeterias,
16 bakeries, caterers, hospitals, assisted living facilities, nursing
17 homes, hospices, group homes, drug stores, educational institutions, and
18 food courts in shopping malls, food retailers at airports and other
19 transportation facilities, gas stations, sports arenas, movie theaters
20 or any other similar establishment.

21 § 27-3003. Availability requirement.

22 1. Every supermarket shall from time to time make excess food avail-
23 able to qualifying entities.

24 2. No supermarket shall be required to make available a particular
25 quantity or level of excess food or to transport or distribute any
26 excess food.

27 3. A supermarket shall be deemed in compliance with this section if
28 it in good faith arranges with a qualifying entity that has requested in
29 writing to collect excess food from the supermarket for the collection
30 of such excess food. A supermarket acting in compliance with this
31 section shall have no liability for the food transferred in the absence
32 of gross negligence or intentional misconduct.

33 4. A supermarket may impose reasonable restrictions as to the time and
34 manner of collection by a qualifying entity so as not to interfere with
35 its business operations.

36 5. A supermarket may, in accordance with any applicable laws, dispose
37 of any excess food which is not picked up by a qualifying entity within
38 a reasonable time.

39 § 27-3004. Construction.

40 Nothing in this title shall be construed to supersede any state or
41 federal health laws or regulations regarding the handling of food.

42 § 27-3005. Enforcement.

43 A supermarket that does not meet the requirements of this title shall
44 not be subject to the penalties specified in title twenty-seven of arti-
45 cle seventy-one of this chapter.

46 § 2. This act shall take effect on the one hundred eightieth day after
47 it shall have become a law. Effective immediately the addition, amend-
48 ment and/or repeal of any rule or regulation necessary for the implemen-
49 tation of this act on its effective date are authorized to be made and
50 completed on or before such date.

BILL NUMBER: S8561

SPONSOR: METZGER

TITLE OF BILL:

An act to amend the agriculture and markets law, in relation to establishing a New York food supply working group

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this bill is to strengthen New York's farm and food system to increase the long-term resiliency and self-reliance of the system to respond to emergencies such as the Covid 19 pandemic and maintain an adequate food supply to New Yorkers in a manner that benefits New York farms, food businesses, workers, and consumers.

SUMMARY OF PROVISIONS:

This bill would add a new subdivision 51 to section 16 of the Agriculture and Markets Law (AGM) authorizing the Commissioner of Agriculture and Market in coordination with the Commissioner of Economic Development to establish a New York food supply working group , including representatives from farming, food processing, food retailing, foodservice, food wholesalers, food transporters, labor, emergency food providers, academia, federal and state government, and any other groups the Commissioners deem necessary, to hold roundtable meetings and develop a report with policy recommendations regarding the need for changes or new programs to strengthen the resiliency and self-reliance of the state's farm and food supply and related supply chain logistics, to prevent food shortages and food waste, and to overcome hurdles involved in getting agricultural products to markets and consumers.

JUSTIFICATION:

The Covid-19 crisis and the State and federal response to it revealed problems in the State's food supply and markets for food producers, processors, wholesalers, retailers and consumers. The declared emergencies recognized that the farm and food industry were essential and needed to remain open and continue to operate. However, the infrastructure and supply chains for food were not prepared for the effects of dramatic changes in consumer purchases that resulted in: the inability of processors and wholesalers to shift production in response to those changes; shortages of labor that not only impacted New York farms and food businesses but industries such as meat and poultry which are highly concentrated in other states; retailers and food service that suddenly had to shift from on-site consumption to pickup and delivery and online ordering; schools that were attempting to feed students remotely; and, the overwhelming demand for emergency food while farm and food products were dumped because they could not be processed, packaged and delivered to emergency food providers, other food businesses or consumers. New York State's consumers are heavily dependent on food imported from other states. As the food marketplace under goes significant changes, our State needs to be prepared to strengthen food security to reduce our dependence on imported food in the long run, but also in preparation for emergencies. In addition, we need to provide support for the small food

businesses that will need to make significant changes in their operations. This working group with stakeholders from all parts of the food system will help policymakers address these concerns.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

Undetermined

EFFECTIVE DATE:

This act shall take effect immediately.

STATE OF NEW YORK

8561--A

IN SENATE

June 16, 2020

Introduced by Sens. METZGER, HOYLMAN, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged and said bill committed to the Committee on Agriculture -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law, in relation to establishing a New York food supply working group

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 16 of the agriculture and markets law is amended by
2 adding a new subdivision 51 to read as follows:

3 51. (a) Establish, in coordination with the commissioner of economic
4 development, a New York food supply working group to provide advice,
5 guidance, and recommendations on improving the resiliency and self-reli-
6 ance of the state's farm and food supply and the related supply chain
7 logistics to address food shortages, food waste, and the inability to
8 get New York farm goods to markets that occurred as a result of the
9 Covid-19 pandemic, with the goal of creating permanent solutions beyond
10 the state of emergency to reflect the changing wholesale, retail and
11 consumer marketplace.

12 (b) The commissioners shall work with the food supply working group
13 which shall include, but not be limited to, representatives, including
14 small and family-owned businesses, of:

15 (i) farmers;

16 (ii) food processors including, but not limited to, dairy, produce,
17 meat, and beverage processors;

18 (iii) retail food businesses including, but not limited to, retail
19 food stores and direct farm-to-consumer businesses;

20 (iv) the food service industry including, but not limited to, restau-
21 rants and institutional foodservice;

22 (v) food wholesalers and distributors;

23 (vi) food transporters including, but not limited to, direct-to-con-
24 sumer transporters serving retail food stores, foodservice, and farmers;

25 (vii) labor organizations and workers from the farm and food industry;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets

LBD16636-02-0

S. 8561--A

2

1 (viii) emergency food providers including, but not limited to, food-
2 banks;

3 (ix) academic experts in food production, marketing, distribution,
4 food safety, and consumers;

5 (x) federal agencies with responsibility for food production, process-
6 ing, marketing, and safety; and

7 (xi) any other representatives of agriculture, the food industry,
8 economic development, or any other state agencies the commissioners of
9 agriculture and markets and of economic development deem necessary.

10 (c) The working group shall convene on or before May first, two thou-
11 sand twenty-one, for the purpose of roundtable meetings which may be
12 held in different regions of the state. The agenda and meeting informa-
13 tion shall be made available to the public in advance and all such meet-
14 ings shall be open to, or accessible to, the public. Such meetings may
15 include, among other things, consideration of the following issues,
16 especially as they relate to state or federal emergencies:

17 (i) the need to strengthen the resiliency and self-reliance of the
18 state's farm and food supply and related supply chain logistics, to
19 prevent food shortages and food waste, and to overcome hurdles involved
20 in getting agricultural products to markets and consumers; and

21 (ii) the need for changes to, and development of, new state and feder-
22 al laws, rules, policies, and programs to address, and provide incen-
23 tives for, the goal of strengthening and improving the state food supply
24 in a manner that benefits New York farms, businesses, workers, and
25 consumers.

26 (d) The working group shall provide a written report of its findings
27 identifying any proposed recommendations and guidance to the governor,
28 the speaker of the assembly, and the temporary president of the senate
29 on or before December first, two thousand twenty-one, and shall publish
30 such report on the department's website.

31 § 2. This act shall take effect immediately.

BILL NUMBER: S7919

SPONSOR: STEWART-COUSINS

TITLE OF BILL:

An act to amend the executive law, in relation to issuing by the governor of any directive necessary to respond to a state disaster emergency; making an appropriation therefor; and providing for the repeal of certain provisions upon expiration thereof

PURPOSE:

This legislation is necessary to ensure the state is protected from a substantial threat to the public health.

SUMMARY OF PROVISIONS:

Section one amends the executive law to clarify that a disaster declaration can be issued for an urgent or impending threat of wide spread injury or loss of life resulting from disease outbreak.

Section two amends section 29-a of the Executive Law to allow the Governor to issue directives when a state disaster emergency is declared to allow for appropriate response to such disaster.

Section three provides for a forty million dollar appropriation for personnel, equipment, and supplies for response to this particular public health threat.

Section four provides for an immediate effective date with a sunset of April 30, 2021, for sections one and two of this act.

JUSTIFICATION:

The bill provides for a \$40 million emergency appropriation and emergency measures necessary to allow for protection of the health and safety of New Yorkers due to the threat of the novel coronavirus.

Recently, the novel coronavirus, which has never before been found in humans, was detected in China. Cases have been detected in sixty other nations, including the United States, and thousands have died. The federal government has taken unprecedented action and has suspended entry of foreign nationals who have been in both China and Iran.

The situation has been declared a public health emergency by the US Centers for Disease Control. There is a threat of widespread transmission of the novel coronavirus in the United States. Several states have declared the crisis a public health emergency, including Florida and Washington.

This legislation is necessary to allow New York to manage, prepare, respond to, and contain such threat, and to respond with appropriate action to protect public health and welfare. New York received its first positive case on March 1, and more are expected. These changes ensure the Governor has necessary legal authority to confront these emergen-

cies.

FISCAL IMPLICATIONS:

The legislation includes a \$40 million appropriation.

EFFECTIVE DATE:

Immediately, and sections one and two shall expire April 30, 2021.

LAWS OF NEW YORK, 2020

CHAPTER 23

AN ACT to amend the executive law, in relation to issuing by the governor of any directive necessary to respond to a state disaster emergency; making an appropriation therefor; and providing for the repeal of certain provisions upon expiration thereof

Became a law March 3, 2020, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 and Article VII, section 5 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph a of subdivision 2 of section 20 of the executive law, as amended by section 1 of part B of chapter 56 of the laws of 2010, is amended to read follows:

a. "disaster" means occurrence or imminent, impending or urgent threat of wide spread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, disease outbreak, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse.

§ 2. Section 29-a of the executive law, as added by chapter 640 of the laws of 1978, subdivision 1 as amended by section 7 of part G of chapter 55 of the laws of 2012, is amended to read as follows:

§ 29-a. Suspension of other laws. 1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend ~~[specific provisions]~~ ~~[of]~~ any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster or if necessary to assist or aid in coping with such disaster. The governor, by executive order, may issue any directive during a state disaster emergency declared in the following instances: fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, disease outbreak, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse. Any such directive must be necessary to cope with the disaster and may provide for procedures reasonably necessary to enforce such directive.

2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits, which shall apply to any directive where specifically indicated:

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

2
3 a. no suspension or directive shall be made for a period in excess of
4 thirty days, provided, however, that upon reconsideration of all of the
5 relevant facts and circumstances, the governor may extend the suspension
6 for additional periods not to exceed thirty days each;

7 b. no suspension or directive shall be made which [~~does not safeguard~~
8 ~~the~~] is not in the interest of the health [and] or welfare of the public
9 and which is not reasonably necessary to aid the disaster effort;

10 c. any such suspension order shall specify the statute, local law,
11 ordinance, order, rule or regulation or part thereof to be suspended and
12 the terms and conditions of the suspension;

13 d. the order may provide for such suspension only under particular
14 circumstances, and may provide for the alteration or modification of the
15 requirements of such statute, local law, ordinance, order, rule or regu-
16 lation suspended, and may include other terms and conditions;

17 e. any such suspension order or directive shall provide for the mini-
18 mum deviation from the requirements of the statute, local law, ordi-
19 nance, order, rule or regulation suspended consistent with the goals of
20 the disaster action deemed necessary; and

21 f. when practicable, specialists shall be assigned to assist with the
22 related emergency actions to avoid needless adverse effects resulting
23 from such suspension.

24 3. Such suspensions or directives shall be effective from the time and
25 in the manner prescribed in such orders and shall be published as soon
26 as practicable in the state bulletin.

27 4. The legislature may terminate by concurrent resolution executive
28 orders issued under this section at any time.

29 § 3. The sum of forty million dollars (\$40,000,000) is hereby appro-
30 priated for transfer by the governor to the general, special revenue,
31 capital projects, proprietary or fiduciary funds of any agency, depart-
32 ment, or authority for services and expenses related to the outbreak of
33 coronavirus disease 2019 (COVID-19). Such funds shall be used for
34 purposes including, but not limited to, additional personnel, equipment
35 and supplies, travel costs, and trainings. A portion of these funds may
36 be made available as state aid to municipalities for services and
37 expenses related to the outbreak of coronavirus disease 2019 (COVID-19).
38 Such funds shall be available for payment of financial assistance here-
39 tofore accrued or hereafter to accrue. Any disbursements from this
40 appropriation shall be distributed pursuant to a plan approved by the
41 director of the budget.

42 § 4. This act shall take effect immediately and sections one and two
43 of this act shall expire and be deemed repealed April 30, 2021.

44
45 The Legislature of the STATE OF NEW YORK ss:

46 Pursuant to the authority vested in us by section 70-b of the Public
47 Officers Law, we hereby jointly certify that this slip copy of this
48 session law was printed under our direction and, in accordance with such
49 section, is entitled to be read into evidence.

50
51 ANDREA STEWART-COUSINS
52 Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly



MARCH 16, 2020 Albany, NY

No. 202.3: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

No. 202.3

EXECUTIVE ORDER

CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

WHEREAS, one state acting alone cannot control the continued spread of this disease and it requires coordination and cooperation amongst the states; and

NOW, THEREFORE, I, Governor Andrew M. Cuomo, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives and suspensions and modifications for the period from the date of this Executive Order 202.3 through April 15, 2020:

- The directive requiring large gatherings and events to be cancelled or postponed if they had anticipated attendance in excess of 500 people by virtue of Executive Order 202.1 dated March 12, 2020, is hereby amended and modified to require that any large gathering or event (concert, conference, worship service, performance before a large audience, etc.) shall be cancelled or postponed if more than fifty persons are expected in attendance, at any location in New York State until further notice.
- Any restaurant or bar in the state of New York shall cease serving patrons food or beverage on-premises effective at 8 pm on March 16, 2020, and until further notice shall only serve food or beverage for off-premises consumption. Notwithstanding any provision of the alcohol and beverage control law, a retail on-premises licensee shall be authorized for the duration of this Executive Order to sell alcohol for off-premises consumption, which shall include either take-out or delivery, subject to reasonable limitations set by the State Liquor Authority.
- Any facility authorized to conduct video lottery gaming, or casino gaming shall cease operation effective at 8 pm on March 16, 2020, and until further notice. For a Class III Tribal Gaming enterprise or Class II Tribal Gaming enterprise, any facility should also close to the public until further notice.
- Any gym, fitness centers or classes, and movie theaters shall also cease operation effective at 8 pm on March 16, 2020 until further notice.
- No local government or political subdivision shall issue any local emergency order or declaration of emergency or disaster inconsistent with, conflicting with or superseding the foregoing directives, or any other executive order issued under Section 24 of the Executive Law and any local emergency order or any local administrative codes, charters, laws, rules or regulations, are hereby suspended with respect to any such order issued under such authority different or in conflict with Executive directives.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this sixteenth day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



MARCH 16, 2020 Albany, NY

No. 202.4: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

No. 202.4

EXECUTIVE ORDER

CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

NOW, THEREFORE, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 15, 2020:

- Any local government or political subdivision shall, effective March 17, 2020, allow non-essential personnel as determined by the local government, to be able to work from home or take leave without charging accruals, except for those personnel essential to the locality's response to the COVID-19 emergency. Such non-essential personnel shall total no less than fifty-percent (50%) of the total number of employees across the entire workforce of such local government or political subdivision.

- Restrictions on reporting to work for any state worker whose service is non-essential, or not required to support the COVID-19 response, are expanded to all counties in the State of New York.
- Notwithstanding any prior directives, every school in the state of New York is hereby directed to close no later than Wednesday, March 18, 2020, for a period of two weeks, ending April 1, 2020. The state shall reassess at that time whether to extend such closure beyond this date and may continue to suspend the 180 day instructional requirement. The 180 day suspension will be adjusted to the state's allowed closure directive. Schools that exceed the period will not be exempted from the 180-day rule. School districts shall develop a plan for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of parents in the health care profession or first responders who are critical to the response effort. Such plans shall be submitted to the State Education Department and may be amended or modified by the State Education Department, in consultation with the Department of Health and Office of Children and Family Services at any time. School districts in Nassau County, Suffolk County and Westchester County and the City of New York must submit such plans for approval no later than midnight, March 17, 2020 to the State.
- Any village election to be held March 17, 2020 shall be postponed and any elected official holding such position shall remain in office until such time as a new election is held.

G I V E N under my hand and the Privy Seal of the State in the City of Albany
the sixteenth day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

BILL NUMBER: S8617B

SPONSOR: GOUNARDES

TITLE OF BILL:

An act to amend the labor law, in relation to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and to amend the education law, in relation to certain protocols for responding to a declared public health emergency involving a communicable disease

PURPOSE OR GENERAL IDEA OF BILL:

To ensure that public employers are better prepared for the next global health pandemic by requiring the drafting and publication of a plan that will safeguard employee's health and welfare

SUMMARY OF PROVISIONS:

Section one of the bill adds a new section 27-c to the Labor Law to provide that public employers shall prepare a plan for the continuation of operations in the event of a public health emergency and outlines the necessary provisions to be included in such plans.

Section two of the bill adds a new subdivision 6-a to Section 27-a of the Labor Law to provide that the Department of Labor shall create a dedicated webpage and hotline through which individuals can report health and safety violations at public worksites related to a pandemic.

Section three amends section 2801-a of the education law to include educational employers in the bill.

Section four sets the effective date of 30 days.

JUSTIFICATION:

The employees of New York's public agencies and departments have emerged as the true heroes of COVID-19. Most New Yorkers will remember our state and city's lawyers, teachers, social workers, healthcare workers, EMS medics, corrections officers, firefighters and more for their service at the peak of the pandemic and contributions to the state's recovery. And yet, one of the great stories of COVID-19, the chaos and confusion that came to characterize the daily reality of public workplaces, has been at best only partially told.

While the private sector received clear guidance from the state on what counts as "essential" after the Governor's executive orders on reduction of workforce, New York's public sector did not. Civil servants across the state were left wondering why they were forced to report to work for a job that could easily have been done from home - only to discover that the designation of "essential" vs. "non-essential" was left entirely up to their managers. Many agencies had never taken the necessary steps to allow their employees to telecommute, and so deemed everyone "essential" simply to continue operations. Other employees who truly did not have the option to work from home, including much of our uniformed workforce,

faced conflicting directions about when to report to work after contracting the virus. Upon discovering that one of their coworkers had fallen ill, those still on the job had to beg managers to have shared workspaces and equipment disinfected. In one of the better-documented sagas, scores of public employees faced a shortage of personal protective equipment (PPE) and were barred from bringing their own.

Our public workforce deserves better than this. This bill will work to protect the health and safety of New York civil servants by mandating that employers across the state work with employee organizations to draft and publish contingency plans for declared public health emergencies before they hit. The plans must include, at a minimum, a thoughtful explanation of who is and isn't essential, a description of what the employer will do to ensure maximum telecommuting for those who are able to do so, and certain tangible steps to be taken to protect those who are not. By thinking through these details ahead of time, we hope to help public workplaces better prepare for the next global health crisis. The drafting and publication of these plans will help assure the public workforce that their well-being is a top priority for the state.

PRIOR LEGISLATIVE HISTORY:

New bill

FISCAL IMPLICATIONS:

TBD

EFFECTIVE DATE:

This act shall take effect immediately provided that hotline, webpage and operational plans shall be completed and published within 30 days.

LAWS OF NEW YORK, 2020

CHAPTER 168

AN ACT to amend the labor law, in relation to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and to amend the education law, in relation to certain protocols for responding to a declared public health emergency involving a communicable disease

Became a law September 7, 2020, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new section 27-c to read as follows:

§ 27-c. Duty of public employers to develop operation plans in the event of certain declared public health emergencies. 1. Definitions. For the purposes of this section:

a. "Personal protective equipment" shall mean all equipment worn to minimize exposure to hazards, including gloves, masks, face shields, foot and eye protection, protective hearing devices, respirators, hard hats, and disposable gowns and aprons.

b. "Public employer" or "employer" shall mean the state of New York, a county, city, town, village or any other political subdivision or civil division of the state, a public authority, commission or public benefit corporation, or any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of this state, provided, however, that this subdivision shall not include any employer as defined in section twenty-eight hundred one-a of the education law.

c. "Contractor" shall mean an individual performing services as party to a contract awarded by the state of New York or any other public employer defined in paragraph b of this subdivision.

d. "Essential" shall refer to a designation made that a public employee or contractor is required to be physically present at a work site to perform his or her job.

e. "Non-essential" shall refer to a designation made that a public employee or contractor is not required to be physically present at a work site to perform his or her job.

f. "Communicable disease" shall mean an illness caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual or via an animal, vector or the inanimate environment to a susceptible animal or human host.

g. "Retaliatory action" shall mean the discharge, suspension, demotion, penalization, or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

2. Each public employer in the state of New York shall prepare a plan for the continuation of operations in the event that the governor

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

CHAP. 168

2

declares a public health emergency involving a communicable disease. Such plans shall follow the provisions for review and publication as prescribed in subdivision four of this section.

3. The operations plan required by this section shall include, but not be limited to:

a. A list and description of positions and titles considered essential in the event of a state-ordered reduction of in-person workforce, and a justification of such consideration for each position and title included.

b. A specific description of protocols the employer will follow in order to enable all non-essential employees and contractors to telecommute including, but not limited to, facilitating or requesting the procurement, distribution, downloading and installation of any needed devices or technology, including software, data, office laptops or cell phones, and the transferring of office phone lines to work or personal cell phones as practicable or applicable to the workplace.

c. A description of how the employer will, to the extent possible, stagger work shifts of essential employees and contractors in order to reduce overcrowding on public transportation systems and at worksites.

d. A description of the protocol the employer will implement in order to procure the appropriate personal protective equipment for essential employees and contractors, based upon the various tasks and needs of such employees and contractors in a quantity sufficient to provide at least two pieces of each type of personal protective equipment to each essential employee and contractor during any given work shift over at least six months. Such description shall also include a plan for storage of such equipment to prevent degradation and permit immediate access in the event of an emergency declaration.

e. A description of the protocol in the event an employee or contractor is exposed to a known case of the communicable disease that is the subject of the public health emergency, exhibits symptoms of such disease, or tests positive for such disease in order to prevent the spread or contraction of such disease in the workplace. Such protocol shall also detail actions to be taken to immediately and thoroughly disinfect the work area of any employee or contractor known or suspected to be infected with the communicable disease as well as any common area surface and shared equipment such employee or contractor may have touched, and the employer policy on available leave in the event of the need of an employee to receive testing, treatment, isolation, or quarantine. Such protocol shall not involve any action that would violate any existing federal, state, or local law, including regarding sick leave or health information privacy.

f. A protocol for documenting precise hours and work locations, including off-site visits, for essential employees and contractors. Such protocol shall be designed only to aid in tracking of the disease and to identify the population of exposed employees and contractors in order to facilitate the provision of any benefits which may be available to certain employees and contractors on that basis.

g. A protocol for how the public employer will work with such employer's locality to identify sites for emergency housing for essential employees in order to further contain the spread of the communicable disease that is the subject of the declared emergency, to the extent applicable to the needs of the workplace.

4. Once drafted, each public employer shall present the plan described in this section to all applicable duly recognized or certified represen-

tatives of the employer's employees, who shall then be granted an opportunity to review the plan and make recommendations, if any, provided that nothing shall preclude such representatives from making such recommendations prior to the draft being completed. The employer must consider and respond to such recommendations in writing within a reasonable timeframe. A copy of the final version of such plan shall then be published in a clear and conspicuous location, and in the employee handbook, to the extent that the employer provides such handbook to its employees, and in a location accessible on either the employer's website or on the internet accessible by employees. No employer shall take retaliatory action or otherwise discriminate against any employee for making suggestions or recommendations regarding the content of the plan.

5. The department shall establish procedures to allow for public employees or contract workers to contact and inform the department of any alleged or believed violations of any of the provisions described in this section.

6. Nothing in this section shall be deemed to impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement, or the rights and benefits which accrue to employees through collective bargaining agreements, or otherwise diminish the integrity of the existing collective bargaining relationship.

§ 2. Section 27-a of the labor law is amended by adding a new subdivision 6-a to read as follows:

6-a. Form of complaints. The department shall establish a dedicated webpage and hotline through which any public employee under the jurisdiction of this section or contractor as defined by the chapter which added this subdivision may report alleged or believed violations of any state law, regulation, rule or guidance related to occupational health and safety involving a communicable disease, including but not limited to the novel coronavirus COVID-19. Such webpage and hotline shall allow individuals to report alleged or believed violations anonymously.

§ 3. Paragraphs k and l of subdivision 2 of section 2801-a of the education law, as amended by section 1 of part B of chapter 56 of the laws of 2016, are amended to read as follows:

k. a description of the duties of hall monitors and any other school safety personnel, the training required of all personnel acting in a school security capacity, and the hiring and screening process for all personnel acting in a school security capacity; [and]

l. the designation of the superintendent, or superintendent's designee, as the district chief emergency officer responsible for coordinating communication between school staff and law enforcement and first responders, and ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring the completion and yearly updating of building-level emergency response plans; or

m. protocols for responding to a declared public health emergency involving a communicable disease that are substantially consistent with the provisions of section twenty-seven-c of the labor law.

§ 4. This act shall take effect immediately; provided, however that the operation plans in the event of certain declared public health emergencies established pursuant to section 27-c of the labor law shall be finalized and published, the hotline and webpage established pursuant to section 27-a of the labor law shall be functional, and the protocols for responding to a declared public health emergency involving a communica-

57 ble disease pursuant to paragraph m of subdivision 2 of section 2801-a
1 CHAP. 168 4

2
3 of the education law shall be established and functional within 30 days
4 of the effective date of this act.

5
6 The Legislature of the STATE OF NEW YORK ss:

7 Pursuant to the authority vested in us by section 70-b of the Public
8 Officers Law, we hereby jointly certify that this slip copy of this
9 session law was printed under our direction and, in accordance with such
10 section, is entitled to be read into evidence.

11
12 ANDREA STEWART-COUSINS
13 Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

BILL NUMBER: S8181A

SPONSOR: MAY

TITLE OF BILL:

An act to amend the general municipal law, in relation to establishing a state disaster emergency loan program; and providing for the repeal of such provisions upon the expiration thereof

PURPOSE:

To provide industrial development agencies (IDAs) with the flexibility to support small businesses and non-profits during public health emergencies.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill provides for grants and in-kind donations from Industrial Development Agencies (IDAs) to small businesses or not-for-profits for the purposes of purchasing personal protective equipment (PPE) and other fixtures needed to help prevent the spread of COVID-19.

Section 2 establishes the State disaster emergency loan program to allow IDAs to make loans to small businesses and not-for-profit organizations up to \$25,000 with certain considerations. IDAs who choose to administer a State disaster emergency loan program will have to maintain records related to the program, and report to the Governor, Speaker of the Assembly and Temporary President of the Senate one year following the end of the State disaster emergency declaration.

Section 3 establishes the effective date, and the expiration of the legislation on December 31; 2021.

JUSTIFICATION:

The current public health crisis is forcing small businesses and not-for-profit organizations across New York to slow down or shut down operations. This represents a significant threat to the viability of these businesses, who are significant employers and important pieces of their communities. Current restrictions limit the ability of local IDAs to provide loans to such small businesses and not-for-profit organizations to help ensure their short-term viability, especially until the Small Business Administration's funding in response to the crisis comes online. Granting IDAs a short-term authority to extend such moderate loans will help ensure New York's small businesses and not-for-profit organizations remain viable after this public health crisis and have more options in any future crises. Also, providing grants for Personal Protective Equipment (PPE) and installation of safety fixtures for these small businesses and not-for-profit organizations will allow safety for workers during the COVID-19 pandemic.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

Immediately.

LAWS OF NEW YORK, 2020

CHAPTER 109

1 AN ACT to amend the general municipal law, in relation to establishing a
2 state disaster emergency loan program; and providing for the repeal of
3 such provisions upon the expiration thereof
4

5 Became a law June 17, 2020, with the approval of the Governor.

6 Passed by a majority vote, three-fifths being present.
7

8 The People of the State of New York, represented in Senate and Assem-
9 bly, do enact as follows:
10

11 Section 1. Subdivisions 16 and 17 of section 858 of the general munic-
12 ipal law, as added by chapter 1030 of the laws of 1969 and as renumbered
13 by chapter 356 of the laws of 1993, are amended to read as follows:

14 (16) To establish and re-establish its fiscal year; [and]

15 (17) To provide loans to small businesses or not-for-profit corpo-
16 rations as authorized in section eight hundred fifty-nine-c of this
17 title; and

18 (18) To provide grants to small businesses and not-for-profit corpo-
19 rations, as defined in section eight hundred fifty-nine-c of this title,
20 for the purpose of acquiring personal protective equipment or installing
21 fixtures necessary to prevent the spread of novel coronavirus, COVID-19,
22 during the period in which executive order two hundred two of two thou-
23 sand twenty, as amended, is in effect. In order to be eligible for a
24 grant pursuant to this subdivision, a small business or not-for-profit
25 corporation must meet the requirements of paragraph a of subdivision
26 three of section eight hundred fifty-nine-c of this title. No indus-
27 trial development agency may provide a small business or not-for-profit
28 corporation with more than ten thousand dollars pursuant to this subdi-
29 vision; and

30 (19) To do all things necessary or convenient to carry out its
31 purposes and exercise the powers expressly given in this title.

32 § 2. The general municipal law is amended by adding a new section
33 859-c to read as follows:

34 § 859-c. State disaster emergency loan program. 1. For purposes of
35 this section:

36 a. "grace period" means the sixty-day period after a state disaster
37 emergency ends;

38 b. "eligible entity" means both a small business and a small not-for-
39 profit corporation that:

40 (i) is physically located in the state; and

41 (ii) was operational prior to the state disaster emergency.

42 c. "small business" means a business with not more than fifty employ-
43 ees;

44 d. "small not-for-profit corporation" means a not-for-profit corpo-
45 ration, formed pursuant to the not-for-profit corporation law with not
46 more than fifty employees; and

47 e. "state disaster emergency" means the period in which executive
48 order two hundred two of two thousand twenty, as amended, is in effect
49 to address the outbreak of novel coronavirus, COVID-19.
50

51 EXPLANATION--Matter in italics is new; matter in brackets [-] is old law
52 to be omitted.

CHAP. 109

2

2. Any industrial development agency (IDA) may administer a state disaster emergency loan program to provide loans from available revenue to eligible entities pursuant to this section, provided that no IDA may create more than one state disaster emergency loan program.

3. a. An IDA may make a loan to an eligible entity upon application from such entity through the state disaster emergency loan program, provided the IDA has determined that the applicant:

(i) was a financially viable entity prior to the state disaster emergency;

(ii) conducts business in the area served by the IDA; and

(iii) has been negatively affected by the state disaster emergency.

b. An IDA shall consider the following, before approving the application of an eligible entity for a loan under the state disaster emergency loan program:

(i) creditworthiness of the applicant prior to the state disaster emergency;

(ii) the level of negative impact of the state disaster emergency on the operations and finances of the applicant;

(iii) applicant's proposed plan to use the funds received through this program;

(iv) applicant's ties to their community and the impact of their work in the area served by the IDA;

(v) applicant's assurance that efforts will be made to retain jobs during the state disaster emergency; and

(vi) other potential sources of funding available to the applicant.

c. An IDA shall give priority under the state disaster emergency loan program to applications from applicants serving highly distressed areas as defined pursuant to subdivision eighteen of section eight hundred fifty-four of this title.

d. No applicant shall be permitted to receive loans from more than one IDA.

e. Any IDAs that serve within the same municipalities shall coordinate the distribution of loans in the state disaster emergency loan program.

4. Prior to administering a state disaster emergency loan program, an IDA shall develop, and adopt by resolution, the terms and conditions of such loans, provided that:

a. The amount of any loan provided pursuant to this section shall not exceed twenty-five thousand dollars, provided that the total amount of all loans received by an eligible entity shall not exceed twenty-five thousand dollars;

b. The loan agreement shall not (i) require repayment during the grace period, or (ii) charge interest on the principal amount;

c. The loan agreement shall require that the eligible entity repay the loan in full not later than one year after the end of the grace period; and

d. The loan agreement shall not contain a fee or penalty for the prepayment or early payment of the loan.

5. The IDA shall offer credit counseling services or refer eligible entities to not-for-profit credit counselors.

6. a. Each IDA shall maintain records related to the state disaster emergency loan program, including a record of loans issued and of payments received, and include such information in the annual report required by section twenty-eight hundred of the public authorities law.

b. An IDA that establishes a state disaster emergency loan program pursuant to this section shall submit a report on the program including

58 but not limited to the number and aggregate amount of loans given, loans
1 3
2 CHAP. 109

3 fully repaid, any outstanding loans, defaults and bad debts, to the
4 governor, the speaker of the assembly, and the temporary president of
5 the senate one year after the state disaster emergency ends.

6 7. Any interest deferred or not charged related to a loan issued
7 pursuant to this section shall be exempt from all state taxes that may
8 be applicable to such interest amounts as they relate to an eligible
9 entity. IDAs shall disclose to eligible entity borrowers in loan docu-
10 ments that there may be federal tax consequences to the program loans.

11 8. No new loan applications pursuant to this section shall be accepted
12 after the state disaster emergency ends.

13 § 3. This act shall take effect immediately and shall expire and be
14 deemed repealed December 31, 2021.

15
16 The Legislature of the STATE OF NEW YORK ss:

17 Pursuant to the authority vested in us by section 70-b of the Public
18 Officers Law, we hereby jointly certify that this slip copy of this
19 session law was printed under our direction and, in accordance with such
20 section, is entitled to be read into evidence.

21
22 ANDREA STEWART-COUSINS
23 Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

BILL NUMBER: S8782

SPONSOR: BRESLIN

TITLE OF BILL:

An act to amend the election law, in relation to requiring municipalities with the highest population in each county to have at least one polling place designated for early voting

PURPOSE:

This bill amends previously enacted early voting provisions to provide that, in each county, the largest municipality by population must contain at least one early voting polling location.

SUMMARY OF PROVISIONS:

Section 1: Amends § 8-600 of the Election Law to provide that the municipality with the highest population in each county based on the latest federal decennial census shall have at least one polling place designated for early voting, and to the extent practicable if such municipality has public transportation routes, such polling place shall be situated along such transportation routes.

Section 2: Effective date.

EXISTING LAW:

Currently, the board of elections in each county must designate early voting locations. There must be at least one early voting location for every full increment of 50,000 voters in each county, with a maximum required number of locations in each county set at seven. Polling places for early voting should be located so that voters in the county have adequate and equitable access, taking into consideration population density, travel time to the polling place, proximity to other early voting poll sites, public transportation routes, commuter traffic patterns, and other such factors the board of elections deems appropriate.

JUSTIFICATION:

In 2019, New York state lawmakers took historic steps in approving a series of reforms intended to make New York's voting process easier, more efficient, more transparent, and more accountable to its citizens. Among these reforms were the scheduling of state and federal primaries on the same day, automatic updating of voters' registrations when they move, preregistration of those ages 16 and 17 prior to an election in which they will be eligible to vote, and requirements that established 10 days of early voting which includes two full weekends prior to elections.

With regard to early voting, the intent of the legislature was to provide a flexible timeline within which voters can cast their ballots, taking into account the reality that voters often have busy schedules, vacations, and family obligations that can get in the way of voting on

election day. Early voting provides flexibility and a longer voting process that encourages civic involvement by New York's citizens.

Key components of ensuring the success and accessibility of early voting are the location and number of polling sites. The original legislation, passed in 2019, set a minimum threshold for the number of polling locations, with one polling location required for each 50,000 voters. The legislature was also careful to include provisions stating that when siting polling locations, boards of elections should take into account population density, travel time, and public transportation routes. These provisions recognize that inaccessibility to early voting polling locations will severely undermine the entire utility of the program for New York's voters. It has come to the attention of the sponsor that in at least one county in the state, the intent of these provisions has been disregarded, with polling locations being sited outside the county's largest municipality and urban center. The sites of the polling locations do not lend adequate and equitable access to the polls for the county's urban voters, as they are located a significant distance outside the county's largest city. Many urban voters, due to population density, utilize public transportation and will not have adequate and equitable access to the polling locations established in such county; these voters are effectively being disenfranchised from New York's early voting system.

In every county across the state, urban locations and cities should be equally represented and given the opportunity to express their voting preferences. This bill seeks to remedy this shortfall in the original legislation by clarifying that, in each county, at least one polling place must be located in the largest municipality of that county. In addition, if such municipality has public transportation lines, the polling location must be along such public transportation lines, to ensure that users of public transportation have equal access to the polling location. This legislation will ultimately ensure that the most populated city in each county is provided with early voting, thus preventing disenfranchisement, whether unintentional or deliberate, of urban voters and users of public transportation.

LEGISLATIVE HISTORY:

This is a new bill.

FISCAL IMPLICATIONS:

There is no cost to the state.

LOCAL FISCAL IMPLICATIONS: None; this bill will not alter the number of required polling locations, rather it further clarifies where such polling places must be located.

STATE OF NEW YORK

8782

IN SENATE

July 15, 2020

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the election law, in relation to requiring municipalities with the highest population in each county to have at least one polling place designated for early voting

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 2 of section 8-600 of the
2 election law, as added by chapter 6 of the laws of 2019, is amended to
3 read as follows:

4 (a) The board of elections shall designate polling places for early
5 voting, which may include the offices of the board of elections, for
6 persons to vote early pursuant to this title; provided, however, that
7 the municipality with the highest population in each county based on the
8 latest federal decennial census shall have at least one polling place
9 designated for early voting, and to the extent practicable if such muni-
10 cipality has public transportation routes, such polling place shall be
11 situated along such transportation routes. There shall be so designated
12 at least one early voting polling place for every full increment of
13 fifty thousand registered voters in each county; provided, however, the
14 number of early voting polling places in a county shall not be required
15 to be greater than ~~seven~~ ten unless required by any other provision of
16 law, and a county with fewer than fifty thousand voters shall have at
17 least one early voting polling place.

18 § 2. This act shall take effect January 1, 2021.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13799-06-0

BILL NUMBER: S6829B

SPONSOR: KAMINSKY

TITLE OF BILL:

An act to amend the environmental conservation law, in relation to prohibiting certain uses of trichloroethylene

PURPOSE:

To prohibit the most harmful uses of trichloroethylene.

SUMMARY OF PROVISIONS:

Section 1 prohibits the use of trichloroethylene as a vapor degreaser, an intermediate chemical to produce other chemicals, a refrigerant, or an extraction solvent or its use as a cleaning product for manufacturing or industrial cleaning process as of December 1, 2021.

Section 2 effective date.

JUSTIFICATION:

Trichloroethylene ("TCE") is a toxic chemical and known human carcinogen. Its use creates unacceptable human health and environmental risks. According to a report from the U.S. Environmental Protection Agency ("EPA"), TCE is one of the most frequently detected groundwater contaminants. TCE is the cause of some of the nation's most high-profile environmental disasters, most notably detailed in the film and book "A Civil Action" about Woburn, Massachusetts.

TCE is used as an industrial cleaning and degreasing agent in manufacturing. It readily evaporates into the atmosphere, and is easily transported into groundwater. In these subsurface environments, TCE degrades slowly and becomes a persistent contaminant to groundwater resources.

The environmental and human health harms associated with TCE are severe and well documented. TCE enters the body through air, water, food, and soil - through ingestion, inhalation, or even skin contact. Long-term exposure is strongly linked to various types of cancer, including kidney, liver, lymphoma, testicular, and leukemia. The U.S. Department of Human Health Services classifies TCE as "known to be a human carcinogen" and the EPA characterizes it as "carcinogenic in humans by all routes of exposure." Some studies also indicate that TCE also causes developmental disorders in children and infants. Furthermore, short-term exposure can cause harmful effects on the nervous system, liver, respiratory system, kidneys, blood, immune system, and heart.

During the final months of the previous federal administration, the EPA proposed to ban TCE for aerosol degreasing, dry cleaning, and vapor degreasing. The agency's risk assessment provided overwhelming evidence in support of a TCE ban. Since that time, the EPA has failed to finalize its proposed rule. Instead, the federal government has reversed course by commencing a new risk assessment. This legislation will prohibit the most harmful uses of TCE, consistent with the overwhelming body of

scientific research. These actions are necessary to protect human health and the environment, and to counter the federal government's inaction.

FISCAL IMPLICATIONS:

None.

PRIOR LEGISLATIVE HISTORY:

New bill.

EFFECTIVE DATE:

This act shall take effect immediately

STATE OF NEW YORK

6829--B

2019-2020 Regular Sessions

IN SENATE

November 1, 2019

Introduced by Sens. KAMINSKY, HARCKHAM, KAPLAN, METZGER, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to prohibiting certain uses of trichloroethylene

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a
2 new section 37-0119 to read as follows:

3 § 37-0119. Prohibition against certain uses of trichloroethylene.

4 1. Beginning December first, two thousand twenty-one, no person shall
5 use trichloroethylene as a vapor degreaser, an intermediate chemical to
6 produce other chemicals, a refrigerant, or an extraction solvent or in
7 any other manufacturing or industrial cleaning process or use.

8 2. For purposes of this section:

9 (a) "Extraction solvent" means a solvent used to separate a specific
10 substance from a mixture.

11 (b) "Refrigerant" means a chemical that is used as a heat carrier in a
12 cooling mechanism and that changes from liquid to gas and back again in
13 the refrigeration cycle.

14 (c) "Trichloroethylene" means a chemical with the Chemical Registry
15 Abstract Services Number of 79-01-6.

16 (d) "Vapor degreaser" means a substance boiled to a vapor that
17 condenses onto metal parts, causing beading and dripping, and that
18 removes contaminants from the parts.

19 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13807-05-0

BILL NUMBER: S6758A

SPONSOR: KAMINSKY

TITLE OF BILL:

An act to amend the penal law and the environmental conservation law, in relation to the disposal, possession and acceptance of solid waste and hazardous materials and to establishing crimes related to sand mining

PURPOSE:

The purpose of this legislation is to address and combat illegal dumping and sand mining as well to deter future illegal schemes.

SUMMARY OF PROVISIONS:

The bill amends the penal law to create multiple new environmental waste crimes to address illegal dumping. These new crimes include criminal disposal and aggravated criminal disposal in connection to both solid waste or hazardous substances and acutely hazardous substances as well as presumptions related to these crimes. The penal law is also amended to include criminal possession of solid waste, criminal acceptance of solid waste of construction and demolition material, criminal acceptance of a hazardous substance, and criminal acceptance of an acutely hazardous substance.

The law is further amended to create a new crime of scheme to defraud by criminal disposal and scheme to defraud by sand mining. The conspiracy crime is also expanded to include the new schemes to defraud.

The penal law is amended to include the crime of failure to maintain solid waste tracking documents and to account for making a false entry in a solid waste tracking document. This bill also creates new crimes targeting the illegal mining of sand, specifically, criminal sand mining and criminal disposal incident to sand mining.

JUSTIFICATION:

Localities across New York, especially those near New York City, continue to suffer from illegal dumping. New York City's construction industry continues to grow, which means there is an abundant amount of leftover construction and demolition debris that needs to be quickly and cheaply removed. Since the proper disposal of this waste is expensive, due to the hazardous nature of it, many businesses have turned to criminal schemes to make a profit.

In 2017, "Operation TrashNet" was undertaken by the Department of Environmental Conservation (DEC), New York State Police, Department of Transportation, and Suffolk County Police and resulted in the issuance of almost 200 tickets for illegal dumping of contaminated construction demolition debris and other safety violations and identified 9 illegal dumping sites over two days. Then in 2018, Suffolk County's District Attorney, in partnership with DEC and Suffolk County Police Department, worked to uncover a massive illegal dumping scheme in Long Island. The investigation, known as "Operation Pay Dirt," resulted in a 130-count

indictment against 30 individuals and 9 corporations for illegally disposing of solid waste at 24 locations.

In connection to "Operation Pay Dirt," a special grand jury was convened to investigate illegal dumping and to consider actions that entities like the legislature could take to prevent these bad acts from occurring in the future. Their final report concluded that current law does not take into account the illegal acceptance or disposal of solid waste, construction and demolition material, and hazardous substances nor does it address the illegal mining of sand. Therefore, without changing the law to deal with these loopholes, companies will continue acting in ways that damage the environment and pollute our communities. Further, without State action, the safety of Long Island's aquifer will continue to be put at risk. The provisions in the legislation incorporate the recommendations included in the special grand jury report, which will allow district attorneys to appropriately charge individuals engaged in illegal dumping and sand mining schemes to prevent similar bad acts from happening in the future.

LEGISLATIVE HISTORY:

New bill

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act takes effect on the first of November next succeeding the date on which it shall have become a law.

STATE OF NEW YORK

6758--B

2019-2020 Regular Sessions

IN SENATE

October 2, 2019

Introduced by Sens. KAMINSKY, BROOKS, GAUGHRAN, KAPLAN, MARTINEZ, THOMAS, BOYLE, BAILEY, BIAGGI, COMRIE, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the disposal of construction and demolition waste; and to amend the penal law, in relation to creating the crime of scheme to defraud by disposal of solid waste

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 71-2702 of the environmental conservation law is
2 amended by adding a new subdivision 15 to read as follows:

3 15. For the purposes of section 27-3101 of this chapter and subdivi-
4 sion five of section 71-2712, subdivisions seven, eight and nine of
5 section 71-2713 and subdivision three of section 71-2714 of this title:

6 (a) "property of another" shall include all property in which another
7 person has an ownership interest, whether or not a person who disposes
8 on such property, or any other person, may also have an interest in such
9 property; and

10 (b) "construction and demolition waste" shall mean waste resulting
11 from the alteration, construction, destruction, rehabilitation, or
12 repair of any man-made structure, including houses, buildings, indus-
13 trial or commercial facilities and roadways and restricted or limited
14 use fill and shall not include municipal solid waste.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD10865-07-0

S. 6758--B

2

1 § 2. Subdivision 4 of section 71-2712 of the environmental conserva-
2 tion law, as amended by chapter 26 of the laws of 1998, is amended and a
3 new subdivision 5 is added to read as follows:

4 4. He or she knowingly engages in conduct which causes the release of
5 more than one hundred gallons or one thousand pounds, whichever is less,
6 of an aggregate weight or volume of a substance hazardous to public
7 health, safety or the environment[-]; or

8 5. With intent to dispose of construction and demolition waste on the
9 property of another and having no right to do so nor any reasonable
10 grounds to believe he or she has such right, he or she unlawfully
11 disposes of either ten cubic yards or more, or twenty thousand pounds or
12 more, of construction and demolition waste, as defined in section
13 71-2702 of this title, on such property.

14 § 3. Subdivision 6 of section 71-2713 of the environmental conserva-
15 tion law, as amended by chapter 26 of the laws of 1998, is amended and
16 three new subdivisions 7, 8 and 9 are added to read as follows:

17 6. He or she knowingly or recklessly engages in conduct which causes
18 the release of a substance hazardous to public health, safety or the
19 environment and such substance enters a primary water supply[-]; or

20 7. With intent to dispose of construction and demolition waste on the
21 property of another and having no right to do so nor any reasonable
22 grounds to believe he or she has such right, he or she unlawfully
23 disposes of either seventy cubic yards or more, or one hundred forty
24 thousand pounds or more, of construction and demolition waste, as
25 defined in section 71-2702 of this title, on such property; or

26 8. With intent to dispose of a hazardous substance on the property of
27 another and having no right to do so nor any reasonable grounds to
28 believe he or she has such right, he or she unlawfully disposes of a
29 hazardous substance; or

30 9. He or she recklessly disposes of any acutely hazardous substance on
31 the property of another.

32 § 4. Subdivision 2 of section 71-2714 of the environmental conserva-
33 tion law, as amended by chapter 26 of the laws of 1998, is amended and a
34 new subdivision 3 is added to read as follows:

35 2. He or she knowingly engages in conduct which causes the release of
36 a substance acutely hazardous to public health, safety or the environ-
37 ment or the release of a substance which at the time of the conduct he
38 or she knows to meet any of the criteria set forth in paragraph (b) of
39 subdivision one of section 37-0103 of this chapter and such release
40 causes physical injury to any person who is not a participant in the
41 crime[-].

42 3. With intent to dispose of an acutely hazardous substance on the
43 property of another and having no right to do so nor any reasonable
44 grounds to believe he or she has such right, he or she unlawfully
45 disposes of an acutely hazardous substance on such property.

46 § 5. Article 27 of the environmental conservation law is amended by
47 adding a new title 31 to read as follows:

48 TITLE 31

49 CONSTRUCTION AND DEMOLITION WASTE

50 Section 27-3101. Waste tracking documents.

51 § 27-3101. Waste tracking documents.

52 1. All generators in a city with a population of one million or more
53 that generate construction and demolition waste, as defined in section

54 71-2702 of this chapter, shall provide waste transporters with a waste
55 tracking document for each construction and demolition waste shipment,
56 in a form prescribed or approved by the department, specifying the quan-

S. 6758--B

3

1 tity and type of construction and demolition waste, and signed and dated
2 by an authorized representative of the generator. The waste tracking
3 documentation shall state: "I certify, under penalty of law, that the
4 information provided in this waste tracking document has been prepared
5 under my direction and supervision and further certify that the informa-
6 tion contained herein is true and accurate. I am aware that any false
7 statement made on this form is punishable pursuant to section 210.45 of
8 the Penal Law."

9 2. All transporters of construction and demolition waste generated in
10 a city with a population of one million or more shall:

11 (a) not accept a shipment of waste that does not match the quantity or
12 type listed on the waste tracking document;

13 (b) have the waste tracking document signed by the receiving location
14 or facility upon delivery of the solid waste and provide a copy of the
15 tracking document to the receiving location or facility.

16 3. Failure to maintain such tracking documents is a class A misdemea-
17 nor.

18 § 6. Section 190.65 of the penal law, as amended by chapter 291 of the
19 laws of 2008, is amended to read as follows:

20 § 190.65 Scheme to defraud in the first degree.

21 1. A person is guilty of a scheme to defraud in the first degree when
22 he or she: (a) engages in a scheme constituting a systematic ongoing
23 course of conduct with intent to defraud ten or more persons or to
24 obtain property from ten or more persons by false or fraudulent
25 pretenses, representations or promises, and so obtains property from one
26 or more of such persons; or (b) engages in a scheme constituting a
27 systematic ongoing course of conduct with intent to defraud more than
28 one person or to obtain property from more than one person by false or
29 fraudulent pretenses, representations or promises, and so obtains prop-
30 erty with a value in excess of one thousand dollars from one or more
31 such persons; or (c) engages in a scheme constituting a systematic ongo-
32 ing course of conduct with intent to defraud more than one person, more
33 than one of whom is a vulnerable elderly person as defined in subdivi-
34 sion three of section [260.30] 260.31 of this chapter or to obtain prop-
35 erty from more than one person, more than one of whom is a vulnerable
36 elderly person as defined in subdivision three of section [260.30]
37 260.31 of this chapter, by false or fraudulent pretenses, representa-
38 tions or promises, and so obtains property from one or more such
39 persons; or (d) engages in a systematic ongoing course of conduct, with
40 intent to defraud more than one person by false or fraudulent pretenses,
41 representations or promises, by disposing of solid waste as defined in
42 section 27-0701 of the environmental conservation law on such persons'
43 property, and so damages the property of one or more of such persons in
44 an amount in excess of one thousand dollars.

45 2. In any prosecution under this section, it shall be necessary to
46 prove the identity of at least one person from whom the defendant so
47 obtained property, but it shall not be necessary to prove the identity
48 of any other intended victim, provided that in any prosecution under
49 paragraph (c) of subdivision one of this section, it shall be necessary
50 to prove the identity of at least one such vulnerable elderly person as
51 defined in subdivision three of section [260.30] 260.31 of this chapter.

52 3. In any prosecution under paragraph (d) of subdivision one of this
53 section, it shall be necessary to prove the identity of at least one

54 person on whose property the defendant fraudulently disposed of solid
55 waste pursuant to such paragraph (d), but it shall not be necessary to
56 prove the identity of any other victim or intended victim.

S. 6758--B

4

1 Scheme to defraud in the first degree is a class E felony.
2 § 7. This act shall take effect on the first of January next succeed-
3 ing the date on which it shall have become a law. Effective immediately
4 any rules and regulations necessary to implement the provisions of this
5 act on its effective date are authorized to be made and completed on or
6 before such date.

BILL NUMBER: S8834

SPONSOR: MONTGOMERY

TITLE OF BILL:

An act to amend the family court act, in relation to the placement of a former foster care youth during a certain state of emergency

PURPOSE:

To allow a former foster care youth who has been discharged from the foster care system the ability to re-enter without submitting a motion to the family court during a certain state of emergency.

SUMMARY OF PROVISIONS:

Section 1 amends section 1055(e) of the Family Court Act to allow a former foster care youth to re-enter the foster care system without having to file a motion with the family court during the state of emergency declared pursuant to executive order 202 of 2020 in response to the novel coronavirus (COVID-19) pandemic. The commissioner of the local social services department would be required to consider the same factors that the court is required to consider when determining the appropriateness of the former foster care youth reentering the foster care system. Any requirement to enroll in vocational or education program when a former foster care youth reenters the system would be required to be waived during the time of the state of emergency. This section would also clarify that to the extent a former foster care youth is denied the request to return to the custody of the local commissioner of social services, or other board or department authorized to receive children as public charges, that the youth would still have the opportunity to file a motion as authorized pursuant to section 1091 of the family court act.

Section 2 amends section 1091 of the Family Court Act to require that during the state of emergency declared pursuant to executive order 202 of 2020 in response to the novel coronavirus (COVID-19) pandemic that former foster care youth can re-enter the foster care system without making a motion to the court, and that any requirement to enroll and attend an educational or vocational program will be waived for the duration of the state of emergency. This section would also clarify, subsequent to former foster youth's return to placement without making a motion, as authorized under this section during the COVID-19 state of emergency, that nothing in this section would prohibit a local social service district from filing a motion for requisite findings needed to claim reimbursement under Title IV-E of the Federal Social Security Act to support the youth's care, and the family court shall hear and determine such motions.

EXISTING LAW:

N/A

JUSTIFICATION:

Under existing law, young adults can return to foster care when they have no alternative and agree to participate in a vocational or educational program, upon the approval of the Family Court. Because access to court can be severely restricted in the event of a state of emergency, requests for assistance by youth between ages 18 and 21 should be automatically granted by the local social services districts. Requirements for participation in vocational and educational programs should be temporarily waived so as not to serve as a barrier to re-entry during the crisis.

LEGISLATIVE HISTORY:

Similar to S8470B which was reported to Finance

FISCAL IMPLICATIONS:

TBD

LOCAL FISCAL IMPLICATIONS:

TBD

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

8834

IN SENATE

July 20, 2020

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to amend the family court act, in relation to the placement of a
former foster care youth during a certain state of emergency

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision (e) of section 1055 of the family court act, as
2 amended by chapter 342 of the laws of 2010, is amended to read as
3 follows:

4 (e) (i) No placement may be made or continued under this section
5 beyond the child's eighteenth birthday without his or her consent and in
6 no event past his or her twenty-first birthday. However, a former foster
7 care youth under the age of twenty-one who was previously discharged
8 from foster care due to a failure to consent to continuation of place-
9 ment may make a motion pursuant to section one thousand ninety-one of
10 this act to return to the custody of the local commissioner of social
11 services or other officer, board or department authorized to receive
12 children as public charges. In such motion, the youth must consent to
13 enrollment in and attendance at a vocational or educational program in
14 accordance with paragraph two of subdivision (a) of section one thousand
15 ninety-one of this act. (ii) Provided, however, that during the state of
16 emergency declared pursuant to Executive Order 202 of 2020 in response
17 to the novel coronavirus (COVID-19) pandemic, a former foster care youth
18 may request to return to the custody of the local commissioner of social
19 services or other officer, board or department authorized to receive
20 children as public charges without making a motion pursuant to section
21 one thousand ninety-one of this act and any requirement to enroll in and
22 attend a vocational or educational program shall be waived for the dura-
23 tion of the state of emergency; provided further, however, that during a
24 state of emergency, the local commissioner of social services or other
25 officer, board or department authorized to receive children as public
26 charges shall be authorized to place such former foster care youth
27 requesting to return to foster care placement; and provided further,
28 however, that the local commissioner of social services or other offi-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets

11/24/2020

Read Bill - SB 8834 - As Filed

[-] is old law to be omitted.

LBD16556-13-0

S. 8834

2

cer, board or department authorized to receive children as public charges shall, when determining whether to return such former foster care youth to foster care placement, take into consideration the factors the court would take into consideration upon making such a determination to return a child to foster care placement pursuant to section one thousand ninety-one of this act. To the extent a former foster care youth is denied the request to return to the custody of the local commissioner of social services, or other board or department authorized to receive children as public charges pursuant to this paragraph, the youth shall still have the opportunity to file a motion as authorized pursuant to section one thousand ninety-one of this act.

§ 2. The opening paragraph of section 1091 of the family court act, as added by chapter 342 of the laws of 2010, is amended to read as follows:

A motion to return a former foster care youth under the age of twenty-one, who was discharged from foster care due to a failure to consent to continuation of placement, to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, may be made by such former foster care youth, or by a local social services official upon the consent of such former foster care youth, if there is a compelling reason for such former foster care youth to return to foster care; provided however, that the court shall not entertain a motion filed after twenty-four months from the date of the first final discharge that occurred on or after the former foster care youth's eighteenth birthday; provided further, however, that during the state of emergency declared pursuant to Executive Order 202 of 2020 in response to the novel coronavirus (COVID-19) pandemic, a former foster care youth shall be entitled to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges without making a motion pursuant to this section and any requirement to enroll and attend an educational or vocational program shall be waived for the duration of the state of emergency. Subsequent to a former foster youth's return to placement without making a motion, as authorized under this section during the state of emergency declared pursuant to Executive Order 202 of 2020 in response to the novel coronavirus (COVID-19) pandemic, nothing herein shall prohibit the local social services district from filing a motion for requisite findings needed to claim reimbursement under Title IV-E of the federal social security act to support the youth's care, and the family court shall hear and determine such motions.

§ 3. This act shall take effect immediately.

BILL NUMBER: S8417

SPONSOR: KRUEGER

TITLE OF BILL:

An act to amend the local finance law, in relation to bond anticipation notes issued in calendar years 2015 through 2021; to authorize the expenditure and temporary transfer of reserve funds for expenses related to COVID-19; and to authorize the extension of repayment of inter-fund advances made for expenses related to COVID-19

PURPOSE:

The purpose of this proposed legislation is to address the COVID-19 public health crisis that has increased the financial burdens on local government. This bill would provide financial and budgetary flexibility to local governments as they continue to operate and provide critical services during this difficult time and its aftermath, by:

- (1) extending the "rollover" period for bond anticipation notes issued in calendar years 2015 through 2021, inclusive;
- (2) authorizing local governments and school districts to spend or temporarily transfer moneys in reserve funds for COVID-19 pandemic-related expenses; and
- (3) permitting the repayment of inter-fund advances made for COVID-19 pandemic-related expenses by the end of the next succeeding fiscal year or later, rather than the end of the current fiscal year.

SUMMARY OF PROVISIONS:

Section one of this bill would amend Local Finance Law ("LFL") § 23.00(b) to allow bond anticipation notes issued originally during calendar years 2015 through 2021, inclusive, to extend up to seven years beyond their original date of issue.

Section two of the bill would authorize local governments and school districts to spend moneys from capital reserve funds for capital costs attributable to the COVID-19 pandemic, without the referendum requirements that would otherwise apply.

Section three of the bill would authorize local governments and school districts to temporarily transfer moneys from any reserve fund to pay for operating costs or other costs attributable to the COVID-19 pandemic. The moneys that are transferred must be reimbursed from the fund into which they were transferred back into the reserve fund over a period of not more than five years, with at least twenty percent of the moneys reimbursed each year, with interest.

Section four of the bill would provide for an exception to General Municipal Law ("GML") § 9-a(3), to permit inter-fund advances made for costs attributable to the COVID-19 pandemic to be repaid by municipalities by the close of the next succeeding fiscal year, rather than the current fiscal year.

Section five of this bill provides for an immediate effective date.

JUSTIFICATION:

The COVID-19 pandemic has created significant financial challenges for local governments. Affected municipalities need additional flexibility in responding to the COVID-19 pandemic and its financial aftermath.

Except in the case of bond anticipation notes issued for "assessable improvements" (e.g., town water or sewer projects), local governments are generally authorized to extend or "rollover" bond anticipation notes ("BANs") for only up to five years. At the end of that period, the BANs must be retired or converted into long-term debt. Temporarily extending the "roll over" period by an additional two years for BANs issued in calendar years 2015 through 2021 would create another option for a municipality currently faced with maturing bond anticipation notes, particularly in this volatile market environment, and aid municipalities in managing future fiscal challenges emanating from the COVID-19 emergency. The Legislature enacted similar extensions of the maximum maturity of BANs issued in calendar years 2004 and 2005, in response to the 2008-2009 economic downturn (Chapter 386 of the Laws of 2010), and calendar years 2007 and 2008, following Superstorm Sandy (Chapter 264 of the Laws of 2012). This bill reflects the magnitude of the financial challenges during and after the COVID19 emergency, and accordingly, it would provide the seven-year rollover period to BANs issued from 2015 through 2021.

This bill would also help provide flexibility by allowing local governments and school districts to spend moneys from their capital reserve funds without the need to comply with referendum requirements. The public benefit in facilitating prompt access to these moneys for their intended purposes, in response to the emergency conditions caused by the COVID-19 pandemic, justifies this one-time exception to the usual referendum requirements.

In addition, the bill would temporarily allow local governments and school districts to access capital and other reserve fund moneys to be temporarily advanced to cover operating costs attributable to the COVID-19 pandemic, notwithstanding that these reserve fund moneys are statutorily restricted for specified uses. To ensure that the lending reserve fund is made whole, so that the moneys advanced ultimately will be used for the originally intended purpose, the local government or school district must reimburse the reserve fund, with interest, over a period of not more than five years. Further, municipalities would enjoy flexibility by advancing funds for the payment of costs prior to reimbursement.

Finally, the bill would also provide that flexibility by extending the maximum time for repayment of an advance made from one fund of a municipal corporation to another fund when the advance is made for costs attributable to the COVID-19 pandemic. Currently, GML § 9-a (3) requires repayment by the close of the fiscal year in which the advance was made. Under this bill, the time for repayment would be extended until the close of the next succeeding fiscal year. The State Comptroller urges the passage of this proposed legislation.

PRIOR LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS FOR STATE:

None.

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

8417

IN SENATE

May 25, 2020

Introduced by Sen. KRUEGER -- (at request of the State Comptroller) --
read twice and ordered printed, and when printed to be committed to
the Committee on Finance

AN ACT to amend the local finance law, in relation to bond anticipation
notes issued in calendar years 2015 through 2021; to authorize the
expenditure and temporary transfer of reserve funds for expenses
related to COVID-19; and to authorize the extension of repayment of
inter-fund advances made for expenses related to COVID-19

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subparagraph 2 of paragraph b of section 23.00 of the local
2 finance law, as amended by chapter 264 of the laws of 2012, is amended
3 to read as follows:

4 2. renewals of bond anticipation notes issued originally during calen-
5 dar [~~year two thousand seven or two thousand eight~~] years two thousand
6 fifteen through two thousand twenty-one, inclusive may not extend more
7 than seven years beyond the original date of issue of such bond antic-
8 ipation notes.

9 § 2. Notwithstanding any provision of sections 6-c or 6-g of the
10 general municipal law or section 3651 of the education law to the
11 contrary, the governing board of a town, village, county, city, water
12 improvement district, sewer improvement district, fire district or
13 school district, by resolution which shall not be subject to referendum
14 requirements, may authorize expenditures from capital reserve funds for
15 capital costs attributable to the COVID-19 pandemic.

16 § 3. Notwithstanding any provision of the general municipal law, the
17 town law or the education law to the contrary, the governing board of a
18 town, village, county, city, water improvement district, sewer improve-
19 ment district, fire district or school district, by resolution which
20 shall not be subject to referendum requirements, if any, may authorize
21 the temporary transfer of moneys from reserve funds to pay for operating
22 costs or other costs attributable to the COVID-19 pandemic, provided,
23 that the reserve fund from which the funds were temporarily transferred
24 shall be reimbursed from the fund to which the transfer was made over a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets

11/24/2020

Read Bill - SB 8417 - As Filed

[-] is old law to be omitted.

LBD16492-01-0

S. 8417

2

1 period of not more than five fiscal years, starting with the fiscal year
2 following the transfer. At least twenty percent of the moneys temporarily
3 transferred shall be reimbursed each fiscal year. Such reimbursement
4 shall include an additional amount reasonably estimated to be the amount
5 that would have been earned on the investment of the transferred moneys
6 had they been retained in the capital reserve fund.

7 § 4. Notwithstanding the provisions of subdivision 3 of section 9-a of
8 the general municipal law, for inter-fund advances made pursuant to such
9 subdivision for costs attributable to the COVID-19 pandemic, repayment
10 of moneys to the fund from which they were advanced shall be made by
11 close of the fiscal year next succeeding the fiscal year in which such
12 advance was made.

13 § 5. This act shall take effect immediately.

BILL NUMBER: S8450C

SPONSOR: RIVERA

TITLE OF BILL:

An act to amend the public health law, in relation to the confidentiality of contact tracing information

PURPOSE:

To ensure that information collected through contact tracing for COVID19 is kept confidential

SUMMARY OF PROVISIONS:

Section one of the bill would amend Article 21 of the public health law by adding a new title 8 including a new section 2180 which sets forth various definitions and a new section 2181 which:

- Requires all contact tracing information be kept confidential and may not be disclosed except as necessary to carry out contact tracing or a permitted purpose;
- Authorizes an individual to waive confidentiality in a written, informed, and voluntary waiver in plain language understandable to the individual (oral waiver in a limited case);
- Authorizes disclosure, possession, or use of contact tracing information that has been de-identified, for public health or public health research purposes, including requiring technical safeguards against re-identification;
- Prohibits law enforcement agents or entities or immigration authorities from participating in contact tracing (except acting as the principal individual or contact individual) and prohibits contact tracers and entities from providing contact tracing information to law enforcement or immigration authorities except for permitted purposes;
- Directs the Commissioner and New York City Commissioner of Health and Mental Hygiene to make regulations on technical safeguards for data storage, transmission, and use, that are at least as protective as apply to other confidential information; and
- Requires non-governmental entities (such as private contractors hired for contact tracing programs) to expunge or de-identify information in their possession within 30 days of receiving it, and allows an additional 15 days if actively engaged in contact tracing using that information and the individual consents.

Section two of the bill provides an effective date.

JUSTIFICATION:

New York State began an aggressive contact tracing program in May 2020 as part of its effort to stop the spread of the COVID-19 virus and move

toward the reopening of regions of the state. The plan envisions an "army" of contact tracers to help identify COVID-19 positive individuals, who they have been in contact with, and isolate those who may have been infected. Contact tracing has been conducted for decades to address various communicable diseases, but never on this scale. It is estimated that there will be 30 contact tracers per 100,000 individuals.

Contact tracing is vital, but will not work unless people know that their information will be kept confidential.

Under the bill, PHL Sec. 2181(1)(a) states: "All contact tracing information . . . may not be disclosed except as necessary to carry out contact tracing or a permitted purpose." Where contact tracing information is disclosed for a particular purpose under the bill, the recipient of the information is and must be bound by the terms under which it was disclosed and may not "repurpose" the use or handling of the information.

New York State has a long history of establishing confidentiality protections for information gathered on people relative to contagious diseases like HIV/AIDS and sexually transmitted diseases. Information gathered through this new, massive COVID-19 contact tracing program must also be protected.

At a joint legislative public hearing held May 18, 2020 entitled "Exploring solutions to the disproportionate impact of COVID-19 on minority communities," concerns were raised about the use and sharing of information gathered through contact tracing. Communities of color have been disproportionately impacted by the COVID-19 pandemic and have experienced many types and levels of racial disparities. They may be rightfully reluctant to share sensitive and personal information with contract tracers for fear that the information will be shared with other government entities. As this information is key to stopping the spread of this highly contagious virus, individuals must know that the information they provide cannot be shared with law enforcement or be used in other ways not associated with the purposes of safeguarding the public's health without their voluntary disclosure and written consent.

This legislation preserves the confidentiality of information and reports gathered through contact tracing. It both protects all individuals involved in the effort and provides them with the confidence that sharing information with a contact tracer cannot put them or their loved ones in harm's way.

LEGISLATIVE HISTORY:

New bill.

FISCAL:

None

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

8450--C

IN SENATE

June 3, 2020

Introduced by Sens. RIVERA, BAILEY, BENJAMIN, BIAGGI, CARLUCCI, COMRIE, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KENNEDY, KRUEGER, LIU, MAY, MYRIE, PARKER, PERSAUD, RAMOS, SALAZAR, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the confidentiality of contact tracing information

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 21 of the public health law is amended by adding a new title 8 to read as follows:

TITLE 8

NOVEL CORONAVIRUS, COVID-19

Section 2180. Definitions.

2181. COVID-19 contact tracing; confidentiality.

2182. Regulations.

§ 2180. Definitions. As used in this title the following terms shall have the following meanings:

1. "Contact tracing" means case investigation and identification of principal individuals and contact individuals.

2. "Contact tracer" and "contact tracing entity" means an individual or entity employed by or under contract with the state, a local government, a state or local governmental entity, or an agent thereof, to conduct contact tracing, engage in contact tracing, or receive contact tracing information.

3. "Contact tracing information" means any information that includes or can reveal the identity of any principal individual or contact individual, and any COVID-19-related information or test results, received or collected for the purpose or in the course of contact tracing.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets

[-] is old law to be omitted.

LBD16487-14-0

S. 8450--C

2

1 4. "Contact individual" means an individual who has or may have come
2 in contact with a principal individual or who has or may have been
3 exposed to and possibly infected with COVID-19.

4 5. "Principal individual" means an individual with a confirmed or
5 probable diagnosis of COVID-19.

6 6. "COVID-19" means infection with or the disease caused by the severe
7 acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

8 7. "Immigration authority" means any entity, officer, employee, or
9 government employee or agent thereof charged with or engaged in enforce-
10 ment of the federal Immigration and Nationality Act, including the
11 United States Immigration and Customs Enforcement or United States
12 Customs and Border Protection, or any successor legislation or entity.

13 8. "De-identified" means, in relation to contact tracing information,
14 that the information cannot identify or be made to identify or be asso-
15 ciated with a particular individual, directly or indirectly and is
16 subject to technical safeguards and policies and procedures that prevent
17 re-identification, whether intentionally or unintentionally, of any
18 individual.

19 9. "Law enforcement agent or entity" means any governmental entity or
20 public servant, or agent, contractor or employee thereof, authorized to
21 investigate, prosecute, or make an arrest for a criminal or civil
22 offense, or engaged in any such activity, but shall not mean the depart-
23 ment, the commissioner, a health district, a county department of
24 health, a county health commissioner, a local board of health, a local
25 health officer, the department of health and mental hygiene of the city
26 of New York, or the commissioner of the department of health and mental
27 hygiene of the city of New York.

28 10. "Support" means resources or services provided to an individual to
29 enable such individual to safely quarantine or isolate, including
30 grocery, meal or pharmacy delivery, laundry services, child or elder
31 care, pet walking, assistance with telephone, internet, or other commu-
32 nication services or devices, health and mental health services, legal
33 services, provision of appropriate living space for individuals who
34 cannot isolate or quarantine at home, and income replacement. "Support"
35 may also include support provided to other individuals for whom the
36 individual commonly provides those resources or services.

37 11. "Permitted purpose" means:

38 (a) disclosure to appropriate health care providers or their personnel
39 for the purpose of the clinical diagnosis, care or treatment of the
40 principal individual or contact individual who is the subject of the
41 information, where an emergency exists and the individual is in immedi-
42 ate need of medical attention and an attempt to secure consent would
43 result in delay of treatment which would increase the risk to the indi-
44 vidual's life or health;

45 (b) facilitating a legally-authorized public health-related action, in
46 relation to a specified principal individual or contact individual,
47 where and only to the extent necessary to protect the public health; or

48 (c) the investigation, prosecution or defense of a civil or legal
49 action for a violation of this title; provided that if the use is initi-
50 ated by a party other than the principal individual or contact individ-
51 ual who is the subject of the contact tracing information, the informa-
52 tion must be highly material and relevant for the purpose.

53 § 2181. COVID-19 contact tracing; confidentiality. 1. (a) All contact

54 tracing information shall be kept confidential by any contact tracer and
55 contact tracing entity, and may not be disclosed except as necessary to
56 carry out contact tracing or a permitted purpose.

S. 8450--C

3

1 (b) Where a contact tracer or contact tracing entity discloses contact
2 tracing information for a permitted purpose, the contact tracer or
3 contact tracing entity shall make a record of the disclosure, including
4 to whom it was made, which shall be part of the contact tracing informa-
5 tion.

6 2. (a) An individual may waive the confidentiality provided for by
7 this section, only by a written, informed and voluntary waiver, in plain
8 language and in a language understandable to the individual making the
9 waiver, and not part of any other document. The waiver shall state the
10 scope and limit of the waiver. If an individual lacks the capacity to
11 make a waiver, an individual authorized to consent to health care for
12 the individual, or the individual's legal representative, may make the
13 waiver. However, a waiver of confidentiality is not required to be
14 written if it is solely for the purpose of arranging or providing
15 support for the individual who is the subject of the contact tracing
16 information.

17 (b) A waiver of confidentiality under this section shall only apply
18 for the purpose of arranging or providing support if the individual who
19 is the subject of the contact tracing information provides voluntary
20 informed consent to the arranging or providing of the support.

21 3. A disclosure of contact tracing information authorized under this
22 section shall be limited in scope as to the identity of any individual,
23 the information to be disclosed, and the party to which disclosure may
24 be made, and as necessary to achieve the purpose of the disclosure under
25 this section, and shall not authorize re-disclosure except as explicitly
26 authorized by the terms of the waiver under this section. However, this
27 section does not bar disclosure of contact tracing information pertain-
28 ing to and identifying a principal individual or contact individual by
29 the individual who is identified.

30 4. (a) This section does not bar otherwise-lawful disclosure,
31 possession or use of contact tracing information, including aggregate
32 contact tracing information, that is de-identified. Disclosure,
33 possession or use under this subdivision shall only be for a public
34 health or public health research purpose.

35 (b) A person or entity may only possess or use de-identified contact
36 tracing information if the person or entity maintains technical safe-
37 guards and policies and procedures that prevent re-identification,
38 whether intentional or unintentional, of any individual, as may be
39 required by the commissioner (or the New York city commissioner of
40 health and mental hygiene in the case of contact tracing information
41 collected by or under authority of the New York city department of
42 health and mental hygiene or the New York city health and hospitals
43 corporation). The commissioner (or the New York city commissioner as
44 the case may be) shall require safeguards, policies and procedures under
45 this paragraph as the commissioner deems practicable.

46 (c) Disclosure, possession and use of de-identified contact tracing
47 information under this subdivision shall be only pursuant to approval by
48 the commissioner (or the New York city commissioner of health and mental
49 hygiene in the case of contact tracing information collected by or under
50 authority of the New York city department of health and mental hygiene
51 or the New York city health and hospitals corporation) specifying the
52 purpose, nature and scope of the disclosure, possession and use and
53 measures to ensure that it will comply with this section and the terms

54 of the approval.

55 5. No law enforcement agent or entity or immigration authority shall

56 be a contact tracer or contact tracing entity or engage in contact trac-

S. 8450--C

4

ing. This subdivision does not bar an individual who is associated with a law enforcement entity or immigration authority from acting only as a principal individual or contact individual.

6. No contact tracer or contact tracing entity may provide contact tracing information to a law enforcement agent or entity or immigration authority. Without consent under subdivision two of this section, contact tracing information and any evidence derived therefrom shall not be subject to or provided in response to any legal process or be admissible for any purpose in any judicial or administrative action or proceeding. However, this subdivision does not restrict providing information, relating to a specified principal individual or contact individual, where and only to the extent necessary for a permitted purpose.

7. (a) The commissioner (or the New York city commissioner of health and mental hygiene in the case of contact tracing information collected by or under authority of the New York city department of health and mental hygiene or the New York city health and hospitals corporation), shall make regulations to require that contact tracing information possessed, used or under the control of a contact tracer or contact tracing entity shall be subject to technical safeguards and policies and procedures for storage, transmission, use and protection of the information. The regulations shall prevent possession, use or disclosure of the contact tracing information not permitted by this title, and shall be at least as or more protective than the safeguards, policies and procedures the commissioner (or the New York city commissioner as the case may be) provides for other confidential information.

(b) This paragraph applies where contact tracing information is possessed or controlled by a contact tracer or contact tracing entity that is a non-governmental individual or entity employed by or under contract with a governmental entity, or an agent thereof. Within thirty days of collecting or receiving the contact tracing information, the non-governmental individual or entity shall (i) remove information from its possession or control and deliver it to the appropriate governmental contact tracing entity, retaining no copy of it; (ii) expunge the information from its possession or control; or (iii) de-identify the information. However, the expungement or de-identification of particular contact tracing information may be postponed for up to fifteen days while the contact tracer or contact tracing entity is actively engaged in contact tracing using that information, provided that the principal individual or contact individual to whom it pertains gives voluntary informed consent. The disclosure, possession and use of the de-identified contact tracing information shall be subject to subdivision four of this section.

§ 2182. Regulations. The commissioner shall make regulations implementing this title.

§ 2. This act shall take effect immediately.

BILL NUMBER: S7589B

SPONSOR: GAUGHRAN

TITLE OF BILL:

An act directing the office of fire prevention and control within the division of homeland security and emergency services to form a task force and issue a report relating to volunteer firefighter recruitment and retention; and providing for the repeal of such provisions upon expiration thereof

PURPOSE OR GENERAL IDEA OF BILL:

To create a recruitment and retention task force, which shall be inclusive of relevant state agencies, designated associations representing volunteer firefighters and members of the Legislature to provide the Governor, the Senate and the Assembly with recommendations to assist in the recruitment and retention of volunteer firefighters.

SUMMARY OF SPECIFIC PROVISIONS:

Section one amends the executive law by creating a new Section 159-d-1 to provide for the creation of a task force that shall provide the Legislature and Governor, no later than one year after enactment, recommendations on the most effective ways to increase recruitment and retention of volunteer firefighters. The task force shall specifically look at the current training methods for volunteer firefighters and most effective delivery methods for such training; utilization of community colleges, BOCES and state accredited high schools to train firefighters and the creation of pilot programs within community colleges and BOCES that will offer Firefighter 1 certification upon completion; creation of a dedicated bureau within the office of fire prevention and control responsible for the recruitment and retention of volunteer firefighters; analysis of current tax incentives and volunteer firefighter benefit programs and recommendations as to these or new programs; analysis of recruitment and retention programs being successfully utilized in other states and recommendations as to the adoption of similar programs in New York State; and identification of incentive programs that will assist in the recruitment of volunteer firefighters from under-served and/or at-risk populations.

Section 2. This act shall take effect immediately and shall expire and be deemed repealed December 31, 2021.

JUSTIFICATION:

Volunteer firefighters serve not only an important function as first responders in the community they serve, but volunteers are often the first line of defense during a state-wide emergency, like COVID-19.

Over the years the number of individuals willing to join the volunteer fire service has decreased. This has put a strain on many communities as they seek to ensure the protection of their residents. The COVID-19 pandemic has further exacerbated the ability to recruit volunteer firefighters. Communities are left with very few options if they are unable

to recruit volunteer firefighters and the dwindling numbers could put many communities in danger.

The Firemen's Association of the State of New York, Association of Fire Districts of New York, State Association of Fire Chiefs and New York State Fire Coordinators have been left with the sole responsibility of the recruitment of volunteer firefighters. Although these four not-for-profit organizations have done a remarkable job, it is imperative that the State of New York become involved in this ongoing problem. Now more than ever, as we battle COVID-19 across the state, it is apparent that we must bring together the respective associations and relevant state agencies to design an effective and comprehensive set of recommendations that will assist in the recruitment and retention of volunteer firefighters.

LEGISLATIVE HISTORY:

New bill

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE:

This act shall take effect immediately and shall expire and be deemed repealed December 31, 2021.

STATE OF NEW YORK

7589--B

IN SENATE

January 29, 2020

Introduced by Sens. GAUGHRAN, ADDABBO, KAPLAN, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT directing the office of fire prevention and control within the division of homeland security and emergency services to form a task force and issue a report relating to volunteer firefighter recruitment and retention; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. New York state volunteer firefighter recruitment and
2 retention task force. There is hereby created the volunteer firefighter
3 recruitment and retention task force whose membership shall consist of
4 the chair to be appointed by the governor; the state fire administrator
5 or his or her designee; the commissioner of education or his or her
6 designee; the chancellor of the state university of New York or his or
7 her designee; the commissioner of taxation and finance or his or her
8 designee; the commissioner of labor or his or her designee; the presi-
9 dent of the Fireman's Association of the State of New York or his or her
10 designee; the president of the Association of Fire Districts or his or
11 her designee; the president of the New York State Association of Fire
12 Chiefs or his or her designee; the president of the New York State Fire
13 Coordinators or his or her designee; two members appointed by the tempo-
14 rary president of the senate; two members appointed by the speaker of
15 the assembly; one member appointed by the minority leader of the senate;
16 and one member appointed by the minority leader of the assembly. The
17 task force shall report to the governor, the speaker of the assembly and
18 the temporary president of the senate no later than one year after the
19 effective date of this act. Such report shall include, but not be
20 limited to, recommendations concerning:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD15049-07-0

S. 7589--B

2

1 1. Firefighter 1 training, and all other firefighter training offered
2 by the office of fire prevention and control, and delivery methods to
3 enhance and streamline training including the use of distance learning;

4 2. The utilization of community colleges, BOCES or state accredited
5 high schools to train firefighters and the creation of pilot programs
6 within community colleges or BOCES that will offer Firefighter 1 certifi-
7 cation upon completion;

8 3. The creation of a dedicated bureau within the office of fire
9 prevention and control responsible for recruitment and retention of
10 volunteer firefighters;

11 4. Tax incentives and volunteer firefighter benefits currently
12 provided and recommendations as to these or new programs;

13 5. Analysis of current recruitment and retention programs successfully
14 being utilized by other states and recommendations as to adoption of
15 similar programs in New York; and

16 6. Identification and recruitment incentives to assist in the recruit-
17 ment of volunteer firefighters from under-represented and at-risk popu-
18 lations.

19 All appointees of the task force shall be made no later than thirty
20 days after the effective date of this act. Any vacancy shall be filled
21 by the appointing authority. The task force shall meet as frequently as
22 deemed necessary prior to issuing its recommendations. The members of
23 the task force shall serve without compensation, except that members
24 shall be allowed their necessary and actual expenses incurred in the
25 performance of their duties under this section. The office of fire
26 prevention and control within the department of homeland security and
27 emergency services shall provide the task force with such facilities,
28 assistance, and data as will enable such task force to carry out its
29 powers and duties within reason.

30 § 2. This act shall take effect immediately and shall expire and be
31 deemed repealed December 31, 2021.

BILL NUMBER: S8492

SPONSOR: PARKER

TITLE OF BILL:

An act to amend the civil rights law, in relation to reporting a none-emergency incident involving a member of a protected class

PURPOSE:

To prevent the misuse of 911 and other organizations that deal with emergencies.

SUMMARY OF PROVISIONS:

Section one establishes civil penalties for summoning a police officer or peace officer when there is no reason to believe a crime or offense, or imminent threat to person or property, is occurring.

Section two establishes the effective date.

JUSTIFICATION:

Recent years have shown a number of distressing, frivolous calls to 911 for selling water, cutting grass, or using the swimming pool. These callers' personal comfort with other people has been the basis for the majority of those calls, and not for any particular threat. Calling 911 for non-emergencies poses a bigger threat to society in the era of Trump. Oftentimes, officers reporting to a scene are deposited into a situation with limited information and if that information sounds critical enough to law enforcement, they may respond with tactical force. It takes less than seven seconds for a situation with few details to escalate.

Furthermore, emergency services should be readily available for citizens in eminent danger. Having 911 call centers continuously dispatching Police, Fire or EMT services for non-emergencies leaves their resources short if an actual emergency is reported at the same time. This bill is not to discourage the intended use of 911, but to inhibit its blatant misuse.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE:

This act shall take effect immediately.

STATE OF NEW YORK

8492

IN SENATE

June 5, 2020

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil rights law, in relation to reporting a none-emergency incident involving a member of a protected class

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 79-n of the civil rights law, as
2 added by chapter 227 of the laws of 2010, is amended to read as follows:

3 2. Any person who intentionally selects a person or property for harm
4 or causes damage to the property of another or causes physical injury or
5 death to another or summons a police officer or peace officer without
6 reason to suspect a violation of the penal law, any other criminal
7 conduct, or an imminent threat to a person or property, in whole or in
8 substantial part because of a belief or perception regarding the race,
9 color, national origin, ancestry, gender, religion, religious practice,
10 age, disability or sexual orientation of a person, regardless of whether
11 the belief or perception is correct, shall be liable, in a civil action
12 or proceeding maintained by such individual or group of individuals, for
13 injunctive relief, damages, or any other appropriate relief in law or
14 equity. If it shall appear to the satisfaction of the court or justice
15 that the respondent has, in fact, violated this section, an injunction
16 may be issued by such court or justice, enjoining and restraining any
17 further violation, without requiring proof that any person has, in fact,
18 been injured or damaged thereby. For the purposes of this subdivision, a
19 person lacks reason to suspect a violation of the penal law, any other
20 criminal conduct, or an imminent threat to a person or property where a
21 reasonable person would not suspect such violation, conduct, or threat.

22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD04520-10-0

BILL NUMBER: S2575B

SPONSOR: BAILEY

TITLE OF BILL:

An act to amend the executive law, in relation to requiring a law enforcement officer or peace officer who discharges his or her weapon under circumstances where a person could be struck by a bullet to immediately report the incident

PURPOSE:

To require police or peace officers who discharges their weapons under circumstances where a person could be struck by a bullet to immediately report the incident.

SUMMARY OF PROVISIONS:

Section one of the bill adds § 837-v to the executive law to require that any law enforcement officer or peace officer who discharges their weapon, while on or off duty, where a person could be struck by a bullet from the weapon is required to verbally report the incident to his or her supervisor within six hours and prepare and file a written report of within forty-eight hours of the incident. This section also provides that a law enforcement officer or peace officer is not prevented from invoking his or her constitutional right to avoid self-incrimination and defines "law enforcement officer" and "peace officer."

Section two of the bill provides the effective date.

JUSTIFICATION:

On October 21, 2007, Jayson Tirado was shot and killed while traveling in a car with friends. Upon arrival at the scene, witnesses informed the police that the incident was a 'road rage' killing. Mr. Tirado was shot by a man who discharged a weapon at a car after arguing with a young man who cut him off on the FDP. Drive. Police diligently investigated the incident, launching a city-wide manhunt for the gunman. Police combed through several neighborhoods, followed up on leads, and even enlisted the media to implore witnesses to come forward to help apprehend the perpetrator. The media spent considerable time covering the story, the police manhunt, its impact on the victim's family, and the public's fear. On October 22, 2007, twenty hours after the incident, Sean Sawyer, a police officer, turned himself in to the police. According to Sawyer, while off duty on the day of the shooting he believed that he may have shot someone. Investigators determined that Officer Sawyer was responsible for the shooting death. of Tirade. When the police, media, and the victim's family inquired as to why Officer Sawyer failed to turn himself in earlier, Officer Sawyer responded that, despite shooting three times at a vehicle containing several passengers, he was not required to report the incident because he was not certain that he had shot someone. Officer Sawyer further claimed that the shooting of Tirado was justified because he shot at the vehicle because he believed that Tirado would have shot him. However, no weapons were found in the car or at the scene of the incident.

Despite the public outrage over the senseless death of Jayson Tirado and Officer Sawyer's failure to inform the police of the shooting, prosecutors at the Manhattan DA's office failed to charge Officer Sawyer with any wrongdoing. The DA and the police department maintained that it is not a crime to walk away from a shooting, and Officer Sawyer reported the incident within the required 24 hours. Officer Sawyer's failure to immediately notify the police of the incident was not only costly to the City, but also caused officers to spend a considerable amount of time and energy on the search of the shooter of Tirado killer. Officer Sawyer's delay in reporting the incident caused the public undue fear and apprehension.

This bill would require that all police officers and peace officers report incidents involving the discharge of their weapon within six hours of the occurrence. This requirement will aid in upholding the professional dignity of our police officers, as well as save the state's resources. This bill seeks to keep the bond between police officers and the community intact.

LEGISLATIVE HISTORY:

2017-18: S:9133/A.3574(Perry) - Referred to Rules

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

This act shall take effect on the ninetieth day after it shall have become law.

STATE OF NEW YORK

2575--B

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sens. BAILEY, BRESLIN, CARLUCCI, HOYLMAN, JACKSON, KAVANAGH, LIU, RAMOS, SANDERS, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to requiring a law enforcement officer or peace officer who discharges his or her weapon under circumstances where a person could be struck by a bullet to immediately report the incident

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 837-v
2 to read as follows:

3 § 837-v. Report of discharge of weapon. 1. Any law enforcement offi-
4 cer or peace officer who discharges his or her weapon while on duty or
5 off duty under circumstances wherein a person could be struck by a
6 bullet from the weapon, including situations wherein such officer
7 discharges his or her weapon in the direction of a person, shall verbal-
8 ly report the incident to his or her superiors within six hours of the
9 occurrence of the incident and shall prepare and file a written report
10 of the incident within forty-eight hours of the occurrence of the inci-
11 dent. Nothing contained in this section shall prevent any officer from
12 invoking his or her constitutional right to avoid self-incrimination.

13 2. As used in this section "law enforcement officer" means a state or
14 local police officer and "peace officer" means any person designated as
15 a peace officer pursuant to section 2.10 of the criminal procedure law.

16 § 2. This act shall take effect on the ninetieth day after it shall
17 have become a law.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD05659-04-0

BILL NUMBER: S6601B

SPONSOR: BAILEY

TITLE OF BILL:

An act to amend the civil rights law, in relation to medical attention for persons under arrest

PURPOSE:

The act amends the Civil Rights Law by adding a new section. This legislation affirms the duty of police officers, peace officers, and other law enforcement representatives and entities to provide attention to medical and mental health needs of persons in custody.

SUMMARY OF PROVISIONS:

Section 1 of the bill establishes a new right of action for failure to provide reasonable and good faith attention, assistance or treatment by an officer.

Section 2 is the effective date.

JUSTIFICATION:

In recent years, in New York State and nationally, there have been many disturbing reports and news accounts concerning individuals who have come into law enforcement custody and been injured, been injured by law enforcement incident to arrest, or become ill subsequent to their arrest. In far too many of these cases, adequate medical assistance has been denied to these individuals or been so delayed that individuals have suffered needless, pain and suffering. In the most egregious cases, indifference or neglect of some persons' conditions have even lead to senseless deaths. By specifically mandating a duty of care, this bill seeks to redress these wrongs and, in the future, prevent such persons from having to endure the infliction of distress and harm.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

TBD

EFFECTIVE DATE:

Immediately

LAWS OF NEW YORK, 2020

CHAPTER 103

1 AN ACT to amend the civil rights law, in relation to medical attention
2 for persons under arrest
3

4 Became a law June 15, 2020, with the approval of the Governor.

5 Passed by a majority vote, three-fifths being present.
6

7 The People of the State of New York, represented in Senate and Assem-
8 bly, do enact as follows:
9

10 Section 1. The civil rights law is amended by adding a new section 28
11 to read as follows:

12 § 28. Medical attention for persons under arrest. When a person is
13 under arrest or otherwise in the custody of a police officer, peace
14 officer or other law enforcement representative or entity, such officer,
15 representative or entity shall have a duty to provide attention to the
16 medical and mental health needs of such person, and obtain assistance
17 and treatment of such needs for such person, which are reasonable and
18 provided in good faith under the circumstances. Any person who has not
19 received such reasonable and good faith attention, assistance or treat-
20 ment and who, as a result, suffers serious physical injury or signif-
21 icant exacerbation of an injury or condition shall have a cause of
22 action against such officer, representative, and/or entity. In any such
23 civil action, the court, in addition to awarding actual damages and
24 costs, may award reasonable attorneys' fees to a successful plaintiff.
25 The provisions of this section are in addition to, but shall not super-
26 sede, any other rights or remedies available in law or equity.

27 § 2. This act shall take effect immediately.
28

29 The Legislature of the STATE OF NEW YORK ss:

30 Pursuant to the authority vested in us by section 70-b of the Public
31 Officers Law, we hereby jointly certify that this slip copy of this
32 session law was printed under our direction and, in accordance with such
33 section, is entitled to be read into evidence.
34

35 ANDREA STEWART-COUSINS
36 Temporary President of the Senate
37

CARL E. HEASTIE
Speaker of the Assembly
38
39
40
41

42 EXPLANATION--Matter in italics is new; matter in brackets [-] is old law
43 to be omitted.

BILL NUMBER: S8315A

SPONSOR: RIVERA

TITLE OF BILL:

An act to amend the public health law, in relation to review of policies and practices relating to any infectious disease outbreak in correctional facilities, including the treatment and prevention of the disease among inmates and staff

PURPOSE:

The purpose of the bill is to expand Department of Health (DOH) review of health policies and practices in Department of Corrections and Community Supervision (DOCCS) and local correctional facilities in relation to emerging infectious diseases.

SUMMARY OF PROVISIONS:

Section 1: amends subdivision 26 of Public Health Law section 206 by adding emerging infectious diseases to the situations in which DOH may review policies and practices of DOCCS and local correctional facilities.

Section 2: effective date

JUSTIFICATION:

New York has over 40,000 inmates in DOCCS custody and another 25,000 in local correctional facilities. These inmates rely on correctional health care providers for their medical care. Many inmates are at high risk for illnesses related to poverty, addiction, or mental illness, and in the event of an emerging infectious disease, the inability to maintain personal distance and lack of access to sanitary supplies are especially dangerous.

Subdivision 26 of PHL 206, enacted in 2009, authorized DOH to review policies and practices in DOCCS and local facilities relating to HIV/AIDS and Hepatitis C. Implementation includes review of HIV and Hepatitis C services in DOCCS facilities done by State contractor IPRO, including on-site reviews, staff interviews, and medical record review. The 2009 law has been successful in addressing HIV/AIDS with a viral suppression rate consistently over 90% in DOCCS, and ten times more individuals currently receive Hepatitis C care in NYS DOCCS than any other state.

Advocates have urged the expansion of this successful law. Last year, the Governor vetoed a bill that would've expanded it to additional inmate categories despite calling it "laudable" in his veto message. COVID-19 has demonstrated the particular risks of emerging infectious diseases in prisons and jails. As of April, rates of positive tests in correctional settings were even higher than in the New York City general public, though the number of tests performed in prisons and jails unacceptably low. (1) COVID-19 spread widely among both inmates and staff alike, and it took legal action for the City of New York to provide

masks to corrections officers. (2) Advocates have also called for expansion of medical parole in order to reduce the spread. This bill gives DOH the same authority to review DOCCS and local jail policies and prac-

tices in relation to emerging infectious diseases as they currently have under the 2009 law regarding HIV/AIDS and Hepatitis C services.

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATE:

This act shall take effect immediately.

STATE OF NEW YORK

8315--A

IN SENATE

May 11, 2020

Introduced by Sens. RIVERA, KRUEGER, MONTGOMERY, MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to review of policies and practices relating to any infectious disease outbreak in correctional facilities, including the treatment and prevention of the disease among inmates and staff

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 26 of section 206 of the public health law, as
2 amended by section 127-t of subpart B of part C of chapter 62 of the
3 laws of 2011, is amended to read as follows:

4 26. The commissioner is hereby authorized and directed to review any
5 policy or practice instituted in facilities operated by the department
6 of corrections and community supervision, and in all local correctional
7 facilities, as defined in subdivision sixteen of section two of the
8 correction law, regarding human immunodeficiency virus (HIV), acquired
9 immunodeficiency syndrome (AIDS), ~~[and]~~ hepatitis C (HCV), and emerging
10 infectious diseases, including the prevention of the transmission of
11 ~~[HIV and HCV]~~ and the treatment of ~~[AIDS, HIV and HCV]~~ such infections
12 and diseases among inmates. Such review shall be performed annually, and
13 more frequently as determined by the commissioner, and shall focus on
14 whether such ~~[HIV, AIDS or HCV]~~ policy or practice is consistent with
15 current, generally accepted medical standards and procedures used to
16 prevent the transmission of ~~[HIV and HCV]~~ and to treat ~~[AIDS, HIV and~~
17 ~~HCV]~~ those infections and diseases among the general public. In perform-
18 ing such reviews, in order to determine the quality and adequacy of care
19 and treatment provided, department personnel are authorized to enter
20 correctional facilities and inspect policy and procedure manuals and
21 medical protocols, interview health services providers and inmate-pa-
22 tients, review medical grievances, and inspect a representative sample
23 of medical records of inmates known to be infected with ~~[HIV or HCV or~~
24 ~~have AIDS]~~ any such infections or diseases. Prior to initiating a review

EXPLANATION--Matter in italics (underscored) is new; matter in brackets

[-] is old law to be omitted.

LBD16343-05-0

S. 8315--A

2

1 of a correctional system, the commissioner shall inform the public,
2 including patients, their families and patient advocates, of the sched-
3 uled review and invite them to provide the commissioner with relevant
4 information. Upon the completion of such review, the department shall,
5 in writing, approve such policy or practice as instituted in facilities
6 operated by the department of corrections and community supervision, and
7 in any local correctional facility, or, based on specific, written
8 recommendations, direct the department of corrections and community
9 supervision, or the authority responsible for the provision of medical
10 care to inmates in local correctional facilities to prepare and imple-
11 ment a corrective plan to address deficiencies in areas where such poli-
12 cy or practice fails to conform to current, generally accepted medical
13 standards and procedures. The commissioner shall monitor the implementa-
14 tion of such corrective plans and shall conduct such further reviews as
15 the commissioner deems necessary to ensure that identified deficiencies
16 in [~~HIV, AIDS and HCV~~] those policies and practices are corrected. All
17 written reports pertaining to reviews provided for in this subdivision
18 shall be maintained, under such conditions as the commissioner shall
19 prescribe, as public information available for public inspection. As
20 used in this subdivision, "emerging infectious disease" means an
21 infection that has increased recently or is threatening to increase in
22 the near future.

23 § 2. This act shall take effect immediately.

Brownfield Redevelopment

Jennifer C. Persico, Esq.

Ian A. Shavitz, Esq.

Michael L. Nisengard, Esq.

Martin Doster



Lippes
Mathias

Brownfield Redevelopment

A Primer on Opportunities, challenges, and Legal Considerations

Presented to: The County Attorneys' Association of the State of New York
December 7, 2020

Presented by: *Jennifer C. Persico*

716.853.5100 x1350
jpersico@lippes.com



Litigation Team Co-Leader

- > Extensive experience in business disputes and commercial litigation matters, including contract claims on behalf of both plaintiffs and defendants.
- > Assisting municipalities in defending 1983 claims, resolving land use issues, drafting local laws and governance issues.
- > Experience in resolving complex disputes on behalf of her clients using both litigation and non-litigation methods.
- > Named one of the Legal Elite of WNY by Business First of Buffalo

Presented by: *Ian A. Shavitz*

716.853.5100 x1602
lshavitz@lippes.com



Partner/Team Leader, Environment & Energy

- > 20 years of experience counseling and advocating for clients on environmental and land use issues associated with developing large-scale infrastructure, energy, and commercial projects.
- > Securing federal, state and local governmental permits and approvals; advising sellers, purchasers, lenders, and investors on environmental issues associated with corporate, real estate and energy transactions; and advocating for favorable policy decisions and legislation before Congress.
- > Clients have included corporations, municipalities, developers, investors, state and local governments, private equity funds, and Indian tribes.

Overview of Presentation

> The Basics

- What are Brownfields?
- Municipal and Private Party Roles
- Why a County Attorney Should Care
- Brownfield Redevelopment Process
- Benefits and Challenges

> NYSDEC Brownfield Cleanup Program

> The Real Estate Transaction

Canalside Buffalo



Brownfield Site Before Renewal



Guthrie Green After Renewal



New York City High Line Park



Before



After

The Basics

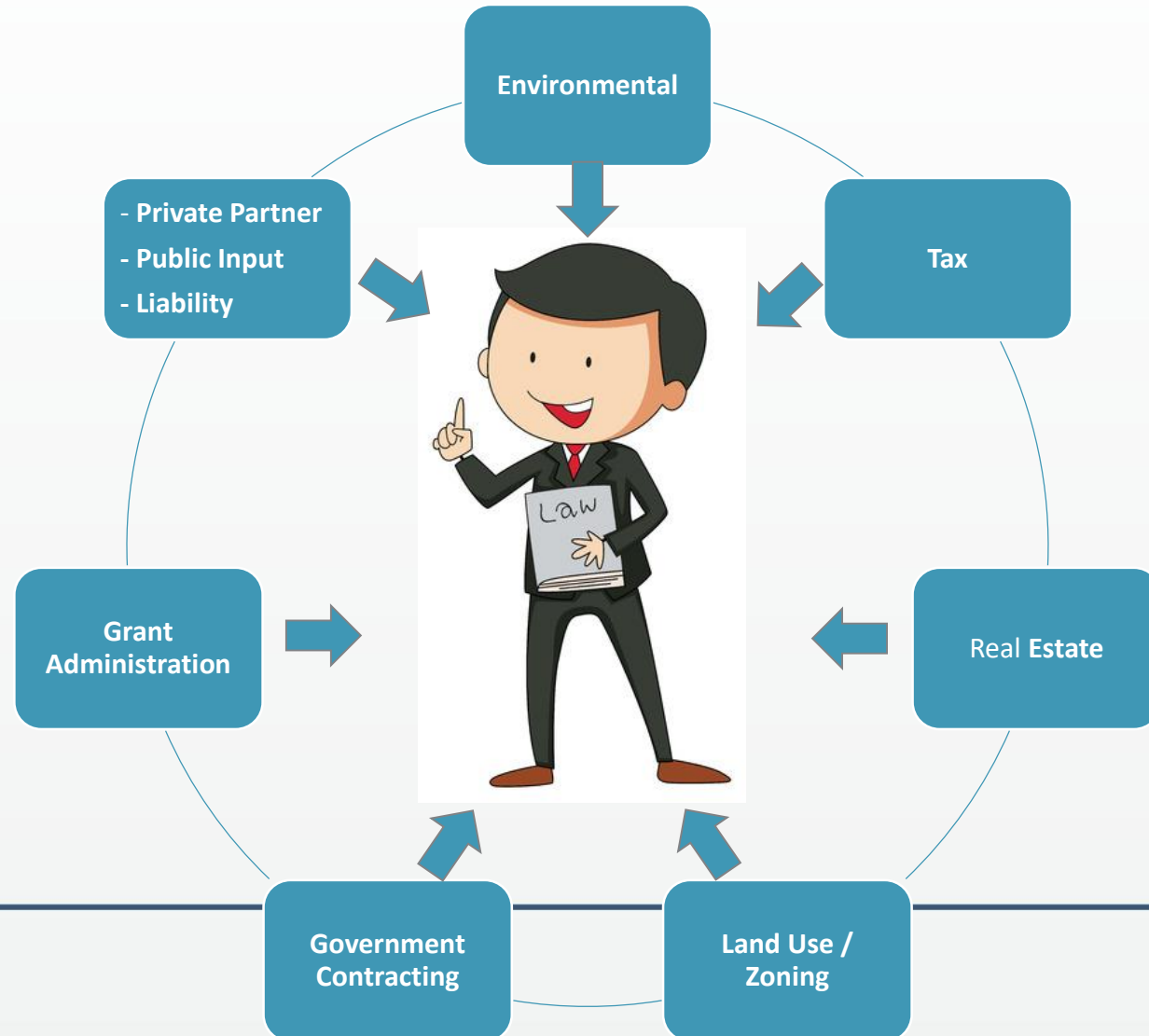
> What is a Brownfield

- EPA: “A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

> What is the Municipality's Role

- Assess / Remediate Site
- Provide Financial Incentive
- Dictate Property uPses
- Property Owner
- Property Developer
- Seller / Buyer

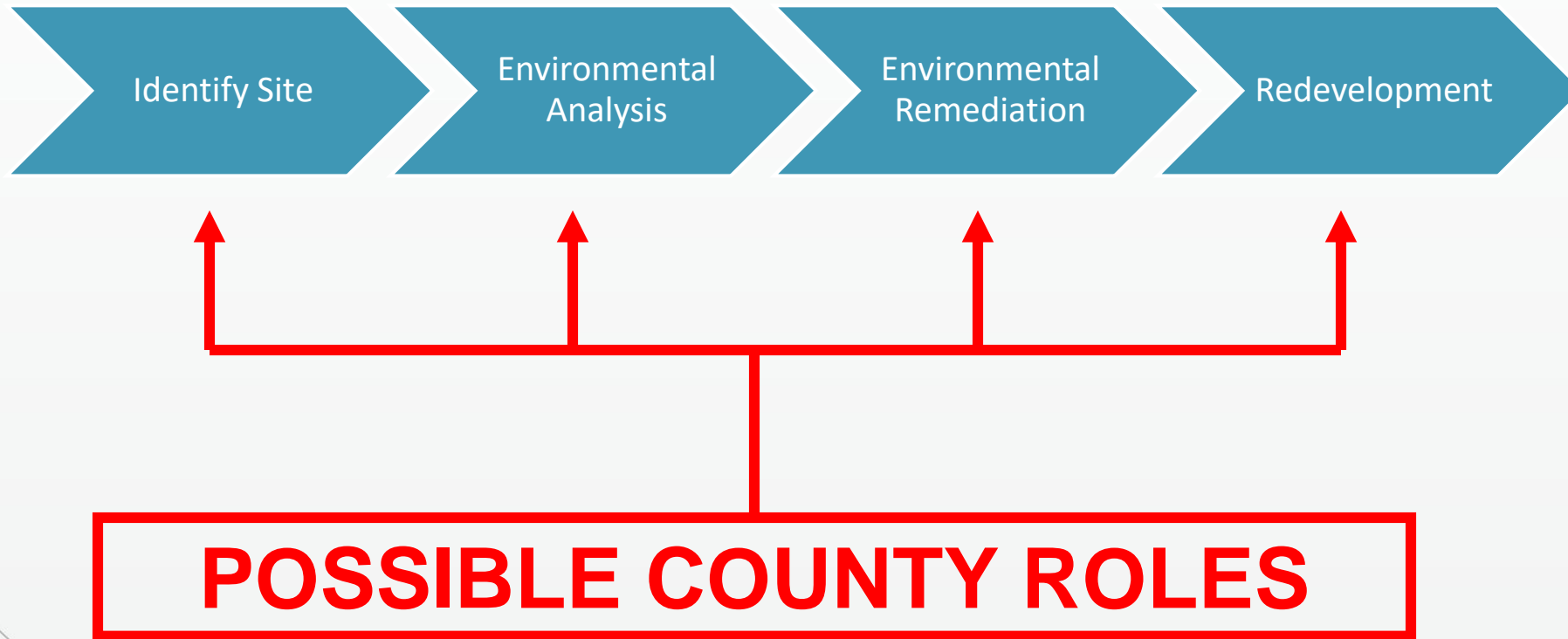
Why Does a County Attorney Care?



Brownfield Redevelopment Process

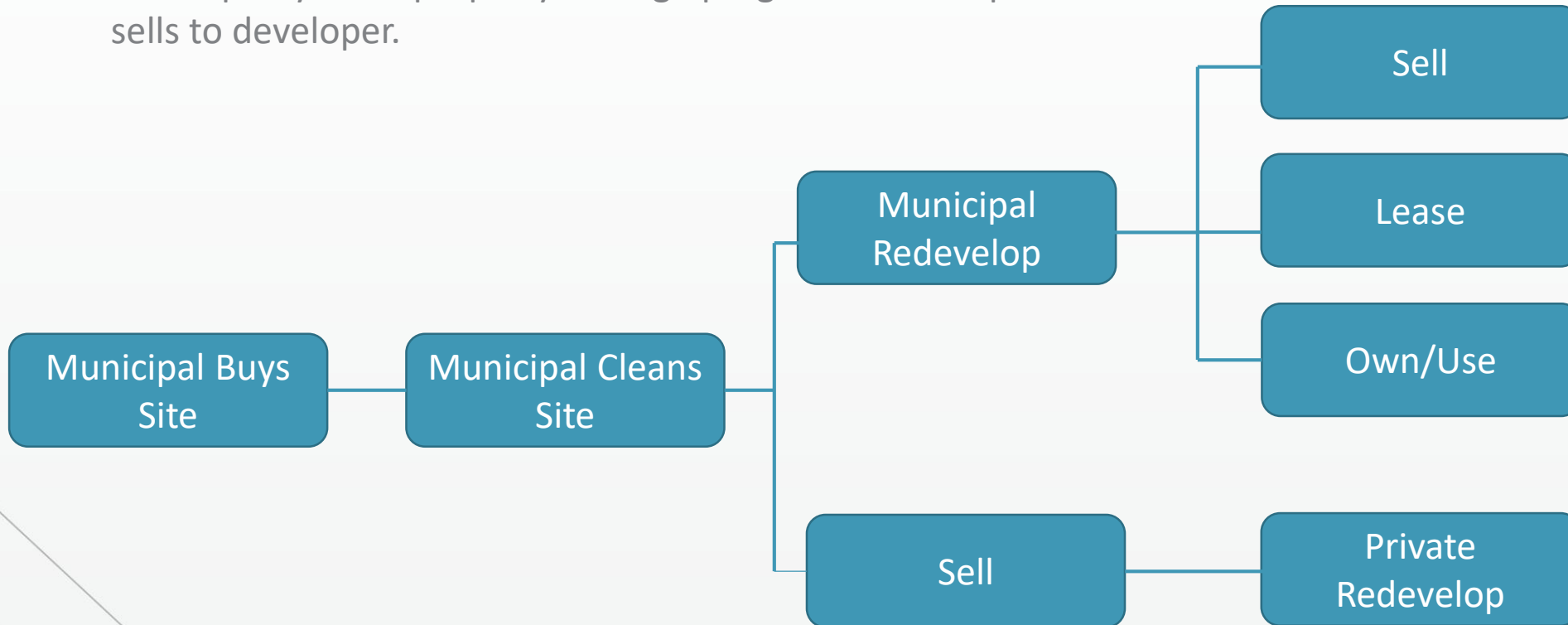


Brownfield Redevelopment Process



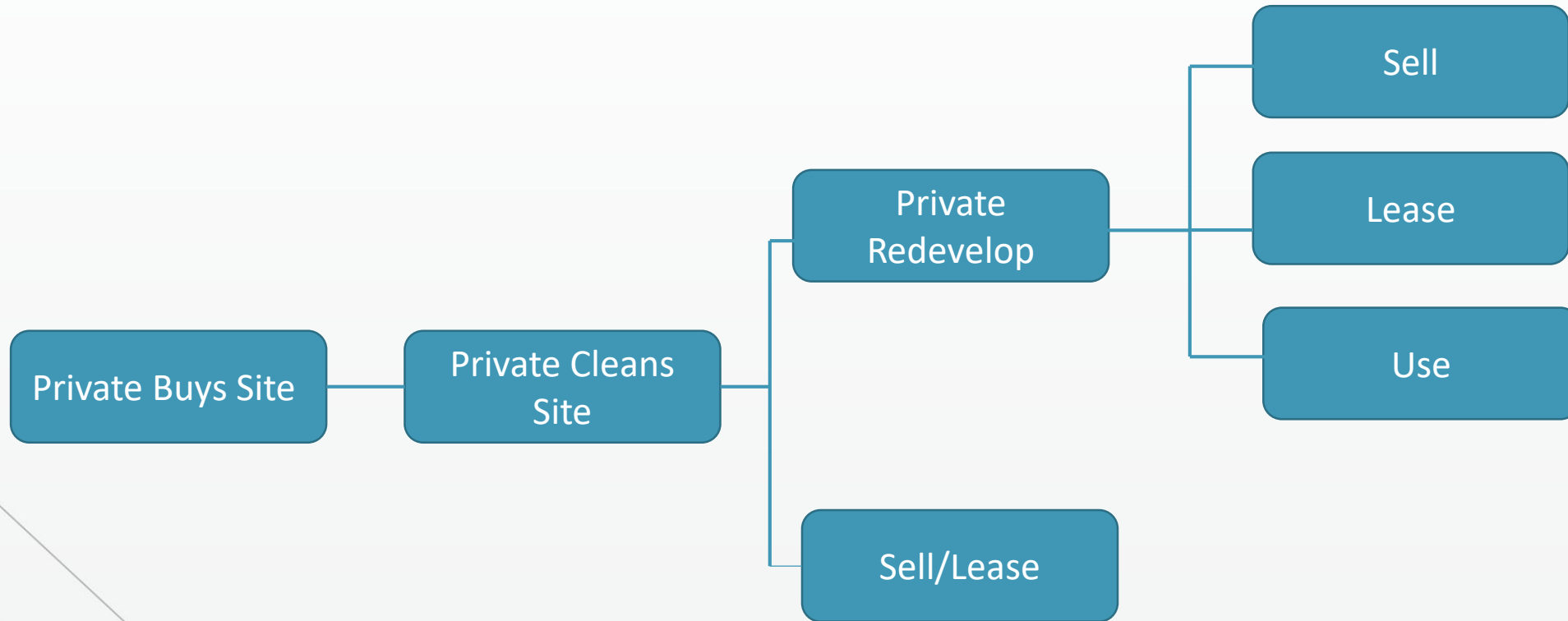
Municipal and Private Party Roles

Municipality takes property through program then keeps or sells to developer.



Municipal and Private Party Roles

Private developer takes property through program.



Benefits of Brownfield Redevelopment

DEVELOPER

- Tax Incentives
- Financial Incentives
- Liability Protection
- Reduced Costs
- Prime Location
- PPP Opportunity
- Reduced Risks

ENVIRONMENTAL

- Water Quality
- Reduced Greenfield Development
- Contamination Remediation
- Regulatory Oversight
- Environmental Justice

SOCIAL

- Neighborhood Revitalization
- Increased Property Values
- Attract New Businesses / Residents to Area
- Remove Blight
- Improved QOL

MUNICIPALITY

- | | |
|--------------------------------|-------------------------------|
| • Economic Growth | • Leverage Private Investment |
| • Attract Investment | • Remove Blight |
| • Increased Tax Base / Revenue | • Control Land Use |
| • Increased Property Values | |

Brownfield Redevelopment Challenges

> Financial

- Increased Costs
- Difficult to Estimate

> Liability (Owner / Operator of Site)

> Remediation Considerations

- Time
- Cost
- Regulatory Involvement

Brownfield Redevelopment Challenges (Cont'd.)

> Uncertainties

- Market Demand
- Infrastructure Conditions
- Contamination

> Securing Financing

Presented by: *Martin L. Doster*

716.853.5100 x1256
mdoster@lippes.com



Senior Environmental Advisor

- > Advises clients on contamination issues, cleanup requirements, and cost-effective remedial strategies under state and federal Superfund and brownfields programs.
- > 32-year career with the New York State Department of Environmental Conservation, where he spent the majority serving as the Regional Remediation Engineer for Western New York.
- > Served as an adjunct professor for the University at Buffalo, where he taught courses on hazardous waste remediation and environmental engineering design.

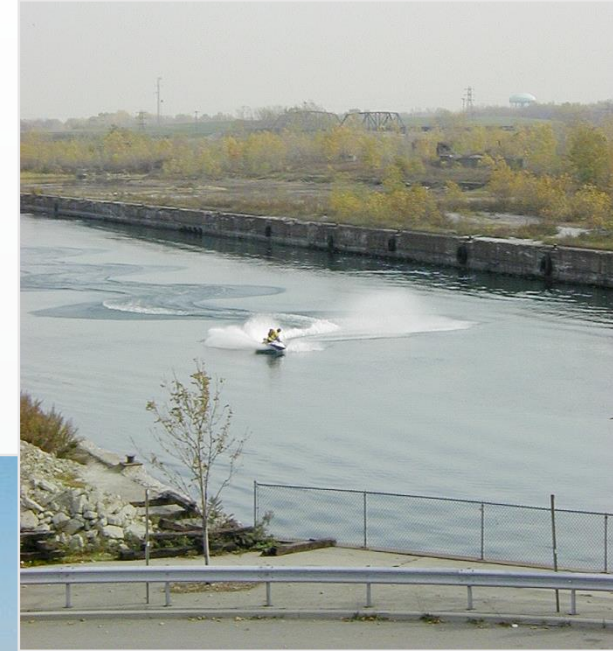
Brownfield Cleanup Program Summary



Brownfield Cleanup Program (BCP)

- > Protective and predictable cleanups
 - Use-based
- > Investigations and cleanups conducted under DEC oversight
- > Certificate of Completion
 - Liability release
 - Tax incentives







Site Assessment Process Terms

- > Phase 1
- > Site Characterization
- > All Appropriate Inquiry (AAI)
- > Phase II
- > ASTM

Phase II Assessments

> Analysis of:

- soil
- sediment
- soil vapor
- groundwater

> Risk Assessment

The Deal

- > Order on Consent
- > Brownfield Cleanup Agreement
- > State Assistance Contract

All Programs Follow a Process

> Site Investigation Work Plan

- Define Nature & Extent of Contamination
- Identify Affected Media
 - Soil
 - Groundwater
 - Vapor

Alternatives Analysis

> Hierarchy

- Protection of Health & Environment
- Source removal
- Groundwater protection/control
- Treatment

Land Use

- > Current use & development patterns
- > Zoning
- > Brownfield Opportunity Area (BOA)
- > Master Plans, LWRP
- > Environmental Justice
- > Federal/State Land use designation
- > Floodplains
- > Groundwater vulnerability

Citizen Participation Requirements

- > Site is listed or reclassified
- > Interim Remedial Measures
- > Beginning/End of Site Investigations/Alternative Analysis
- > Remedy Selection
- > Construction
- > Certificate of Completion

Certificate of Completion

- > Issued after Final Engineering Report
- > Release of Liability

Site Preparation & Remediation Tax Credits

| Cleanup Track | Unrestricted | Residential | Commercial | Industrial |
|---|--------------|-------------|------------|------------|
| Track 1 (Unrestricted) | 50% | NA | NA | NA |
| Track 2 (Look-up SCOs) (No IC/ECs) | NA | 40% | 33% | 27% |
| Track 3 (Site-specific SCOs) (No IC/ECs) | NA | 40% | 33% | 27% |
| Track 4 (IC/ECs) | NA | 28% | 25% | 22% |

Tangible Tax Credits

| Baseline | 10% |
|--------------------------------|-----------------------|
| Plus the sum of the following: | |
| Environmental Zone | 5% |
| Track 1 Cleanup | 5% |
| Brownfield Opportunity Area | 5% |
| Affordable Housing | 5% |
| Manufacturing | 5% |
| Maximum % | 24% |
| | |
| Cap – non-manufacturing | \$35M or 3x Site Prep |
| Cap - Manufacturing | \$45M or 6x Site Prep |

South Ogden St. Charter School



New South Buffalo Charter School: Fall 2014

South Ogden Street School

Cost Comparison

Brownfield

| | |
|---------------|-----------|
| Environmental | \$1.2MM |
| Legal/NYSDEC | \$75K |
| Development | \$23MM |
| Tax Credits | (\$2.7MM) |
| Net Cost | \$21.6M |

Non-Brownfield

| | |
|---------------|---------|
| Environmental | \$500K |
| Legal/NYSDEC | \$15K |
| Development | \$23MM |
| Tax Credit | \$0 |
| Net Cost | \$23.5M |

Net BCP Equity = **\$1.9MM**

*Equally Important: Liability Release &
NYSDEC/NYSDOH Approval*

Presented by: *Michael L. Nisengard*

716.853.5100 x1284
mnisengar@lippes.com



Real Estate | Senior Associate

- > Experienced commercial real estate lawyer representing owners, landlords, tenants, buyers, sellers, borrowers, lenders, and investors in purchases, sales, leases, financing, title and due diligence matters.
- > Structures and negotiates all phases of real estate development projects throughout New York State and the country, and across many classes of property (vacant, improved, brownfields, etc.) for multiple uses including office, medical, residential, retail, manufacturing, warehouse, industrial and renewable energy.
- > Represents individuals, small businesses, not-for-profit organizations, and national/international companies.

The Real Estate Transaction

- > Environmental Easement
- > Transaction Components: Pre-BCA Sites
- > Transaction Components: BCA Sites
- > Transaction Components: Purchase and Sale Agreement Terms

Environmental Easement

“[T]he Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.”

(Section 1 – Purposes Clause)

Environmental Easement

Run With The Land In Perpetuity

- > Easement is recorded with the County Clerk (Book of Deeds)
- > Can only be released by the DEC
- > All subsequent property conveyance documents must include reference to the Environmental Easement
 - Deeds
 - Easements and Rights of Way
 - Leases and Licenses

Environmental Easement

Enforceable Means

- > Enforceable by Grantor, Grantee, or any affected local government
 - Includes “every municipality in which land subject to an environmental easement is located”
- > Enforceable against the owner of the Property, any lessees, and any person using the land.
 - If there is a violation of the Environmental Easement, the DEC can revoke the Certificate of Completion

Environmental Easement

Ensuring The Performance of Operation, Maintenance and/or Monitoring Requirements

- > Engineered structures that must be maintained
- > Requires adherence to the Site Management Plan

Environmental Easement

Ensure The Restriction of Future Uses

- > Residual contamination at levels determined safe for some uses, but not all uses
 - Industrial, Commercial, Restricted Residential, Residential
- > Sets forth both permitted and prohibited uses
 - Groundwater use restrictions
 - Soil management restrictions

Transaction Components: Pre-BCA

- > Buyer: Thorough due diligence (180 days), including a Phase II, to ascertain site conditions, level of contamination and remediation expense
 - Seller: Know nothing
- > Will need a sense of the end user (different cleanup standards)
- > Timing on development; the current program ends March 31, 2026 and incentives may be modified if extended
- > Buyer: Contract contingency for reasonable assurances property will be admitted into BCP
 - Seller: Don't want to bind property to BCA before closing

Transaction Components: Site in BCA

- > Want to have an independent environmental consultant review site documents to understand extent of management costs and use restrictions
- > Accountants to assess tax credits within development scope
- > Buyer will need to be added to the BCA via Amendment
 - 60 days notice before closing

Transaction Components: Purchase and Sale Agreement Terms

- > Eligible tax credits properly allocated between the parties
- > Obligation to obtain Certificate of Completion
- > Buyer (and Buyer party) obligations under BCA and SMP
- > Post-Closing obligations and indemnities
- > Memorialize obligations in deed and other conveyance documents
- > Binding on successors in interest



Questions?

List of References

NYSDEC DER-32 Brownfield Cleanup Program Applications and Agreements
https://www.dec.ny.gov/docs/remediation_hudson_pdf/der32.pdf

NYSDEC Brownfield Cleanup Program Citizen Participation Plan (Example)
<https://www.dec.ny.gov/data/DecDocs/C360198/Application.BCP.C360198.2020-01-01.Citizen%20Participation%20Plan.pdf>

NYSDEC Brownfield Redevelopment Toolbox
https://www.dec.ny.gov/docs/remediation_hudson_pdf/bftoolbox.pdf

EPA Anatomy of Brownfields Redevelopment
https://www.epa.gov/sites/production/files/2015-09/documents/anat_bf_redev_101106.pdf

New York State Environmental Conservation Law Article 71 Title 36 (Environmental Easement)
<https://codes.findlaw.com/ny/environmental-conservation-law/#!tid=N609F52D59768461B9E2827072C91EDE2>

New York State Environmental Conservation Law Article 27 Title 14 (Brownfield Cleanup Program)
<https://codes.findlaw.com/ny/environmental-conservation-law/#!tid=N807A352C48BB40F3A300917CFC66B558>

New York State Regulations 6 NYCRR Part 375-3 (Brownfield Cleanup Program)
[https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ide14c1c0b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ide14c1c0b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

NYSDEC Brownfield Cleanup Program website
<https://www.dec.ny.gov/chemical/8450.html>

NYSDEC Environmental Easement Checklist
<https://www.dec.ny.gov/chemical/65118.html>

NYSDEC Sample Environmental Easement
https://www.dec.ny.gov/docs/remediation_hudson_pdf/easement.pdf