

Legislative Update

April 28, 2019

The New York State Enacted FY 2019-2020 Budget

Local Government Funding

School Aid

New York State School aid was increased \$1 billion, which is a 3.8 percent increase over the FY 2018-2019 Budget.

AIM Funding

While cities will receive the same amount as they did in FY 2018-2019, the Governor eliminated AIM funding for villages and towns whose AIM amount is less than 2% of their local fiscal year 2017 expenditures. This would have taken a total of \$16.4 million away from 480 of the 531 villages across the State and \$42.7 million away from 846 towns. The village and town AIM amounts may be found at <https://www.budget.ny.gov/pubs/archive/fy20/exec/local/aim/fy20aim-villages.pdf> and <https://www.budget.ny.gov/pubs/archive/fy20/exec/local/aim/fy20aim-towns.pdf>.

The Enacted Budget does not restore these AIM cuts but makes those local governments negatively impacted by the AIM cuts whole by allocating funds from the anticipated internet sales tax revenues.

Water and Sewer Infrastructure Funding

The Enacted Budget included an additional \$500 million for drinking water and wastewater infrastructure. This money supplements the amounts already made available under the five-year \$2.5 billion Clean Water Infrastructure Act that was created in 2017-18.

Tax Cap

The property tax cap was made permanent and includes no changes with respect to how the tax cap is calculated or administered. Part NNN of A.2009-C/S1509-C.

Public Campaign Finance

The Fiscal Year 2020 Enacted Budget establishes a Public Financing Commission that will be empowered to implement public campaign financing for legislative and statewide officers. The Commission is authorized to annually fund \$100 million in public financing. Additionally, the Commission will determine eligibility thresholds and public financing and contribution limits for candidate participation. The Commission must issue findings by December 1, 2019. Part XXX of A.2009-C/S1509-C.

Internet Sales Tax

The Enacted Budget imposes a sales tax on internet transactions. The State is intercepting \$240 million of the estimated \$400 million in new local revenue to help fund the MTA capital plan. The intercepted funds increase to \$320 million in 2020-21 and then by an additional 1% each year thereafter.

Plastic Bag Ban

While the Bottle Bill was not enacted as part of the 2019-2020 State Budget, the Legislature adopted a different waste diversion measure, the Bag Waste Reduction Law, which makes two major changes to single-use carryout bags in the State. Specifically, a new Title 28 Bag Waste Reduction is added to the NYS Environmental Conservation Law. First, the Law prohibits stores that collect tangible property tax

from distributing single use carry-out plastic bags, and second, cities and counties are authorized to adopt a fee on single-use paper bags.

In addition, the Bag Waste Reduction Law specifically prohibits and preempts all local laws attempting to regulate single-use carry out bags by vesting the authority in all matters relating to plastic bags in the State. This provision eliminates the ability of cities and villages to impose more stringent regulations relating to single use plastic bags. For instance, because produce bags and garment bags are specifically exempted from the prohibition, cities and villages may not adopt local laws that prohibit their use within their jurisdictions.

Regarding the paper bag fee, the Bag Waste Reduction authorizes only cities and counties to impose a 5 cent per paper bag fee after March 20, 2020. If a county adopts a paper bag fee, all fees imposed by the municipalities within that county would remain operative only for one year after the county's fee becomes effective. However, a fee may not be imposed pursuant to Environmental Conservation Law § 27-2805 on paper carryout bags that are subject to a paper carryout bag fee that is imposed via local law or ordinance that is adopted prior to March 1, 2020.

The law becomes effective March 1, 2020. Part H of A.2008-C / S.1508-C.

Organics Diversion and Compost Programs

The 2019-2020 Enacted State Budget added new Title 22 Food Donation And Food Scraps Recycling of the Environmental Conservation Law, which requires sizable food production entities, like supermarkets, hotels, educational institutions, correctional facilities, and large food service business, called "food scraps generators," that produce an annual average of 2 tons or more per week of food scraps to engage in organics diversion by separating (1) excess edible food for donation and (2) food scraps from other solid wastes to be sent to and processed by an organics recycler. The separation and diversion of food scraps is required for all non-exempt food scraps generators provided that an organics recycler is within 25 miles of the generator and has the capacity to accept all of the generator's food scraps. Food waste generators must take steps to prevent food waste from becoming odorous or attracting vectors.

Hospitals, nursing homes, adult care facilities, and elementary and secondary schools are explicitly exempted from the law. All other generators, including all colleges and universities, appear subject to the law's requirements. However, a generator may request a waiver from the Department of Environmental Conservation based on undue hardship.

Part SS of A.2008-C /S.1508-C.

The Official Health Plan Marketplace

The Enacted Budget adds a new Title VII to the NYS Public Health Law, codifying the establishment of the health benefit exchange in New York, which was originally established to implement the Affordable Care Act.

Autonomous Vehicle Technology Pilot Program

The Enacted Budget extends the authority to test autonomous vehicles until April 1, 2021.

ESCO Sales Tax

The Enacted Budget eliminates the sales tax exemption on the non-residential transmission and distribution of gas or electricity when purchased from an ESCO (Energy Service Company), which would increase city (outside NYC) and village sales tax revenue up to \$4.5 million annually and county revenues up to \$48 million.

Downtown Revitalization Initiative

The Enacted Budget includes another \$100 million for a fourth round of the Downtown Revitalization Initiative which will provide ten downtowns \$10 million each to invest in transformative housing, economic development, transportation and community projects that will attract and retain residents, visitors and businesses. Similar to the first three rounds, one community's downtown would be chosen by each of the 10 REDCs.

Regional Economic Development Councils (REDC)

The Enacted Budget continues the regional economic development approach and provides \$220 million to support a ninth round of the REDC awards. This will include core funding of \$150 million and \$70 million in tax credits. This will be combined with a wide range of existing agency programs to provide a total of \$750 million for this purpose.

Binding Arbitration Extender

The Enacted Budget extends binding arbitration for public safety unions for an additional five years, until 2024. Part F of A.2005-C/S.1505-C, amending Civil Services Law § 209.

Consolidation and Restructuring Programs

The Enacted Budget includes \$39 million to support the Citizens Empowerment Tax Credits, the Citizen Reorganization Empowerment Grants, Local Government Efficiency Grants and the Municipal Restructuring Fund.

Citizen Empowerment Tax Credits (CETC)

Funding is available to incentivize local government consolidation or dissolution, providing a bonus equal to 15% of the newly combined local government's tax levy. At least 70% of such amount must be used for direct relief to property taxpayers.

Citizens Reorganization Empowerment Grants

Funding is available for grants up to \$100,000 for local governments to cover costs associated with studies, plans and implementation efforts related to local government reorganization activities. The local match for planning or study grants initiated by the local government would be 50%. However, upon approval of the local government reorganization, 90% of the local match would be refunded.

Local Government Performance and Efficiency Grants

Funding of \$4 million will continue to cover costs associated with local government efficiency projects, such as planning and/or implementing a functional consolidation, shared or cooperative services, and regionalized delivery of services. The local match for planning grants or study grants is 50%. However, if a local government implements a previously completed planning project, the local match for the planning project would be refunded (up to the local share for implementation). The maximum implementation grant award is \$200,000 per municipality/\$1 million per grant, and the maximum planning grant award is \$12,500 per municipality/\$100,000 per grant.

Property Tax Administration

The Enacted Budget changes property tax administration including: allowing local governments to provide assessment relief when a disaster is declared; allowing a county to appoint members of an assessing unit's board of assessment review at local option; allowing certain statutory notices currently mailed to assessors to be transmitted via email or by website posting; and, requiring electric generating facilities to file an inventory and income report to assist with the appraisals of such facilities.

Union Member Privacy Protections

The Enacted Budget prohibits all public employers, including local governments, from disclosing personal information about their employees, except: 1) in matters under the jurisprudence of the Public Employment Relations Board regarding union enrollment and employee organization representation; or

2) where compelled to do so by lawful service of process, subpoena, court order, or as otherwise required by law. The Budget also includes language authorizing public employers to provide employee organizations the name, address, job title, employing agency and work location of their members (i.e., upon request, not more than quarterly). Part E of A.2005-C/S.1505-C.

Bail Reform

The Enacted Budget eliminates cash bail for misdemeanors and non-violent felonies and requires police to issue desk appearance tickets to most people charged with misdemeanors and Class E felonies. Specifically, the Enacted Budget amends Criminal Procedure Law §§ 150.10 & 150.20 and repeals CPL § 150.30 to mandate appearance ticket issuance. Additionally, Criminal Procedure Law § 500.10 is amended to add a new subdivision 3-a which provides for the release of defendants under non-monetary conditions under conditions that will reasonably assure the defendant's return to court and two new subdivisions 21 and 22 which address electronic monitoring and misdemeanor crimes of domestic violence. Criminal Procedure Law §§ 510.10, 510.20, 510.30, and 510.40 are amended with respect to courts issuing securing orders, including the requirement that non-monetary conditions of release be individualized. Criminal Procedure Law §§ 530.20 and 530.30 are amended to implement the non-cash bail securing orders. The provisions are effective January 1, 2020. Part JJJ of A.2009-C/S.1509-C.

Amends the Criminal Trial Discovery Process

The Enacted Budget repeals Article 240 of the Criminal Procedures Law and adds a new Article 245, Discovery, which would require prosecutors and the defense to share information before a trial takes place, including disclosure of evidence and information favorable to the defense. Intended exhibits; expert opinion evidence; witnesses' criminal history information; and search warrant information will be made available to defendants in a timely and consistent manner. Part LLL of A.2009-C/S.1509-C.

Speedy Trial Access

The 2019-20 Executive Budget requires courts to take a more proactive role in actively advising litigants regarding how time will be charged and will not take at face value an assertion that the government is ready to proceed with trial. Specifically, Criminal Procedure Law § 30.30 is amended to require courts to inquire into the district attorney's actual readiness for trial, including requiring a certification of good faith compliance with the disclosure requirements of 245.20. Effective January 1, 2020. Part KKK of A.2009-C/S.1509-C.

Model Law Enforcement Use of Force Policy

The 2019-20 Executive Budget amends Executive Law § 840 to requires the State Municipal Police Training Council to establish a model law enforcement use of force policy to address myriad issues including guidelines regarding when use of force is permitted, requirements for documenting use of force, procedures for investigating use of force incidents, guidelines regarding excessive use of force including duty to intervene, reporting, and timely medical treatment for injured persons, training mandates on use of force, conflict prevention, conflict resolution and negotiation, de-escalation techniques and strategies, and prohibited use of force.. Effective June 11, 2019. Part ZZ of A.2005-C/S.1505-C.

Leave for Voting

The 2019-20 Executive Budget amends NYS Election Law § 3-110 to allow works to take off up to three hours of work to vote without loss of pay. This amendment (a) *removes* the restriction that this benefit is only allowed if the voter does not have sufficient time outside of his working hours to vote and (b) *removes* the definition that having four consecutive hours before or after work of and the opening or closing of polls is sufficient time. This provision applies to "any election," although there is currently some debate as to whether that means elections run by county boards of elections only or all elections including village elections conducted at times other than November, town district elections, and/or school board elections. Effective April 12, 2019. Part YY of A.2005-C/S.1505-C.

Primary Election Voting Hours

The 2019-20 Executive Budget amends NYS Election Law § 8-100 to require polling places for all primary elections to be open from 6:00 a.m. to 9:00 p.m. Effective for all elections held 120 days after January 1, 2020. Part BBB of A.2005-C/S.1505-C.

Voter Enfranchisement Modernization Act of 2019 (VEMA)

The 2019-20 Executive Budget adds a new Title VIII to the NYS Election Law requiring the State Board of Elections to establish and maintain an electronic voter registration transmittal system, allowing for online voter registration. Part CCC of A.2005-C/S.1505-C.

Congestion Pricing: New York City Central Business District Tolling

The Enacted Budget adds a new Article 44-C to the NYS Vehicle and Traffic Law, entitled Central Business District Tolling Program. The new law imposes a toll to be imposed on vehicles entering the “central business district” in Manhattan. Most of the details of how the district will be implemented are left to the Triborough Bridge and Tunnel Authority (d/b/a/ MTA Bridges and Tunnels) under a memorandum of understanding with the NYC Department of Transportation. However, the district will be south of (and including) 60th Street in Manhattan and may not start operating earlier than December 31, 2020. Part ZZZ of A.2009-C/S1509-C.

The Jose Peralta New York State DREAM Act

Amends the Education Law to create the New York DREAM Fund Commission and the DREAM Fund to advance educational opportunities for immigrants’ children. Part D of A.2006-C/S.1506-C.

Forfeiture Action and Seized Assets (Part PP)

The State’s forfeiture laws are amended to create a new section of the NYS Civil Practice Law and Rules (CPLR § 1311-b), which clarifies the procedure for obtaining money judgments equivalent to but in lieu of proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime (previously addressed in CPLR § 1311). The amendment adds procedural protections for defendants to challenge money judgment actions and requires the claiming authority to prove the value of the property by a preponderance of the evidence. Additionally, a new Section 6-v is added to the NYS General Municipal Law, which mandates that every local government with a claiming agent (i.e., a police department) create an asset forfeiture escrow fund for the handling and disposing of the monies collected (see Civil Practice Law and Rules § 1349). Finally, CPLR § 1352 is amended to require law enforcement to provide property owners (a) an opportunity to be promptly heard regarding seized property “to ensure the legitimacy and necessity of its continued retention by law enforcement and (b) clear notice of deadlines for accomplishing the property’s return. Part PP of A. 2005-C/ S.1505-C.

In New York, forfeiture of property is governed by Article 13-A of the Civil Practice Law and Rules (CPLR), which establishes (a) which property is subject to forfeiture and (b) the procedure by which law enforcement may seize property. Specifically, CPLR § 1311 authorizes claiming authorities¹ to recover property which is the “proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime.”² The 2019-2020 New York State Enacted Budget amended the State’s forfeiture provisions,³ adding a new CPLR § 1311-b to address the procedure for claiming authorities to apply for money judgments when the claiming authority has obtained a forfeiture judgment “for the proceeds, substituted proceeds, instrumentality of a crime or real property instrumentality of a crime, but is unable to locate all or part of any such property.” Section 1311-b allows defendants to challenge the valuation of any property that is the basis of the proceeding and requires the claiming authority to establish the value of the property beyond a preponderance of the evidence.

Additionally, a new Section 6-v has been added to the NYS General Municipal Law and mandates that every local government with a claiming agent (i.e., a police department) create an asset forfeiture escrow fund to handle and dispose of the monies collected (see Civil Practice Law and Rules § 1349). Finally, CPLR § 1352 is amended to require law enforcement to provide property owners (a) an

opportunity to be promptly heard regarding seized property “to ensure the legitimacy and necessity of its continued retention by law enforcement and (b) clear notice of deadlines for accomplishing the property’s return. Part PP of A. 2005-C/ S.1505-C.

Any proceeds from a forfeiture must be paid out of the asset forfeiture escrow fund and must be apportioned and paid out in a descending order of priority as set forth in CPLR § 1349. The purposes for which the assets must be paid out include (1) court ordered liens against the property, (2) restitution/reparations to a victim of a crime, (3) expenses incurred by the claiming authority/agent for maintaining/operating property, (4) expenses the claiming authority & agent incurred in undertaking the forfeiture action, (5) the State’s chemical dependence service fund, and (6) law enforcement and prosecution services.

The value of the assets seized pursuant to CPLR Article 13-A is reported annually by the New York State Division of Criminal Justice Services. In 2017, the most recent reporting year for which data is available, \$43.4 million was forfeited and distributed pursuant to New York’s forfeiture laws. New York City accounts for the lion’s share of this total, with asset forfeiture proceeds of the 57 counties outside of the City varying from hundreds of thousands of dollars to none.⁴

Enacted Stand Alone Legislation

Reproductive Health Act

Added a new Article 25-A Reproductive Health Act to the NYS Public Health Law. In addition, the Penal Law, Criminal Procedure Law, the County Law, and the Judiciary Law were amended in relation to abortion. Effective: January 22, 2019. Chapter 1 of the Laws of 2019.

Authorizes Voter Pre-Registration

Allows persons who are at least 16 to pre-register to vote and requires local boards of education to adopt policies to encourage student voter registration. Effective: January 1, 2020. Chapter 2 of the Laws of 2019.

Transfers Voter Registration

Facilitates the transfer of voter registration when a person moves within the state (this is an expansion of the requirements currently in place for when a person moves within the county). Effective: March 25, 2019. Chapter 3 of the Laws of 2019.

Limits Political Contributions of Limited Liability Corporations

Expands existing restrictions of political contributions by corporations to LLCs and other corporate entities; requires LLCs that make political contributions to file with the State Board of Elections; attributes contributions made by an LLC to each member of the LLC in proportion to their ownership stake and requires State Board of Election to establish regulations for the compliance with the attribution of the contributions. Effective: January 31, 2019. Chapter 4 of the Laws of 2019.

Amends Election Filings and Consolidates Primary Day

Establishes that election filings (e.g. certificates and petitions of designation or nomination, certificates of acceptance, objections and specifications of objections), filed outside of NYC, will be accepted considered timely when filed by mail and received not later than 2 business days after the last day to file; failure of the post office (or other means of delivery) to deliver the filing will be a fatal defect; consolidates the primary date for federal, state, and local elections for both parties to the 4th Tuesday in June; changes the notice requirement for referenda conducted by county boards of elections; provides for military voters to receive primary ballots. Effective: January 24, 2019. Chapter 5 of the Laws of 2019.

Early Voting

Amends the NYS Election Law, establishing in-person early voting beginning 10 days before any general, primary, run-off, or special election; requires the county board of elections to designate polling places for in-person early voting; and provide at least one early polling place for every 50k voters; *specifically exempts villages conducting their own elections*. Effective: Immediately. Chapter 6 of the Laws of 2019.

Gender Identity & Expression Discrimination

Prohibits discrimination based on gender identity or expression and Includes offenses regarding gender identity or expression under New York's hate crimes statute. Effective: February 24, 2019. Chapter 8 of the Laws of 2019.

Statute of Limitations for Actions for Sexual Offenses Committed Against Children

Amends the NYS Criminal Procedure Law and the NYS Civil Practice Law and Rules to extend the statute of limitations by five years to 23 years of age for criminal proceedings and until the victim reaches 55 years of age for civil actions. Effective: Immediately. Chapter 11 of the Laws of 2019.

Firearm Purchase Extreme Risk Protection Order

Amends the Civil Practice Law and Rules by adding a new Article 63-A, which establishes extreme risk protection orders as a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun. Also, allows for a temporary extreme risk protection order. Effective: August 24, 2019. Chapter 19 of the Laws of 2019.

State Commission on Prosecutorial Conduct

Amends the provisions relating to the appointment of Commissioners and clarifies the procedures of the Commission on Prosecutorial Conduct. Chapter 23 of the Laws of 2019.

Legislation Passed Both Houses, Awaiting Delivery to the Governor

School Zone Speed Violation Monitoring System Authorization – City of Buffalo

Authorizes a demonstration program for photo enforcement of school zone speed violations in the City of Buffalo. A.951/S.231 – Assembly: Passed/Senate: Passed.

Expands New York City's school speed zoning photo violation monitoring system. A.6449/S.4331 - Assembly: Passed/Senate: Passed.

State Commission on Prosecutorial Conduct

Amends the provisions relating to the appointment of Commissioners and clarifies the procedures of the Commission on Prosecutorial Conduct. A.781/S.1190. Assembly: Passed/Senate: Passed.

Firearm Background Check

Would amend the Penal Law and the General Business Law, establishing an extension of up to the 30 days of National Instant Background Checks. A.2690/S.2374. Assembly: Passed/Senate: Passed.

Firearm Safe Storage

Would amend the NYS Penal Law to require safe storage of firearms in residences where there is a resident under 16 years of age and in instances where the firearm owner/custodian has reason to know

that a person under 16 years of age is likely to gain access to the firearm. A.2686-A/S.2450-A. Assembly: Passed/Senate: Passed.

Municipal Gun Buyback Program

Would add a Section 233 to the NYS Executive Law, which would authorize a municipal gun buyback program. Would also establish a municipal gun buyback program fund. A.2685/S.2449. Assembly: Passed/Senate: Passed.

Bump Stock Ban

Would amend the NYS Penal Law to prohibit the possession of bump stock devices. A.2684/S.2448. Assembly: Passed/Senate: Passed.

Proposed Constitutional Amendments

Elimination of the 10-Day Voter Registration Cut-Off

Constitutional amendment eliminating the requirement that voters register 10 days before the election. Effective: After State Legislature 2021-2022 passes and then approved at statewide referendum. A.777/S.1048. Assembly: Passed/ Senate: Passed.

Authorizes Ballot by Mail/Expands Absentee Voting

Constitutional amendment eliminating the reasons why a person may vote absentee and authorizes ballot by mail for any reason. Effective: After State Legislature 2021-2022 passes and then approved at statewide referendum. A.778/S.1049. Assembly: Passed/Senate: Passed.

Potential Legislative Issues Remaining for the 2019 NYS Legislative Session

The Bottle Bill Expansion

In an effort to minimize glass contamination of the recycling stream, the 2019-2020 Executive Budget proposed to expand Environmental Conservation Law § 27-1003, also known as the Bottle Bill or Returnable Container Act.⁵ The Bottle Bill was first implemented in 1983 and requires a 5¢ deposit on many beverages.⁶ The purpose of the deposit is to incentivize consumers to return the containers in order to refund their deposits. Processing the containers at redemption centers considerably reduces the environmental impact of littered bottles and results in fewer products being collected as part of curbside recycling programs. Since its inception, approximately 75% of beverages sold in New York have been redeemed, totaling approximately 11.2 million tons of containers.⁷

While certain dairy products, infant formulas, syrups, and prescriptions were exempted from the proposal, the proposed expansion would have significantly increased the variety of drink containers requiring a deposit to include nearly all carbonated and noncarbonated beverages. Broadening the categories of containers subject to the Bottle Bill should persuade consumers to return more bottles which in turn should result in a reduction in the amount of material municipal recycling programs collect curbside a reduction of local recycling costs.

Although the bottle deposit expansion was ultimately left out of the State's Enacted Budget, increasing the scope of Bottle Bill, would have removed valuable product from the stream, some of which remains profitable for MRFs. As a result, many counties that manage their own MRFs opposed the expansion because of that loss of revenue.⁸ A more targeted bottle deposit expansion which included only wine and spirits containers, however, should keep more glass out of the stream, which is a major contaminator, without effecting plastics.

Currently, Assemblymember Englebright, Chair of the NYS Assembly's Environmental Conservation, is sponsoring legislation (A. 5028-A) that would expand the Bottle Bill to include wine, liquor, spirit, and cider containers, but preserves much of the existing program related to plastic. Expanding the Bottle Bill to include wine and liquor bottles is advocated by many local governments, but including those containers in the State's bottle redemption requirements is not without its costs. Redemption centers would need to be reconfigured to accommodate the larger bottles captured by this alternative expansion and new regulations and procedures would affect manufacturers and purveyors of wine and spirits.

Adult-Use Cannabis

Governor Cuomo's Recreational Marijuana Proposal

Part VV of Governor Cuomo's Revenue Article VII Legislation would have enacted the Cannabis Regulation and Taxation Act. The stated purpose of the Act is to create and amend existing laws to legalize adult-use cannabis, consolidate governance of all forms of cannabis and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale and taxation of cannabis within New York State.

The Governor's Act would create a new chapter of New York State Law, entitled the Cannabis Law, which would include new regulations for adult-use and hemp cannabis while merging existing New York State Law regulating medical cannabis.

This Cannabis Law would establish the Office of Cannabis Management (OCM) within the Division of Alcohol Beverage Control, and consolidate governance of adult-use, medical and hemp cannabis. OCM would be tasked with establishing cultivation and processing standards, licensing all business entities in the production and distribution chain, inspecting and enforcing the program standards, and developing and issuing program regulations.

Article 3 of the Cannabis Law would govern New York State's Medical Cannabis Program.

Article 4 of the Cannabis Law would regulate and control the cultivation, processing, manufacturing, distribution and sale of cannabis products for adults 21 years of age and over. Specifically, the Act would establish a three-tier market structure for the adult-use cannabis industry, which prohibits vertical integration, limits licenses and supply management to control market concentration and to encourage social equity applicant participation. The proposed law provides for social equity licensing and an incubator program that would provide technical assistance, training, loans and mentoring to social equity applicants.

County governments may opt-out of the provisions of Article 4 of the Cannabis Law. If a county does not opt out, a city with a population over 100,000 in that county could elect to opt out. In addition, the proposed law expressly preserves the authority for municipalities to regulate the time, place, and manner of licensed adult-use cannabis retail dispensaries, so long as the regulations do not make the operation of dispensaries "unreasonable impracticable." Local governments would be preempted from adopting any other regulations regarding adult-use cannabis.

The Act would also establish a program to review and seal prior cannabis convictions and eliminate the collateral consequences of conviction while ensuring that the enforcement framework of legalization does not replicate the arrest disparities and criminalization of prohibition.

Article 5 of the Cannabis Law would provide a regulatory framework for regulating hemp cannabis.

Additionally, this legislation would amend the New York State Tax Law to add a new Article 20-C, Tax on Adult-Use Cannabis Products, to impose three taxes:

1. A tax on the cultivation of cannabis at the rate of \$1 per dry weight gram of cannabis flower and \$0.25 per dry weight gram of cannabis trim;
2. A tax on the sale by a wholesaler to a retail dispensary at the rate of 20 percent of the invoice price; and

3. A tax on the same sale by a wholesaler to a retail dispensary at the rate of 2 percent of the invoice price but collected in trust for and on account of the county in which the retail dispensary is located.

Revenues from these cannabis taxes will be deposited in the New York State Cannabis Revenue Fund and expended for the following purposes:

1. Administering the cannabis program,
2. Data gathering, monitoring and reporting,
3. The Governor's traffic safety committee,
4. Small business development and loans,
5. Substance abuse, harm reduction and mental health treatment and prevention,
6. Public health education and intervention,
7. Research on cannabis uses and applications,
8. Program evaluation and improvements, and
9. Any other identified purpose recommended by the director of the Office of Cannabis Management and approved by the Director of the Budget.

The State's Division of the Budget estimates that the Act would increase All Funds revenue by \$83 million in FY 2021, \$85 million in FY 2022, \$141 million in FY 2023 and \$184 million in FY 2024.

Most of the provisions of this legislation would take effect immediately, with some exceptions. Despite the law's effective date, establishment of the recreational marijuana market is expected to take months.

Electric Scooters & Electric Bicycles

The Governor's Proposed Budget

The 2019-20 Executive Budget includes language that would authorize electric scooters and bicycles to be used on dedicated bicycle lanes and streets with posted speed limits of 30 M.P.H. or less. Electric scooters and bicycles could only be ridden by one person at a time and may not be capable of traveling faster than 20 m.p.h. Local governments would be given substantial authority to further regulate electric scooters and bicycles, including establishing maximum speed limits, and time, place, and manner restrictions. Local governments would also be able to authorize their use on sidewalks. However, the Governor's proposal was not included in the enacted budget.

Bicycles & Scooters: What Has Changed?

People have been using bicycles and scooters to traverse cities for almost 150 years, but their prevalence and use has, until recently, been limited to a degree that neither state governments nor the federal government have deemed it necessary to seriously address their use. So why are we now seeing an explosion of them in communities across the country, and why are multi-billion dollar companies like Uber and Ford getting in the bicycle and scooter business?

Advances in technology have radically transformed electric bicycles (e-bikes) and electric scooters (e-scooters), and companies are rushing to establish themselves as the Google of the e-bike and e-scooter markets. Three factors are driving the proliferation of these technologies:

- 1) Advances in battery, GPS, and wireless network technology have made the electric bicycles and scooters more economical and user-friendly;
- 2) A resurgence in downtowns and mixed-use, walkable communities are driving bicycle and scooter use as complements to walking and mass transit; and
- 3) The future of transportation, particularly with respect to autonomous vehicles, is increasingly looking to include a system where users eschew owning their own car in favor of a subscription transportation system that is comprised of a network of bicycles, scooters, and autonomous cars and vans, all married to mass transit.⁹

A recent report by the National Association of City Transportation Officials highlighted the growth in bike share programs, noting that 35 million trips were taken using bike share programs in 2017, a 25% increase year over year. This proliferation was due in part to an increase in the number of bike share

companies as well as the implementation of dockless bike share systems. A consequence of the growth in bike share programs was the doubling of the number of bikes these programs are putting on the streets, from 42,500 at the end of 2016 to approximately 100,000 in 2017.¹⁰

Additionally, E-bikes are increasingly being embraced by bike share companies. A recent report by the National Conference of State Legislatures noted some examples of how e-bikes are being integrated into bike share systems:

In 2011, the University of Tennessee-Knoxville launched the country's first electric bicycle sharing system, with two bike-share stations on their campus. In 2015, Birmingham, Ala., unveiled a citywide bike-share system with 100 e-bikes in the fleet of 400 bikes, in the hopes the program will attract more novice riders. With the aid of private funds, Utah has unveiled a small electric bike-share system at their State Capitol complex. Richmond, Va., will be unveiling an electric bicycle sharing system soon. Dockless bike-sharing systems are also rapidly integrating e-bikes into their fleets; companies such as LimeBike, JUMP Bike and Motivate now offer dockless e-bikes in cities such as Austin, Denver and Sacramento.¹¹

E-scooters are quickly following suit. Consequently, e-bikes and e-scooters are likely here to stay. But state, federal, and local governments have found themselves flat-footed as these products have arrived in their communities. Because e-bike, e-scooter, and bike share programs are only going to become more prevalent, local officials need to be preparing for their arrival and integration into their communities transportation network.

Bike and Scooter Operation Regulations Generally

Any discussion of the local government role in regulating e-bikes, e-scooters, and bike and scooter share programs has to start with a discussion of the role of the federal and State governments. Generally, regulation of motor vehicles is divided between the federal government and the states, with the federal government regulating vehicle safety, including establishing safety standards, while states have the responsibility of regulating insurance requirements and rules of the road.

Federal Regulation

At the federal level, electric bicycles are not regulated by the National Highway Traffic Safety Administration. Rather, in 2002, Congress defined "low-speed electric bicycles" as "a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph"¹² and authorized the Consumer Product Safety Commission (CPSC) to promulgate necessary and appropriate regulations. To date, the CPSC has promulgated nominal regulations.

This definition highlights an important issue. E-bikes can be of two types: (1) bicycles which must be pedaled to operate but which have an electric motor that assists the pedaling and only operates when the rider is pedaling ("pedal-assist" e-bikes), and (2) bicycles which have fully-operable pedals but have a motor that can operate the bicycle whether the operator is pedaling or not ("throttle-assist" e-bikes).

Regarding electric scooters, federal statutes and regulations are effectively silent.

Current New York State Regulations

E-Bikes

The State of New York has not expressly defined e-bikes, which has led to no shortage of confusion about their legality. New York State Vehicle and Traffic Law (VTL) defines "bicycle" in relevant part as "Every two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle."¹³ Both "pedal-assist" and "throttle-assist" e-bikes fit this definition. However, e-bikes can also fall within the definition of a motorcycle under New York State Law.

The VTL defines motor vehicle as a “vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.”¹⁴ “Public highway” is defined as “Any highway, road, street, avenue, alley, public place, public driveway or any other public way.”¹⁵

Motorcycles are in turn defined as motor vehicles “having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.”¹⁶ “Limited use motorcycles” are a sub-classification of motorcycles, defined based upon their maximum speeds, with Class C motorcycles having a maximum performance speed of not more than 20 m.p.h.¹⁷ This definition clearly includes “throttle-assist” e-bikes, and the New York State Department of Motor Vehicles has advised that “throttle-assist” e-bikes are not allowed to be registered in New York or operated on public roads.¹⁸

Regarding “pedal-assist” e-bikes, the City of New York and New York City bike share operator Citi Bike have concluded that “pedal-assist” bicycles are not required to be registered and thus may be operated on public streets.¹⁹ Other communities have taken a more cautious approach to implementing e-bikes, and legislation has been introduced that would legalize both “pedal-assist” and “throttle-assist” e-bikes.²⁰

E-Scooters

Like “throttle-assist” e-bikes, e-scooters have been determined not to be allowed on public roads in New York. In a 1997 case, *Reilley v. New York*,²¹ the court addressed the question of the legality of operating e-scooters on public streets. The petitioner in the *Reilley* case described the scooter at issue as “a lightweight, portable motorized scooter” which was started by muscle power for the first 15 or 20 feet at which point a 1.2 horsepower motor capable of a speed of 20 miles per hour takes over. The police officer who ticketed the petitioner described the scooter as a “motorized skateboard” with a “T-bar attached to it for the operator to hold onto” and “a throttle control lever attached to the T-shaped bar.” The court concluded that the scooter fit squarely within the definition of “motor vehicle” under Vehicle and Traffic Law § 125 as a “vehicle ... propelled by any power other than muscular power,” for which insurance is required under Vehicle and Traffic Law § 312 and § 319(1). The court noted that “[t]he exceptions in [VTL] section 125 do not include ‘lightweight’ vehicles or vehicles not capable of causing serious injury if operated improperly.” The court also ruled, “To the extent that it can be said that the Goped is not a ‘vehicle’ as that term is commonly understood, we defer to [the Department of Motor Vehicle’s] construction of a broad term contained in a statute it is responsible for enforcing.”²²

Consequently, absent a clarification from the New York State Department of Motor Vehicles or a clear amendment to State law, as of December 2018, e-scooters are not authorized to be operated on New York’s public roads.

Regulating Bike Share Programs

Regardless of the type of bicycle being used or the future of e-bikes and e-scooters in New York, bike share programs present a separate set of challenges local officials need to address. Bike share programs come in two flavors: docked and dockless. Docked bike shares use a series of fixed stations where bikes are parked. Bike share subscribers utilize a mobile app to determine which docking stations have bikes available and which docking stations have spaces available to drop bikes off.

Advances in technology have allowed bike share companies to go dockless, meaning that bicycles can be left anywhere and subscribers use the mobile app to locate available bikes that are transmitting their location using built-in GPS technology and network connectivity. The bikes are limited to a specific geographic area (referred to as geo-fencing), and users are charged extra if they take a bicycle out of its zone. Dockless bike share bicycles have built-in locking devices that prevent them from being ridden. A subscriber enters the bicycle’s unique code to unlock the bike.

Dockless bike share programs have many advantages over their dock-based brethren: they can be more convenient for users and the operators, the operator does not need to acquire space for docks, and the operator does not need to maintain docking stations. Dockless bike share programs are not

without their disadvantages, however. The biggest complaint is that dockless bikes are left everywhere, taking up valuable sidewalk space and obstructing pedestrians.

Luckily, local governments have broad authority pursuant to Municipal Home Rule Law § 10 to regulate bike share programs. The National Association of City Transportation Officials has provided guidance for local officials for regulating and managing private bike share programs.

Regulating the Public Right-of-Way

Municipalities should consider addressing the following issues when adopting local bike share regulations:

- 1) Requiring bike share companies to obtain a revocable license or permit to operate within the municipality and in the public right-of-way,
- 2) Limiting the number of companies operating within the municipality as well as the number of bicycles they can place on sidewalks;
- 3) Establishing operating zones in which bike share operations must be limited;
- 4) Imposing a fee to cover the local government's cost of administering the bike share regulations;
- 5) Requiring companies to hold insurance and to indemnify the municipality;
- 6) Requiring companies to remove damaged, abandoned, improperly placed bicycles within a specific time frame and assessing penalties for failing to do so;
- 7) Requiring companies to comply with procedures and protocol for:
 - Extreme weather (e.g., snowstorms and flooding);
 - Emergencies;
 - Special events (e.g. races, parades, festivals, film shoots); and
 - Municipal Street Maintenance (e.g. snow and trash removal);
- 8) Requiring companies to provide 24/7 contact information (name, phone number, and email) of a locally-based manager/operations staff with decision-making power who can respond to city requests, emergencies, and other issues at any time; and
- 9) Requiring companies operating in the public right of way to provide the municipality with accurate, complete, and timely data about how the bike share services are used and, in an appropriately anonymized fashion, who is riding.

Regulating Dockless Bike Share Parking

Local governments should also consider whether to designate locations where bike share bicycles may be parked in order to ensure an efficient and fair use of the public right-of-way. Some cities allow unrestricted or "free floating" bicycle parking, meaning that customers may leave bikes and scooters anywhere. Other municipalities allow bike share bicycles to be parked in only specific areas. A combination of these approaches can also be utilized, allowing "free floating" parking in some neighborhoods and restricting parking on specific blocks to designated areas. Enforcement of parking regulations can be a challenge, however, due to limitations in GPS accuracy.

Transportation Equity

Local government officials should also consider requiring bike share operators to ensure that their transportation systems are accessible and usable by everyone in the community. This would include participating in a public engagement program and pricing options that address the needs of the community's low-income population.

¹ "Claiming authority" is defined as the district attorney, attorney general, or a corporation counsel or county attorney when authorized by the district attorney or the attorney general. CPLR § 1310(11).

² CPLR § 1311.

³ The recent amendments to New York's forfeiture laws can be found in Part PP of A.2005-C/S.1505-C.

⁴ www.criminaljustice.ny.gov/crimnet/ojsa/2017-asset-forfeiture-annual-report.pdf.

⁵ S.1508-B, Part F, Budget Article VII (Internal # 9 - 2019).

⁶ Container Recycling Institute, *35 Years of the New York State Bottle Bill* (January 2019).

⁷ *Id.*

⁸ Alex LaMonte, *2019 Budget Priority: Plastic Bag Ban and Bottle Bill Expansion*, New York State Association of Counties (2019), available at <http://www.nysac.org/files/Plastic%20Bag%20Ban%20and%20Bottle%20Bill%20Expansion-%202019%20v2.pdf>.

⁹ “Uber’s shot at replacing personal car ownership starts with Jump Bikes,” by David Peisner, *Fast Company*, www.fastcompany.com/90254182/ubers-shot-at-replacing-personal-car-ownership-starts-with-jump-bikes.

¹⁰ “Bike Share in the U.S.: 2017,” National Association of City Transportation Officials, <https://nacto.org/bike-share-statistics-2017/>.

¹¹ “State Electric Bicycle Laws: A Legislative Primer,” www.ncsl.org/research/transportation/state-electric-bicycle-laws-a-legislative-primer.aspx.

¹² 15 U.S. Code § 2085.

¹³ N.Y. Veh. & Traf. Law § 102.

¹⁴ N.Y. Veh. & Traf. Law § 125.

¹⁵ N.Y. Veh. & Traf. Law § 134.

¹⁶ N.Y. Veh. & Traf. Law § 123.

¹⁷ N.Y. Veh. & Traf. Law § 121-b.

¹⁸ Note that pursuant N.Y. Veh. & Traf. Law § 400-a, the Department of Motor Vehicles Commissioner has broad authority regarding registering vehicles the Commissioner determines is unsafe. Under this authority, the Department of Motor Vehicles has concluded that motor-assisted bicycles do not qualify for registration and thus may not be operated on public highways. See <https://dmv.ny.gov/registration/motorized-devices-cannot-be-registered-new-york>.

¹⁹ See www1.nyc.gov/office-of-the-mayor/news/165-18/mayor-de-blasio-new-framework-clarify-legality-pedal-assist-bicycles; see also www.citibikenyc.com/how-it-works/electric-faqs.

²⁰ See A.1018 (Gantt)/S.2888 (Dilan), which would defined “electric assisted bicycle.”

²¹ 240 A.D.2d 296, 296 (1st Dept. 1997).

²² *Reilly* referencing *Matter of Howard v. Wyman*, 28 N.Y.2d 434, 438.