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End of Session “Policy Season” Preview

Despite one of the strangest budget processes in recent memory, New York’s leaders reached an agreement on the budget including major changes on taxes. They also came to a deal on adult use cannabis and mobile sports betting, two complicated and long outstanding issues.

Amidst Senate Majority Leader Andrea Stewart-Cousins calls for Cuomo’s resignation and multiple investigations (more on that in a minute) including the Assembly’s ongoing impeachment inquiry—for the time being at least—the possibility exists for Assembly/Senate or even three-way deals on several pieces of standalone legislation before final adjournment of the 2021 State Legislative Session scheduled for June 10th.

Every end of Session is different but the dynamics at play are like no other end of Legislative Session ever. Legislators are actively negotiating with a man they have called on to resign.

Last week, Senator Todd Kaminsky and Senate Majority Leader Andrea Stewart-Cousins both appeared with Cuomo, raising eyebrows across the State. Afterwards, Kaminsky reiterated that his position on the Governor resigning “has been clear and has not changed.” Stewart-Cousins—despite effusive praise for the Governor at the event in Yonkers—says her position had not changed and reiterated her call for him to resign. The events are a microcosm of the larger dichotomy of negotiating with an Executive Chamber led by a man most legislators have said should not even be there right now.

In the budget process, the Legislature used the chaos to their advantage. Stewart-Cousins and Assembly Speaker Carl Heastie finished strong, landing key victories like revenue raisers, and the \$2 billion Excluded Workers Fund—all in a process that is normally heavily weighted toward the Executive. This begs the question: will the Legislature again seize on the Governor’s weakened position and pass standalone legislation to force his hand? Or is it just easier for everyone to go home?

Outside the Capitol, the Governor’s emergency powers—despite being heavily reined in by the Legislature—will remain a topic of discussion. As County Executives and other local elected officials push forward with increasingly locally focused reopenings, Cuomo is intent on continuing wield the absolute power given to him by the Legislature as the pandemic began. Squabbles much like the one unfolding in Western New York over the Bills and Sabres vaccine mandates will continue to pop up across the State. How legislators respond—and with whom they side—could also change the shape of the end of session negotiations.

The release of any of the multiple reports, investigations, probes, or disclosure of additional scandals, accusations, or revelations could also change things utterly.



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In short, keep a close eye on Albany and on everything going on across the State. While headlines about the Governor's scandals may signal a stalemate, things will be moving on a vast array of policy areas—from health to energy to labor and employment issues.

As always, do not hesitate to contact the O'Donnell & Associates team with any questions!

The Investigations

While the Legislature and the Governor continue to work together, the Governor is still under investigation on numerous fronts—and the results of any one of those investigations could blow up any end of session policy plan at any minute.

If you cannot keep track of all of the investigations that could come to a conclusion in the coming months, we do not blame you. Here is a quick recap:

- The current FBI and federal probe by the United States Attorney's Office in Brooklyn into the Executive Chambers' undercount of nursing home deaths continues to circle closer to the Governor. This week, the Cuomo Administration refused to make public what it is has shared with the Department of Justice. That investigation is ongoing. The Attorney General's January report was only a preliminary report so there will also be a further, final report from her office on nursing homes and Covid, as well.
- Attorney General Tish James—whose report on nursing home deaths was the beginning of all of the controversy to date—is actively investigating multiple allegations of sexual harassment against the Governor. James fought to ensure her office controlled the investigation after it was initially proposed that the Governor would select his own investigator. James won and her office has all the tools to fully investigate. Many see this as the most serious threat to the Governor and, likely, the first to be made public.
- Earlier in the month, Tish James was given a formal referral by State Comptroller Tom DiNapoli to launch an investigation into the Governor's \$4 million book deal for *American Crisis: Leadership Lessons from the COVID-19 Pandemic*—amidst allegations of violations of New York's Public Officers Law.
- Finally, the Assembly's impeachment proceedings are on-going. Assembly Judiciary Chair Charles Lavine indicated in a hearing last Wednesday that the Committee has received over 200 tips and their investigators had spoken with attorneys for at least 70 potential witnesses. The Assembly's scope includes all three scandals—the book deal, the nursing home deaths, and the multiple sexual harassment allegations as well as allegations about a cover up of malfeasance at the Mario M. Cuomo/Tappan Zee Bridge.



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The Policy

While the investigations are on-going, for the most part, the Legislature has not stopped their usual business. Legislators continue to plow through a host of issues, quickly moving them through Committee to the floor. Last week, the Legislature passed and delivered to the Governor the HERO Act—a measure mandating employers maintain protections to keep employees safe from future pandemics—and they show no sign of letting up from here. Below are some of the key pieces of legislation to watch.

- **Extension of the Eviction Moratorium**—Senator Brian Kavanagh (who represents Manhattan and Brooklyn) and Assembly Member Jeff Dinowitz (who represents the northwest Bronx) introduced legislation to extend the eviction moratorium for tenants facing COVID-19 related hardships (which is set to expire this weekend—May 1st). The legislation would extend the moratorium through August 31st. Even though \$2.3 billion from the American Rescue Plan is coming to New York State for rent relief—the Sponsors say there is no way it will be available in time—making the five month extension a necessity for tenants across the State.
- **Data Privacy**—After a lot of noise around its inclusion in the Executive Budget Proposal in January, the Governor’s proposed New York Data Accountability and Transparency Act quietly fell out of the final budget agreement. Now, insiders in Albany are saying that Senator Kevin Thomas plans to introduce an amended version of the New York Privacy Act (NYPA) over the next couple of weeks and host a hearing on the bill in May. While we still await the amended framework, if the proposed is enacted in its current form, it would be even more expansive than California’s ‘nation leading’ Consumer Privacy Act (CCPA), providing consumers with even greater control over their personal information, while at the same time being much more onerous for businesses to comply with.
- **Construction Wage Theft**—Labor leaders—including the New York State Building & Construction Trades—are targeting rampant withholding of unpaid wages by unscrupulous contractors and subcontractors throughout the construction industry—a problem that costs workers an estimated \$300 million per year. The proposal from Senate and Assembly Labor Chairs Jessica Ramos and Latoya Joyner (S2766/A3350) passed the Assembly in January, and advocates are pushing to move it in the Senate in May.
- **Adult Survivors Act**—Both the Senate and the Assembly sponsors of the Adult Survivors Act—Senator Brad Hoylman and Assembly Member Linda Rosenthal—have said that they will push for passage of the legislation before the end of session in June. The bill, which is based on the Child Victims Act, would create a one-year legal look-back window during which people who were 18 years of age or older when they were abused could file civil lawsuits against their abusers. The look back window would open 6 months after the bill is signed into law.



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The lawsuits would address claims arising from crimes including sexual assault and sexual harassment. While it was created in 2019, in part, in response to the crimes committed by disgraced film producer Harvey Weinstein, the bill could also snare Governor Andrew Cuomo if he is found to have committed the acts of sexual harassment which he has been accused of. [Ironically, a group of women who stood up to Harvey Weinstein and others have written a letter to the Governor, urging him to support the bill.](#)

- **Criminal justice reforms**—The decriminalization and expungement of cannabis related offenses in the Marijuana Regulation and Taxation Act (MRTA) were a major victory for progressive reform criminal justice advocates. Many hope to build on that energy through the end of session to pass another police reform package. Advocates are pushing for an [end to qualified immunity in New York State](#), and [bills that provide transparency in police custody, New York for All \(which would prohibit NY law enforcement agencies from sharing data with ICE\)](#), and bills increasing transparency in police interrogations.
- **New York Health Act**—[A single payer system in New York State is a priority for both Legislative Health Committee Chairs Richard Gottfried and Gustavo Rivera.](#) However, it is a non-starter for the Governor. Furthermore, it would be unprecedented—the thornier issues, like how the State would interact with Medicare—are immense. The Legislature does have a veto override, but a vote to override on single payer would be risky for more moderate members throughout the State as the framework does not hold much support outside of New York City. While seeing single payer in the next year is unlikely, the Assembly moved it through the Health Committee last week and plans to pass it before the end of session as a show of force. More important, the larger policy discussion around the New York Health Act also opens smaller policy conversations that create interesting politics, like a Fee for Service Carve out of the Medicaid Drug Benefit and changes to administration of benefits through Managed Care Organizations.
- **Gig Economy**—After a relatively quiet budget process on gig economy ([save for a brief mention in the Governor's State of the State Address](#)), legislators could move on the [Dependent Worker Act](#) in the remaining months of Session. Assembly Labor Chair Latoya Joyner reintroduced the bill in January, and rumors had circulated that Savino would be dropping an amended package based on negotiations between the key principals: Transportation Network Companies, [the Independent Drivers Guild](#), and others, but no such bill has dropped to date. And while New York is New York, battles across the Country—[including one currently happening across the border in Massachusetts](#) could always spark the conversation.
- **Safe Staffing**—The original safe staffing bill that would have established minimum nurse-to-patient ratios in both hospitals and nursing homes has been stalled for almost twenty years amidst a stalemate between hospital and labor groups. Following negotiations involving the New York State Nurses Association, 1199SEIU, Communications Workers of America District



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1 and hospital groups, including the Healthcare Association of New York State, the Legislature introduced bills that would separately address hospital and nursing home staffing. The first would establish clinical staffing committees—not ratios—in general hospitals to oversee staffing plans and the second would set staffing levels at nursing homes equal to 3.5 hours of daily nursing care per resident. The Senate Health Committee will consider the proposals today, with the full Senate expected to vote next week. The Assembly Health Committee will consider the proposals today, but has not laid out a time for passage.

- **State Level Green New Deal?**—While many in New York considered 2019’s Climate Leadership and Community Protection Act (which sets targets on carbon emissions and renewable energy generation—setting the State to be 100% renewable energy powered by 2040 and 85% emissions reductions by 2050) to position New York as a leader on green policy, many progressive advocates are pushing for *more* in the way of policymaking and funding projects that set New York on the path toward those goals. Some of the proposals that could move before June include the Low Embodied Carbon Concrete Leadership Act, a carbon tax proposal, and the Climate and Community Investment Act.

It is also worth noting that the CLCPA *itself* turned into a three-way priority overnight in 2019—the final bill was introduced, reported from Committee, and passed on the floor in both Houses just three days before the Legislature adjourned in June 2019. In short, climate bills tend to move fast, you will want to pay attention.