

NY Connection



Official Magazine for the New York State PHCC

Spring 2018



Harassment Amongst Generations

see page 4

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President

Joseph Marchitte
M.K.S. Plumbing Corp.
19 Ransier Drive
West Seneca, NY 14224
Tele: 716-675-5771 Fax: 716-675-4957
Email: jmarchitte@mksplumbing.com

First Vice-President

Ryan Truncali
Lakeville Place Mechanical, Inc.
75 East Hoffman Ave.
Lindenhurst, NY 11757
Tele: 631-226-8100 Fax: 631-226-7232

Second Vice-President

Chris Tryjankowski
PCS Heating & Plumbing
1 Carter St.
Buffalo, NY 14220
Tele: 716-822-4302 Fax: 716-893-9657
Email: chris@pcsplumbing.com

Secretary

Ronald Doughty
Williston Plumbing
201 Hillside Avenue
Williston Park, NY 11596
Tele: 516-746-3353
Email: Ron@willistonplumbing.com

Treasurer

Donald Powers
Plumbing Help Now
345 Schultz Rd.
West Seneca, NY 14224
Tele: 716-861-7337
Email: powersdonald@yahoo.com

Immediate Past President

Al Esposito
Al Esposito Plumbing & Heating
47 Gazza Road
Farmingdale, NY 11735
Tele: 631-293-2600 Fax: 631-293-2686
Email: pipedoc26@gmail.com

Executive Director

Dorothy Reddy
PO Box 23
N. Tonawanda, NY 14120
Tele: 716-216-4360
Toll Free: 800-523-5505
Email: dreddy@nysphcc.org

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PUBLISHED BY:



Alexis Kierce, Publications Manager
717-238-5751 x119
alexis@thinkgraphtech.com
For Advertising Information:
Jen Smith, Account Manager
717-238-5751 x124
jen@thinkgraphtech.com



President's Message

Joseph Marchitte

The phrase “change orders” is very familiar to most contractors. When there’s a change to the project documents or work that is issued in the field, we itemize a price and send it to the owner/construction manager.

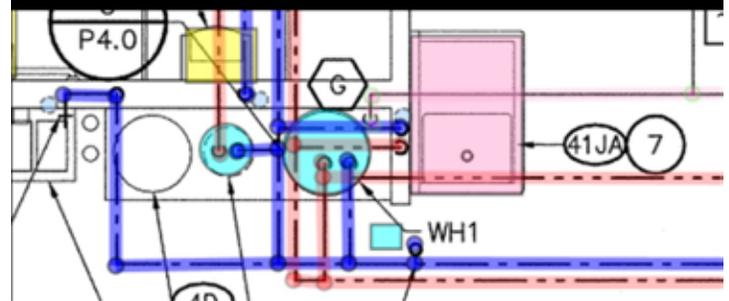
Joseph Marchitte
NYSPHCC President

I remember years ago, I would hear contractors who were really low on bidding a project say, “I’m going to make up the difference on change orders.” Some of them are still saying the same thing. I can really laugh when I still hear this. How can you make up the difference? First off, when you write up a change order 99.9% of the time it must be itemized by labor, material and subcontractors, if involved. There are usually administrative consultants, engineers, and construction managers, that review your pricing based on the change order that is sent to you via email or by mail. Once the change order is approved, guess what happens next? We bill for it and get paid, correct? Well that’s how it’s supposed to work. Now, let me explain why change orders are a bunch of BS! By the time you send your pricing in and get it back to you, of course after they make you revise it 10 times, is it worth it? Where do you make the difference up? On the 10% overhead and 5% profit? I don’t think so. If you bid a project at a lower percentage, chances are you are only going to make that percentage hoping that you have no screw ups during the project. These days there are always screw ups on the job whether it’s field install or engineering, etc. An estimate is just an estimate. Now, you must have your project manager or administrator write up the change order. That costs you money which technically they say is overhead. Sometimes change order write ups can be lengthy. Let’s say the project is supposed to be completed in one year. I guarantee you will all agree to this. How many times have we all submitted change order proposals during the course of the project and NOT GET PAID UNTIL THE END OF THE PROJECT! UNACCEPTABLE!!! We have all expended money out of our own pockets to pay for all the change orders for the entire job. Why can’t we be compensated with adding interest or adding a few more hours/ material to make up the difference? As far as I’m concerned, they can keep their change orders because they are not worth it. Most times we lose money on them unless there’s some sort of large piece of equipment that might have some value to it. We exhaust way too much overhead preparing change orders that we do not get paid for in a timely manner. I know that there will always be changes to most projects, but if the owner gave more time and money for engineering projects respectively, this would reduce the amount of change orders.

“Most times we lose money on [change orders] unless there’s some sort of large piece of equipment that might have some value to it. We exhaust way too much overhead preparing change orders that we do not get paid for in a timely manner. I know that there will always be changes to most projects, but if the owner gave more time and money for engineering projects respectively, this would reduce the amount of change orders.”

— Joseph Marchitte
NYSPHCC President

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Planning for the Unexpected

As a business owner, you know there are things that can disrupt and possibly cripple the success of your business. You have to focus on, plan for, and address many diverse issues, such as what your competition is doing; federal, state, and local laws; employee issues; etc. All of these and more can threaten your financial well-being.

Have you also considered the impact on your business, on your family, and on your employees if you became disabled? A long-term disability can have far-reaching implications: Not only are you providing for your family, but you also are providing for the well-being of your employees and their families. If disability strikes, you need time to react and hold things together until plans can be worked out. The success of your business is dependent on your being an active owner. A disability can put this success in danger. What steps have you taken to protect yourself and the people who count on you from an unexpected loss of income?

A Cloudy Crystal Ball

Do you know what the future holds? Of course not. So how do you plan for something you can't foresee—or something that may never happen? Start by asking yourself some thought-provoking questions:

- If you're disabled for a short time, can you rely on savings and other assets to keep your personal income and family situation stable? For how long?
- Could you ask and require your employees to do more?
- If you had to eliminate unnecessary expenses, how long could that continue without creating a real hardship?

- If you were to suffer a long-term disability, could your business continue to pay you? How would you survive the loss of income? Would your business survive?

These are things no business owner wants to think about, but should. Planning for the unexpected—just in case—can put your mind at ease and may protect you from financial disaster. To help with your peace of mind, you may want to consider **individual disability income protection**. These products provide a monthly income if you are unable to work due to an injury or sickness. If your business is trying to provide you with an income, this type of protection could help to reduce the financial strain. Specialized riders or policy provisions can allow you to work part time, or even provide additional monthly benefits that can be used to offset business expenses during your disability.

Insuring your income is as important as insuring any other business risk. If it's one thing life has taught us, it's that things can happen suddenly, so it's a careful business owner who prepares for that. Protect your most valuable asset—the ability to earn an income.

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Harassment Amongst Generations

By Michael Copp, Executive Vice President

Recently I have cringed each time I turn on the news and hear about yet another case of sexual flirtation, misconduct, harassment, and assault, and I am increasingly worried about the long term impact on the workplace. Yes, we know that this behavior has no place in our society and creates a hostile environment (yes, this is the legal ramification of harassment) for victims who could be our brothers, sisters mothers and fathers. In 2015, the Huffington Post reported that a “survey found that one in three women between the ages of 18–34 [had] been sexually harassed at work.” I can’t express how angry I became when I learned that my two sisters were victims of such ignorant and disrespectful behavior given how hard they work to achieve success in their lives. But for now, let’s shift our focus on harassment in the workplace about which I see as a disturbing dynamic for the trades.

With life expectancy on the rise and many people working longer into their later years, we are faced with a workplace that employs multiple generations whose view of sexual harassment is vastly different. Within that mix are the “traditionalists” born before 1945, “boomers” born between 1946 and 1965, “Gen X” born between 1966 and 1977, “Millennials” born between 1978 and 1995, and Gen 2020” (or “Gen Z”) born after 1995. “Boomers ... knew [sexual harassment] went on but it was not well publicized and it

was harder for women to speak up” says San Diego State University psychologist Jean Twenge. “For Generation X it was more accepted but there was still a lot of skepticism in the 1970s and 1980s.” (Twenge, 2017) However, “national data surveys show increasing support for women in the workforce and for gender equality.” Therefore, millennials are “self-confident and also differ dramatically from their elders in their attitudes about women, work and workplaces [hence] ... it is “more likely to (some) Gen X or (many) millennials

“... as more millennials and Gen Zs work with members of any generation who may have a proclivity toward ‘locker room talk’ or worse ... we have a potential misalignment of acceptable social conduct within the workplace that will fragment efforts toward collaboration and shared respect.”

— Michael Copp

would not think it’s acceptable and would not put up with sexual abuse.” (Twenge, 2017)

I think this dramatic change in attitude toward sexual misconduct will only get worse as more millennials and Gen Zs work with members of any generation who may have a proclivity toward “locker room talk” or worse, and will bring greater scrutiny and workplace conflict. Add to that the heightened sense of social responsibility felt by later generations and we have a potential misalignment of acceptable social conduct within the workplace that will fragment efforts toward collaboration and shared respect.

And while each generation may react differently toward this corrosive conduct, all agree that there is no room for this aberrant behavior amongst supposed industry professionals. As author Miya Yamanouchi once noted, we respect ourselves by respecting others.

Alanna Vagianos (2015) writes, “sexual harassment at work isn’t always easy to spot. It can be a sexual comment in a meeting or even an insinuating Facebook message.” Given this potential overt or covert misconduct, contractors who do not have human resource support (as well as those that do) must have this critical conversation with all their employees and agree on conduct that nurtures individual and corporate respect. There are multiple training materials online for business owners to deliver programs to their employees. For example, you might check out OSHA’s website for resources that may help and/or Society for Human Resource Management (SHRM) for additional training.

RESOURCES

https://www.huffingtonpost.com/2015/02/19/1-in-3-women-sexually-harassed-work-cosmopolitan_n_6713814.html

<https://www.usatoday.com/story/life/2017/11/06/millennials-vs-genx-vs-boomers-sexual-harassment-they-different/814056001/>

<https://www.osha.com/store/workplace-harassment-training.html>

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Hamond Safety Management — A Monthly News Briefing

One phrase commonly heard, usually after an unexpected mishap, is “accidents happen” to explain or justify that human beings may expect to be injured from time to time as an unavoidable aspect of living. Shakespeare called it “the thousand natural shocks that flesh is heir to.” This rationale, however, has not been readily accepted by the occupational safety industry and specifically the Occupational Safety and Health Administration (OSHA) believes that all accidents are preventable, assuming workers are given thorough training and provided with the proper equipment. The agency insists that, if their applicable standards, guidelines and regulations are followed, no injuries should occur.

Whether it is theoretically possible or not to prevent “all” injuries is beyond the scope of this article. Suffice to say that occupational accidents have such an emotional and financial impact on the affected worker, family members, and the company that employs him or her and that every possible precaution must be taken to prevent them.

Every possible precaution must be taken to prevent occupational accidents. Emerging trend analysis and use of what collectively has been labeled “Big Data” may be the future of accident prevention.

Emerging trend analysis and use of what collectively has been labeled “Big Data” may be the future of accident prevention. Using computers to evaluate possibly thousands of workplace scenarios to in effect predict the accidents and resulting injuries that would be most likely to happen. In fact, “Big Data” and “predictive analytics” have been used for a number of years in the retail industry. Ebay and Amazon, among many others, use predictions to promote other products. For example, if a person’s purchasing or browsing history includes “mystery novels”, in the website page margins “pop up” advertisements may appear with the caption “You may also like” or “just for you”. This is basic predictive analytics. Using your own previous actions as a guide, the retailer hopes to stimulate additional sales of similar items.

How do safety professionals use this process for the advancement of occupational safety? Since the entire concept of Big Data involves evaluating massive amounts of information, would it seem reasonable that accidents might be avoided by predicting them? Could the risks found at a particular construction site or factory floor be evaluated and models be created that would identify all of the potential

accidents using probability? Might the specific information about a jobsite be input, analyzed and the risks extrapolated to “look into the future” and then require that certain safety training is stressed or emphasized to help prevent the most likely mishaps from occurring?

Predictive analysts would review similar jobsites to ascertain how, when and where, the most likely d would occur, again based on past experiences. If the data suggests that a worker, for example, is most likely to be struck by a forklift on days when materials are delivered, the training could be designed to increase worker awareness at the appropriate time. If the materials are scheduled for the next work day, the employees could be reminded during the morning tool box talk to be alert for this particular hazard during the following workday.

According to the National Institute for Occupational Safety (NIOSH) “It seems likely that if injuries can be predicted accurately, they can be prevented. Work environments can be modified, maintenance performed, and workers trained, and improved protections offered. Multi-site employers could focus on their efforts on sites where injury or death is most probable.”

Despite the exciting promise that predictive analytics brings to the world of occupational safety, certain concerns about its implementation remain. Company managers and safety professionals must be trained on how to use the information and believe that that is useful and worthwhile to fulfill its promise. Also, generally larger companies with advanced accident prevention programs will, at least initially, be predisposed toward embracing the new technology. Still, all safety professionals should take time to investigate how predictive analytics may benefit their workers by identifying potential hazards and preventing accidents. According to NIOSH, “Prediction depends on the availability of information of adequate quality and consistency; access to trained analysts who have the tools to do their work; and an ability to frame questions and identify situations that are likely to benefit from predictions before they happen.”



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By Bill Harrison

“WHOOOPS!” is a magic phrase and most folks believe they are consistent. But let’s go a little deeper into this area. Let’s ask a very basic question — have you ever made the same mistake more than once? Would you then be consistent? There is only one type of consistency that we must strive for. We must get consistent in doing whatever task we are engaged in right the first time. “Of course” you might say. But is this actually what happens in our workplace every day? Maybe not.

It is one thing to talk about it but making this a reality is very hard work. When we don’t do something correctly the first time, then we get into firefighting, yes? When we do not do the task right the first time then we must find the time to do it over. Question — does it take more time to do it right or to do it over? We all know the answer to that, don’t we?

We must get out of the firefighting mode; even though we feel we are good at it. Instead, steady, we must get 100% into the fire prevention mode. Let’s look at a few things that might cause us to not do it right the first time. One culprit is a lack of proper training. It is important to train everyone on the correct way to do each task. Assuming a person knows the right way is a big mistake. Even a person with experience may not know the right way and/or might not know the right way in your company. Time in the trade does not equate to a certain level of knowledge. When we say “they should know” we are going down a slippery slope. I have covered proper training in other articles so will not repeat that here.

We might have some confusion because in our company there might be four different folks doing things four different ways. As folks move from crew to crew or talk to different supervisors they get confused on how to do it right. This often can happen with PMs but not exclusively in that venue. It may sound simplistic, and too hard to do, but there must be the Our Company Way of doing things. When there is confusion we are very open to not doing it right the first time.

Perhaps you can think of examples of this. You must get a more in depth response beyond the “Yes”. I believe you can come up with ways to do this. Too often we don’t take the time to communicate that well and we pay a price. The time to communicate properly may take only minutes; but the time to do it over may take hours.

When tasks do not have a specific deadline it is human nature to let things drag out. Then it is crunch time and folks rush to get it done. Then, far too often things are not done right the first time. Poor planning can also get us into crunch time and then we know what happens. To complete a task by Friday that was established on Monday, we probably need to do something every day that week to get there. Stuffing all the effort into Thursday and Friday may result in a do over.

Just a note — a do over is not just about the time, it is also about money isn’t it? Do enough tasks over and we don’t have time to do a current task right. That is an opportunity

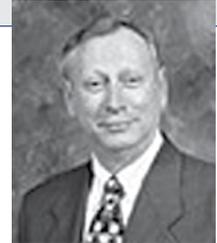
cost as well. What is the effect on your bottom line by not consistently doing each task right the first time? I would suggest it could have a 5% or higher impact on your net profit. I have proven this many times.

Got a question — ask The Coach. The call is free and so is the advice and guidance. **Remember —** The Coach does not succeed until you do.

Just do it!

Bill Harrison is president of PLI, LLC.

*His contact information is:
6200 Settlers Trail Place
Gainesville, VA 20155
(703) 909-8230
wiharrison@comcast.net*



PROPER FOLLOW-UP HELPS

“Show me” management can go a long way to prevent not doing it wrong the first time. Let’s say you have directed a staff member to do a task four days from now. Perhaps the second day you could ask them to show you where they are on the project. Do not be surprised that they tell you they were just getting ready to start on it. Or, they do come with “something” and you can determine if they are on track or need additional training or clearer communication. If you wait until the time is up and then ask: “Where is it?” you are in big trouble. That’s when we go into crisis mode and things do not go well. Can you relate to this? Worse yet, you end up and do it for them. Now we are going down the rabbit hole.

Perhaps you have tasked someone to do a task or series of tasks in the field. It is OK to check on them before days end and make a similar determination to that above. I know,

you don’t have time to check on how they are doing but you do have time to fix things when it is all screwed up for any number of reasons. The old phrase: “I didn’t have time to do it right the first time” is lame. It is also costly in many different ways. I am confident you can relate to everything published here.

Make your company mantra – **Do It Right The First Time.** Then make that happen.

We have talked often about systems in these articles and in my monthly newsletters so I will not beat that horse again. Incidentally, if you are reading this article and find value in it, and do not receive my monthly newsletter, just send me an email and request it. It is free and many folks from your association do get it. It is to help you go to the next level and is not used for marketing my services.



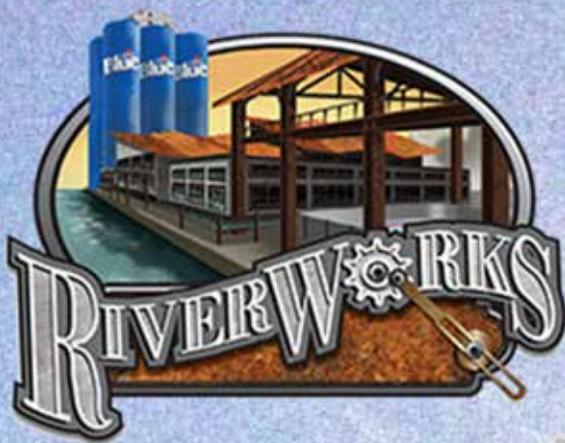
NYS PHCC E-Learning Apprenticeship Program!

Soon, the New York State PHCC & PHCC Educational Foundation will be offering plumbing apprentice eLearning courses for apprentices in New York State. This program is recognized by the U.S. DOL, and the New York State Department of Labor, Office of Apprenticeship, as a reasonable option for apprentice training. Each course is the equivalent of one year of classroom instruction. Scholarships will be available through the PHCC Educational Foundation and the PHCC National Auxiliary. The NYS PHCC is hoping to have this new program rolled out in the next couple of months. Stay tuned for details.

Plumbing & Mechanical Trade Show

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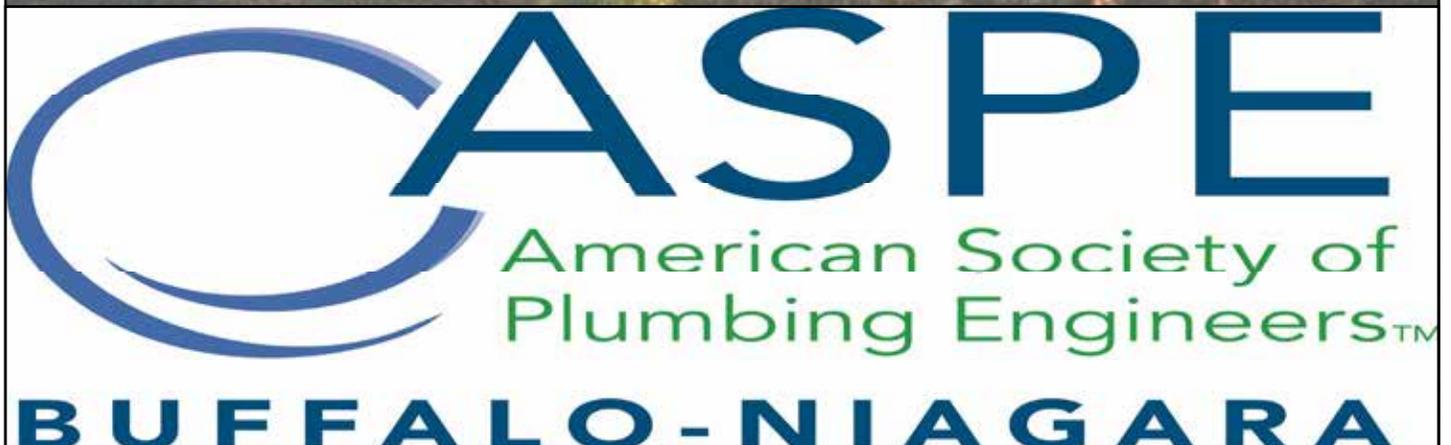
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Legislative Update

January 2018

The NYS Legislature is in Session

Wednesday, January 3, 2018 marked the first day of the 2018 Legislative Session as Senators and Assemblymembers made their way back to Albany and gavelled in. A number of issues are said to take priority in 2018, as outlined by NYS Governor Andrew Cuomo in his State of the State Address. Governor Cuomo delivered a self-described “ambitions agenda” that ranged from undoing federal tax changes on New Yorkers to expanding tourism.

Addressing the NYS Multi-Billion Dollar Deficit

On Tuesday, January 16th, the Governor unveiled his executive budget proposal for the upcoming fiscal year. The Governor and the Legislature will have to deal with a projected \$4.4 billion budget deficit in a fiscal 2019 budget, expected to total about \$160 billion.

The projection at \$4.4 billion budget deficit for fiscal 2019, which begins April 1, is if it doesn't adhere to a 2%

limit on spending growth. If it holds to the 2% increase, the deficit would be \$1.7 billion, which lawmakers hope to approve by April 1. That will force them to make some difficult decisions about spending priorities in the more than \$150 billion spending plan.

These next few months will consist of thorough executive budget review by the Legislature who will hold public hearings regarding budget proposals. Each House will then present their own budget resolutions based on their respective houses' budget priorities. The Senate, Assembly, and the Governor will then negotiate a comprehensive and balanced budget. A final and agreed upon budget is set to be due by March 31, 2018.

Proposals in Governor's Budget that may impact NYSPHCC

The Governor proposed a very comprehensive extension of the provisions of law relating to participation by minority and women-owned business enterprises

(MWBE) in state contracts for five years, and wants to implement certain findings and recommendations of the 2016 MWBE Disparity Study.

S7508/A9508 Article VII TED Budget Bill:

The Executive proposes extending the Minority and Women Owned Business (MWBE) program through 2023. The proposed extension includes several modifications to the program, including changes based on the 2016 disparity impact study that was released by the Division of Minority and Women’s Business Development in June 2017, and anti-fraud provisions.

PART Q – Reauthorizes and extends the provisions of law relating to participation by minority and women-owned business enterprises (MWBE) in state contracts and expands upon those provisions based upon the findings of a 2016 Disparity Study

- Extends for five years Article 15-A of the Executive Law authorizing the Department of Economic Development’s (ESD) Division of Minority and Women’s Business Development to promote employment and business opportunities on state contracts for MWBE.

ESD’s authority and the requirements of the MWBE program are set to expire on December 31, 2018.

- Expand the MWBE program to local governments who receive State funding for the State funded component of a project

“State-funded entity” shall mean any unit of local government, including, but not limited to, a county, city, town, village, or school district that is paid pursuant to an appropriation in any state fiscal year.

- Increase the value of state contracts to \$50,000 for non-construction and \$200,000 for construction;
- Update diversity practices definition to include diverse leadership of businesses and MWBE mentorship;
- Increase agency and authority discretionary purchasing threshold to
- Enhance opportunities for MWBE prime contractors by establishing bidding credits for low-bid construction projects of up to \$1.4 million and increases the size of procurements that can include bidding credits each year with inflation

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Makes a number of programmatic amendments to MWBE requirements Article 15-A of the Executive Law, including:

- Creating a new criminal offense of MWBE Fraud (Article 181 of the Penal Law) when a person “knowingly provides materially false information or omits material information” in order to be awarded a State contract or demonstrate compliance with MWBE participation requirements. This new crime would be punishable as a class E felony if the State contract is worth more than \$50,000 and a class D felony if the State contract is worth more than \$1M; o Expanding MWBE program requirements to include all municipalities on contracts let with State dollars, and requires units of local government subject to Article 15-A to set MWBE goals on contracts and submit reports to the Division;
- Authorizing the Division to set the “personal net worth” requirement for MWBE certification via regulation; o Expanding the authority of the Statewide MWBE Advocate to audit agencies and investigate complaints from MWBEs by State agencies and contractors; and o Amending various statutory dollar amount thresholds on contracts subject to MWBE participation requirements.
- Creating a new “Workforce Diversity Program” , Article 28 of the Executive Law to develop “aspirational goals” for the utilization of minority group members and women in each construction trade, profession and occupation:

Section 822 of this Article: Workforce participation goals:

- The director of the MWBE program in consultation with the department of Labor shall develop aspirational goals for the utilization of minority group members and women in construction trade, profession, and occupation.
- Must set forth the expected participation of minority group members and women in each construction trade, profession, and occupation, and shall be expressed as a percentage of the total hours of work to be performed by each trade, profession, and occupation based on the availability of minority group members and women within each trade, profession, and occupation.
- Goals shall be established for each county of the state. The director may establish aspirational goals for the expected participation of minority group members and women for municipalities where the director deems feasible and appropriate. The director shall,

in establishing the aspirational goals consider the findings of the most recent disparity study and any relevant data published by the United States Census Bureau

- State agencies shall set workforce participation goals for each invitation for bids, RFP, or other solicitation; and set forth the expected level of participation by such groups in the performance of each trade, profession, and occupation required in the performance of the contract.
- Every contractor will have to agree to such goals or request a waiver. A contractor will certify that they and their subcontractors will make a good faith effort to achieve the applicable workforce goals.

Additional Major Proposals for 2018

NYS’s Potential Response to the new Federal Tax Law

For those that have business operations in NYS, the initial version of the budget presented on Tuesday, January 16 by Governor Cuomo did not address any of the myriad corporate and personal income tax (PIT) conformance issues raised by passage of the new federal tax law.

Instead, he announced those issues are to be explored in a special Department of Taxation and Finance study, which would presumably tee them up for consideration during the 30-day budget amendment period. This preliminary report outlines a series of proposals for consideration and comment, in four Parts.

- Part I outlines a potential proposal for creating additional opportunities for charitable contributions to benefit New Yorkers.
- **Part II discusses the policy options for reducing income taxes and shifting instead to a statewide employer compensation expense tax.**
- **Part III outlines options for a new statewide unincorporated business tax, which would be offset by personal income tax credits for business owners.**
- Part IV discusses the impacts of the Act on New York’s tax system and outlines potential responses for the State.

The Department recommends that these options be considered in light of these four key State objectives: first, promoting fairness for New York’s taxpayers in light of the new limitation on the deductibility of state and local taxes, which negatively impacts New York relative

to other states; second, protecting the progressivity of New York's tax system and the investments and services that benefit New Yorkers and beyond; third, protecting and enhancing the competitiveness of New York's economy; and fourth, maintaining New York's revenue base in both the short- and long-term.

Congestion Pricing

A recent report issued by a panel created by Governor Cuomo deemed "Fix NYC" has proposed a congestion pricing plan for driving into Manhattan's busiest neighborhoods. We are aware that Rite Aid stores in Manhattan will be closing, however we are not sure of the time frame and therefore thought it would be best to inform you of the congestion pricing proposal that is expected to be analyzed and considered by the Governor and the legislature over the next several months.

The recommended congestion pricing plan is to be implemented in three phases over the next two years. The first phase would involve mass transit improvements in the outer-boroughs and buying the equipment needed for the program. The second would enact congestion pricing for for-hire vehicles while the third would first focus on trucks and then all vehicles.

The third phase, which would begin in 2020, would create a congestion zone stretching from 60th Street south to the Battery, from the Hudson River to the East River. Trucks and commercial vehicles would be charged a fee of \$25.34 to enter during peak traffic times.

Child Sex Abuse

A proposal to loosen the statute of limitations for child molestation has failed repeatedly in Albany but supporters are hoping national attention on sexual misconduct gives their cause fresh momentum. The bill would give victims more time to file civil lawsuits or seek criminal charges against abusers and create a one-year window for past victims to file civil suits. Victims now have until they turn 23 to sue.

Sexual Misconduct

Cuomo has proposed a comprehensive state policy for combating sexual harassment. Several lawmakers have already advanced their own ideas.

Election Integrity

Russian attempts to influence the 2016 election have prompted proposals from Cuomo and lawmakers to require the disclosure of groups paying for online political ads.

Voting Reforms

New York is now one of a minority of states that don't allow early voting. Cuomo and lawmakers have advanced measures to authorize it and to make it easier to register to vote.

Legislation Signed by the Governor that may impact NYSPHCC

On December 18, 2017 Governor Cuomo signed Chapter 461 of 2017 (S6790 Murphy/ A8514 Bronson), relates to reciprocity of debarments imposed under the federal Davis-Bacon Act. This law, ensures that those contractors and subcontractors who are debarred on the federal level under the Davis-Bacon Act for wage payment violations, are unable to bid on state public work contracts; this legislation would close a loophole in the existing law.

Under the current law, contractors and subcontractors who have been debarred from federal job sites are considered on equal footing with law-abiding contractors. This bill would remedy this gross inequity by granting reciprocity to debarments imposed by the federal government on contractors and subcontractors who have violated the Davis-Bacon Act. New York courts have long settled that the right to bid on a public work contract is not a property right. This privilege to bid must be subject to restrictions, one of which should be the ability of the bidder to comply with certain prevailing wage provisions.

When signing the legislation, the Governor issued an approval memo which stated that he supports the intent of the bill but there are certain technical concern that would make it difficult to implement effectively. Since then, a Chapter Amendment has been introduced as a response to his concerns; S7323 Murphy/ A8931 Bronson. This legislation expands the scope of reciprocity to the entire federal list while also providing an awarding entity limited flexibility to, after a public notice and comment period, award a public contract to a federally debarred entity upon demonstration of a compelling reason. In looking at Chapter 461, the amendment to Section 103 the General Municipal Law did not change and the creation of a work group study was not affected in this chapter amendment. This bill is expected to pass both houses and be signed by the Governor.

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