

An aerial photograph of New York City at sunset. The Empire State Building is the central focus, with other skyscrapers visible in the background. The city is densely packed with buildings, and a large body of water is in the foreground. A highway with traffic runs along the water's edge.

FY2021 NYS Enacted Budget Brief



**GREATER
ROCHESTER**
Chamber of Commerce

S U M M A R Y

The New York State legislature passed the FY2021 \$177 billion budget. The budget accounts for decreased tax revenue of \$10 billion and approves up to \$11 billion in borrowing. The budget also allows for cuts to be made mid-year at the discretion of the Budget Director if budgeted receipts are behind or disbursements are exceeded. Included in the budget is prevailing wage on certain private construction projects, paid sick leave, a ban on polystyrene, and reforms to the bail law. Some items that the Governor had proposed in his executive budget proposal that were ultimately excluded from the final budget include the proposed small business tax cuts, legalization of recreational marijuana, and gig economy workers.

W H A T P A S S E D

Prevailing Wage: The enacted budget includes a requirement that prevailing wage be paid on construction projects of \$5 million or more and that are paid for with at least 30% public funds. This legislation also creates a public subsidy board that is empowered to recommend any necessary adjustments to thresholds included in the bill. The board may also make determinations related to the applicability of the law to projects undertaken with benefits stemming from certain programs. The public subsidy board is effective April 1, 2021, and the law takes effect January 1, 2022, applying to contracts for construction executed on or after that date.

A “covered project” shall mean construction projects done under contract which is paid for in whole or in part out of public funds where the amount of public funds, when aggregated, is at least 30% of the total construction project costs and such total project costs are over \$5 million.

“Public funds” are considered:

- Grants from a public entity
- Savings achieved from fees, rents, interests or loans
- Savings from reduced taxes as a result of tax credits, abatements, exemptions, or tax increment financing (IDAs, PILOTs)
- Other savings from reduced, waived, or forgiven costs that would otherwise be at a higher market rate

“Public funds” are not:

- 421-A benefits (NYC)
- Funds used to incentivize sewage system development
- Tax benefits provided for projects which cannot be calculated at the time the work is preformed (Excelsior Job Credits)
- Tax benefits related to brownfield remediation or redevelopment

Explicitly exempted in the policy:

- One- or two-family dwellings
- Construction on non-profits with gross annual revenue under \$5 million
- Affordable housing projects
- Manufactured homes

- Projects covered under a pre-hire collective bargaining agreement
- Downtown Revitalization Initiative (DRI) projects
- Renewable projects under five megawatts
- FRESH supermarket construction (NYC)
- Historic tax credit projects.

The Public Subsidy Board will examine and make recommendations regarding:

- The minimum threshold percentage of public funds
- The minimum dollar threshold of project costs
- Construction work excluded from the project
- The definition of “construction”
- Whether benefits, monies, or credits shall constitute public funds

Prior to any recommendations, the board must hold a public hearing on those changes that are under consideration. The board is empowered to issue binding determinations on any matter related to an existing or potentially covered project. The board may temporarily delay implementation of these requirements beyond the effective date statewide or in a specific region, based on a review of “well-established” economic indexes and accepted economic factors tied to the construction industry. The board will consist of 13 members, each of whom is appointed by the Governor.

Paid Sick Leave: Businesses making less than \$1 million a year with fewer than five employees would be required to offer up to 40 hours of unpaid sick leave. Business with fewer than five employees and making more than \$1 million, along with businesses that have between five and 99 employees, must offer up to 40 hours of paid sick leave. Employers with more than 100 employees must offer up to 56 hours of paid sick leave. Employees would begin to accrue leave as soon as they’re hired, at the rate of at least one hour for every 30 hours worked.

Employers with pre-established sick leave policies that meet or exceed the requirements in this legislation will not be required to provide additional leave. Unused sick time will carry over to the following year, but the annual hourly caps are still in place. Employers are not required to pay out their employees for unused time. Employers must preserve six years’ worth of accurate payroll records showing the amount of sick leave provided to each employee. This legislation takes effect 180 days after passage (October 3, 2020).

Sick leave will be provided for the following purposes:

- Mental or physical illness of an employee or an employee’s family member
- The diagnosis, care, or treatment of a mental or physical illness, for an employee or employee’s family member
- An absence from work due to domestic violence, rape crisis, stalking or human trafficking, and various circumstances related to those instances

Polystyrene Ban: Polystyrene foam used in packaging and food containers will be banned starting January 1, 2022. Food service providers are not permitted to sell or distribute disposable polystyrene (Styrofoam) containers. No manufacturer or store may sell or distribute polystyrene loose-fill packaging material (Styrofoam packing peanuts). Excluded are prepackaged foods filled or sealed prior to sale at a food service provider. Also excluded are raw food products that will be prepared off premises.

A financial hardship waiver will be offered under certain circumstances. A waiver may be granted in instances where no alternative product of comparable cost is available and alternative products would create undue financial hardship. Such waivers are available to certain non-profit facilities, including food kitchens, food pantries, and places of worship. Also covered are food service providers with annual gross income under \$500,000 per location (with fewer than 10 total locations). A waiver is valid for 12 months and must be renewed annually.

Middle class tax cuts

- Income tax rates have been lowered from 6.85 percent to 6.09 percent for taxpayers in the \$43,000-\$161,550 income bracket, and to 6.41 percent in the \$161,550-\$323,200 income bracket. Furthermore, income tax rates will continue to drop to 5.5 percent for taxpayers in the \$27,900-\$161,550 tax bracket and 6 percent in the \$161,550-\$323,200 bracket.

Hydrofracking ban

- Codifies Governor Cuomo's ban on approving permits that would authorize an applicant to drill, deepen, plug back, or convert wells that use high-volume hydraulic fracturing to complete or recomplete a well.

Reimagining the Erie Canal

- NYPA will invest \$300 million over the next five years in the Erie Canal to stimulate tourism and economic development and address environmental challenges.

Public financing of campaigns

- This was a codification of the recommendations that were given by the campaign finance commission.

Bail reform

- Effective January 1, 2021, 115 offenses will be eligible for cash bail.

Banning the "pink tax"

- Prohibits gender-based pricing discrimination for substantially similar or like kind goods and services.

Paid gestational surrogacy

Electric bikes and scooters

WHAT DIDN'T PASS

- Small business tax cuts
- Expanding alcohol sales to movie theaters
- New taxes on the wealthy
- Expanding the "NY Buy American" program
- Legalization of recreational marijuana
- Gig economy workers policy

WHAT'S UNCERTAIN

\$3 billion environmental bond

- The fund for flood mitigation and wildland restoration efforts is included in the budget, however, it may be nixed before voters have a chance to decide if they want it in November depending on the state of our economy.

How the budget will turn out in the months ahead

- Each month, state revenue will be evaluated. If revenue is too low or disbursements are too high, the budget director has the authority to withhold dollars that were allocated to localities (school aid, aid/incentives to municipalities, etc.) The legislature will have 10 days to respond to the executive branch cuts and, if no adjustments are made/agreed upon, the decisions will stand.

Medicaid

- Adjustments to the global cap and long-term care, as well as many policies recommended by the MRT II, are included in budget language. The confusion comes in that changing how Medicaid is administered violates the terms of accepting the federal aid that was offered to help fill the budget gap. Under enacted language the Division of Budget is empowered to delay implementation of certain MRT proposals which would preclude New York from legally accepting the federal funds.