



JANUARY 2011 *Local Government Council*

New York's Constitutional Convention

By Kimberly G. Finnigan, Esq.
Cooper Erving & Savage, LLP

Professor Gerald Benjamin, Associate Vice President for Regional Engagement and Director of the Center for Research, Regional Education and Outreach, SUNY New Paltz, joined the Local Government Council (LGC) in September to discuss New York State's constitutional convention and the impact it could have on the future of our state constitution and governmental structure. In framing the discussion, Professor Benjamin began the discussion with a few important facts: (1) New York has not had a Governor from upstate New York since Franklin D. Roosevelt; (2) three out of four state officials currently in elected office were not actually elected to office; and (3) New Yorkers are continuing to lose confidence in the state's ability to govern itself. In fact, more than ¾ of voters believe state government is dysfunctional and support a constitutional convention.

There are two ways to amend New York's constitution. First, state legislators may identify problems with the political system and propose changes to the people. Second, the constitution provides that the people can propose necessary revisions. This is where a convention comes in. Every 20 years, the question, "Shall there

be a Convention to revise the Constitution or amend the same?" is placed before the voters of New York State. Constitutional Conventions have been called in New York in 1777, 1801, 1821, 1846, 1867, 1894, 1915, 1938 and 1967. The question was last placed before the voters, and defeated, in 1997. There are three votes involved in the convention process. First, the people vote to hold the convention. If the majority votes for a convention, the next vote is to elect the delegates to the convention. Finally, after the convention is completed, the people vote whether to uphold the outcomes.

The next chance to have a convention will be in 2017, a date that is frustratingly distant given the state of disrepair of our government. According to Professor Benjamin, the legislature has traditionally not favored calling such a body to life because it feared that a convention might take steps to diminish the legislature's institutional power or incumbents' chances of re-election. The legislature not only dominates the path to constitutional change over which it has formal power, but also the path designed to bypass it. As Professor Benjamin explained, the legislature exercises two gate-keeping functions to avoid the convention process. First, the constitution specifies >>

The Local Government Council (LGC) was founded in 1997 to give local government leaders a forum to identify issues of importance to municipalities, to discuss opportunities for regional cooperation and to foster working relationships among local leaders.



Co-Chair
Gerald D. Jennings
Mayor of Albany



Co-Chair
Kathleen M. Jimino
Rensselaer County
Executive

Mark your calendars: Winter LGC Meetings

January 25th 2010 | 11:30am – 1:15pm
United Way of the Greater Capital Region, Albany

February 22nd 2010 | 11:30am – 1:15pm
United Way of the Greater Capital Region, Albany

Local Government Jobs Continue to Decline

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The Rockefeller Institute reported that, based on the U.S. Bureau of Labor Statistics' September Report, state and local government jobs continue to decline. According to the Report, the declines in state and local government employment reflected a loss from August to September of 7,000 state government jobs and

76,000 local government jobs. After rising for eight consecutive months at the start of the recession, state and local government employment has declined for 19 of the last 25 months. State and local government employment is now down 234,000 jobs from the start of the recession, or 1.2 percent, and is down 416,000 jobs, or 2.1 percent, from its August 2008 peak. >>

New Year, New Membership

Membership ensures CEG has the funding to continue to staff the Local Government Council with topics and presenters that engage and educate the members on key issues, in addition to supporting continued regional growth activities in the 11-county region.

To join, contact Rosalind Harris, at rosalindh@ceg.org or (518) 465 – 8975 x222



LGC Discusses Upcoming Legislative & Budget Issues

During November's Local Government Council (LGC) meeting, G. Jeffrey Haber, Executive Director, New York State Association of Towns; Brian T. McMahon, Executive Director, New York State Economic Development Council, and Margaret Moree, Director of Federal Affairs, The Business Council of New York State, once again joined members in a lively discussion about the LGC's agenda for the new administration.

One member began the discussion by reminding the LGC that New York State taxes are 79% higher than the national average, and therefore municipalities should not settle for a tax cap that does not address the issue of unfunded mandates. Ms. Moree agreed that is imperative to focus on getting true and meaningful mandate relief. She also recommended that the LGC find two to three core issues to present to the new administration. The Business Council has been going through the same process and has focused on Medicaid costs, unfunded pensions, and retiree health care costs.

Mr. Haber explained that the Association of Towns is focusing on four primary areas in their agenda for the new administration: (1) tax caps; (2) consolidation; (3) purchasing; and (4) training. With respect to the tax cap, Mr. Haber agreed that proponents do not understand the true ramifications of a tax cap. With respect to consolidation, Mr. Haber acknowledged that no study exists that shows that costs decreased after consolidation, but people continue to push for consolidation because they do not want to accept that reality. In addressing purchasing issues, Mr.

Haber noted that New York is one of only two states that does not allow for joining of the national consortium for purchasing.

Mr. McMahon began his discussion by recognizing that the only way to solve the state's fiscal problems is to grow the economy through job creation. Governor Cuomo's economic development plan, outlined in his "NY Works" publication, sets forth a solid path for economic development, including regional empowerment, business expansion, and driving an innovation economy. The "NY Works" publication can be found at <http://www.andrewcuomo.com/NYworks>. In order for the plan to work, Governor Cuomo must be an advocate and get out and talk to businesses that have the greatest opportunity for growth in our state. Mr. McMahon also acknowledged that the premature conclusion of the Empire Zone Program sent a terrible message to the global economy and left in its wake a wide credibility gap for New York State, thus making it even more difficult to attract, retain, and expand businesses. He noted that important pieces to the economic development puzzle include reauthorizing IDAs to finance not-for-profit projects, restructuring certain incentives in the new Excelsior Jobs Program, rescinding wage mandates for IDAs because the mandates add more to the cost of the project than IDAs can offer in benefits, and increasing seed funding because while universities are investing in research and development, those projects are not becoming commercialized because of the gap in funding.

All members agreed that in formulating an agenda, the message must be consistent for cities, towns, and villages and transparent to the public. Issues of greatest importance included: (1) relief from mandates; (2) property tax caps; (3) pension contributions and other retiree benefits; (4) wage freezes; (5) health

insurance and Medicaid costs; (6) binding arbitration under the Taylor Law; (6) redirection and reorganization of education; (7) economic development as related to the Smart Growth Act, IDAs, and an innovation economy; and (8) procurement and purchasing consolidation. □

Highlights from Gov. Cuomo's Inauguration

- Creating jobs & getting the economy running
- Cleaning up Albany & restoring trust
- Setting a property tax cap
- "Rightsize" the state government

School Boards Association Opposes Tax Cap Plan

The NYSSBA released a report, analyzing data from 668 school districts throughout the state, showing that school districts statewide would face a combined \$3.3 billion budget shortfall over the next four years if the government caps tax levy increases at 2% or at the inflation rate. Salaries, pension costs, and health care coverage alone are expected to increase by more than \$1 billion per year, while the cap would limit tax levy increases to \$229 million per year. "Had a cap been in place this year, school districts would have faced an immediate need to eliminate nearly \$900 million in expenses or find alternative revenue sources," said Executive Director Kremer. The full report can be accessed at http://www.nyssba.org/clientuploads/nyssba_pdf/nyssbapropertytaxcapreport



Local Gov't Jobs Cont'd

Although this decline pales in comparison to cuts in private sector employment, these government declines are significant by historical standards.

The Rockefeller Institute explained that governments often feel and respond to the effects of recession with a lag. It takes time for declines in private-sector employment to be reflected in some components of government tax revenue, and it takes time for governments to make policy decisions in response. The Institute explains that the lags can be even greater for local governments for two main reasons: "First, the property tax, which is primarily a local government tax, generally responds to property value declines more slowly and less sharply than income, sales and corporate taxes (mainstays of state government budgets) respond to general economic downturns. Second, many local governments depend heavily on state aid, and lags in cuts by state government lead to further delays in local government responses. Those cuts are now underway in earnest and local governments are responding. In addition, in the current fiscal crisis federal stimulus aid has helped to delay and stretch out some of the hard choices that state and local governments need to make." The full report can be accessed at http://www.rockinst.org/newsroom/data_alerts/2010/07-23-govt_employment.aspx □

Constitutional Convention Cont'd

change processes, some of which were formally adopted, and others that were unintended consequences of those adoptions. For example, many individuals who would like government reformed refuse to endorse the constitutional convention until the processes themselves are changed, but the only way those changes can be made is through the legislature by constitutional amendment. By failing to amend the

processes, the legislature can block the alignment of support for a convention. Second, Professor Benjamin explained that the likelihood of a favorable vote for a constitutional convention increases when incumbent political leaders endorse the idea and when serious preparations, including public education, are made well in advance of the vote. The legislature can diminish the probability of a successful vote by failing to take steps to prepare the public for the vote or by withholding support from those who attempt to prepare for such a convention.

During the LGC's discussion, some other interesting points were raised. One was the timing of the convention. By design, the convention is automatic – it appears on the ballot every 20 years. The problem, therefore, is that it is not always timely; it is not a question that arises in response to a popular movement or a felt need in the electorate. In addition, with the recent change in government, members questioned whether New York will be ready for a convention. Professor Benjamin says yes, provided that we organize early, make it a priority, get funding of \$500,000 - \$1 million for public education, and begin early on to build public support. It comes down to a cost/benefit ratio – are things bad enough to invest \$50 - \$60 million in a convention, or do we continue on the same destructive path? The remedies versus continuing challenges must be weighed. Despite the ratio, Professor Benjamin was clear about this – local government costs will remain unaddressed without a constitutional convention.

Professor Benjamin was also asked whether the constitutional convention could address problems with the state's education system. Because education is a constitutional right of New Yorkers, the convention could address educational issues. A question that remains, however, is whether the convention could address higher education because it is debated whether higher education is a constitutional right.

One member of the LGC asked

Professor Benjamin about the effect of special interest groups on a constitutional convention. Because the state constitution is "a locus of super legislation," with provisions entered by groups with their own special interests, there is concern that such groups will attempt to bend the process to their own desires. For example, public employee unions are amongst the strongest opponents of the 2017 convention because they want to protect public sector worker pensions.

In making this point, Professor Benjamin emphasized that it was not only legislators who had an interest in the status quo. "When aggregated, the interests of these groups, many of them ordinarily regarded as politically liberal, produces a powerful coalition committed to the idea that the risk of change through a convention far outweighs the potential benefits. To protect particular interests entrenched in constitution-based 'super legislation,' they combine to block the public interest, when reforms in the basic structures and processes of government are needed." □

State Comptroller Releases Local Government Budget Guide

On December 10, the Office of the State Comptroller released the Citizens' Guide to Local Budgets. With the resources in this guide, citizens should be able to understand what is contained in their local government's budget, thus allowing citizens to understand the challenges facing their local government, what the government is doing to manage them, and what it is doing with their tax dollars. The guide is intended to enable concerned citizens to evaluate how well the budget has been formulated. The guide is available at <http://www.osc.state.ny.us/localgov/pubs/releases/LocalBudgetGuide2010.pdf>. □