



2009 Legislative Session is about half over and the budget process is finally complete. Many policy issues are still unresolved, including the deficit in the Metropolitan Transportation Authority that is the primary agenda item for the legislature at this time. Below, NYSH&TA provided an overview of the current state of the 2009 Legislative Session, its budget numbers and policy issues. NYSH&TA will continue to monitor these and any other issues presented that affect the hospitality industry as the Legislative Session continues.

Budget Wrap-up

The funding for “I Love NY” was reduced another \$2 million to \$9,015,000 while maintaining the Tourism Matching Grant program at \$4,171,000 and funding the Explore NY program at \$980,000. The budget appropriated \$1.5 million for the Hudson-Fulton-Champlain Quadricentennial celebrations. Additionally, the final budget included a provision that expands the state’s current returnable container act to include bottled water and flavored water that does not use sugar. Containers of liquor and wine remain exempt under this legislation. The final budget also establishes two new personal income tax brackets, which the state estimates will generate four billion dollars annually. Many proposed provisions did not make it into the final budget; a number of the proposed taxes and fees on amusement charges, including a tax on all amusement charges, including tickets for theatres, amusement parks, fairs, race tracks, golf courses, and bowling alleys. Jan Marie Chesterton, NYSH&TA Vice President, testified before the Joint Tourism Committee in February regarding the so called “amusement tax.” She successfully detailed how this onerous legislation would have devastated New York State’s tourism community.

Legislative and Regulatory Issues/Actions for 2009

The following issues are being considered in the 2009-2010 Legislative Session and we will continue to monitor them on behalf of NYSH&TA.

Paid Family Leave

Paid family leave is a top issue for the Working Families party and for many legislators in Albany. Two bills (S.1824 Morahan and S.4074 Addabbo) have been introduced this year. Both include at least 12 weeks of paid leave, application to all employers in the state, and one includes an increase in the benefit up to \$550 per week. One increases the weekly allowed deduction from employee wages, adding 45 cents per week per employee to cover the cost of paid leave; the other does not include any such increase. These proposals would also add to the current Family and Medical Leave Act requirements, which mandates that positions be held open in companies with more than 50 employees.

NYSH&TA, along with the Business Council, opposes this legislation as it would increase job costs, encourage absence from the workplace, and create a mandate for overtime in businesses across the state.

Additionally, despite not being bound by the terms of the proposed legislation, many New York State employers already provide paid family leave at their expense.

NYSH&TA will continue to work with the Business Council, the State Legislature, and the Department of Labor to work toward a proposal that is advantageous to both the industry and its workforce.

Service Charges and Gratuities

In response to letters written by NYSH&TA and others regarding the ruling in the World Yacht case, Patricia M. Smith, Commissioner of Labor confirmed the rule in the World Yacht case: if an employer causes a reasonable patron to believe that a service charge is a gratuity to be received by service employees, then it is a “charge purported to be a gratuity for an employee” under the Labor Law and must be distributed to such employees. As this is not a departure from current policy under the Department’s view, no new regulations have been contemplated and no retroactive enforcement policy intended.

The increase of the federal minimum wage in July has reopened the issue of service personnel payment. The 2009 Restaurant and Hotel Industry Wage Board has been convened and NYSH&TA President Dan Murphy has been appointed to sit on the board as an industry representative. This issue of service charges is a specific item on the agenda of the Wage Board.

Minimum Wage Increase

On July 24, 2009, the Federal minimum wage will increase to \$7.25, which will supersede New York’s current \$7.15 minimum wage. The Federal minimum wage law does not speak to the minimum wage for food service employees; however, the Wage Board, upon which NYSH&TA President Dan Murphy sits, has the opportunity to review the appropriateness of the current minimum wage for the food service workers in the hotel industry. NYSH&TA will have a unique opportunity to be a part of the discussions of the Wage Board.

Unemployment Insurance and Workers’ Compensation

Bills have been introduced into both houses of the Legislature that would increase the maximum weekly UI benefit to \$550 by 2011 and increase the maximum weekly benefit in 2013 to one-half the average weekly wage. This legislation (S.2245 Onorato / A.4921 John) would increase the taxable wage base incrementally in 2009 and 2011. The Senate has also introduced an expansion for the eligibility of unemployment insurance to include employees who voluntarily separate from their employer because of compelling family reasons (S.4110 Onorato). Additionally, both houses have introduced legislation (S.2781 Onorato / A.2135 John) to amend the Workers’ Compensation Law in order to expand the qualifications for permanent total disability to include persons who qualify for social security disability benefits.

Trans Fat Ban

A priority of the Governor is a statewide ban on trans fats. A similar ban has already been implemented in New York City. The Governor has announced he will introduce legislation to ban the use of trans fats in restaurants. Five bills have been reintroduced in the Legislature that ban trans fats in restaurants (A.2514 Ortiz, A.6358 Ortiz, A.6359 Ortiz, S.2824 Hannon, and S.2822 Hannon). A ban on trans fat has a good potential of passing into law because it is a social measure that would not impose any cost on the state. NYSH&TA will monitor any such legislation that would place a similar requirement on all hotels and restaurants in the State.

Food Safety

Chapter 635 of 2007 required the Commissioner of the Department of Health to mandate that food service establishments have on premises a person certified in food service preparation safety. Currently, organizations such as NYSH&TA provide training and certification for proper food handling. The law, which took effect on August 28, 2008, is still awaiting regulations to be promulgated by the Department of Health. The regulations will seek to ensure that properly trained staff is available in food service establishments to provide guidance in safe methods of handling, preparing, serving and storing foods. NYSH&TA will be a participant in offering this type of training, and NYSH&TA will monitor the development of the new regulations. Additionally, Mayor Bloomberg, Senator Jeff Klein, and New York City Health Commissioner Dr. Thomas Frieden have announced a new restaurant inspection program.

This document was prepared by Wilson, Elser, Moskowitz, Edelman & Dicker LLP, 677 Broadway Albany, NY 12207 and is issued for the general information of members of the New York State Hospitality & Tourism Association Inc. It is not intended to constitute legal advice to any NYSH&TA member in particular. This document is not to be reprinted or copied without permission of the Association.