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BY JEFFREY D. FRIEDLANDER

The Law Department And Legislation

As the New York State Legislature approaches the scheduled end of its 2007 session, it is an appropriate time to consider the role of the New York City Law Department in the preparation and review of legislative proposals—state and local as well as federal—that affect the lives of New Yorkers.

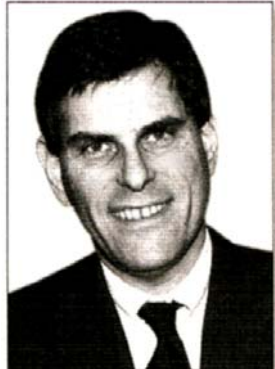
In this article I will describe the Law Department's involvement in that process as well as some of the substantive proposals (including Mayor Michael Bloomberg's recently announced PlaNYC 2030) that have engaged Law Department attorneys.

The Process

Each year, the mayor develops and introduces a legislative program that includes federal, state and local initiatives. Proposals in the mayor's legislative program are generally initiated by the city agencies with jurisdiction over particular areas and approved by the mayor's office. Most legislative initiatives pass through a formal review process, overseen by the Mayor's Office of Intergovernmental Affairs, that takes place annually, beginning in the late summer and fall. The Law Department plays an essential role in this process. In fact, no legislation that is part of the mayor's legislative program is introduced unless it has been reviewed by the Law Department.¹

Within the Law Department, the Division of Legal Counsel, consisting of 18 attorneys, is responsible for the drafting or review of virtually all items in the mayor's legislative program, in addition to its responsibility for providing advice and counsel to city agencies on a wide variety of legal issues. Preparing legislation is a collaborative process that involves other city agencies as well as other Law Department divisions on subjects that relate to their practice areas. Within the Legal Counsel Division, attorneys are assigned to work on the legislative packages of particular agencies; those assignments remain relatively stable from year to year, so that attorneys have an opportunity to develop subject matter expertise. This year, there are 37 city agencies with legislative initiatives that have been made part of the mayor's legislative program.

While the Law Department's legislative work continues year-round, the workload generally follows a recognizable cycle tied to legislative calendars. The 2007 State legislative session convened on Jan. 3 and is scheduled to end on June 21. The development of the mayor's state legislative program



necessarily began well before the beginning of the legislative session. By early October 2006, most city agencies had submitted to the Mayor's Office for Intergovernmental Affairs the legislative priorities they wanted incorporated into the mayor's legislative program. Most agencies prepared draft legislation, as well as an accompanying memorandum of support that summarizes the legislation and presents arguments in favor of its enactment.

Following the submission of agencies' legislative initiatives, the Mayor's Office of Intergovernmental Affairs, which includes the Office of Federal Legislative Affairs, the Office of State Legislative Affairs and the Office of City Legislative Affairs—the mayor's representatives in Washington, D.C., Albany and New York City—conducts meetings at which individual agencies present their legislative initiatives. These meetings take place over a period of several weeks in the fall. While most agencies attend only the meeting at which their own initiatives are discussed, the Law Department, as well as the Mayor's Office of Management and Budget (OMB), attend all meetings. These meetings generally offer attorneys of the Legal Counsel Division their first opportunity to discuss potential legal issues with clients. The mayor's office, the Law Department and OMB all undertake a more detailed analysis of agency legislative proposals following their presentation, and, after a consideration of the relevant policy, legal and fiscal issues involved, a proposal may be endorsed, modified or disapproved.

While the primary focus of Legal Counsel Division attorneys in the review of proposed legislation is whether the proposal is constitutional and otherwise legal, they also seek to ensure that it solves the problem it was intended to address. They ask, for example, whether the proposal makes sense, whether it is workable, whether it is internally consistent and consistent with related provisions of law, whether it contains an enforcement mechanism, whether terms need to be defined, and whether defined terms are properly used, and whether the draft complies with the technical requirements of legislation submitted to the particular legislative body.

Legislative proposals that are not enacted in one session of the Legislature are often resubmitted by agencies for inclusion in the mayor's legislative program for the following year. Resubmissions, like new proposals, must also be approved as to form. Review is necessary to ensure that intervening changes in statutory or common law have not affected the proposal and that the passage of time has not

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rendered provisions of the bill obsolete, such as dates in the text of the bill, or the effective date of the bill.

City Council's Calendar

The City Council's legislative calendar is not as compressed as the state Legislature's. In fact, the New York City Charter (§42) requires the council to hold "at least two stated meetings . . . each month, except in its discretion in July and August." As a result, the work of reviewing local legislative proposals is more evenly distributed throughout the year. However, city agencies generally submit their local legislative proposals at the same time, and those proposals go through the same review process, as state initiatives.

In addition to assisting in the preparation of the mayor's legislative program, the Law Department also analyzes and comments on nonmayoral initiatives, generally at the request of the Mayor's Office of Intergovernmental Affairs. Throughout the year, Law Department attorneys meet on a weekly basis with the Mayor's Office of City Legislative Affairs and, while the state Legislature is in session, with the Mayor's Office of State Legislative Affairs. Law Department attorneys, primarily in the Legal Counsel Division, review virtually every piece of local legislation that is the subject of a hearing before a City Council committee. Legal problems presented by proposed legislation are often resolved in discussions involving Law Department attorneys, legal staff of the City Council and representatives of the city agency or agencies affected by the legislation in question. In the relatively rare instance where issues cannot be resolved and local laws are enacted over the mayor's opposition, the Law Department assists in the preparation of veto messages. The Law Department also reviews pending state legislation that affects the city, generally after the legislation has been introduced in both the state Senate and the state Assembly and appears to be under active legislative consideration If the issues are significant enough, Law Department attorneys—again, primarily from the Legal Counsel Division prepare memoranda in support or opposition to those bills.

The Substance

That is the process. What of the substance? Attorneys of the Legal Counsel Division have had the opportunity this year to participate in the crafting of a number of far-reaching legislative proposals, not least of which, and perhaps currently most exciting, are the proposals that make up Mayor Bloomberg's PlaNYC 2030, an initiative comprising over a hundred projects that address the pressing environmental and growth challenges facing the city in the coming decades. Important parts of this initiative would require the enactment of state legislation to become effective, including the establishment of congestion pricing in parts of Manhattan and a financing mechanism that will use congestion pricing revenues to finance mass transit projects in the city. State legislation would also be required for the mayor's proposals to

create an energy planning board, bringing together representatives of the city and public utilities, and a new public authority to promote energy efficiency initiatives in the city, to implement an expedited remediation program for brownfields, or sites contaminated by industrial wastes, and to introduce tax credits for, among other things, the installation of green roofs and solar electricity generating facilities. Legal Counsel Division attorneys drafted these and other proposals comprising PlaNYC 2030 in consultation with the Law Department's Environmental Law Division and policymakers in the Mayor's Office of Sustainability and Long Term Planning, the New York City Economic Development Corporation, the Office of Management and Budget, and other city agencies.

Another important legislative project in which Legal Counsel attorneys have played an instrumental role is the creation of a set of new construction codes for New York City, replacing the city's current Building Code, which has not been significantly modified since 1968. The new codes are based on the International Building Code and other related codes created by the International Code Council, with significant modifications reflecting the unique circumstances of construction in the city. Division attorneys worked closely with the legal and operational staff of the Department of Buildings, and in the process becoming steeped in the intricacies of architecture, building safety, and construction methodologies as they apply in New York City.

The legislation was submitted to the City Council on May 30, 2007. Once enacted, it will provide the city with a thoroughly modern building code comparable to those of many other jurisdictions in the United States and abroad, emphasizing the safety, efficiency, and sustainability of the built environment.

Law Department's Agenda

Finally, there is the Law Department's own legislative agenda. The proposals comprising this agenda, generally directed to the state Legislature, address important legal issues arising from the Law Department's work. These include several tort reform initiatives that, if enacted, would relieve the spiraling tort costs burdening the city and reshape the principles of the civil liability system as applied to public entities in New York State. Another notable component of the Law Department's agenda, one that has garnered support from over 1,300 governmental entities around the state (including all of the state's 62 cities), is a proposed amendment to §4545 of the Civil Practice Law and Rules to cure an anomaly in the treatment of collateral sources of income in tort actions. The Court of Appeals, in *Iazzetti v. City of New York*, 94 NY2d 183 (1999), has interpreted this section as denying a public employer, when sued in tort by one of its employees, the benefit of offsetting collateral sources of income against future economic damages. Such an offset, however, is available to any private employer sued in tort by an employee.

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The Law Department's legislative proposal would modify CPLR 4545 so that public employers, and the public fisc, are not placed in an inferior position with regard to collateral offsets compared to private defendants and forced to pay twice for injuries sustained. The enactment of just this one piece of legislation would save the taxpayers of New York City an estimated \$11 million a year.

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1. Section 7-104 of the Administrative Code of the City of New York provides: "The corporation counsel shall prepare the draft of any bill to be presented by the city to the Legislature for enactment, with a proper memorial for the passage thereof, and shall prepare such local laws as may be required by the council or any committee thereof."