

BATAVIA CITY COUNCIL CONFERENCE MEETING

**City Hall - Council Board Room
One Batavia City Centre
Monday, February 27, 2017 at 7:00 PM**

AGENDA

- I. Call to Order
- II. Public Comments
- III. Council Response to Public Comments
- IV. Communications
- V. Council President Report
 - a. Announcement of the next regular City Council Business meeting to be held on Monday, March 13, 2017 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre
- VI. Public Hearing
 - a. A Public Hearing to Introducing 2017/2018 Budget Ordinance
 - b. A Public Hearing to Propose A Local Law No 2 of the year 2017 Amending Section 184-41 (A), (B), (C), And (O) of the Batavia Municipal Code to Establish New Water Rates, Meter Fees and a Capital Improvement Fee
 - c. A Public Hearing to Propose a Local Law No. 3 of The Year 2017 Entitled "Amending The Business Improvement District Plan"
 - d. A Public Hearing to Provide Information to the Public on the Community Development Block Grant (CDBG) Program
- VII. Appointment of Members to Various City Committees/Boards
- VIII. Annual Financial Audit Request for Proposal
- IX. Summit Street Final Change Orders and Cost
- X. Year-end Close Out Resolutions
- XI. Department of Public Works Bids
- XII. New York State Liberty Act
- XIII. Executive Session...Real Property
- XIV. Adjournment

#-2017

A RESOLUTION TO APPOINT MEMBERS TO VARIOUS CITY COMMITTEES/ BOARDS

Motion of Councilperson

WHEREAS, certain vacancies exist on various City Committees/Boards.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that the following appointments be made:

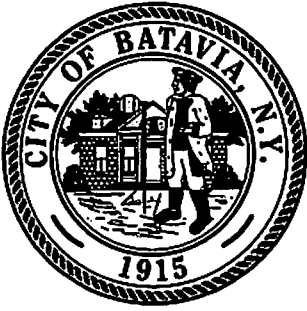
Youth Board

Nick Russo

December 31, 2020

**Seconded by Councilperson
and on roll call**

DRAFT



City of Batavia

Memorandum

To: Jason Molino, City Manager

From: Lisa Neary, Deputy Director of Finance

Date: February 22, 2017

Subject: Annual Financial Audit

On March 31, 2016, the City's five year contract with Freed Maxick for financial auditing services expired. The Bureau of Finance sent out request for proposals to five certified public accounting firms soliciting their services to perform an audit of the City's financial statements, complete a Single Audit, if necessary, review the City's Management Discussion and Analysis and the City's Comprehensive Annual Financial Report submission, and provide an opinion on the City's Deferred Compensation Plan's financial statements.

Five firms responded to our request. After careful review of the proposals submitted, Freed Maxick was found to be the lowest bidder and because of their long history of being the City's auditors, it is recommended the City appoint Freed Maxick as the City's financial auditors for the five years beginning March 31, 2017 and ending March 31, 2021.

Freed Maxick has approximately 80 governmental clients and has a team of 21 professionals to serve the City timely, professionally and in a personalized manner. This firm has an in-depth understanding of the City and has consistently worked with the City to make our financial audits effective and efficient.

I am submitting to you a resolution to be presented to the City Council for consideration and approval at the March 13, 2017 business meeting.

Please let me know if you have questions or need addition information.

#-2017

**A RESOLUTION AUTHORIZING FREED MAXICK TO PROVIDE FINANCIAL
AUDITING SERVICES**

Motion of Councilperson

WHEREAS, on March 31, 2016, the City's five year contract with Freed Maxick for financial auditing services expired; and

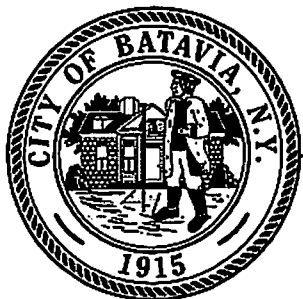
WHEREAS, the City of Batavia Bureau of Finance solicited requests for proposals from certified public accountants to audit the City's financial statements, complete the City's single audit when necessary, review the City's management discussion and analysis and the City's comprehensive annual financial report and provide an opinion on the City's deferred compensation plan's financial statements for the next five (5) years beginning March 31, 2017 and ending March 31, 2021; and

WHEREAS, five proposals were received and reviewed; and

WHEREAS, after careful consideration it is recommended the City of Batavia engage with Freed Maxick, as the City's financial auditors.

NOW, THEREFORE, BE IT RESOLVED, that the City Council President be, and hereby is, authorized and directed to execute any and all necessary documents in relation to the City of Batavia financial audit services.


**Seconded by Councilperson
and on roll call**



City of Batavia

Memorandum

To: Jason Molino, City Manager

From: Matt Worth, Director of Public Works 

Date: February 7, 2017

Subject: Summit Street Final Change Orders and Cost

With the essential completion of the Summit Street Reconstruction Project, the consulting engineers have been working on final pay items and negotiation of disputed work. After several weeks of discussions with the contractor, agreement has been reached on 107 outstanding items (both costs and credits) resulting in a final construction cost increase of \$90,862.64 for a final project construction cost of \$1,948,616.34

I am requesting that the City Council amend the authorized expenditure for this project from the original contract award amount of \$1,857,753.70 with approval of Change Order #1 (increase of \$161,576.19) and Change Order #2 (decrease of \$70,713.55) for a net final project cost of \$1,948,616.34. It should be noted that the increase in the road construction part of this project (\$67,681.45) is eligible for Federal and State funding reimbursement under the same formulas of the original project award. The increase in the water main aspect of this project (\$23,181.18) is fully the responsibility of the City.

The final cost of this project is \$247,748.03 under the original project budget of \$2,196,400.37 and \$72,282.28 lower than the 2nd low bid of \$2,020,898.62.

#-2017

**A RESOLUTION FOR APPROVAL OF TWO CHANGE ORDERS TO THE
CONTRACT FOR SUMMIT STREET RECONSTRUCTION PROJECT**

Motion of Councilperson:

WHEREAS, on February 22, 2016 the City of Batavia City Council awarded the contract to Accadia Site Contracting, Inc., for the Reconstruction of Summit Street and funded under Title 23 U.S.Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and,

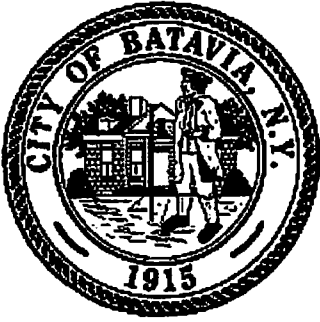
WHEREAS, the original contract price was awarded at a cost of \$1,857,753.70; and

WHEREAS, it was determined that there was 107 outstanding items (both cost and credits) needing to be resolved between the City and the contractor; and

WHEREAS, Change Order No. 1 resulting in a contract increase of \$161,576.19 and Change Order No. 2 resulting in a contract decrease of \$70,713.55 will resolve the 107 outstanding items; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Batavia that Change Orders No. 1 and No. 2 to the contract with Accadia Site Contracting, Inc., for the reconstruction of Summit Street, in the amount of \$67,681.45 for Roadway portion and \$23,181.18 for the water portion, is hereby approved for a final contract amount of \$1,948,616.34.

**Seconded by Councilperson
and on roll call**



City of Batavia

TO: Jason Molino, City Manager
Gretchen DiFante, Assistant City Manager

FROM: Lisa Neary, Deputy Director of Finance

DATE: February 22, 2017

RE: Year end close out resolutions

In preparation of the City's fiscal year end, there are a number of resolutions that require Council action.

- Annually the City transfers dumpster permit revenue and parking permit revenue received throughout the fiscal year into the parking lot reserve to assist with future replacement and improvements to the City's parking lots.
- There are certain capital improvements utilizing reserves that have started but will not be completed prior to the end of the fiscal year and therefore, the reserves need to be re-appropriated for use in the next fiscal year. Those projects are the sanitary lift station electrical improvement project and the Summit Street water main project.
- Annually, Employee Benefit Accrued Liability Reserve is used to cover moneys paid out throughout the year to employees who retired or terminated their employment with the City. In the fiscal year ending March 31, 2017, the City has had one employee who has retired.
- As discussed during budget sessions, to further the financial health of the Workers' Compensation Fund, the City is requesting to transfer \$125,000 of Workers' Compensation Fund Balance into the Workers' Compensation Reserve Fund.
- For ease of accounting, it is also recommended that the Self-Insurance Health Benefit Plan Reserves located in the General Fund, Water Fund and Wastewater Fund be combined into one Self-Insurance Health Benefit Plan Reserve in the General Fund.

Attached please find resolutions supporting these actions to be presented to City Council at the February 27, 2017 conference meeting. Please let me know if you have any questions.

#-2017
A RESOLUTION TRANSFERRING \$4,200 TO THE
PARKING LOT CAPITAL RESERVE FUND

Motion of Councilperson

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Parking Lot Reserve Fund; and

WHEREAS, the City of Batavia, through January 31, 2017, received parking and dumpster permit revenue in the amount of \$4,200 and is desirous of transferring said \$4,200 to the Parking Lot Capital Reserve Fund to assist with future replacement and improvements of City parking lots.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$4,200 of parking and dumpster permit revenue to the Parking Lot Capital Reserve Fund.

Seconded by Councilperson
and on roll call

#-2017

**A RESOLUTION TO RE-APPROPRIATE RESERVE FUNDS FOR THE SANITARY
LIFT STATION ELECTRICAL IMPROVEMENT PROJECT AND THE SUMMIT
STREET WATER MAIN PROJECT**

Motion of Councilperson

WHEREAS, the City of Batavia approved in the 2016/2017 budget the use of \$207,000 of sewer facility reserves and \$35,000 of facilities reserves for the sanitary lift station electrical improvement project; and \$700,000 of water fund capital improvement reserves for the Summit Street water main project; and

WHEREAS, both projects will not be completed prior to the city's fiscal year ending March 31, 2017; and

WHEREAS, \$17,176.43 of the approved sewer facility reserve appropriation has been expended, \$2,903.57 of the approved facilities reserve appropriation has been expended, and \$352,439.19 of the approved water fund capital improvement reserve appropriation has been expended as of February 14, 2017; and

WHEREAS, the Bureau of Finance is requesting permission to re-appropriate \$189,823.57, \$32,096.43 and \$347,560.81, respectively, in the 2017/2018 fiscal year, to cover the cost to complete these projects in the fiscal year ending March 31, 2018.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Manager has permission to re-appropriate \$189,823.57 of sewer facility reserves, \$32,096.43 of facilities reserves and \$347,560.81 of water fund capital improvement reserves to continue the process of completing the sanitary lift station electrical improvement project and the Summit Street water main project in the fiscal year ending March 31, 2018.

**Seconded by Councilperson
and on roll call**

#- 2017

**A RESOLUTION TRANSFERRING FROM THE EMPLOYEE BENEFIT ACCRUED
LIABILITY RESERVE AND TO AMEND THE BUDGET**

Motion of Councilperson

WHEREAS, pursuant to General Municipal Law 6-p, the City of Batavia has an established Employee Benefit Accrued Liability Reserve fund for payment of accrued benefits due to employees upon termination of the employees' service; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2017 has approximately \$92,716.00 of Employee Benefit Accrued Liability Reserve; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2017 will have had one employee retirement/termination from General Fund employment with payable accrued employee benefits totaling \$7,704.96.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that the City Manager is hereby authorized to make the following budget transfers:

Effective March 31, 2017, the following transfers are hereby approved:

Increasing expenditure accounts:

Police Department	001.3120.0100.2109	\$7,704.96
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Increasing revenue account:

Appropriated Employee Benefit Accrued Liability Reserve	001.0001.0511.2109	\$7,704.96
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**Seconded by Councilperson
and on roll call**

#- 2017

A RESOLUTION TO RECLASSIFY WORKERS' COMPENSATION FUND BALANCE

Motion of Councilperson

WHEREAS, pursuant to Article 4, section 4a of the Workers' Compensation Law requiring the City to establish a reserve fund, the City has a Workers' Compensation Reserve Fund will have an estimated balance of \$314,412 as of March 31, 2017; and

WHEREAS, the City of Batavia's Workers' Compensation Fund assigned fund balance as of March 31, 2016 was \$227,395; and

WHEREAS, the City staff has recommended and City Council is desirous of increasing the Workers' Compensation Reserve Fund.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia hereby authorizes the City Manager to reclass \$125,000 of Workers' Compensation assigned fund balance to Workers' Compensation reserves effective March 13, 2017 as shown below:

Increase reserve:

006.0006.0863.2160 \$125,000

Increase Fund Balance:

006.0006.0915.0000 \$125,000

**Seconded by Councilperson
and on roll call**

#-2017

A RESOLUTION TO COMBINE HEALTH INSURANCE RESERVE FUNDS

Motion of Councilperson

WHEREAS, pursuant to General Municipal Law 6-n, the City of Batavia has an established Self-Insurance Health Benefit Plan Reserve fund for payment of healthcare benefits claims in the General Fund, the Water Fund and the Wastewater Fund; and

WHEREAS, the City of Batavia's Self-Insurance Health Benefit Plan Reserve Funds have approximate balances of \$401,361, \$33,539, and \$22,018, respectively; and

WHEREAS, the City of Batavia is desirous to combine the three reserve funds into one for the General Fund for ease of accounting for and managing the reserve funds.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Manager is hereby authorized to combine the three Self Insurance Health Benefit Plan Reserve funds into one General Fund reserve.


**Seconded by Councilperson
and on roll call**



City of Batavia

Memorandum

To: Jason Molino, City Manager

From: Matt Worth, Director of Public Works 

Date: February 24, 2017

Subject: Lime Sludge Removal

Lime Sludge is a by - product of the softening process performed at the Water Filtration Plant. Approximately six times per year an independent contractor hauls the waste material from the plant to an appropriate site for disposal.

Bid documents have been prepared and advertised with the required scope of services to haul the sludge from the plant to a disposal site. Bids will be opened at 1:00 PM on February 24th, 2017. All bids will be canvassed and a recommendation of award will be submitted to City Council for their consideration at the regular Business Meeting on March 13th, 2017.



City of Batavia

Memorandum

To: Jason Molino, City Manager

From: Matt Worth, Director of Public Works 

Date: February 24, 2017

Subject: Chemical Bids


The Bureau of Water and Wastewater issued a Request for Bids on February 3rd, 2017 for chemicals to be used at the Water Filtration Plant and Wastewater Treatment Plant during the 2017-2018 fiscal year. The chemicals are used in various aspects of the treatment processes at these facilities.

Bids are scheduled to be opened on February 24th, 2017 at which time they will be reviewed and verified by staff. The lowest responsible bidders will be recommended for award at the March 13th business meeting.



City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: February 23, 2017

Subject: The New York State Liberty Act

As requested, attached please find bill A3049B and Memorandum in Support of Legislation provided to the New York State Assembly. This bill has been referred to as the "New York State Liberty Act". The bill was passed by the New York State Assembly on February 6, 2017. The bill is still under committee review in the New York State Senate.

This institution is an equal opportunity provider and employer. If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov

**Office of the City Manager
One Batavia City Centre
Batavia, New York 14020**

**TDD 800-662-1220
Phone: 585-345-6330
Fax: 585-343-8182
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A03049 Summary:

BILL NO A03049B

SAME AS SAME AS

SPONSOR Moya

COSPNR Heastie, Crespo, Solages, Lentol, Farrell, Rivera, Arroyo, Barron, Bichotte, Blake, Cook, Cahill, Jean-Pierre, Joyner, De La Rosa, Dickens, Harris, Hooper, Hyndman, Mosley, Ortiz, Peoples-Stokes, Perry, Niou, Pichardo, Otis, Pretlow, Richardson, Rodriguez, Rozic, Ramos, Aubry, Kim, Davila, Sepulveda, Titus, Gantt, O'Donnell, Lifton, Abinanti, Dinowitz, Glick, Kavanagh, Nolan, Quart, Simon, Simotas, Carroll, Weprin, Fahy, Gottfried, Jaffee

MLTSPNSR

Add Art 15-AA §§319 - 319-h, Exec L; amd §35, Judy L

Relates to providing access to services, law enforcement and counsel in certain immigration related matters.

A03049 Actions:

BILL NO A03049B

01/25/2017 referred to codes
 01/30/2017 reported referred to ways and means
 02/03/2017 amend and recommit to ways and means
 02/03/2017 print number 3049a
 02/03/2017 amend and recommit to ways and means
 02/03/2017 print number 3049b
 02/06/2017 reported referred to rules
 02/06/2017 reported
 02/06/2017 rules report cal.17
 02/06/2017 ordered to third reading rules cal.17
 02/06/2017 passed assembly
 02/06/2017 delivered to senate
 02/06/2017 REFERRED TO FINANCE

A03049 Committee Votes:**CODES Chair:Lentol****DATE: 01/30/2017 AYE/NAY: 14/8 Action: Favorable refer to committee Ways and Means**

Lentol	Aye	Graf	Nay
Schimminger	Nay	Giglio	Nay
Weinstein	Aye	McKevitt	Nay
Pretlow	Aye	Montesano	Nay
Cook	Aye	Ra	Nay
Cymbrowitz	Aye	Morinello	Nay
Titus	Aye		
O'Donnell	Aye		
Lavine	Aye		
Perry	Aye		
Zebrowski	Nay		
Abinanti	Aye		
Weprin	Aye		
Mosley	Aye		
Hevesi	Aye		
Fahy	Aye		

WAYS AND MEANS Chair:Farrell**DATE: 02/06/2017 AYE/NAY: 19/11 Action: Favorable refer to committee Rules**

Farrell	Aye	Oaks	Nay
Lentol	Aye	Crouch	Nay
Schimminger	Nay	Barclay	Nay
Gantt	Excused	Fitzpatrick	Nay
Weinstein	Excused	Hawley	Nay
Glick	Excused	Malliotakis	Nay
Nolan	Aye	Walter	Nay
Pretlow	Aye	Montesano	Nay
Perry	Aye	Curran	Nay
Colton	Aye	Ra	Nay
Cook	Aye		
Cahill	Aye		
Aubry	Aye		
Hooper	Aye		
Thiele	Aye		
Cusick	Excused		
Ortiz	Aye		
Benedetto	Aye		
Moya	Aye		
Weprin	Aye		
Rodriguez	Excused		
Ramos	Aye		
Braunstein	Aye		
McDonald	Aye		
Rozic	Aye		

RULES Chair:Heastie**DATE: 02/06/2017 AYE/NAY: 20/8 Action: Favorable**

Heastie	Aye	Kolb	Nay
Gottfried	Aye	Oaks	Nay
Lentol	Aye	Butler	Nay
Farrell	Aye	Crouch	Nay
Gantt	Excused	Finch	Nay
Nolan	Aye	Barclay	Nay
Weinstein	Excused	Raia	Nay
Hooper	Aye	Hawley	Nay
Ortiz	Aye		
Pretlow	Aye		
Cook	Aye		
Glick	Excused		
Morelle	Aye		
Aubry	Aye		
Englebright	Aye		
Dinowitz	Aye		
Colton	Aye		
Magnarelli	Aye		
Perry	Aye		
Galef	Aye		
Paulin	Aye		
Titus	Aye		
Peoples-Stokes	Aye		

A03049 Floor Votes:

DATE: 02/06/2017 Assembly Vote

YEA/NAY: 77/61

Abbate	Y	Crouch	NO	Goodell	NO	Lifton	Y	O'Donnell	Y	Simanowitz	Y
Abinanti	Y	Curran	NO	Gottfried	Y	Lopez	NO	Ortiz	Y	Simon	Y
Arroyo	Y	Cusick	NO	Graf	NO	Lupardo	Y	Otis	ER	Simotas	ER
Aubry	Y	Cymbrowitz	Y	Gunther	ER	Lupinacci	NO	Palmesano	NO	Skartados	Y
Barclay	NO	Davila	Y	Harris	Y	Magee	NO	Palumbo	NO	Skoufis	NO
Barnwell	NO	De La Rosa	Y	Hawley	NO	Magnarelli	NO	Paulin	NO	Solages	Y
Barrett	NO	DenDekker	Y	Hevesi	ER	Malliotakis	NO	Peoples-Stokes	Y	Stec	NO
Barron	Y	Dickens	Y	Hikind	Y	Mayer	Y	Perry	Y	Steck	NO
Benedetto	Y	Dilan	Y	Hooper	Y	McDonald	Y	Pheffer Amato	Y	Stirpe	NO
Bichotte	Y	Dinowitz	Y	Hunter	NO	McDonough	NO	Pichardo	Y	Thiele	Y
Blake	Y	DiPietro	NO	Hyndman	Y	McKevitt	NO	Pretlow	Y	Titone	Y
Blankenbush	NO	D'Urso	Y	Jaffee	Y	McLaughlin	NO	Quart	Y	Titus	Y
Brabenec	NO	Englebright	NO	Jean-Pierre	Y	Mill B	NO	Ra	NO	Vanel	ER
Braunstein	Y	Errigo	NO	Jenne	Y	Mill MG	Y	Raia	NO	Walker	Y
Brindisi	NO	Fahy	Y	Johns	NO	Mill ML	NO	Ramos	Y	Wallace	NO
Bronson	Y	Farrell	Y	Jones	NO	Montesano	NO	Richardson	Y	Walsh	NO
Buchwald	NO	Finch	NO	Joyner	Y	Morelle	Y	Rivera	Y	Walter	NO
Butler	NO	Fitzpatrick	NO	Kavanagh	Y	Morinello	NO	Rodriguez	ER	Weinstein	ER
Byrne	NO	Friend	NO	Kearns	NO	Mosley	Y	Rosenthal	Y	Weprin	Y
Cahill	Y	Galef	NO	Kim	Y	Moya	Y	Rozic	Y	Williams	Y
Carroll	Y	Gantt	ER	Kolb	NO	Murray	NO	Ryan	Y	Woerner	NO
Castorina	NO	Garbarino	NO	Lalor	NO	Nioui	Y	Santabarbara	ER	Wright	Y
Colton	Y	Giglio	NO	Lavine	Y	Nolan	Y	Schimminger	NO	Zebrowski	NO
Cook	Y	Gjonaj	Y	Lawrence	ER	Norris	NO	Seawright	Y	Mr Spkr	Y
Crespo	Y	Glick	ER	Lentol	Y	Oaks	NO	Sepulveda	Y		

A03049 Memo:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A03049B**SPONSOR:** Moya**TITLE OF BILL:**

An act to amend the executive law and the judiciary law, in relation to access to services, law enforcement and counsel in certain immigration related matters; and to amend the judiciary law, in relation to compensation of legal counsel for certain matters

SUMMARY OF PROVISIONS:

The executive law is amended to add a new article 15-AA regarding relations with immigrant communities and detention of certain persons. This new article would: *establish definitions;

*ensure that people are not unnecessarily questioned about immigration status when seeking state or local services, benefits or assistance;

*establish that state or local law enforcement agencies shall not stop, question, investigate or arrest a person based on perceived immigration status or suspected violation of federal immigration law;

*generally prohibit law enforcement agencies from inquiring about the immigration status of persons contacting such agencies when in need of assistance, including victims and witnesses;

*require state and local agencies and their employees to maintain the confidentiality of immigration status information, unless acting in accordance with 8 U.S.C. § 1373, and other information absent valid consent of the individual;

*prohibit the detention of individuals based on administratively-issued immigration detainers and require notification to an individual if an immigration detainer or related request has been filed;

*curtail the use of state and local facilities for the purposes of federal immigration enforcement;

*establish a right to legal representation for persons subject to removal or deportation proceedings (the bill also amends Judiciary Law § 35 for this purpose);

JUSTIFICATION:

Regrettably, some persons in New York State are reluctant to interact with state and local agencies out of fear or mistrust. Regardless of individual immigration status, these persons are concerned with possible immigration-related consequences for themselves or family members upon interacting with law enforcement or other agencies that provide vital services and benefits. While much of immigration law is established at the federal level, there are policies that can be enacted by New York to ensure that persons are not stereotyped, profiled or deterred from accessing services for which they may be eligible.

This bill, therefore, includes various measures designed to encourage cooperation and foster positive relations between agency officials and individuals in our state. Consistent with constitutional principles, the bill would prohibit New York state and local law enforcement officials from acting based on suspected federal immigration status or suspected violation of U.S. immigration law, and would prohibit these officials from performing immigration-related duties that are designated by law for federal immigration officials. This would include a prohibition on access and use of state and local governmental facilities, such as jails and detention centers, for the purpose of immigration inquiries, absent request of the individual.

People in New York should not be afraid to report crime to the police or seek benefits or services for which they are eligible. A victim of domestic violence, for example, or pedestrian injured by an automobile, should be able to seek help without fear of repercussions. This bill would limit the collection of unnecessary information concerning immigration status in these circumstances and others. State and local officials may, in some circumstances, be required by federal law to respond to certain requests regarding immigration status, but federal law does not require that other personal information be shared.

This bill also addresses when a civil immigration detainer would be given effect by state and local law correctional authorities. A civil immigration detainer, issued by an agency and not a judge, is a request by a federal immigration agency for temporary detention of an individual. This bill would allow detention based on such a civil administrative detainer when the individual named therein has been convicted of a class A felony or violent felony offense and there is documented probable cause to believe the person illegally re-entered the United State

after a previous removal, or is listed in the national terrorist screening database, or if a judicial warrant has been issued. California, Connecticut, Illinois and the cities of Philadelphia and New York, for example, have similar laws or executive orders in place.

The bill would also help assure due process by providing a right to assigned legal counsel for immigrants in New York who are unable to afford counsel, and who are subject to removal or deportation proceedings.

The bill complies with federal law and also sets forth constitutionally-permissible state and local procedures that will help assure fair and just treatment for all persons in New York State.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

Immediately

A03049 Text:

STATE OF NEW YORK

3049--B

2017-2018 Regular Sessions

IN ASSEMBLY

January 25, 2017

Introduced by M. of A. MOYA, HEASTIE, CRESPO, SOLAGES, LENTOL, FARRELL, RIVERA, ARROYO, BARRON, BICHOTTE, BLAKE, COOK, CAHILL, JEAN-PIERRE, JOYNER, DE LA ROSA, DICKENS, HARRIS, HOOPER, HYNDMAN, MOSLEY, ORTIZ, PEOPLES-STOKES, PERRY, NIOU, PICHARDO, OTIS, PRETLOW, RICHARDSON, RODRIGUEZ, ROZIC, RAMOS, AUBRY, KIM, DAVILA, SEPULVEDA, TITUS, GANTT, O'DONNELL, LIFTON, ABINANTI, DINOWITZ, GLICK, KAVANAGH, NOLAN, QUART, SIMON, SIMOTAS, CARROLL, WEPRIN -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the judiciary law, in relation to access to services, law enforcement and counsel in certain immigration related matters; and to amend the judiciary law, in relation to compensation of legal counsel for certain matters

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new article 15-AA
2 to read as follows:

3 ARTICLE 15-AA
4 ACCESS TO SERVICES AND LAW ENFORCEMENT IN CERTAIN IMMIGRATION RELATED
5 MATTERS

6 Section 319. Definitions.

7 319-a. Access to services, assistance and eligible benefits.
8 319-b. Federal agencies to investigate and enforce federal
9 immigration laws.
10 319-c. Confidentiality of information.
11 319-d. Custody of certain persons: bail and related pre-trial
12 issues.
13 319-e. Civil immigration detainers.

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets
[] is old law to be omitted.

LBD09294-06-7

319-f. Limitation on use of certain facilities.

319-g. Legal representation.

319-h. Effect on other laws.

§ 319. Definitions. For purposes of this article, the following terms and phrases shall be defined as follows:

1. "Agency" shall mean any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof.

2. "Agent" shall mean any officer, official, employee or volunteer working for, employed by or providing assistance to an agency.

3. "Civil immigration detainer" shall mean an administrative request issued pursuant to 8 C.F.R. § 287.7 or any similar request issued by an agency or agent of the United States for the detention of a person suspected of violating the immigration law of the United States.

4. "Family or household member" shall mean a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law.

5. "Federal immigration authority" shall mean any officer, employee or person otherwise paid by or acting as an agent of the United States immigration and customs enforcement or any division thereof or any other officer, employee or person otherwise paid by or acting as an agent of the United States department of homeland security or any other federal entity who is charged with enforcement of the provisions of any federal immigration law.

6. "Federal law" shall mean a provision of the Constitution of the United States, or a statute or similar provision approved by the Congress of the United States that has been enacted and taken effect.

7. "Immigration status" or "immigration status information" shall mean immigration status, lawful or unlawful, of an individual under the laws and regulations of the United States of America.

8. "Judicial warrant" shall mean a warrant based on probable cause and issued by a judge serving pursuant to article three of the United States constitution or a federal magistrate judge serving by appointment pursuant to 28 U.S.C. § 631, that authorizes a federal immigration authority to take into custody a person who is the subject of such warrant.

9. "Law enforcement agency" shall mean any agency that is empowered by law to conduct an investigation or make an arrest for a crime or offense, or any agency that is authorized by law to prosecute or participate in the prosecution of a crime or offense, or any agency authorized by law to jail, detain or imprison a person under color of law, or any agency employing a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or peace officer, as defined in subdivision thirty-three of section 1.20 of the criminal procedure law.

10. "Terrorist screening database" shall mean the United States terrorist watch list database lawfully maintained by the terrorist screening center of the government of the United States.

§ 319-a. Access to services, assistance and eligible benefits. 1. Except where explicitly required by state or federal law for the purpose of verifying eligibility, continued eligibility, or upon recertification, no state or local agency, or agent thereof, may make any inquiry or record any information concerning the immigration status or place of birth of a person who is seeking public assistance and care, as such phrase is defined in subdivision eighteen of section two of the

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1 social services law, or seeking any other benefit, assistance or service
2 for himself, herself, or on behalf of a family or household member or
3 any other potential beneficiary. Provided, further, that such informa-
4 tion shall not be used or disclosed to any state or federal agency for
5 any purpose other than verifying eligibility, continued eligibility, or
6 upon recertification.

7 2. Notwithstanding the provisions of subdivision one of this section,
8 limited inquiry of such information concerning the relevant person may
9 be made when such information is requested for the benefit of the person
10 by the office for new Americans established pursuant to section ninety-
11 four-b of this chapter or any other similar agency that is assisting
12 such person in matters related to such person's immigration status,
13 provided that the status of such person shall not be disclosed for any
14 purpose.

15 3. In addition to any other right to the assistance of interpretation
16 or translation services, any foreign-born person, or person not profi-
17 cient in the English language, to whom inquiry is made pursuant to this
18 section shall be entitled to the assistance of a neutral and qualified
19 interpreter or translator, as the case may be, with respect to such
20 inquiry, provided at no cost or expense to such person.

21 § 319-b. Federal agencies to investigate and enforce federal immi-
22 gration laws. 1. No state or local law enforcement agency, or agent
23 thereof, shall stop, question, interrogate, investigate or arrest a
24 person for any of the following:

25 (a) suspected United States immigration or citizenship status
26 violation;

27 (b) suspected violation of the United States immigration law or
28 authorized regulations; or

29 (c) a civil immigration detainer.

30 2. No state or local law enforcement agency, nor any agent thereof,
31 shall make any inquiry or record any information concerning the immi-
32 gration status or place of birth of a person who: (a) contacts,
33 approaches or asks for or is in need of assistance of a law enforcement
34 agency or (b) is stopped, questioned, interrogated, investigated or
35 arrested; except where such immigration status or place of birth infor-
36 mation is an element of a criminal offense in a specific, ongoing law
37 enforcement investigation engaged in by such state or local law enforce-
38 ment agency, or agent thereof, or where such inquiry or recording of
39 such information is otherwise authorized by this article.

40 3. No state or local law enforcement agency, or agent thereof, shall
41 perform the function of or be cross-designated as a federal immigration
42 officer or otherwise engage or significantly assist in the enforcement
43 of federal immigration law, pursuant to 8 U.S.C. § 1357 (g) or any other
44 federal law, regulation or policy. Nothing in this subdivision shall
45 prevent detention of a person in accordance with and to the extent
46 permitted by section three hundred nineteen-e of this article.

47 4. In addition to any other right to the assistance of interpretation
48 or translation services, any foreign-born person, or person not profi-
49 cient in the English language, to whom inquiry is made pursuant to
50 subdivision one or two of this section shall be entitled to the assist-
51 ance of a neutral and qualified interpreter or translator, as the case
52 may be, with respect to such inquiry, provided at no cost or expense to
53 such person.

54 § 319-c. Confidentiality of information. Unless disclosure is required
55 by a lawful court order, no state or local agency, or agent thereof, or
56 state or local law enforcement agency, or agent thereof, shall provide

1 to a federal immigration authority any information collected or obtained
2 with respect to a person in accordance with this article or otherwise,
3 including but not limited to home, work or school address, except that:
4 1. providing immigration status information shall not be prohibited if
5 requested by such federal immigration authority and required to be
6 provided to it in accordance with 8 U.S.C. § 1373 or another federal
7 law;
8 2. the division of criminal justice services or a qualified agency, as
9 defined in subdivision nine of section eight hundred thirty-five of this
10 chapter, may provide criminal history information, as defined in para-
11 graph (c) of subdivision one of section eight hundred forty-five-b of
12 this chapter, when lawfully requested about a specific person and such
13 disclosure is permitted by state law; and
14 3. a state or local agency, or agent thereof, or state or local law
15 enforcement agency, or agent thereof, may provide such information,
16 other than the information described in subdivision one of this section,
17 concerning a person, including but not limited to status as a victim of
18 or witness to suspected criminal activity, home address and/or work
19 address, only with informed written consent of the person and, if
20 represented by counsel, written authorization by such attorney.
21 § 319-d. Custody of certain persons: bail and related pre-trial
22 issues. 1. Except as provided in section three hundred nineteen-e of
23 this article, no state or local law enforcement agency, or agent there-
24 of, or court shall delay or deny release of a person on recognizance or
25 bail, pursuant to article five hundred thirty of the criminal procedure
26 law or otherwise, on the basis of the person's immigration status, a
27 civil immigration detainer, or a federal immigration authority's request
28 for notification about, transfer of, detention of, or interview or
29 interrogation of such person.
30 2. Upon receipt from a federal immigration authority of a civil immi-
31 gration detainer, or a request for transfer, notification, interview,
32 interrogation or other request, a state or local law enforcement agency,
33 or agent thereof, shall promptly notify the person who is the subject of
34 such detainer or request and such person's counsel, provide a copy of
35 such detainer or request, as the case may be, to such person and coun-
36 sel, inform such person of the right to counsel pursuant to the
37 provisions of section three hundred nineteen-g of this article, and
38 inform such person and counsel, reasonably in advance of responding to
39 the federal immigration authority, as to whether or not such agency
40 intends to comply with such detainer or request.
41 3. A person in the custody of a state or local law enforcement agency,
42 or agent thereof, shall be subject to booking, processing, right to
43 counsel, release and transfer procedures, policies and practices of that
44 agency that are at least as protective of individual rights as other
45 persons in such agency's custody, regardless of the person's actual or
46 suspected immigration status.
47 § 319-e. Civil immigration detainers. 1. A state or local law enforce-
48 ment agency, or agent thereof, lawfully holding a person in its custody,
49 may thereafter detain such person solely on the basis of a civil immi-
50 gration detainer, for a single period not exceeding forty-eight hours
51 excluding weekends and holidays, beyond the time when such person would
52 otherwise have been released from such agency's custody, only if:
53 (a) an authorized federal immigration agency presents such state or
54 local law enforcement agency with a judicial warrant for the detention
55 of the person who is the subject of such civil immigration detainer at
56 the time such civil immigration detainer is presented; or

1 (b) notice has been received from a court or any other governmental
2 entity, documenting that the person illegally reentered the United
3 States after a previous removal or return as defined in 8 U.S.C. §
4 1326, and the person stands convicted of a violent felony offense as
5 defined in subdivision one of section 70.02 of the penal law, or a class
6 A felony offense defined in the penal law, or an offense in any other
7 jurisdiction that has the same essential elements of any such violent
8 felony offense or class A felony offense; or

9 (c) such person is identified by such state or local law enforcement
10 agency as a likely match with a person listed in the terrorist screening
11 database.

12 2. Except to the extent that disclosure is required by federal law, no
13 state or local law enforcement agency, or agent thereof, shall provide
14 to a federal immigration authority, or another agency, entity or person
15 on behalf of a federal immigration authority, any information obtained
16 concerning a person who is in or formerly was in the custody of such
17 state or local law enforcement agency, or agent thereof, including but
18 not limited to the person's release date, court appearance date or
19 dates, home, work or school address.

20 3. Nothing in this section shall be construed to confer any authority
21 on an entity to detain a person based on a civil immigration detainer
22 beyond the authority, if any, to do so that existed prior to the enact-
23 ment of this section.

24 § 319-f. Limitation on use of certain facilities. 1. No state or local
25 law enforcement agency, or agent thereof, shall provide a federal immi-
26 gration agency, or agent thereof, with access to an individual in such
27 law enforcement agency's custody or control.

28 2. Notwithstanding the provisions of subdivision one of this section,
29 a person in the custody of a state or local law enforcement agency may
30 request to be interviewed by a federal law enforcement agency or an
31 agent thereof only with knowing and voluntary written consent of the
32 individual and, if represented by counsel, written authorization by such
33 counsel, provided that if such individual is not represented and is
34 entitled to counsel assigned pursuant to section three hundred nine-
35 teen-g of this article or article eighteen-B of the county law, he or
36 she shall be notified of such right and provided a reasonable opportu-
37 nity to obtain such counsel before any such interview.

38 3. In addition to any other right to the assistance of interpretation
39 or translation services, any foreign-born person, or person not profi-
40 cient in the English language, to whom inquiry is made pursuant to this
41 section shall be entitled to the assistance of a neutral and qualified
42 interpreter or translator, as the case may be, with respect to such
43 inquiry, provided at no cost or expense to such person.

44 4. Except as provided in subdivision two of this section, federal
45 immigration authorities shall not be permitted to use or maintain, for
46 the purpose of interviewing any person or witness or investigating or
47 adjudicating any alleged violation of federal immigration law, any
48 office or quarters in any building or facility or any land owned, leased
49 or operated by a state or local law enforcement agency; provided, howev-
50 er that the federal Executive Office for Immigration Review, pursuant to
51 an otherwise lawful agreement with the state department of corrections
52 and community supervision, may make use of offices in one or more build-
53 ings or facilities operated as state correctional facilities in this
54 state for the purpose of conducting adjudicatory hearings involving
55 alleged violation of federal immigration law.

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1 § 319-g. Legal representation. 1. A person unable to afford counsel
2 against whom a removal proceeding may be or has been commenced, shall be
3 entitled to representation by assigned counsel and related assistance,
4 pursuant to subdivision one of section thirty-five of the judiciary law,
5 when the person:

6 (a) was present in this state when questioned, taken into custody,
7 charged, summoned or presented with the allegations of the removal
8 proceedings, and the person resides or is detained in either this state
9 or an adjoining state; or

10 (b) resided in this state when questioned, taken into custody,
11 charged, summoned or presented with the allegations of the removal
12 proceedings, and the person continues to reside in this state or an
13 adjoining state, or if detained, continues to be detained in either this
14 state or an adjoining state.

15 2. Representation and related assistance provided in accordance with
16 subdivision one of this section shall be a state charge, pursuant to
17 subdivision one of section thirty-five of the judiciary law.

18 § 319-h. Effect on other laws. This article shall supersede conflict-
19 ing local laws, rules, policies, procedures and practices, except to the
20 extent that the provisions of any such local law, rule, policy or any
21 such procedure or practice may provide any additional or greater right
22 or protection. Nothing in this article shall prohibit any entity from
23 cooperating with a federal immigration authority to the extent required
24 by federal law. Nothing in this article shall be interpreted or applied
25 so as to create any power, duty or obligation in conflict with federal
26 law.

27 § 2. The opening paragraph of paragraph a of subdivision 1 of section
28 35 of the judiciary law is designated as subparagraph (i) and a new
29 subparagraph (ii) is added to read as follows:

30 (ii) Persons providing assigned counsel and related assistance in
31 immigration-related matters pursuant to section three hundred nineteen-g
32 of the executive law shall be compensated in accordance with this
33 section. In any case where a person entitled to assigned representation
34 pursuant to section three hundred nineteen-g of the executive law
35 petitions the criminal court of the city of New York, the county court
36 or district court, with jurisdiction where the person is to be ques-
37 tioned or detained, or is detained, or was charged in such immigration-
38 related matter, or most recently resided, the court shall assign coun-
39 sel, with appropriate expertise and experience in immigration-related
40 matters, in accordance with this section.

41 § 3. Severability. If any clause, sentence, subdivision, paragraph,
42 section or other part of this act shall be adjudged by any court of
43 competent jurisdiction to be invalid, such judgment shall not affect,
44 impair or invalidate the remainder thereof, but shall be confined in its
45 operation to the clause, sentence, subdivision, paragraph, section or
46 part thereof directly involved in the controversy in which such judgment
47 shall have been rendered.

48 § 4. This act shall take effect immediately.

MOTION TO ENTER EXECUTIVE SESSION

Motion of Councilperson

WHEREAS, Article 7, Section 105(1)(h), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the proposed acquisition, sale, or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof...".

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia, that upon approval of this Motion, the City Council does hereby enter into Executive Session.

**Seconded by Councilperson
and on roll call**