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THE BIG UGLY

Is a monstrous mishmash of bills looming at the 11th hour?

BY ASHLEY HUPFL | MAY 26, 2015 |

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In the closing weeks of the 2011 legislative session, Gov. Andrew Cuomo had yet to reach a deal with state lawmakers on some of the biggest bills of the year. The state Senate Republicans, enjoying their return to the majority, were pushing hard for a tax cap to limit the annual growth of local property taxes to less

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than 2 percent. Assembly Democrats were demanding stronger rent regulation laws, which were set to expire shortly. Cuomo, just a few months into his first term as governor, was also negotiating with Senate Republicans to secure support for a landmark same-sex marriage law.

“They’re all together because they’re not done,” Senate Deputy Majority Leader Thomas Libous said at the time, referring to the three proposals, all of them unrelated. “Whether they’re in the same bill, I don’t know. Those are discussions the governor and the two leaders make.”

Ultimately each measure was passed, although the success was tempered by criticism that they were all lumped together in a last-minute flurry of horse-trading, resulting in a hodgepodge of legislation.

In Albany parlance, this has come to be known as the “Big Ugly”—a term despised by several lawmakers, though privately used by many. For all the negatives associated with the practice—from its lack of transparency to mistakes in bill language that have unintended consequences—it has also opened the door for a lot of controversial measures that would never have gotten passed on their own.

The property tax cap is one example. It was explicitly tied to the renewal of the rent regulation laws in 2011. The final version that passed the state Legislature states the property tax cap will remain in effect as long as the rent control laws exist or until June 15, 2016.

“The key (to the passage of the property tax cap) was the leverage of the rent control laws,” E.J. McMahon, president of the Empire Center for Public Policy, told City & State in a recent interview. “The reason they could do it was because the rent control laws were up.”

This year, lawmakers could be poised to produce another Big Ugly. The rent control measures that have a huge impact in New York City are set to expire again in mid-June, and Assembly Democrats have made renewing them one of their top priorities for the remainder of the legislative session. And Senate Republicans have made it a top priority to extend the 2 percent property tax cap permanently. Also in the mix are such controversial measures as the 421-a tax credit for real estate developers; a package of criminal justice reforms; and an array of education-related bills—from mayoral control and teacher evaluations to the Dream Act and the education investment tax credit.

Of course, one key change since 2011 is the change in legislative leadership following a series of high-profile scandals that have thrown the state Capitol into chaos. In January, then-Assembly Speaker Sheldon Silver stepped down from the leadership in the wake of federal corruption

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charges and was replaced by Carl Heastie. In May, former state Senate Education Chairman John Flanagan was elected as majority leader of the Senate after Sen. Dean Skelos and his son, Adam, were arrested on charges of extortion, fraud and bribery. Skelos resigned his position as majority leader the following week.

This year's end of session sees the leaders of both houses untried at the negotiating table with Cuomo. Although Cuomo tried to ram a number of bills through in the state budget process, many key pieces of legislation were dropped and some still need to be addressed before the session ends on June 17.

Some political observers were hesitant to predict how the legislative session could end given the disruptions, new leadership and lengthy remaining agenda.

“It could just end up being ugly, instead of a big one. If (the state Legislature) just focuses on the things that must get done and they could just knock them out and get it over with because these scandals have weakened the legislative leadership—thus helped the governor,” said Blair Horner, legislative director for the New York Public Interest Research Group. “It’s entirely possible you end up with this automatic extension scenario at the end—with very little else getting done and you end on a whimper instead of a bang.”

One reason the budget or other major bills don't get done until the last minute is simple human nature. Putting off hard decisions is easier until deadlines arrive and real consequences loom. Lawmakers also try to use the delay to their advantage, hoping that they can hold out longer than their negotiating partners to secure a better deal. Linking bills together can also help legislators sell their constituents on a final deal, allowing votes for unpopular measures as long as they can be explained away as tradeoffs for something more desirable.

The budget is often used strategically to get policy measures passed, since there is little lawmakers can do to amend the full spending plan. The term “Big Ugly” was popularized as a term for the state budget in the 1990s, when the spending plan sometimes wouldn't get done until August. But in recent years Big Uglies have emerged ahead of other key dates, such as federal or court-ordered deadlines or the expiration of key laws, like rent regulation in 2011 and again this year.

“The idea is to put everything in a package and do all the tradeoffs as you approach the deadline,” said Gerald Benjamin, a political science professor at SUNY New Paltz. “It’s a deadline-driven institutional dynamic. It leads to the linkage of non-obvious things, things that don't appear to be substantively related because either there's a compelling reason to get something done—because something bad will happen if you don't get it done, like federal aid will be at risk, or a law will sunset and there will be some potential consequence from the sunset—or it's simply nobody making a deal until they do out of expectation that they can get a

better deal at a deadline.”

What troubles critics is that, while there are 213 seats in the state Legislature, the major decisions are largely left to three men: the Assembly speaker, the governor and the state Senate majority leader. The “three-men-in-a-room” style of negotiating has long been criticized in Albany, but little has been done to change it (though in recent years state Sen. Jeffrey Klein, the leader of the Independent Democratic Conference, has also been in on the talks, making it “four men in a room”).

Cuomo has in the past defended such meetings, arguing it is easier to debate with one person representing his or her conference instead of the whole Legislature. But good-government groups have argued the practice gives the three leaders a disproportionate amount of power over the future of legislation—especially when major decisions are made during eleventh-hour talks with little to no public deliberation.

The state constitution does require a three-day waiting period before bills can be voted on in the Legislature, unless the governor issues a message of necessity to bypass the requirement and allow an immediate vote.

Cuomo has used messages of necessity to facilitate his on-time budgets, but during his tenure has used the power far less than his immediate predecessors. A NYPIRG report released last year found an average of 13.5 bills per year have passed either house with a message during the Cuomo administration, compared with 41 under former Govs. Eliot Spitzer and David Paterson and 89.2 under former Gov. George Pataki.

“I have a rule for myself,” explained state Sen. Liz Krueger, a Democrat. “If a bill shows up at the last minute with a message of necessity from the governor that’s just been printed and we’ve never seen that version of the bill before, but there have been other versions floating around and it’s taken up at 11 o’clock at night—you know it’s a stinker. You know there’s stuff in there no one would agree to if they understood the substance of the bill and you should stay away from it.”

Cuomo was criticized in 2013 when he used a message of necessity to pass the SAFE Act, a controversial gun-control law in the wake of the Newtown, Connecticut, school shooting. Gun-rights activists have railed against the law and this year Flanagan promised to push for reforms to the law.

Good-government groups have proposed making a message of necessity only available under real emergencies. Slowing the process down toward the end of the budget process or session would allow lawmakers and watchdogs to catch their breath and review the proposed legislation to prevent potential mistakes.

Another way to reform the budget negotiations would be to reform the conference committee

process. “My only other recommendation would be that they have a real conference committee process instead of this sort of fake process they have,” NYPIRG’s Horner said. “In the Kabuki theater version of it that they have now there’s no real work done.” The downside would be that with more people in a position to make decisions, the process would be more unwieldy.

“What they call Big Uglies are the ultimate legislative sausage,” McMahon said. “It’s either savory or repellent, depending on who’s tasting it. The main problem here is not that things end up getting jammed in in the end, it’s that unfortunately so many issues here come out of nowhere with no deliberation, which is very important when things emerge from the ether.”

The consequences of how Albany routinely operates were demonstrated in March 2012, in what many observers feel was bigger and uglier than the end of the 2011 session. The state Legislature was approaching the deadline to draw new electoral district lines and was willing to pass a host of Cuomo’s priorities if he promised not to veto their redistricting proposals—in which Assembly Democrats and Senate Republicans were allowed to draw lines to help secure their respective majorities.

In the 2010 campaign, both Cuomo and Senate Republicans had promised to create an independent commission to redraw the lines. However, Assembly Speaker Sheldon Silver and many of his conference members had not. Shortly after the election, it seemed clear that an independent commission was not a priority for either chamber, so the old process of forming a 10-member Legislative Task Force on Demographic Research and Reapportionment, known as LATFOR, took hold.

On March 15, 2012, things came to a head as state Senate Democrats tried to blow up the deal, staging a heated debate on the Senate floor, arguing the redistricting plan was deeply partisan and facilitated racial gerrymandering.

“A lot of pledges were broken that night,” said state Sen. Michael Gianaris, referring to the 2010 promises. “They did what they typically do when they are ashamed of what’s happening. They pass something in the evening hours when the fewest amount of people are paying attention and try and do it with a minimal amount of discussion and debate and hope that no one notices.” At one point, the debate grew so heated that news reports said Gianaris, who argued against the bill on the floor, told Senate Republicans to “shove it.”

After Senate Republicans closed off debate on the redistricting bill, the Senate Democrats, led by then-Senate Minority Leader John Sampson, walked out of the chamber in protest and refused to return.

“It’s very hard to get the public to focus on the process of legislation and they know that and they take advantage of it,” Gianaris said. “It’s atrocious.”

State Sen. Michael Nozzolio, who led the redistricting effort for Republicans, defended the redistricting process and at the time said the conference's decisions were based on population, not politics.

“Senate Democrats abdicated their responsibilities and walked out of the chamber in a cheap publicity stunt and a dereliction of their responsibilities,” he said.

Following the walkout, Republicans proceeded to easily pass several of Cuomo's legislative priorities, including a less generous Tier 6 pension plan, teacher evaluations, the DNA databank and the bill to legalize casino gambling. They also, as part of the agreement with Cuomo, passed a constitutional amendment to reform redistricting, which voters would eventually approve in 2014.

In the days following, many elected officials, good-government groups and advocates criticized the final product—once they had a chance to comb through it.

New York State United Teachers officials blasted the new pension plan and argued it reduced needed benefits for their union. The Tier 6 plan increased the minimum retirement age from 62 to 64 and required workers to contribute more to their pensions. NYSUT officials, too, said they did not know what the new pension plan entailed until after the bill was passed.

“In Albany, nothing gets done until everything is done,” Horner said. “So everything waits until the last minute.”

Now, Democrats are pushing to not only renew the current rent regulation laws, but strengthen them to promote housing affordability and protect tenants. New York City Mayor Bill de Blasio is also pushing to reform the expiring 421-a tax abatement program to require developers receiving the break to set aside 25 to 30 percent of units as affordable and extend the abatement by 10 years to 35 years.

Political observers told City & State it is likely Democrats and state Senate Republicans pushing for a permanent property tax cap will once again forge a deal.

“Now that leverage has come up again—because it's the same leverage. City members don't care about the property tax cap ... and upstate members don't care about rent control. One wants the other,” McMahon said. “Therefore it's the ideal time and so that's basically where we are now.”

The housing laws could also play a role in a deal regarding the many education reforms remaining, which both Cuomo and Flanagan have named as a priority before session ends.

Assembly Democrats, who have long been closely allied with the state teachers union, recently

passed legislation to delay the new evaluation system for teachers and principals, which was approved in this year's state budget, along with extending mayoral control of New York City schools and passing the Dream Act.

Some Senate Republicans have also expressed support for legislation that would delay the new teacher evaluations. However, Cuomo has publicly said he would not support a blanket extension.

"When it comes to education, we must ensure that every child has the same opportunity to receive a first-class education," Flanagan said in a statement May 17. "That's why we cannot end this session without enacting the Education Investment Tax Credit, which has already been approved in the Senate, and increasing the charter school cap. I firmly believe the state must continue to reform our education system to address the concerns raised by parents about Common Core."

Senate Republicans have been skeptical of many of the Assembly Democrats' education proposals, but political observers said there are key issues that both sides are looking to pass that could be potentially linked together in a deal.

"Hopefully we don't have a Big Ugly at the end of this because we've seen how that can go," said Andrew Pallotta, NYSUT executive vice president for political mobilization and legislative advocacy. "The governor seems to have no plan besides stirring the pot and making things more difficult."

With only a few session days remaining until June 17, and with a large legislative agenda unresolved, lawmakers could arrive at a large, complicated deal involving both the housing and education issues, or state legislators could decide to only renew the legislation that is set to expire and leave Albany for the year.

When asked what would happen if rent regulations were allowed to expire, Assembly Housing Committee Chairman Keith Wright compared the prospect to a natural disaster.

"Do you remember the impact the tsunami had on those folks in Asia? It would be something like that," the Manhattan Democrat said. "It would be devastating."

Krueger expressed doubt that many legislative issues would be taken up before the end of June. She predicted the bills set to sunset will be renewed, but little else will get done.

"I suspect minimal, minimal issues will be taken up legislatively before the end of June," Krueger said. "There's some education issues and housing issues that have to come and get resolved, but for everyone else in the world who's hoping for movement on important issues, I

would be cynical about telling them, ‘Yes, there’s possibility of something happening.’ ”

Republican state Sen. Patrick Gallivan noted that there are a number of the bills still under discussion this session—extending rent regulations and mayoral control in New York City, the state property tax cap, the education investment tax credit, changes to the SAFE Act, criminal justice proposals and various education issues— and described the legislative to-do list as “really quite a bit to deal with.” But in the same breath he predicted that lawmakers would only address what needs to be dealt with immediately.

“Certainly it’s hard to predict how anything will end up,” Gallivan said. “I would say that the things that have expiration dates, that need to be addressed, will be addressed.”

City & State Senior Correspondent Jon Lentz contributed to this report.

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